

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Michael Owen Harriot — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Fourth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Owen Harriot

(Your Name)

USP, Lewisburg, P.D. BOX 1000

(Address)

Lewisburg, Pennsylvania 17837

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

IS WHETHER THE FOURTH CIRCUIT'S LACK
AUTHORITY SEE 28 U.S.C. § 1291, ON ITS
OWN TO RAISED § 2401(b)'S TIME BAR WHEN
THE DISTRICT COURT'S OPINION DID NOT
REST ON § 2401(b), BUT IS BASED SOLELY
ON HECK'S BAR ?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at 795 Fed. Appx. 215; No. 19-7511; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

Dist. LEXIS 172756; C/A No. 3:19-2482-JFA-SVH
☒ reported at Dist. LEXIS 172497; C/A No. 3:19-2482; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 26, 2020

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 28, 2020, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Petitioner's Fourth Amendment 'based on' fraudulent concealment were affirmed by an unpublished Fourth Circuit's opinion which is sufficient basis for reviewed by this Supreme Court to vacate, or reverse any judgment 28 U.S.C. § 2106

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FOURTH AMENDMENT - False Arrest and False Imprisonment

28 U.S.C. § 2680(h) Law Enforcement proviso exception

28 U.S.C. § 2401(b)

STATEMENT OF THE CASE

A. This Supreme Court is ask again to consider the Petitioner's Fourth Amendment egregious arrest and tortious detention without Judicial Warrant Unsupported by Probable Cause and remains unanswer on the merits see Case No.18-9222, in the District of Columbia, South Carolina("S.C."), on July 24,1999, under the Federal Tort Claims Act(FTCA) 28 U.S.C. § 2680(h),Law Enforcement Proviso alleging False Arrest and False Imprisonment by Federal Bureau of Investigator (FBI) officer(s). See 18 U.S.C. § 3052; see also Millbrook v United States,569 U.S. 50 (2013);

Facts and Procedurally Background

B. On Saturday, July,24,1999, before obtaining a judicial warrant, Sheriff's deputies arrested Petitioner at the Columbia Place Mall as a passenger in a taxi-cab in Columbia, SC, at the direction of Special Agent of the FBI,Robert "WAizenhofer" in the District of Charleston, SC. Hours later at the columbia place mall, two FBI special agents,Rodney "pritchard and Charles "Klatz" arrived at the scene and transported Petitioner to the Richland County jail at the direction of Waizenhofer. Neither the sheriff's deputies or FBI pritchard or klatz informed Petitioner on the grounds for his arrest and detention;

C. While in jail on July 25,1999, Waizenhofer and Task Force Officer, Allen Walker visited Petitioner. Walker's arrested Petitioner in March of 1997, for Assault and Battery charges. Neither Waizenhofer or Walker informed Petitioner of the grounds for his arrest and

detention, but, instead, they interrogated and advised Petitioner of how much time he is facing for drug activity;

D. At the time of Petitioner Initial Appearance hearing on July 26, 1999, Petitioner was brought before the Magistrate Judge Bristow "Merchant," where Waizenhofer filed a "Criminal Complaint Case No. 3:99-MJ-481, as an attempted for an arrest warrant application." 1 Neither Waizenhofer or Defense Attorney, Herbert Louthian jr. or the Magistrate Judge Merchant put Petitioner on "inquiry notice" of the "arrest without legal process violation, and is entitled to a hearing."

E. That information was concealed from petitioner and also the Court(s) during the years until Petitioner on his own in February 2018, "uncovered" Waizenhofer's fraudulent concealment and as a result, "deprived Petitioner of his Constitutional Fourth Amendment right to be free from unreasonable searched and seized." See Albright v Oliver, 510 U.S. 266(1994);

F. Relying on that new information, Petitioner presented his "administrative claim" to the appropriate FBI agency through the Standard Form 95(SF-95) on January 3, 2019, more than 19 years after the "accrued [concealed] warrantless arrest on July 24, 1999." See 28 U.S.C. §§ 2401(b), and 2675(a). The FBI Chief Division Counsel Donald A. "Wood" acknowledged the SF-95, however, he returned the SF-95 to Petitioner on January 10, 2019, with a letter indicating the claim was not perfected;

1. The record is conclusively clear that at no point on Saturday, July 24, through Sunday, July 25, 1999, "did Waizenhofer had an arrest warrant for Petitioner arrest" until July 26, 1999, as an attempted, where the Court's Docket record is tainted with false information known as "BENCH WARRANT" [ECF No. 2].

G. On January 22, 2019, Petitioner perfected the claim by attaching copies of Waizenhofer's filed complaint in Case N.3:99-MJ-481, and indictment filed on April 6, 1999, in Case No.3:99-341-MBS, charging Jinkin Hopkins, Scott Sherpinskas and not Petitioner Harriot. Petitioner did not received any response from Counsel Wood, despite having sent a follow up letter on July 22, 2019. § 2675(a) provides that, "the failure of any agency to make a final disposition of a claim within six month after it is filed shall, at the option of the claimant anytime thereafter, be deemed a final denial of the claim for purposes of this section." id.;

H. Petitioner timely sued the United States under the FTCA's law enforcement proviso for "false arrest and false imprisonment" in the Federal District court of Columbia, SC, where the United States Respondent's fraudulent concealed of Petitioner's arrest and ~~fortious~~ detention without legal process unsupported by probable cause on July 24, 1999. See § 2401(b) (within the six month be deemed a final denial of the claim);

I. First, the Magistrate Judge Shiva V. Hodges assigned to this matter granted Petitioner in forma pauperis status. Second, She directed the Clerk not to service of the Summons and Complaint upon the United States to answer, to the contrary, as required by Federal Rule of Civil Procedure (Fed. R. Civ. P.) Rule 4(i)(A)(1). Third, She "recommends the district judge to dismiss the FTCA's complaint with prejudice and without issuance and service of process." And fourth, She reliance on Heck v Humphrey, 512 U.S. 477 (1994), barred the Petitioner's FTCA's for false arrest and false

imprisonment. See U.S. Dist. LEXIS 172756 at *4(D.S.C. 2019) Appendix B). Nowhere in her four-page report, did she recommended § 2401(b)'s time bar.id.;

J. Petitioner moved the Court to recused both the magistrate judge and district judge Joseph F. Anderson for being substantially prejudice against Petitioner suing the United States Government and its Employees by targeting Petitioner's Civil Right Action not to issued the Summon(s) and Complaint(s) upon the government to answer See C/A No.3:18-540-JFA-SVH; C/A No.3:18-3164-JFA-SVH; C/A No.1:20-1266-JFA-SVH; but see C/A No.1:19-2963-JFA-SVH(allowing service of the summon and complaint upon the United States because Petitioner asserts the Bureau of Prisons staffs were negligence). Where the same magistrate and district judge denied Petitioner's recusal motion rather than a judge not assigned to the case;

K. The Petitioner timely filed a specific objection against the magistrate judge's reliance on Heck's barred,inter alia. In doing so, Petitioner contends that "the magistrate judge viewed Petitioner's FTCA's law enforcement proviso as a malicious prosecution claim and this was clear error. [ECF No.13];

L. First, the district judge stated that," the magistrate judge correctly opines that Petitioner's claims concerning his alleged false arrest and false imprisonment are barred by the holding in Heck. Second, the district judge stated that,"Petitioner argues that the Report is contrary to Heck,however, Petitioner does not explain how the report departs from the established precedent." [ECF No.16]. Next, the district court concluded that,"Petitioner

argues that the magistrate judge viewed Petitioner's FTCA claim as a malicious prosecution and this was clear error"[ECF No.13]. However, the magistrate judge makes no reference to malicious prosecution in the Report [ECF No.13]."See Dist. LEXIS 172497 at *2,3,and 4(D.S.C. 2019)(Appendix B). Nowhere in his three-page opinion, did the district judge makes reference to § 2401(b)'s time bar in its "final decisions."id.;

M. Petitioner filed a "timely notice of appeal," where the Clerk of the 4th Cir. mailed him an Informal Brief package as provide by Local Rule 34(b)(requiring court to limit review to issues raised in pro-se litigant's informal brief; Jackson v Lightsey, 775 F.3d 170,177(4th Cir.2014)(stating that the"informal brief is an important document, under Fourth Circuit rules, our review is limited to issues preserved in that brief"). Further, the Petitioner Consented to pre-paid payments of \$505.00 under the PLRA, for his preserved issues to be heard on the merits,but,instead, his issues were never considered at all by the Fourth Circuit;

N. With the Fourth Circuit rules 34(b) instructions in mind, on appeal, Petitioner proceeding pro-se timely filed three meritorious preserved issues adjudicated on the merits by the district judge:(1) Whether Heck's bar Petitioner's arrest and detention without legal process unsupported by probable cause;(2)Requesting appointed counsel; and (3) the Recusal of the magistrate and district judges;

O. On February 26,2020, the panel for the Fourth Circuit affirmed the district court's order not on Heck's bar, but based on

§ 2401(b)'s time bar. In reaching that conclusion, the panel's add words of its own reasoning to invoked the applicable statute of limitation § 2401 (b)(2018). See 795 Fed. Appx.215, at 216(2020); see also Appendix A. The Fourth Circuit did not quote or analyze the text of the FTCA's law enforcement proviso or cite any cases that had addressed the FTCA's law enforcement proviso for false arrest and false imprisonment. On April 28, 2020², the fourth Circuit denied the Petitioner's rehearing and rehearing en banc See Appendix C;

Because the Fourth Circuit did not considered Petitioner's three meritorious preserved issues raised under 4th. Cir. Rule 34(b), Petitioner question presented: Is whether the Fourth Circuit's lack authority see 28 U.S.C. § 1291, on its own to raised § 2401(b)'s time bar when the District Court's opinion did not rest on § 2401 (b), but is based solely on Heck's bar? In any events, it did. See § 1291(governs appeals from all "final decision of district court");

ARGUMENT

The record is crystal clear that the "final decision of the district court" did not "based on" or "makes reference to" § 2401 (b)'s time bar see Appendix B; see also § 1291. Even if the Fourth Circuit were to consider[ed] § 2401(b)'s time bar set forth in its per curiam opinion rather than on the district court's Heck's barred "final decision," this Supreme Court has foreclosed the Court of Appeals' § 2401(b)'s time bar in United States v Kwai Fun Wong, 575 U.S. 402 (2015);

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2. Petitioner's due date for his Writ of Certiorari is on July 27, 2020.

In Kwai Fun Wong, this Court rejected the Government's argument and conclude that courts may toll both of FTCA's § 2401 (b) limitations periods. Id. Whereas here, in February of 2018, Petitioner on his own "discovered" that the United States Respondent's engaged in "fraudulent concealment" of his 'actual arrest and tortious detention' without legal process lacked probable cause and still remains adjudicated on the merits since July 24, 1999. Thus, "a claim accrues when the plaintiff becomes aware of his injury, United States v. Kubrick, 444 U.S. 111, 123 (1979), or when he is put on notice...to make reasonable inquiry as to whether a claim exists." Accordingly, the Fourth Circuit unpublished opinion did not consider Petitioner's contention that the United States Respondent had concealed his warrantless arrest without probable cause from the District Court for reviewed on the merits;

Furthermore, this Court has held that "time bars in suits between private parties are presumptively subject to" equitably tolling, Irvin v. Department of Veteran Affairs, 498 U.S. 89, at 95-96 (1990); see also Kwai Fun Wong, 575 U.S. at 407. That means a court usually may pause the running of limitations statute in private litigation when a party "has pursued his rights diligently but some extraordinary circumstances"[in Petitioner's concealed warrantless arrest lacked probable cause case here] prevents him from meeting SC three years deadline. Kwai Fun Wong, 575 U.S. at 408. This Court

3. First, Petitioner became aware for the the first time in Feb. of 2018, that the Respondent's prevented him and the court from knowing of the warrantless arrest lacked probable cause on July 24, 1999 and second, neither the Court or Petitioner were put on notice.

also held in Irvin, that "the same rebuttable presumption of equitable tolling" should also applies to suits brought against the United States under a statute waiving sovereign immunity, 498 U.S. at 95-96;

In this case at bar, this Supreme Court should also apply equitably tolling here to suits brought against the United States under the FTCA's law enforcement proviso § 2680(h) exception for false arrest and false imprisonment waiving sovereign immunity see Millbrook v United States, 569 U.S. 50("28 U.S.C. §§ 1346(b), 2671-2680 which waives the government's sovereign immunity from tort suits, including those based on certain intentional torts committed by federal law enforcement officers, § 2680(h)");

Moreover, it is true, as this Supreme Court has held, that "the fraudulent concealment tolling doctrine is to be 'read into every federal statute of limitation.'" See Holmberg v Armbrecht, 327 U.S. 392, 397(1946). Petitioner contends that, Kwai Fun Wong,⁴ and Holmberg, ends the inquiry and makes § 2401(b)'s 2-years or 6-months like "every federal statute of limitations," 575 U.S. at 407, 327 U.S. at 397, subject to tolling based on fraudulent concealment;

Next, the district court's reliance on Heck's bar is misplaced. The Fourth Amendment claim in Heck was fundamentally different from Petitioner's Fourth Amendment claim here. Unlike the plaintiff in Heck, Petitioner was arrested and detained without legal process-- a warrantless arrest. Therefore, the malicious prosecution paradigm applied by this Court in Heck does not fit here. See Wallace v Kato,

4. The Fourth Circuit's opinion is inadequate as to whether § 2401 (b)'s time bar 2 -years or 6 months or both applies in Petitioner's case.

549 U.S. 384 at 397(2007);

In Wallace, this Court found that the plaintiff unlawful warrantless arrest Fourth Amendment claim resembled a false imprisonment claim, because the constitutional violation occurred when the plaintiff was arrested without a warrant. Law enforcement officers transported the fifteen-year-old plaintiff to a police station-without a warrant or probable cause to arrest him-and interrogated him into the early morning id. at 386,389; see also Supra, at Bland C;

Here, Petitioner's FTCA's law enforcement proviso seeking monetary damages for his arbitrarily arrest and tortious detention that resulted from without legal process-i.e. from a Saturday, July 24, 1999, warrantless arrest--most closely resembles a common-law claims for "the intentional torts of false arrest and false imprisonment See Wallace,549 U.S. at 397, rather than Heck's bar relied on the district court for "arrest with legal process unsupported by probable cause (malicious prosecution);

For the foregoing reasons, the Fourth Circuit's unpublished opinion judgment should be vacated and remand is necessary for further proceeding consistent with this Supreme Court's Order to allow Petitioner's FTCA's law enforcement proviso for false arrest and false imprisonment to service on process upon the United States Respondent to answer, as required by Fed. R. Civ. P. Rule 4(i)(A)(1);

REASONS FOR GRANTING THE PETITION

The reasons for granting the petition is simply based on two specified conditions:(1) It is undisputed here that the United States Respondent FBI Waizenhofer qualified as investigative/law enforcement officer See 18 U.S.C. § 3052 and (2) The Constitutional Fourth Amendment violation occurred in SC when the Petitioner was arrested on July.24,1999, without legal process lacked probable cause--most resembles a common-law [intentional] torts for false arrest and false imprisonment See Wallace,549 U.S. at 397; see also Millbrook v United States,569 U.S. 50, at 54, citing Ignacio v United States,674 F.3d 252,256(4th Cir.2012)("holding that the law enforcement proviso "waives immunity whenever an investigative or law enforcement officer commits one of the specified intentional, regardless of whether the officer is engaged in investigative or law enforcement activity"(emphasis added));

WHEREFORE, this Supreme Court should grant the petition for a Writ of Certiorari because the Petitioner has satisfied two conditions specified by the FTCA's law enforcement proviso § 2680 (h) exception enacted in 1974, which waive the United States's sovereign immunity from actions arising out of false arrest and false imprisonment by FBI waizenhofer's bad faith;

CONCLUSION

For the reasons set forth above,
it is respectfully submitted that:
The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Harriot

Date: July 23rd 2020