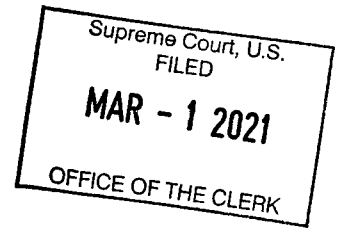


No. 20-1237



In The
Supreme Court of the United States

BLANCHE BROWN

Petitioner

v.

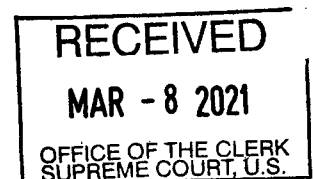
UNITED STATES
(Veterans Health Administration)

Respondent

On Writ Of Certiorari To The
United States Court Of Appeals
For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

38 USC§ 901 makes the VA Secretary and VA Facility Directors Responsible for Providing PROTECTION of persons, to include patients, visitors, and employees at VA medical facilities and on Department Property. Veteran's Health Administration's Mission and **Mandate**, as codified by **38 USC§§§ 501, 901, 1721** as well as the **Patient Bill Of Rights** (38 CFR §17.33); **Privacy Polices** (42 USC 522; 38 CFR 1605); The VA's **Policy Prohibiting Patient Abuse** (38 CFR 17.34) and **Mandated Protection Of Vulnerable Persons** ((38 CFR 1199)-- **ALL create a self-imposed non- delegable and non discretionary DUTY**-upon the VA Agency (VISN network directors and VA Medical Center facility directors). Specifically, **38 USC§ 901** and **VA Security's Policy(38 CFR 0730)** mandate VA Secretary and VA Facility Directors—to:

PROTECT Beneficiaries; CONTROL conduct of those under VA's control and on VA Property; CORRECT dangerous conditions; and PREVENT harm

Federal Torts Claims Act (28 USC § 1346 and §2671 et seq): is the exclusive remedy and makes the United States the sole Defendant in any civil action for injury, "caused by the negligent act or omission of any Gov't employee (acting within scope of employment)." --in accordance with Tort Laws of the State where negligence occurred.

Victims Rights Act: 18 USC §3771; Crime Control Act, 42 U.S.C. 10607(c); **DOJ Victim Witness Program**, 34 U.S.C. § 20141 **AND Victim and Witness Protection Act** Provide Crime victims' right to **be reasonably protected** from her abusers and **require** the District Court to *RESTRAIN The Intimidation and Harassment Of Victims And Witnesses* (to Include Plaintiffs).

FRCP Rule 41 Involuntary (Penalty) Dismissal permits Defendant to motion the court to dismiss an action or claim **If the plaintiff fails to prosecute** or to comply with court rules or a court order in an established PATTERN of “dilatory” “conduct.

The 3rd Circuit REQUIRES District Courts considering a **Rule 41(b) Penalty Dismissal** motion to **correctly apply the 6 –step process (Six Poulis Factors)** (*Poulis v. State Farm Fire & Gas. Co.*1984) **THEREFORE, QUESTIONS ARE:**

1. **WHETHER** the Magistrate Judge Exceeded his authority (28 USC §636; FRCP 72) and the District Court Abused Its Discretion and ignored 3rd Circ Rules and Precedent; and misapplied **FRCP 41 (b) Involuntary Dismissal** by improperly **Granting Defendant's** strategic motion for **Penalty Dismissal** of Plaintiff's FTCA Negligence complaint--for *“Failure to Prosecute Claim”* **ALTHOUGH:**

- Petitioner (a traumatized Cardiac and Heart Surgery Patient) **Declined** (for safety and health reasons) to “comply” with Defendant's late-noticed **Demand**

that Plaintiff/Petitioner travel long distance (during July heat wave)for **WITNESS TESTIMONY** (under pretext of civil case Discovery Rule 54 *deposition subpoena*, BUT) in the VA's **Internal Agency Administrative** (criminal HIPAA) Investigation of her violent VA PATIENT ABUSERS -- Absent WITNESS or VICITM PROTECTION from her patient abusers.

- the CLAIM—"Invasion of Privacy" state Tort that the Court "preserved" against her violent patient abusers--was **not a claim that Plaintiff had made**

2. WHETHER the Court improperly Denied Plaintiff's Requests for PROTECTIVE ORDER and Request TO ENJOIN VA facility administrators and counsel from inciting and facilitating intimidation and foreseeable preemptive and retaliatory violence by Defendant's problematic Patient Abusers-

3. WHETHER the District Court Clerk's Office triggered **REVERSIBLE** FUNDAMENTAL, LEGAL and PROCEDUAL ERRORS when it INCORRECTLY DESIGNATED and DOCKETED Plaintiff's FTCA (28 USC § 1346 et seq) NOT as a Federal Employer Liability Negligence complaint against the United States . . .

BUT INSTEAD, the Clerk of Court erroneously DESIGNATED, DOCKETED AND TREATED the complaint as a **"42 USC 1983 Civil Rights Act: Other"** complaint against government subdivisions and against Govt' employees in their individual capacity pursuant 42 USC §1983 Law--setting the stage for misapprehension of Plaintiff's position; improper adjudication; improper presumptions,; misapplication of Civil Rights Case Law; and erroneous case outcomes.

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are Petitioners (Plaintiff below) Blanche Brown, US Military Veteran; and Respondent (Defendant below) United States

TABLE OF CONTENTS

QUESTIONS PRESENTED	<i>i</i>
PARTIES TO THE PROCEEDINGS	<i>iii</i>
TABLE OF CONTENTS	<i>iv</i>
INDEX OF APPENDICES	<i>vi</i>
LIST OF AUTHORITIES	<i>vii</i>
PETITION FOR A WRIT OF CERTIORARI	1
OPINION AND ORDER BELOW	1
JURISDICTION	1
RELEVANT FEDERAL STATUTES	1
STATEMENT OF THE CASE	4
 A. Preliminary Statement	 4
 B. Introduction	 4
 C. Factual Information	 6
 D. Background Facts Giving Rise To The Civil Action	 7
 E. The District Court Proceedings	 9
 F. The Appellate Court Proceedings	 18
 REASONS WHY CERTIORARI SHOULD BE GRANTED	 20
 I. THE CIRCUITS HAVE NOT ADDRESSED FAR-REACHING ISSUES OF SECURITY AND SAFETY FAILURES	 20
• In VA Medical Centers And Other Federal Facilities	
• Unabated Preventable Violence Against And Harm to Patients, Visitors, Beneficiaries And Employees On Federal Property	
II THE APPEALS COURT PANEL'S RULING CONFLICTS WITH <i>This</i>	20

II THE APPEALS COURT PANEL'S RULING CONFLICTS WITH <i>This</i> Court's Decisions Related To Rule 41(b) Penalty Involuntary Dismissal	20
III. THE CIRCUIT'S RULING CONFLICTS WITH The 3 rd Circuit's Own Standard (Six <i>Poulis</i> Factors) And Precedent Regarding Rule 41(b) Penalty And Involuntary Dismissal.	21
IV. NONE OF THE CIRCUITS NOR THIS COURT HAS ADDRESSED THE ISSUE OF Life Threatening Danger As A Barrier To A Plaintiff's Ability To Properly "Prosecute Her Claims" And Avoid A <u>Rule 41(b) Penalty Involuntary Dismissal</u>	23
V. THE CIRCUITS, HAVE NOT ADDRESSED The issue of Separation of Powers in the Context of <u>Government Agencies of the Administrative Branch</u> using the Judicial process and judicial authority in an active Civil action as an adjunct platform for conducting an Agency-based Internal Administrative (HIPAA) Investigation.	25
CONCLUSION	26

INDEX OF APPENDICES

APPENDIX A US Court of Appeals Decisions, Judgments and Orders

Judgment of US Court of Appeals for 3d Circuit July 30,2020	App A	1
Entry of Judgment July 30, 2020	App A	2
Opinion of US Court of Appeals for 3d Circuit July 30,2020 (11 pages)	App A	3
Order : Denying Rehearing	App A	4

APPENDIX B: US District Court of Eastern District of Pennsylvania Opinions, Judgments and Orders

ORDER: Grant of Defendant Rule 41(b) Penalty Involuntary Dismissal motion <u>February 21, 2019</u>	App B	1
Memorandum Opinion : Rule 41(b) Penalty Dismissal <u>February 21, 2019</u>	App B	2
ORDER: Denial of Plaintiff Request for Reconsideration of Final Judgment <u>March 25, 2019</u>	App B	3
ORDER: Denial of Plaintiff's Request for Reconsideration of Partial Dismissal <u>July 16, 2018</u>	App B	4
ORDER: Denial of Plaintiff's Motion to Quash Def Subpoena duces tecum <u>June 29, 2018</u>	App B	5
ORDER: Denying Plaintiff's Motion to Amend her Complaint and make a clearer statement <u>May 29, 2018</u>	App B	6
ORDER: Denying Plaintiff's request for Phone Conference Rule 16 motion <u>March 20, 2018</u>	App B	7
ORDER: Denying Plaintiff Request to Restrain Defendant from inciting Violence from embattled patient-abusing VA employee against Plaintiff <u>Feb 28, 2028</u>	App B	8
ORDER : Granting Defendant Rule 12 Dismissal Motion ("in Part") Dismissing 14 of Plaintiff's claims and "preserving" Tort of "Invasion of Privacy" (which Plaintiff did not make) <u>Feb 7, 2018</u>	App B	9
Memorandum Opinion (23 pages) Partial Dismissal (14 out of 15 claims)	App B	10

PETITION FOR A WRIT OF CERTIORARI

Petitioner Blanche Brown, US Military Veteran, respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals for the 3rd Circuit. The order of the court of appeals denying rehearing en banc are unreported. The opinions of the district court is unreported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment of the court of appeals was entered on August 26, 2020. Petition for rehearing en banc was denied and entered on October 5, 2020

CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE

The Due Process Clause of the Fourteenth Amendment: This Court has held that the liberty “specially protected” by the Due Process Clause includes the right to BODILY INTEGRITY

Also, the Due Process Clause to the 14th Amendment guarantees the Right To BE HEARD.

18 U.S.C. § 3771 Justice For All Act. Provides Crime victims' right to be reasonably protected from her abusers

The Victim and Witness Protection Act of 1982 Created A Federal Civil Cause Of Action Authorizing A United States District Court To Enjoin Obstruction Of Justice And To Restrain The "Harassment" Of Crime Victims And Witnesses

38 USC§ 901 Sets Forth The Policies And Responsibilities For Law And Order And Protection Of Persons on Property Within VA's Jurisdiction and to PREVENT HARM
Associated Regulations under 38CFR:

- VA Patient Bill of Rights (38 CFR §17.33) which guarantees Patient SAFETY
- VA Prohibition against Patient Abuse (38 CFR §17.34):
- VA Security and Safety Regulation (38 CFR§ 0730) requiring the VA to PROTECT patients and other visitors AND to PREVENT Harm by those persons under the VA's control and those on Government property

5 U.S.C. §552a, Privacy Act applies to any VA records about an individual and prohibits disclosure of a record about that individual

28 USC §455: Recusal of Judge who give Appearance of Bias

Pertinent parts of The Federal Tort Claims Act are:

- **28 USC§ 1346 (b) (1):**

[T]he district courts ... shall have exclusive jurisdiction of civil actions on claims against the United States for personal injury ... caused by the ... wrongful act or OMISSIONS ... of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act ... occurred

- **28 USC 2679. Exclusiveness of Remedy.**

The remedy against the United States provided by section[] 1346 (b) ... of this title ... is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against.

42 USC Ch 6 and 38 USC Parts 18a and b (Prohibition against Intimidation and Retaliation) prohibit Discrimination and Retaliation in Federal Programs (i.e., Veterans Health Administration as a Program of Dept of Veterans Affairs).

STATEMENT OF THE CASE

A. Preliminary Statement

Veterans Health Administration (VHA) is responsible for providing a **safe and secure** environment for patients, staff and visitors at nearly 170 medical centers.

VA **Patient Bill of Rights** (38 CFR §17.33) unambiguously guarantees patients *“a right to be treated with dignity in a humane environment that **affords them safety and reasonable protection from harm**”* WHILE **38 CFR §17.34** Prohibits PATIENT ABUSE by employees on and Off VA Property.

Concomitantly, **Pennsylvania Negligence Laws** (*Restatement 2nd of Torts* §§213, 323 and 324A) impose a general duty upon all persons and agencies who undertake to perform a particular service **not to expose others to risks of injury which are reasonably foreseeable**

B. Introduction

This Case arises from Veterans Health Administration **May 12, 2014 FAILURES to Keep her safe** upon arrival at her scheduled Medical Appointment--**despite ASSURANCES only days earlier, that she would be safe from her known PATIENT ABUSERS¹**-- when her Medical Care team **persuaded her** to not cancel her appointment—in the face of active harassment, stalking and patient abuse by a handful of VA Employees with known, documented histories of patient abuse, assaulting disabled veterans, stalking women employees and beneficiaries, and workplace violence.

¹ **Petitioner's Patient Abusers were KNOWN** unlawfully armed and violent convicted felon with known Mental Illness, and has documented history of stalking and assaulting women veterans and Women employees at *VA facilities and threatening to kill VA employees*. Defense counsel was aware of physical threats against Plaintiff on VA premises in 2014 and threats with firearms in 2014 and Feb 2018.

This petition presents several issues of First Impression not only for this Court, but also among and between circuits. None have visited the issues of:

1. **Security and Safety Failures** to Lives and Safety of Thousands of Employees and Visitors—all of whom are at risk of injury or death on Government Property by disgruntled employees, and others.
2. **Preventable Violence and Unabated Public Safety and Security** Issues in Federal Programs and in FEDERAL FACILITIES² related to Safety and Protection of Millions of Veterans who receive medical care at 150 VA Medical Centers across the country
3. **Violence Against Women**: Specifically Violence Against Woman Veterans
4. **VA Retaliatory Culture** that Fosters and encourages PATIENT ABUSE and (“WHISTLEBLOWER”) Reprisal against Disabled Veterans; and other Vulnerable Populations who seek to be free from abuse.
5. **Improper Rule 41(b) Involuntary (Penalty) Dismissal** against Plaintiffs who default or “fail to Prosecute” their cases due to extraordinary barriers and conditions (intimidation, harassment and risks of foreseeable violence and harm) established by Defendant—as a way of coercing or forcing Plaintiffs to choose between safety and Default.
6. **Reinforcing Systemic Barriers to Access To Justice** for marginalized groups and non-affluent and pro-se litigants
7. **Separation of Powers** :Executive Branch agency’s (VA) improper and Deceptive UTILIZATION of Judicial Platform, Forum, Processes, Personnel,

² **CONTEXT** *The Government Accountability Office (GAO)*, In January 2018, Reported to Congress and Dept of Homeland Security that Veterans Administration is NOT following security standards--at its hospitals and clinics --although required of all federal facilities--thereby placing Patients and Visitors at Risk.

Authority and resources—and misuse/abuse of COURT RULES to conduct WITNESS INTERVIEW in the AGENCY'S **Internal Administrative Investigations**—absent Witness/Victim Protection (**BUT under the pretext of “Discovery” in Petitioner civil case).**

The unabated stalking and violence (since 2014) by career patient-abusing VA employees at Coatesville VA Medical Center ultimately **Forced Petitioner/Plaintiff to TRANSFER, for safety reasons,** her Medical Care Out of CVAMC in 2014 even though (1) she was eligible for timely and appropriate medical care at the closest VA facility and (2) 38 USC§ 901 and VA Security's Policy(38 CFR 0730) make VA Secretary and VA Facility Directors responsible for providing PROTECTION of persons (patients, visitors, and employees) at VA medical facilities and requires VA to PREVENT harm by persons under VA control and those on VA property.

Stalking and attempted violence on May 12, 2014 occurred

This case also arises from Defendant (through Coatesville VAMC Facility administrators) FAILURE to PROTECT Petitioner Plaintiff's Patient Records.

This petition further shines the light on seldom-addressed recurring issues of Veterans Health Administration's profound systemic failures to Protect Vulnerable Veterans and their Privacy and the VA's inability to Prevent Patient Abuse; and Violence Against Veterans and others by known violent VA employees-- as well as the organizational culture of “Whistleblower” intimidation and retaliation against veterans who report patient abuse.

C. Factual Information

The VA's Mission and **Mandate**, as codified by 38 USC§§§ 501, 901, 1721 as well as the Patient Bill Of Rights (38 CFR §17.33); Privacy Policies (42 USC 522; 38 CFR

1605) and The VA's **Policy Prohibiting Patient Abuse** (38 CFR 17.34) and mandated protection of vulnerable persons ((38 CFR 1199) **create a self-imposed non- delegable and non discretionary DUTY--** upon the Agency as well as upon VISN4 director and VA Medical Center facility directors—to:

- **PROTECT Beneficiaries;**
- **CONTROL conduct of those under VA's authority**
- **CORRECT dangerous conditions; and**
- **PREVENT harm to Persons in the VA's care and those on VA Property**

The Pennsylvania Supreme Court has adopted *Restatement 2nd of Torts (i.e., §§213, 323 and 324A)* —which impose a general DUTY upon all persons and agencies who undertake to perform a particular service not to expose others to RISKS OF INJURY which are reasonably foreseeable and apply to agencies who BREACH their duties to Protect and Prevent Harm.

D. Background Facts Giving Rise To The Civil Action in this Case

Petitioner Blanche Brown brought the negligence civil action against the US and holds the GOVERNMENT (but not individuals) liable for the Negligence, Omissions and Failures of VA Facility and Regional Network ADMINISTRATORS at Coatesville VA Medical Center and VISN 4—which over decades, created the conditions that fostered UNCORRECTED culture of Patient Abuse, threats, assaults, intimidation and stalking against Petitioner (as well as other women beneficiaries and women employees-- and against other disabled veterans) by known (for decades) violent and problem VA employees.

Petitioner, at all times relevant was a Permanently Disabled Veteran and Cardiac

Patient (having recently undergone emergency open-heart surgery) who received her medical care from Coatesville VA Medical Center.

Defendant (through Facility Director, and Medical Center Law Enforcement)—despite knowledge of the abuse, firearm threats, violence and stalking—nonetheless FAILED to Keep Petitioner safe upon her arrival at her scheduled Medical Appointment—despite known and foreseeable risks of harm.

Defendant Had Placed The Problem Violent Employee On Disciplinary Leave Of Absence: because of his threats and patient abuse against Petitioner.

The violent employee was NOT supposed to be on VA Property—yet on May 12, 2014 he WAS ALLOWED on the medical center campus at the SAME time as Petitioner’s Scheduled Medical Appointment.

MOREOVER, her VA patient abuser “mysteriously” KNEW when and where Petitioner would be on the VA Medical Center campus.

Apparently someone within the VA facility informed him about the Day, Date and TIME and LOCATION of Ms Brown’s scheduled medical appointment.

****Immediately upon Ms Brown’s arrival, her VA Patient Abuser/Stalker drove up on her with his car-- as Ms Brown walked across the driveway—threatening her with his car and blocking her path. He glared and gestured. He drove off—as the incident took place in front of the Police Building (otherwise things would have been much worse).**

The facility administrators knew that a month earlier, their violent employee had threatened Plaintiff that IF SHE REPORTS his PATIENT ABUSE TO THE VA, “*There’s Gonna Be Trouble*”.

Also, Facility Administrators were aware that not only had their violent employee made credible threats of gun violence (which he attempted to carry out) against this

Petitioner/Plaintiff (an already traumatized and permanently disabled cardiac patient) and had accessed Petitioner's protected Patient Information and **threatened to post it to FACEBOOK---**, but Defendant ALSO knew that the violent patient-abusing VA employee had a history of stalking and harassing women employees and women beneficiaries assaulting patients (for more than a decade); physical altercations with co-workers, and credible threats of violence against his supervisors, managers and union reps.

What is more, Defendant knew that only 3 months earlier, the same violent VA employee had ASSAULTED and THREATENED TO KILL a VA Registered Nurse in her home. And that he was ILLEGALLY ARMED.

Defendant failed to adhere to 38 USC 901Mandate to Protect persons visiting VA facilities; and failed to follow VA Security's Policy (38 CFR 0730) to **PREVENT HARM** by those persons under the VA's control (known violent employees) and those on Government property; And Defendant FAILED to **CORRECT Known Dangerous Conditions And Conduct that their experience knew** posed threats of foreseeable harm.

Further, Defendant failed to protect Plaintiff/Petitioner's medical information-- by allowing someone (Plaintiff is unaware of who that person or persons were) to access her patient information and inform her stalker patient abuser about her scheduled May 12, 2014 appointment—where he intercepted and intimidated her.

E. The District Court Proceedings

On April 4, 2017, Petitioner Blanche Brown filed a Federal Employer Negligence Liability Suit at the PA Eastern District Federal Court against the United States as Defendant-- pursuant to the Federal Torts Claims Act (FTCA): 28 USC 1346 et seq).

However, unbeknownst to Petitioner/Plaintiff at the time, the District Court Clerk's office had INCORRECTLY DESIGNATED³ the FTCA Federal Employer Negligence Complaint as a "CIVIL RIGHTS Other" claim pursuant to 42 USC 1983—against Coatesville VA Medical Center and VISN 4.

In her Civil Action, Plaintiff again alerted Defendant about the violent VA employee's credible threats to harm VA supervisors, admin and union reps and reiterated **that abusive employees (felons) are TOO DANGEROUS TO FIRE.**

On Aug 11, 2018 Defendant Filed a Rule 12 (c) Dismissal Motion for "*failure to state a claim . . .*". And requested "*in the alternative, a Clearer Statement*"

The Court's s improper designation (April 5, 2014) by the District Court clerk's office opened the door for Defendant (in it's (Aug 11,, 2017) Rule 12 Dismissal Motion) to invoke the FTCA's "Discretionary Function" Exception (§2680a) and "Scope of Employment" (Westfall Act) Exception to the FTCA's waiver of sovereign immunity. Also, the improper Designation mislead the District COURT in it's (Feb 6, 2018) partial dismissal opinion: to misapprehend and mischaracterize Petitioner/Plaintiff's complaint, not against the United States for Defendant's Omissions and **Failures (at non-discretionary and non-delegable duty) to Protect and Prevent violence and abuse and to REPORT abuse.**

But instead, the District Court mischaracterized the FTCA Government Employer Negligence Complaint as a misguided Civil Rights complaint (42 USC 1983) against Coatesville VA Medical Center and Regional Network (VISN4)as (as government subdivisions) for administrative failing to train or correct and terminate chronically violent employees.

³ Petitioner/Plaintiff first discovered the mistake in Feb, 2019 when she downloaded the case docket—following the District Court's Feb 21, 2019 Rule 41(b) Penalty Dismissal and final judgment

On Feb 6th and 7th, 2018 the District Court Dismissed “all but 1 of Plaintiff’s claims (Dist Ct Docs 12, 13). Also, the District Court **Denied Plaintiff’s Motion to Amend her complaint** --in which she intended to clarify the relevant *Restatement of Torts* related to Duty, Premises Negligence, 3rd Party harm, etc.; and to address Defendant’s and the Court’s misapprehension of Plaintiff’s negligence claims that ADMINISTRATORS (not low-ranking patient abusing employees) had a duty to Protect and prevent harm as part of their non-discretionary scope of employment.

The mischaracterization of Petitioner/Plaintiff’s position and claims also gave rise to the District Court’s assertions that the claims were also made against Plaintiff’s violent VA Patient Abusers in their individual capacity (when in fact they were not).

The District Court, in its “partial dismissal” decision of Feb 6, 2018 (Dist Ct Docs 12 and 13) and subsequent Orders (Docs 44, 66) **REFUSED TO ALLOW** Plaintiff to Amend and Clarify her complaint

The District Court instead, advanced the Mischaracterization of the complaint and INCORRECTLY STATED on page 1 that Plaintiff’s

“claims arise out of the allegedly negligent acts and omissions of the Coatesville VAMC administrators in not supervising and discharging a VA employee, who was known to be chronically violent and who repeatedly harassed Plaintiff.

The District Court also INCORRECTLY wrote (page 12) in its Feb 6, 2018 Opinion:

“In short, Plaintiff incorrectly assumes that because JAB, Solomon, and AWB were employed by Coatesville VA during the relevant time period, all of their actions with respect to Plaintiff were done within the scope of their employment.”

Actually, Petitioner/Plaintiff’s claims arose from Defendant Federal Employer’s (VA Secretary, Administrators, Facility Directors) **FAILURES TO PROTECT** her (and other foreseeable victims) from a known pattern of **VIOLENCE** and other **ABUSE** by

FAILING to CORRECT known dangerous conditions and FAILING to control conduct of career patient abusing employees under Defendant's control.

NONE of Defendant's DUTIES of CARE are DISCRETIONARY, but are Within the SCOPE OF EMPLOYMENT of the VA Facility and regional Network Administrators.

On Feb 7, 2018 The District Court issued a Court Order dismissing all BUT ONE of Plaintiff's claims—and preserving what the Court “interpreted” as “*Invasion of Privacy*” claim (even though Plaintiff had NOT made such an argument or raised that claim against her patient abusers)—but improperly implicating Plaintiff's violent illegally armed patient abusers (ignoring the FTCA's “Intentional Torts” Exception and “Outside of Scope of Employment” exception)--whom she warned “ARE TOO DANGEROUS TO FIRE.”

Nonetheless Defendant's **facility administrators told their violent employees** that Petitioner/Plaintiff is TRYING TO HAVE THEM FIRED and that she is THE ONLY WITNESS who can TESTIFY AGAINST THEM in an internal ADMINISTRATIVE HIPAA INVESTIGATION and that their JOB SECURITY is contingent upon Plaintiff's TESTIMONY against them.

In the Courts Feb 6, 2018 OPINION, the District Court Acknowledged that facility administrators were aware that defendant's long-time problem violent employees not only had a long history of assaulting disabled veterans/patients and women employees---but also that one of the violent employees had recently ASSAULTED AND THREATENED TO KILL A VA REGISTERED NURSE prior to turning his violence against Petitioner/Plaintiff—**whom he threatened with gun violence if she dared report his patient abuse to his VA Employer.**

The District Court also acknowledged that Petitioner/Plaintiff alerted Defendant to their violent employee's credible threats to harm his supervisors, managers and union reps—and that he discharged his illegal firearms outside of Petitioner/Plaintiff's bedroom window.

On Feb 22, 2018, Defendant's violent patient abusing employee (Plaintiff's abuser) made (yet another) pre-dawn visit to Plaintiff/Petitioner's rural neighborhood and (again) DISCHARGED HIS ILLEGAL FIREARM outside of her window.

On Feb 28, 2018 Petitioner/Plaintiff motioned/requested (Dist Ct Doc 16) the Court to RESTRAIN and ENJOIN Defendant from inciting violence and intimidation against her by their disgruntled and embattled Employees—unto whom Defendant transferred the Court's "Invasion of Privacy" liability and against whom Defendant launched an agency INTERNAL HIPPA INVESTIGATION

Also on Feb 22, 2018 the Court DENIED (Dist Ct Doc 17) ~~the same day~~—Plaintiff's Request to Restrain and Enjoin Defendant from inciting VIOLENCE against her by their known violent employee.

On March 14, 2018 Plaintiff filed a *Request For Reconsideration* of the court's Feb 6, 2018 "partial" dismissal of Plaintiff's Complaint.

On March 20, 2018 The District Court DENIED Plaintiff's request for Telephone Rule 16 Conference (which she requested in light of impending SEVERE SNOW STORM forecasted for March 22nd)

On March 23, 2018 the District Court issued a Scheduling Order (Dist Ct Doc 28) with Discovery deadlines of July 13, 2018 and Dispositive motions deadline of Aug 13.

On May 29, 2018 the District Court Denied Plaintiff's 2nd Motion for Leave to Amend her complaint

In Late JUNE, 2018 Defendant sent Petitioner/Plaintiff an IMPROPER 11th hour SUBPOENA Duces Tecum for a July 9th INTERVIEW (**but under the pretext of “deposition”**)⁴ in the VA’s Internal Agency ADMINISTRATIVE (HIPAA) INVESTIGATION—and identified **Plaintiff** as “THE ONLY WITNESS”. But the Subpoena did not adhere to the Court’s Discovery Rules (FRCP26, 30, 34,37) with respect to timing and reasonable alternatives. Moreover, the subpoena demanded Protected Information which was already in the VA’s possession as well as information that Petitioner/Plaintiff DID NOT HAVE.

The District Court Coached Defendant about when to respond to Plaintiff’s Motion to Quash the Subpoena. And the Court DENIED Plaintiff’s Quash Motion in less than 24 hours.

The Court ALSO DENIED Plaintiff’s multiple Motions and Requests for Protection Orders and Requests to RESTRAIN and ENJOIN Defendant from instigating (indirectly and directly) intimidation, threats and stalking by Coatesville VAMC’s violent Patient abusers—who were targets of Defendant’s ADMINISTRATIVE INVESTIGATION—which could cost them their jobs and pensions.

On July 9, 2018 Plaintiff attempted to drive to Philadelphia for the **“Deposition”**—but turned around because of anxiety, heat and illness—and lack of safety or protection

In July 16, 2018 The District Court issued an Order (Dist Ct Doc 63) in which the court made sweeping Denials of all of Plaintiff’s outstanding motions (for leave to

⁴ Defendant’s Scheduled “Encounter” Under The Guise Of “Deposition was deceptive, threatening and intimidating—and meant to sabotage Plaintiff’s FTCA complaints by dissuading or preventing her from further pursuit. The Court’s having Ignored Plaintiff’s concerns is the Moral equivalent of Ignoring COVID-19 dangers.!

amend her complaint, For Protective Order, For alternative to in-person interview with defendant—and Denied motions that Petitioner/Plaintiff had not made.

On **July 26, 2018** the District Court issued an **Order** (Dist Ct Doc 66) **commanding Plaintiff to make REASONABLE arrangements** to attend defendant's "Deposition" (HIPAA Investigation Interview) within 30 days.

****The Court had repeatedly IGNORED and DISREGARDED** Petitioner/Plaintiff's legitimate concerns about PRE-EMPTIVE and RETALIATORY VIOLENCE by Defendant's embattled violent Patient Abusers (Plaintiff's abusers). The Court ALSO ignored Plaintiff's REASONABLE REQUESTS for ALTERNATIVES to in-person encounter (such as Phone Conference or interview CLOSER to Plaintiff's home (as opposed to an hour and a half drive—alone-- to Philadelphia during a heat wave) **On Aug 6, 2018** Petitioner/Plaintiff motioned the Court for PROTECTIVE ORDER and requested **ALTERNATIVE to in-person encounter** with Defendant (in light of foreseeable risk of harm)

On Aug 20, 2018 Defendant motioned the Court for a Rule 41 Penalty (involuntary) Dismissal of Plaintiff's "claim".

In Aug 2018 Plaintiff filed another RECUSAL MOTION

On February 21, 2019 The District Court GRANTED DEFENDANT'S Rule 41(b) Penalty Involuntary Dismissal Motion (Dist Ct Docs 77,).

On Feb 21, 2019 the Court Issued an OPINION MEMORANDUM (Dist Ct Doc 76) in the form of a blistering diatribe in defense of e Counsel's dangerously reckless conduct Also **On Feb 21, 2019** (Dist Ct Doc 77) the District Court Ordered THAT Plaintiff's MOTIONS FOR PROTECTIVE ORDER, Motion for Sanctions and 3rd Recusal motion ARE DENIED

On March 25, 2019 the Court Issued an ORDER THAT PLAINTIFF'S (post-judgment) MOTION FOR RECONSIDERATION (DOC. 82) IS DENIED.

On April 2, 2019 the Court Issued an ORDER THAT PLAINTIFFS MOTION FOR RELIEF FROM JUDGMENT AND DENIAL OF RECONSIDERATION (DOC. 84) IS DENIED

On April 30, 2019 the Court Issued ORDER THAT PLAINTIFFS SECOND RULE 60 MOTION (DOC. 86) IS DENIED.

Overt District Court Errors Compounding The Clerk's Office Initial Fundamental, but UNCORRECTED Error.

In the District Court's April 21, 2019 Memorandum Opinion (Dist Ct Doc 76), the District Court browbeat Petitioner/Plaintiff for having raised issues about Defense Counsel's dangerously reckless conduct.

The Court excoriated Petitioner/Plaintiff for having called Defendant for knowingly placing her in harms way—foreseeable violence by their known troubled and violent patient abusing employees WHOSE JOBS, Defendant asserted were threatened and contingent on the “outcome” of Petitioner/Plaintiff's INTERVIEW in Defendant's agency internal ADMINISTRATIVE HIPAA INVESTIGATION (under PRETEXT of “Deposition).

The District Court also lambasted Petitioner/Plaintiff for having requested recusal of court staff.

MOREOVER, Throughout the District Court's Feb 21, 2019 Opinion Memorandum (Dist Ct Doc 76) the court conflated and misapplied 3rd Circuit Case law.

For example, the District Court improperly relies on 3rd cir. Hicks v Feeney to justify its Improper Rule 41 penalty Involuntary dismissal-- by premising its decision

on the court's **initial legal error**:

That is to say, the Court Clerk's April 5th , 2017 unchecked INCORRECT DESIGNATION and Docketing of plaintiff's FTC complaint (instead) AS a *42 USC 1983 "Civil Right Case: other"*(see april 5, 2017 docket coversheet: downloaded march 25, 2019)—had far-reaching negative implications for the adjudication process and case outcomes.

United States District Court Eastern District of Pennsylvania (Philadelphia) CIVIL DOCKET FOR CASE #: 2:17-cv-01551-MSG	
BROWN v. UNITED STATES et al Assigned to: HONORABLE MITCHELL S. GOLDBERG Cause: 42:1983 Civil Rights Act	Date Filed: 04/05/2017 Date Terminated: 02/21/2019 Jury Demand: Plaintiff Nature of Suit: 440 Civil Rights: Other Jurisdiction: Federal Question

The Docket coversheet shows that the District Court Clerk Categorized, DESIGNAED and Docketed the complaint pursuant to "42 USC 1983 Civil Rights Act" against the US and Subdivisions--EVEN THOUGH Petitioner/Plaintiff filed her Complaint as a FEDERAL EMPLOYER Negligence Case pursuant to the Federal Torts Claims Act.

Nonetheless, the District Court subsequently *treated the complaint* as a 42 USC 1983 complaint and improperly *applied* 3rd Circuit Case Law. In the Court's errant Feb 21, 2019 Penalty Dismissal Memorandum (Doc 76), the Court's writer **incorrectly** refers to *Hicks v Feeney* 3d Cir. 1988) as "*Factually ANALAGOUS to this case at hand*" — when in fact there are NO parallels or similarities.. *Hicks v Feeney* is a 42 USC 1983 Individual-capacity civil rights lawsuit filed by an incarcerated detainee- against the director of a hospital for involuntarily detaining him.

Additionally, in the District Court's Feb 7, 2018 interlocutory Order/Opinion the Court INCORRECTLY stated:

"Plaintiff brings this claim against the United States, as well as Coatesville VA Medical Center, and administrators of the Region 4 Veterans Integrated Services

Network, including human resources staff, program managers, and policy makers.”

The District Court’s mis-statement appears to discredit and ridicule Petitioner/Plaintiff but is ALSO consistent with the Court’s initial error of March 5, 2017-- in that the Court applied **42 USC 1983 Civil Rights Designation and Law** to Plaintiff’s complaint asserting claims against individuals and the agency subdivisions INSTEAD of properly Applying 28 USC 2679 to the negligent oversights and omissions of Medical Center Administrators and VA regional network administrators acting within the scope of their employment, who for decades **failed to correct** the known PATIENT ABUSE problem.

The Court’s initial Legal Error opened the Door for Defendant to improperly argue the FTCA’s Exceptions to its waiver of sovereign immunity. Specifically, Defendant’s argued that the FTCA does not apply to individuals, but only the Government; Defendant also improperly argued that Civil Rights violations are not within the purview of the FTCA (although Petitioner’s civil action is against the US for omissions and failures of Administrators to Provide SAFE environment, PROTECT her from harm, PREVENT violence.

F. The Appellate Court Proceedings

On May 1, 2019, Petitioner/Plaintiff filed a notice of appeal from the District Court’s Final judgment and Interlocutory Orders.

On May 8, 2019 the Appeals Court issued a Briefing Schedule

On June 19th, 2020 This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1

On July 30, 2020 the 3rd Circuit Court of Appeals Affirmed the District Court's judgment

On Sept 28, 2020 Petitioner/Plaintiff Requested Rehearing En Banc

On October 6, 2020 the Court of Appeals Denied Petitioner/Appellant's Request for Rehearing

The 3-judge Appeals Court panel did not address the district court's initial and fundamental reversible errors which include:

- (1) Magistrate Actions Exceeding Statutory Authority pursuant to 28 USC §636)
- (2) Defendant's Abuse of Judicial Civil Processes of this civil action to carry out Administrative Branch Internal Agency Investigation against problem employees
- (3) Turning a Blind eye to Defendant's overt Dangerous Discovery Abuses:
Placing Plaintiff in harms way by making her the scapegoat for VA violent employees whom the VA set out to terminate
- (4) Denial of Plaintiff's numerous request to Amend her FTCA Complaint (pursuant to FRCP Rule 15 and 3d Circuit "*Foman Factors*")—thereby denying her opportunity to clarify her position about the Govt' liability (Restatement 2nd of Torts) for failures of VA Administration failure at non-Discretionary Duties to PROTECT, PREVENT HARM (*SEE Heyl & Patterson Int'l, Inc. v. F.D. Rich Housing of the Virgin Islands, Inc.*, 663 F.2d 419, 425 (3d Cir.1981)
- (5) Disregarding US Supreme Court Holding in *Liljeberg v. Health Services Acquisition Corp.* (1988) regarding RECUSAL Pursuant to 28 USC 455 (which is NOT Discretionary when there is an "appearance" of bias)
- (6) Reversible Procedural, Clerical and Administrative Errors that could have been corrected early on --such as misclassification and Improper designation (under 42 USC 1983-- hence improper adjudication--of Plaintiff's FTCA complaint.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I.

REVIEW IS WARRANTED BECAUSE THE CIRCUITS HAVE NOT ADDRESSED THE FAR-REACHING IMPLICATIONS FOR SECURITY AND SAFETY FAILURES

- **In VA Medical Centers And Other Federal Facilities And**
- **Unabated Preventable Violence Against And**
- **Harm To Visitors, Beneficiaries And Employees On Federal Property**

The Panel's Decision Trivializes and even ignores Government inspectors and accountability reports to congress and department of homeland security underscore exceptional importance of these issues.

Of Import, The Government Accountability Office (GAO) Wrote to Department of Homeland Security (DHS) and House Committee on Veterans Affairs. The GAOs report stated that:

- VA cannot ensure that local physical security decisions are based on actual risk, are appropriate to protect the facility and are effective.
- The type of oversight VA lacks is required of all government agencies by the Interagency Security Committee.
- "This could leave staff, patients, and visitors, as well as property, vulnerable to unmitigated risks

II.

REVIEW IS WARRANTED BECAUSE THE 3-JUDGE APPEALS COURT PANEL'S AFFIRMANCE CONFLICTS WITH *THIS COURT*'s DECISIONS RELATED TO RULE 41(b) Penalty Involuntary Dismissal

The Appeals Court Affirmance Conflicts With The US Supreme Court's Holding in *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, (1976) in which US the SUPREME COURT HELD **that**

Dismissal with prejudice is an "extreme" sanction. *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, (1976) and That:

“dismissals with prejudice or defaults are drastic sanctions” that “must be a sanction of last, not first, resort.” Poulis, 747 F.2d at 867, 869; see also Briscoe, 538 F.3d at 258; Emerson, 296 F.3d at 190

The Affirmance Of Unconstitutional Ruling (conflicting Rule 41(b)) Is Itself An Offense Against The Constitution, as it ENDANGERS the rights and LIVES of millions of veterans who receive services through the VA.

Moreover, the Appeals Court Panel’s Affirmance of the District Court’s unconstitutional judgment Diminishes The Humanity Of Vulnerable Victims And Ignores the visible Need To Protect Disabled Veterans; Seniors; Victims of Patient Abuse and Preventable Violence--and other vulnerable groups and “Whistle-blower” litigants-- in further unjustifiable danger of violence or DEATH—(through negligence or retaliation) --perpetuating the indifference and making certain groups DISPOSABLE. And it NORMALIZES violence by Government Defendant employees against vulnerable groups.

III.

Review Is Warranted BECAUSE THE OPINION BY THE 3-JUDGE PANEL RULING CONFLICTS WITH THE 3RD CIRCUIT’S OWN STANDARD (Six *Poulis* Factors) AND PRECEDENT REGARDING RULE 41(B) Penalty And Involuntary Dismissal.

The District Court’s Penalty Dismissal exhibits abuse of discretion and disregard for it’s own precedent and rules even though The 3rd Circuit Held that A District Court Abuses Its Discretion if its Decisions to NOT draw the inferences in favor of non-moving party rests upon a “Clearly erroneous finding of fact, an errant conclusion of law or an improper application of law to fact “*Meditz v City of Nework*, (3d Cir 2011) The Panel’s Affirmance Conflicts with 3rd Circuit’s Standard established in *Poulis v. State Farm Fire & Casualty Co.*, 747 F.2d 863 (3d Cir. 1984 in its application of “Six

Poulis Factors”) to FRCP 41 (b) Involuntary Dismissal

The 3rd Circuit Asserted:

“dismissals with prejudice or defaults are drastic sanctions” that “must be a sanction of last, not first, resort.” Poulis, 747 F.2d at 867, 869; see also Briscoe, 538 F.3d at 258; Emerson, 296 F.3d at 190

The 3rd Circuit REQUIRES District Courts, when considering a Rule 41 Penalty Dismissal motion (which the 3rd Circuit views as a measure of last resort) to correctly apply the 6 –step process. Those Factors Are:

- (1) The extent of the party's personal responsibility;
- (2) The prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery;
- (3) A history of dilatoriness;
- 4) Whether the conduct of the party or the attorney was willful or in bad faith;
- (5) The effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and
- (6) The meritoriousness of the claim or defense.” *Poulis*, 747 F.2d at 868.

Third Circuit has provided additional guidance to district courts by admonishing that **“no single *Poulis* factor is dispositive,”**

However, in this instant case, The District Court never MENTIONED the *Poulis* Factors in it’s Dismissal Ruling (*SEE Dist Ct Case: 17-cv-1551 Docs 76, 77*), much less correctly applied them.

The Appeals Panel, however **errantly submits that the District Court Correctly Applied the “6 *Poulis* factors”** established by the 3rd Circuit—*but failed to EXPLAIN HOW* the district court’s decision comports with 3rd Circuit **requirement.**

Moreover, the Case Record does not show that Petitioner/Plaintiff acted in bad faith or that Plaintiff has a history of dilatoriness or that Plaintiff’s Refusal to cooperate

with Defendant's dangerous "deposition" plan prejudiced Defendant—or that Plaintiff is in any way responsible for the known danger willfully created by Defendant—which prevented Plaintiff's participation in their "deposition".

IV

REVIEW IS WARRANTED BECAUSE NONE OF THE CIRCUITS NOR THIS COURT HAS ADDRESSED THE ISSUE OF LIFE THREATENING DANGER AS A BARRIER TO A PLAINTIFF'S ABILITY TO PROPERLY "PROSECUTE HER CLAIMS" AND AVOID A RULE 41(B) PENALTY INVOLUNTARY DISMISSAL

In this instant case, Defendant knew that Petitioner/Plaintiff (a traumatized cardiac patient recovering from open heart surgery) was targeted by career patient abusing employee(s) with known history of assaulting patients and co-workers; assaulting women employees and stalking women patients. hand Defendant was aware of the same violent VA employee's violence against Petitioner—which included threats, vandalism, stalking both on and off VA property.⁵

The GAO's dire warning and report was published and sent to congress

- **TWO YEARS BEFORE a man OPENED FIRE in 2020 inside the Veterans Affairs Medical Center in West Palm Beach, Florida**
- **A YEAR AFTER 3 VA employees WERE SHOT TO DEATH in 2017 by a**

5

This Risk Of Harm Or Death To Plaintiff Was As Great Or Greater THAN THE RISK TO A JUDGE, ATTORNEY or other Officer of the Court of letting down their guard and then contracting and succumbing to COVID-19 during a Pandemic. As the Record Shows, Plaintiff's concerns about her safety and life-threatening dangers posed by her VA Patient Abusers (Defendant's disgruntled and embattled employees) were valid and as real as—*but more violent and even more dangerous for Plaintiff than COVID-19.*

YET IT IS DOUBTFUL THAT IF A Court employee or judge DECIDED TO OPT-OUT for SAFETY REASONS that decision would be evaluated under "Poulis Factors" **BUT PENALIZED as "Dilatory"**, Intentional Delay, Bad Faith; Injurious to Opposing Party—OR that their reasoning for choosing SAFETY and LIFE is without merit.

non-veteran visitor at a VA facility in California

- **3 YEARS AFTER** a VA Psychologist **WAS SHOT TO DEATH** in El Paso

HOWEVER, the GAO's report was issued to Congress:

- **ONLY 1 MONTH BEFORE** Defendant's administrators at Coatesville VA Medical Center weaponized the District Court's Feb 7, 2018 "*Invasion of Privacy*" Tort claim and transferred the liability to it's Known Violent and embattled Employee (Plaintiff's Patient Abuser and Stalker)—
- **And A MONTH BEFORE** the VA Patient-abusing employee RETURNED to Plaintiff's home (Feb 22, 2018) and AGAIN DISCHARGED one of his many illegal firearms outside of Plaintiff's window---- to intimidate and dissuade her from "Testifying" in response to Reports from **DEFENSE COUNSEL and GENERAL COUNSEL** announcement that *Plaintiff is TRYING TO GET THEM FIRED and she is THE ONLY WITNESS* in the INVESTIGATION that was designed to **TERMINATE 2 of Coatesville VAMC's** most notorious patient abusers and problem employees
- **And ONLY 5 months BEFORE** Defendant (late June 2018) attempted to Set Petitioner up for what would have been a foreseeable VIOLENT ENCOUNTER (pre-emptive or retaliatory violence) with her VA Patient Abusers when Defendant unreasonable Demanded that Plaintiff attend a short-noticed July 7, 2018 INTERVIEW (TESTIMONY against her abusers) in the Agency's Internal ADMINISTRATIVE HIPAA INVESTIGATION (but under the pretext of a Subpoena *Duces Tecum* and "Deposition" in Plaintiff's civil case).

Further, the GAO's warning about Security and Safety issues at VA Facilities was published and sent To Congress . . .

- **ONE YEAR AFTER, *this* Petitioner filed her civil action in which she warned Defendant that her violent VA Patient Abusers ARE TOO DANGEROUS TO FIRE**
- **FOUR YEARS AFTER *this* Petitioner reported being encouraged by her VA Medical team to attend her scheduled May 12, 2014 medical appointment, ONLY TO BE STALKED AND THREATENED and Re-traumatized AT the VA Medical Center by Coatesville VAMC's known illegally and heavily armed disgruntled employee with a long history of PATIENT ABUSE, Workplace Violence; Demotions and stalking Women Veterans and women employees.**
- **And 4 years AFTER the violent employee WAS PERMITTED TO Enter the VA Property on MAY 12, 2014 to stalk and TERRORIZE Plaintiff during her scheduled medical appointment .**
 - **4 YEARS AFTER the SAME KNOWN VIOLENT Coatesville VAMC EMPLOYEE assaulted and THREATENED TO KILL a VA Nurse**
 - **6 YEARS AFTER the same long-time problem employee (Petitioner's VA patient abuser and stalker) at Coatesville VAMC ASSAULTED HIS CO-WORKER (documented) and made credible threats to harm his supervisors and co-workers and administrators who demoted him—and Union Reps whom he believed did not support him.**
 - **11 YEARS AFTER a woman veteran and VA Employee Filed a Police Report because the SAME Coatesville VAMC employee was harassing and STALKING HER at work and at her home**

V.

REVIEW IS WARRANTED BECAUSE NONE OF THE CIRCUITS, HAVE ADDRESSED The issue of Separation of Powers in the Context of

Government Agencies of the Administrative Branch using the Judicial process and judicial authority in an active Civil action as an adjunct platform for conducting an Agency-based Internal Administrative (HIPAA) Investigation.

Moreover, Defendant offered NO level of Protection for Petitioner/Plaintiff even though Defendant intended to utilize her Witness Testimony for the Agency's internal investigation AND although Plaintiff was effectively a Victim/Witness (albeit involuntarily and unwittingly) as Defined by HIPAA as well as by 18 USC 377, 34 USC 201411, 42 US 10607, 18 USC 2261. Petitioner was a Witness/Party , hence qualified for witness/victim protection from her abusers.

The Victim and Witness Protection Act of 1982 Created A Federal Civil Cause Of Action Authorizing A United States District Court To Enjoin Obstruction Of Justice And To Restrain The "Harassment" Of Crime Victims And Witnesses . However, the District Court turned a blind eye to Defendant's overt misconduct and reckless endangerment of Petitioner/Plaintiff's welfare—as a crime victim, domestic abuse victim and a VA Health beneficiary/Patient.

CONCLUSION

Based on the foregoing, Petitioners respectfully submit that this Petition for Writ of Certiorari should be granted. The Court may wish to consider summary reversal of the decision of the Ninth Circuit Court of Appeals.

Dated: Feb 27, 2021

Respectfully Submitted,



Blanche Brown,
Petitioner