

IN THE  
SUPREME COURT OF THE UNITED STATES

Krishna Mote- Petitioner

vs

(list of parties)

Captain James W. Murtin, Trooper  
Barry Brinser, Detective Jack Gill,  
Trooper Peter Salerno, Trooper Craig  
Rodrigues, Trooper Matthew Tredor,  
Trooper Gregory Daley, Trooper Powell  
Trooper Yown, Respondents

Petition For Writ Of Certiorari

Third Circuit Court Of Appeals  
( name of Court last ruled on merits of case)

Petition For Writ Of Certiorari

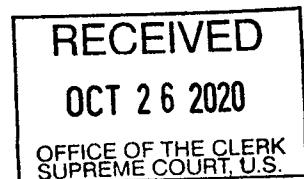
Krishna Mote

Federal Prison Camp Schuylkill

P. O. Box 670

Mineraville, Pa. 17954

(2)



## QUESTIONS

(1) Where as if a Civil Action is not connected to the criminal Action, should the Civil Action be dismissed without Prejudice or dismissed under the **Fugitive Disentitlement Doctrine**, because of a criminal matter without determining the merits of the Civil Action?

(2) Where as if the District Court dismiss an Civil Action without Prejudice, Can the District Court reopen the Civil Action and Dismiss the Civil action without considering the merits of the Civil Action?

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## TABLE OF AUTHORITIES

### Cases

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Barnett v YMCA 268 f.3d 614 8th cir. 2001  
Walsh v Walsh 221 f.3d 204, 215 first circuit 2000  
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Jones v Graham 709 f.2d 1457, 1458 11th cir. 1983  
Prevot v prevot 59 F.3d 556, 562 sixth circuit 1995  
Brennan v Kulick 407 F.3d 603 third circuit 2005

### Federal Statutes

28 USC §2466

42 USC §1983

## STATEMENT OF FACTS

Now comes the Petitioner Krishna Mote that states the following:  
The Petitioner claims he was denied his Civil Rights, Fourth Amendment and his Due process of Law that's guaranteed as an American Citizen under the Fifth Amendment of the Constitution. The Petitioner will present facts that the Middle District Court of Pennsylvania **Prejudice** the Petitioner by abusing his **Civil Action** against, **Captain James W. Murtin, Detective Jack Gill, Trooper Peter Salerno, Trooper Barry Brinser, Trooper Craig Rodrigues, Trooper Matthew Tredor, Trooper Gregory Daley, Trooper Powell and Trooper Yown**. Wherefore the Petitioner will let the record show the armor of the truth.

The Petitioner has prepared this motion for Writ of Certiorari without the benefit of professional counsel as a pro-se prisoner litigant. The Petitioner would invoke the liberal Construction of pleadings standard under *Haines v. Kerner* 404 US 519-520-521 (1972).

Now the Petitioner will reflect back to the record.  
On January 23, 2007 at about 7:00pm the Petitioner was visiting a residence located at 178 South First Street Lehighton Pennsylvania. At that date and approximate time, the state police Troopers, Barry Brinser, Trooper Peter Salerno, Trooper Craig Rodrigues, Trooper Matthew Tredor, Trooper Powell, Trooper Yown, Trooper Gregory Daley, and Detective Jack Gill, came into the residence, and ordered Petitioner and other occupants to lie face down on the floor. The S.E.R.T. members quickly moved to various positions inside the residence, with weapons drawn and pointed at the occupants. (the officers did not have a warrant for the Petitioner arrest) The Petitioner immediately complied with this order by the officers without giving resistance. Immediately the Petitioner was handcuffed with his hands secured behind his back. At this time and place under the supervision of Detective Jack Gill, Trooper Barry Brinser, and S.E.R.T. members began the assault. Trooper Powell proceeded to shoot an unknown weapon into Petitioner, firing twice into his left side, and then two more shots one to his right hip, and the other to Petitioner groin area. (see Appendix-B exhibit-K). The impact pushed the Petitioner to the floor. And then with the Butt of his rifle

Trooper Powell hit the Petitioner on his head over his right eye, causing blood to flow out of the Petitioner head. The S.E.R.T. members Trooper Powell, Trooper Yown, Trooper Barry Brinser, Trooper Peter Salerno, Trooper Craig Rodrigues, Trooper Matthew Tredor, Trooper Gergory Daley, and Detective Jack Gill proceeded to kick and punch the Petitioner about his face and Body. Meanwhile the Petitioner was not giving no resistance and presented no threat to the officers. After the brutal beating the officers grabbed the Petitioner by his shoulders, Detective Jack Gill and Trooper Gregory Daley, dragged the Petitioner down a long flight of stairs to the ground floor. The unprovoked and unjustified actions of the state Troopers caused the Petitioner extreme physical permanent damage, to his groin area, leaving the Petitioner without the ability to produce children. The unprovoked and unjustified actions of Trooper Powell, Trooper Yown, Trooper Barry Brinser, Trooper Peter Salerno, Trooper Craig Rodrigues, Trooper Matthew Tredor, Trooper Gregory Daley and Detective Jack Gill, who was under the Supervised Authority of Captain James W. Murtin, that left the Petitioner with two broken ribs, damage to his right hip bone, a Lacerated spleen, Lacerated Kidney, Lacerated liver, a cut under his chin, acut over his right eye, two black eyes, head trama, neck and back damage. The Petitioner received treatment at Gnaden Huetten Memorial Hospital, (Lehighton Pa.) St. Luke Hospital in Bethlehem Pa. the Petitioner was in I.C.U. for seven days (see Appendix-b Exhibit-E-1) The Petitioner continued his treatment at Southeast Health center in Phila. Pa. located at 800 Washington Ave. ( see Appendix-b Exhibit E-2, E-3) And Thomas Jefferson University Hospital, Phila. Pa. Greater Phila. Health action Center Phila. Pa. and Petitioner applied for social Security Disability (for three years) The Petitioner was examine by doctor Ely Sapol PHD medical Towers BLDg 255 south 17th street suit 1601 Phila. Pa. 19103 (see appendix-b exhibit-B The Petitioner been suffering for 13 years (which he has been incarcerated for 10 years) with Posttraumatic Stress disorder, he suffers from anxiety attacks that feels like cold needles running through his vanes, Also nightmares of the State Troopers kicking him in the face and body punching him in the face spiting on him and calling him the **N-Word**. citing Burke V. Hemlock farms cmtty. Assn.(2009) US Dist. LEXIS 100355, 3; cv-07-1186 Third Circuit. An Opinion by Honorable Thomas L. Vanaskie "quote" as explained in light of Graybill v. Providence Twp. 140 Pa. commw. 505 593 A. 2d. 1316, 1317 (Pa. commw. ct. 1991) The term permanent as here

used, has reference not alone to the Character of the structure or thing which produces the alleged injury, but also the character of the injury produced by it. In light of *Graham v. Connor* 490 US 386, 394 (1989) An Opinion by Supreme Court Justices, Rehnquist Ch. J. joined by White, Stevens O'Connor and late Honorable Scalia, and Kennedy JJ. Quote" it was held that all claims brought under §1983 in which it was alleged that law enforcement officers used excessive force deadly or not- in the course of an arrest, investigatory stop or other seizure of a free citizen were properly analyzed under Amendment's objective reasonableness standard rather than under the more generalized standard of substantive due process pursuant to the due process clause of the Fourth Amendment, because the Fourth Amendment provided an explicit textual source of Federal Constitutional protection against such physically intrusive Governmental conduct and (2) under the Fourth Amendment standard, See also *Tennessee v. Garner* 471 US 1 -7, 22 (1985) ( Tennessee) Quote" finding that a claim of excessive force to effect arrest is analyzed under the Fourth Amendment generally excessive force claims brought under the Fourth Amendment are not barred by the favorable termination rule articulated in *Heck v Humphrey* 512 US 477 (1994).

Congress seized this opening when it enacted the Civil Asset Forfeiture Reform Act of 2000 (C.A.F.R.A.) Pub. L. No. 106 185, 114 Stat. 202 (2000). Section 14 of C.A.F.R.A. created the fugitive disentitlement statute which provides, as amended. (a) A judicial officer may disallow a person from using the resources of the court of the United States in furtherance of a claim in any related civil forfeiture action or a claim in third party proceedings in any related criminal forfeiture action upon a finding that such person (1) after notice or knowledge of the fact that a warrant or process has been issued for his apprehension, in order to avoid criminal prosecution (A) purposely leaves the Jurisdiction of the United States, (B) declines to enter or reenter the United States to submit to its jurisdiction or, (C) otherwise evades the jurisdiction of the Court in which a criminal case is pending against the person and (2) is not confined or held in custody in any other jurisdiction (B) Subsection (a) may be applied to a claim filed by a corporation if any majority shareholder or individual filing the claim on behalf of the corporation is a person to whom subsection (a) applies 28 USC §2466.

On August 27, 2007 the Petitioner attorneys Brian E. Appel, and Stephen M. Wagner filed the Petitioner Civil Action against Captain James Murtin and unknown state troopers at that time. The Petitioner would like to state that there's only one date that the civil action was filed" August 27, 2007 and one date that the civil action was ordered February 2009. The reason for this statement is because the District Court Judge Mariani's order (on February 20, 2020 civil no: 3:20-cv-92) to dismiss the Petitioner complaint "Quote "all Plaintiff claims arising under 42 USC §1983 are hereby Dismissed with prejudice see case no: 4:07-cv-1571. Only Plaintiff's pendent state claims were dismissed in that action without prejudice. (see Appendix-b exhibit 5-x) Also on January 23, 2020 Magistrate Judge Carlson stated in his report and recommenddation (see Appendix-b exhibit c&d) thattthe Petitioner filed a law suit quote" challenging this use of force in August 2007, Mote v. Murtin civil no: 4:07-cv-1571, Quote this case was dismissed in July of 2008, nearly 12 years ago. Mote then lodged an untimely **Appeal** which was dismissed by the Court of Appeals in February of 2009. This is evdence that shows emblematical abuse of power to cover up the District Court arbitrary prejudice, by dismissing the Petitioner action. Without prejudice (in February 2009) under the **Fugitive Disentitlement Doctrine**. In Degen v. United States, citing 517 US 820, 135 L. ed 2d.102 116 S. ct. 1777 (1996). An Opinion by Honorable Justice Kennedy J. expressing the unanimous view of the court it was held that the fugitive disentitlement doctrine under which the Supreme court had sustained the authority of an appellate court to dismiss an appeal or writ in a criminal matter where the party seeking relief became a fugitive would not be extended to allow the district Court to strike the owner's filing and enter summary judgment against the owner because, (1) there was no **risk of delay or frustration in determining the merits** of the forfeiture claims or in enforcing the resulting judgement , (2) the District Court had the means to resolve dilemmas related to the Owner's and (3) disentitlement was too blunt an instrument for advancing either the interest of redressing the indignity visited upon the District Court by the Owner's absence from the criminal prosecution or the interest in deterring flight from criminal prosecution by the Owner's and others. Now the Pëtitioner will reflect back to the record. On January 29, 2008 Counsel for Captain James W. Murtin submitted a motion for enlargement of time in support his motion to dismiss pursuant to the fugitive



Disentitlement Doctrine. (see Appendix-b exhibit-a-7). The Petitioner submitted an answer to Captain motion to dismiss pursuant to the Fugitive Disentitlement Doctrine. On January 25, 2008. (see Appendix-B exhibit a-8) This is evidence to show that the Petitioner was incontact with the Middle district Court during his Civil action. Also on July 11, 2008 during Judge Jones Opinion, giving the procedural history let the record show that the Petitioner filed several motions for extensions of time on page one of order on July 11, 2008 (see Appendix -b Exhibit(f). Citing Barnett v. YMCA 268 f.3d 614 eighth circuit 2001. In Barrnett, An opinion by Honorable Judge Beam"Quote" we adopt the reason of the Eleventh and First circuits regarding dismissal of Civil actions on fugitive disentitlement grounds involving cases where the fugitive is the Plaintiff. The fugitive Status must have a connection to the civil action, and the dismissal must animate the concerns underlying the fugitive disentitlement doctrine. see Walsh v. Walsh 221 f.3d 204, 215(1st. cir. 2000) citing Magluta v Samples 162 f.3d 662 664 (11th cir. 1998). Muglute an Opinion by Honorable Judge Birch and Barkett and Senior District Judge Hancock, state"The district court's power to dismiss a cause is an inherent aspect of its authority to enforce its orders and insure prompt disposition of lawsuits, Jones v Graham 709 f.2d 1457, 1458 (11th cir. 1983) The standard of review on Appeal from the dismissal of a lawsuit on fugitive disentitlement grounds is abuse of discretion. see also Prevot v Prevot 59 f.3d 556 562 (6th cir. 1995) (discussing equitable power of court to disentitle fugitives. Therefore, the issue before the court is whether the dismissal of a civil action because of the plaintiffs status as a fugitive in an unrelated criminal matter Constitutes an abuse of discretion. On February, 2009 the Petitioner civil action was dismissed without prejudice according to the recommendation by Magistrate Judge Blewitt on July 11, 2008 (see Appendix-b exhibit-f page 3) pursuant to rule 4(m). When the Petitioner action was dismissed without prejudice under the fugitive disentitlement doctrine the civil action was unable to amend nor appealable. citing Brennan v Kulick 407 f.3d 603 third cir. 2005. In Brennan an Opinion by Honorable Judge Cowen" Quote"we further noted that orders which dismiss a complaint without prejudice with leave to amend are not deemed final until either the time for amendment has expired or the Petitioner has announced its intention to stand on its Complaint, until then the dismissal is neither final nor Appealable because the deficiency can be corrected by the Petitioner without

affecting the cause of action. If the District Court cannot produce any documents of the Petitioner continuing his litigation after his civil action was dismissed without prejudice then let the record show that the district Court committed afoul against the Petitioner civil action. The Petitioner also would like to bring to this Honorable Court attention is the Petitioner never left the Country or the State of Pennsylvania See Appendix-B exhibit-E. This is another example that the Petitioner whereabouts was known by the Middle District Court, and the Government Authoritys for three years. Wherefore the evidence show that the fugitive disentitlement Doctrine that was used to dismiss the Petitioner civil action without prejudice is in Question.

## Reasons For Granting Certiorari

The Petitioner pray that this Honorable Court will take inconsideration that the Pennsylvania State Troopers violated the Petitioner's rights under the Fourth Amendment and that a seizure occurred and it was unreasonable under the circumstances, causing the Petitioner permanent damage to his body as well as mental damage. Furthermore the District Court made a clear error on the record by dismissing the Petitioner civil Action without prejudice under the **Fugitive Disentitlement Doctrine** when the Fugitive disentitlement didnot apply. This abuse of discretion prejudice the Petitioner by foreclosing the Petitioner civil rights action, and violated the Petitioner **Due Proçess of Law** under the **Fifth Amendment**. The Petitioner is asking this Honorable Court to Remand this matter back to the District Court and have the Defendants answer the Complaint.