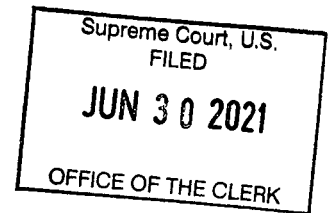


21-47



IN THE SUPREME COURT OF THE UNITED STATES

Petitioner, Khai Quang Bui

v.

Respondent, Abdul Alshaer

**ON PETITION FOR WRIT OF CERITORARI
TO THE SUPREME COURT OF VIRGINIA**

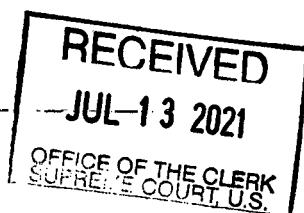
PETITION FOR WRIT OF CERTIORARI

Khai Quang Bui

1124 Duchess dr Mclean, VA 22102

Email: akhaibui@yahoo.com

Number: 571-389-0693



I. QUESTION OF LAW

The question asks this Court should separate and distinct causes of action
overrule res judicata defense.

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- i. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 February 5, 2021 order.
- ii. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 December 8, 2020 order.
- iii. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer January 31, 2020 order.
- iv. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer proceeding (5).
- v. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer Transcript of hearing transcribed order on [page 13-14].
- vi. Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer April 6, 2018 order.
- vii. Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer proceeding (13).
- viii. Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer proceeding (17).
- ix. Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer complaint “civil libel defamation tort” file February 12, 2018.
- x. Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer proceeding (12).
- xi. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer complaint “Malicious prosecution” filed October 29, 2019.

- xii. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer proceeding (1).
- xiii. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer “response to plea in bar” filed January 23, 2020.
- xiv. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer proceeding (4).
- xv. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer plea in bar filed November 21, 2019.
- xvi. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer proceeding (3).
- xvii. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 February 5, 2021 order.
- xviii. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 proceeding (1).
- xix. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 proceeding (3).
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- xxi. General Rules of Pleading, 28 U.S.C. Rule 8 (c) (1) (2010).
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II. INTRODUCTION OF PARTIES TO THE PROCEEDING

i. APPELLANT IN SUPREME COURT OF VIRGINIA

Khai Quang Bui was the appellant for petition of appeal. Appellant address: 1124 Duchess dr Mclean VA 22102, Telephone number: 571-389-0693, Email: akhaibui@yahoo.com

ii. APPELLEE IN SUPREME COURT OF VIRGINIA

Abdul Alshaer was the appellee for the petition of appeal. Appellee was represented by Sefton Smyth. He is an attorney license in state of Virginia. His address is 32 W. Baltimore Street P.O. Box 944 Funkstown, MD 21734, Telephone number: 301-671-1620, and Email: ssmyth@funkstownlaw.com

iii. CORPORATE DISCLOSURE

Petition for writ of certiorari is filed by and on behalf of Khai Quang Bui; a corporate disclosure statement is not required when the filing is not by or on behalf of a corporation.

iv. LIST OF ALL PROCEEDINGS

Proceedings of lower courts related to the case in this Court:

1. Fairfax County General District Court, GC17176768-00, Commonwealth of Virginia v. Khai Bui, adjudicatory nolle prosequi, November 8, 2017.
2. Fairfax County Circuit Court, CL2017-16518, Khai Bui v. Abdul Alshaer, motion plea in bar order entered, April 6, 2018.

- (1) COMPLAINT filed November 22, 2017
- (2) PROOF OF SERVICE filed December 8, 2017
- (3) DEMURER filed December 22, 2017
- (4) MEMORANDUM MOTION STRIKE AND DEFAULT
filed January 3, 2018
- (5) OPPOSITION TO MOTION TO STRIKE filed
January 11, 2018
- (6) NOTICE OF APPEARANCE filed January 11, 2018
- (7) PLAINTIFF ANSWER filed January 22, 2018
- (8) MEMORANDUM TO DISMISS SECOND DEMURER
filed January 22, 2018
- (9) MEMORANDUM TO RESTRICT PARTIES FROM
OBTAINING BUSINESS AND PERSONAL DATA filed
January 22, 2018
- (10) OPPOSITION TO (9) filed February 2, 2018
- (11) ORAL ARGUMENT ON (10) filed February 9, 2018
- (12) CIVIL LIBEL DEFAMATION TORT filed
February 12, 2018
- (13) PLEA IN BAR filed February 23, 2018
- (14) NON-WAIVER RESPONSE TO PLEA IN BAR filed
March 16, 2018
- (15) Order: Motion to strike and default January 19, 2018

(16) Order: Motion to strike and default January 19, 2018

(17) Orders: Plea in bar order April 6, 2018

3. United States District Court Eastern District of Virginia, 1:18-CV-1061, Khai Bui v. Abdul Alshaer, order entered, October 29, 2018.

- (1) August 24, 2018 COMPLAINT against Abdul Alshaer filed by Khai Bui (Attachments: # 1 Attachment 1, # 2 Attachment 2, # 3 Receipt)(pmil,) (Entered: 08/27/2018)
- (2) August 24, 2018 Summons Issued for service by SPS as to Abdul Alshaer. (pmil,) (Entered: 08/27/2018)
- (3) September 10, 2018 MOTION to Dismiss for Lack of Jurisdiction with Roseboro, by Abdul Alshaer. (Smyth, Sefton) (Entered: 09/10/2018)
- (4) September 10, 2018 Memorandum in Support re 3 MOTION to Dismiss for Lack of Jurisdiction with Roseboro, filed by Abdul Alshaer. (Attachments: # 1 Exhibit, # 2 Proposed Order)(Smyth, Sefton) (Entered: 09/10/2018)
- (5) September 10, 2018 Notice of Hearing Date re 3 MOTION to Dismiss for Lack of Jurisdiction with Roseboro, 4 Memorandum in Support (Smyth, Sefton) (Entered: 09/10/2018)
- (6) September 11, 2018 Set Deadlines as to 3 MOTION to

Dismiss for Lack of Jurisdiction with Roseboro, Motion
Hearing set for 10/12/2018 at 10:00 AM in Alexandria
Courtroom 800 before District Judge Claude M. Hilton.
(klau,) (Entered: 09/11/2018)

- (7) September 14, 2018 AMENDED COMPLAINT against
Abdul Alshaer, filed by Khai Bui.(dvanm,) (Entered:
09/14/2018)
- (8) September 14, 2018 MOTION to effect service by Khai
Bui. (dvanm,) (Entered: 09/14/2018)
- (9) September 14, 2018 MOTION for Pro Se E-Noticing by
Khai Bui. (dvanm,) (Entered: 09/14/2018)
- (10) September 14, 2018 CERTIFICATE of Service as to
Notice of a lawsuit and request to waive service of a
summons by Khai Bui (dvanm,) (Entered: 09/14/2018)
- (11) September 14, 2018 Memorandum in Support re 3
MOTION to Dismiss for Lack of Jurisdiction with
Roseboro, Supplemental filed by Abdul Alshaer. (Smyth,
Sefton) (Entered: 09/14/2018)
- (12) September 14, 2018 Opposition to 7 MOTION to effect
service filed by Abdul Alshaer. (Smyth, Sefton) (Entered:
09/14/2018)
- (13) September 14, 2018 Memorandum in Opposition re 7

MOTION to effect service filed by Abdul Alshaer.

(Attachments: # 1 Exhibit)(Smyth, Sefton) (Entered: 09/14/2018)

- (14) September 17, 2018 ORDER granting 8 Motion for Pro Se E-Noticing. Signed by Magistrate Judge Ivan D. Davis on 09/17/2018. (dvanm,) (Entered: 09/17/2018)
- (15) September 17, 2018 ORDER denying 7 Motion to Effect Service. Signed by Magistrate Judge Ivan D. Davis on 09/17/2018. (dvanm,) (Entered: 09/17/2018)
- (16) September 19, 2018 SUMMONS Returned Executed by Khai Bui Abdul Alshaer served on 9/13/2018, answer due 10/4/2018 (dvanm,) (Entered: 09/20/2018)
- (17) September 20, 2018 WAIVER OF SERVICE Returned Executed (dvanm,) (Entered: 09/20/2018)
- (18) September 24, 2018 Brief in Opposition to 3 MOTION to Dismiss for Lack of Jurisdiction with Roseboro, filed by Khai Bui. (dvanm,) (Entered: 09/24/2018)
- (19) September 25, 2018 REPLY to Response to Motion re 3 MOTION to Dismiss for Lack of Jurisdiction with Roseboro, filed by Abdul Alshaer. (Smyth, Sefton) (Entered: 09/25/2018)
- (20) September 25, 2018 REPLY to Response to Motion re 3

MOTION to Dismiss for Lack of Jurisdiction with
Roseboro, Memorandum in Support filed by Abdul
Alshaer. (Smyth, Sefton) (Entered: 09/25/2018)

- (21) October 10, 2018 Per CMH chambers motions set for
10/12/18 on the pleadings (clar,) (Entered: 10/10/2018)
- (22) October 29, 2018 ORDER granting 3 Motion to Dismiss
for Lack of Jurisdiction. Signed by District Judge Claude
M. Hilton on 10/29/2018. (dvanm,) (Entered: 10/29/2018)
- (23) August 29, 2019 MOTION for Pro Se E-Noticing by Khai
Bui. (dvanm,) (Entered: 08/29/2019)
- (24) August 30, 2019 ORDER granting 21 Motion for Pro Se E-
Noticing. Signed by Magistrate Judge Ivan D. Davis on
08/28/2019. (dvanm,) (Entered: 08/30/2019)

4. United States District Court Eastern District of Virginia, 1:19-CV-
01097, Khai Bui v. Abdul Alshaer, order entered, September 4, 2019.

- (1) August 20, 2019 COMPLAINT against Abdul Alshaer,
filed by Khai Bui. (Attachments: # 1 Civil Cover Sheet, #
2 Receipt)(klau,) (Entered: 08/21/2019)
- (2) August 20, 2019 Summons Issued for service as to Abdul
Alshaer. (klau,) (Entered: 08/21/2019)
- (3) August 20, 2019 MOTION for Pro Se E-Noticing by Khai
Bui. (klau,) (Entered: 08/21/2019)

- (4) August 22, 2019 ORDER granting 3 Motion for Pro Se E-Noticing. Signed by District Judge Leonie M. Brinkema 08/22/19. (pmil,) (Entered: 08/22/2019)
- (5) August 22, 2019 ORDER that the 1 Complaint be and is DISMISSED WITHOUT PREJUDICE; if Bui wishes to proceed with this civil action, he must file a properly amended complaint no later than close of business on Monday, September 16, 2019 (See. Order for details). Signed by District Judge Leonie M. Brinkema on 08/22/19. (pmil,) (Entered: 08/22/2019)
- (6) August 29, 2019 AMENDED COMPLAINT against Abdul Alshaer filed by Khai Bui.(pmil,) (Entered: 08/29/2019)
- (7) August 29, 2019 MOTION signing of pleadings, motions and other papers by Khai Bui. (pmil,) (Entered: 08/29/2019)
- (8) August 29, 2019 NOTICE of Waiver of Oral Argument re: 7 MOTION signing of pleadings, motions and other papers by Khai Bui (pmil,) (Entered: 08/29/2019)
- (9) August 29, 2019 NOTICE of Civil Lawsuit by Khai Bui (pmil,) (Entered: 08/29/2019)
- (10) August 29, 2019 NOTICE of Lawsuit Representation by Khai Bui (pmil,) (Entered: 08/29/2019)

(11) August 29, 2019 AMENDED COMPLAINT Summons

Issued for service by SPS as to Abdul Alshaer. (pmil,)

(Entered: 08/29/2019)

(12) September 4, 2019 ORDER that the Amended Complaint

be and is DISMISSED; Bui's filing captioned 7 "Motion
signing of pleadings, motions and other papers" be and is

DENIED as moot (See. Order for details). Signed by

District Judge Leonie M. Brinkema on 09/04/19. (pmil,)

(Entered: 09/04/2019)

5. Fairfax County Circuit Court, CL2019-14766, Khai Bui v. Abdul

Alshaer, motion plea in bar order entered, January 31, 2020.

(1) COMPLAINT filed October 29, 2019

(2) PROOF OF SERVICE filed November 8, 2019

(3) PLEA IN BAR filed November 21, 2019

(4) RESPONSE TO PLEA IN BAR filed January 23, 2020

(5) ORDER - JUDGE BRETT A. KASSABIAN hearing
January 31, 2020

(6) NOTICE OF APPEAL TO SUPREME COURT OF
VIRGINIA filed February 25, 2020

(7) STATEMENT OF FACTS BY APPELLANT filed
February 25, 2020

(8) APPELLEE OBJECTION TO STATEMENT OF FACTS

filed March 3, 2020

- (9) NOTICE OF JOINT STATEMENT OF FACTS SIGNING

filed March 5, 2020

- (10) JOINT STATEMENT OF FACTS filed March 5, 2020

- (11) OBJECTION TO PROPOSED STATEMENT OF FACTS

filed March 5, 2020

- (12) STATEMENT OF FACTS EMAIL EXHIBITS filed

March 9, 2020

- (13) APPELLANT PROPOSED STATEMENT OF FACTS filed

March 17, 2020

- (14) OBJECTION TO PROPOSED STATEMENT OF FACTS

filed March 17, 2020

- (15) ORDER - JUDGE BRETT A. KASSABIAN filed

March 18, 2020

- (16) NOTICE OF OBJECTION TO APPELLEE'S

STATEMENT OF FACTS filed March 25, 2020

- (17) ORDER - JUDGE BRETT A. KASSABIAN filed

April 3, 2020

6. Supreme Court of Virginia, record number 200989, Khai Bui v. Abdul Alshaer, order entered December 8, 2020, rehearing order entered February 5, 2021.

- (1) Petition entry date August 6, 2020 - record received

April 13, 2020

- (2) Refuse disposition on December 8, 2020
- (3) Petition rehearing receive date December 22, 2020
- (4) Rehearing refused decision on February 5, 2021

III. TABLE OF AUTHORITIES AND TABLE OF CONTENTS

The petition is prepared under rule 33.1 and it is more than 1500 words. The table of authorities and table of contents are required under rule 14.1 (c). The table of contents included items contained in the appendix.

IV. CITATIONS OF ORDERS FROM THE LOWER COURTS

The lower courts final order in each case relate to the order sought for review in the petition for writ of certiorari:

- 1) Commonwealth of Virginia v Khai Bui Fairfax County General District Court GC17176768-00 (November 8, 2017) (nolle prosequi disposition)

- 2) Khai Bui v. Abdul Alshaer Fairfax County Circuit Court CL2017-16518 (April 6, 2018) order entered; the order bar the use of magistrate report:

“this matter came to be heard on defendant’s plea in bar, and, it appearing that the plea in bar is well taken, it is hereby adjudged, ordered, and decreed that the plea in bar is sustained and this case is dismissed with prejudice.”

- 3) Khai Bui v. Abdul Alshaer United States Eastern District Court of Virginia 1:18-CV-1061 (October 29, 2018) opinion and order entered:

“...as there is no federal question in the case and the parties are not diverse, this Court stands without subject matter jurisdiction. For these reasons, it is hereby ordered that defendant’s motion to dismiss is granted, this case is dismissed without prejudice”

- 4) Khai Bui v. Abdul Alshaer United States Eastern District Court of Virginia 1:19-CV-01097 (September 4, 2019) opinion and order entered:

“....amended complaint is dismissed”

and that the court does not have jurisdiction on the matters described in the amended complaint

- 5) Khai Bui v. Abdul Alshaer Fairfax County Circuit Court CL2019-14766 (January 31, 2020) order entered:

“Plaintiff’s claim is barred by res judicata, it is hereby adjudged, ordered, and decreed that the plea in bar is sustained and case is dismissed with prejudice. The request for sanction is denied. “

- 6) Khai Bui v. Abdul Alshaer Supreme Court of Virginia record number 200989 (December 8, 2020) order entered:

“Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly. the Court refuses the petition for appeal.”

and upon rehearing request Supreme Court of Virginia (February 5, 2021) rehearing order entered:

“On consideration of the petition of the appellant to set aside the judgment rendered herein on December 8, 2020 and grant a rehearing thereof, the prayer of the said petition is denied.”

V. STATEMENT OF JURISDICTION FOR THIS COURT

U.S. Supreme Court by writ of certiorari granted may review final judgments rendered in lower courts including highest court of a State. Rules of the U.S. Supreme Court governing review on certiorari 10 (c) state that “a state court

or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. “. Lower courts and the highest court of State of Virginia in the cases *Khai Bui v. Abdul Alshaer* decided a federal affirmative defense use in federal cases belong to the federal rule civil procedure 8 (c) res judicata affirmative defense. 28a U.S. Code Rule 8 (c) (1) res judicata defense or affirmative defense is a federal law of question for this Court. U. S. Supreme Court had decided res judicata in precedent cases and recently in *Lucky Brand Dungarees Inc., ET AL v. Marcel Fashions Group Inc.*, 590 U.S. (2020) on res judicata defense preclusion. Those decisions are quite different and conflicts with the lower courts and highest State court of Virginia in the cases of *Khai Bui v. Abdul Alshaer*.

- i. The order sought to be reviewed was entered on February 5, 2021 by the Supreme Court of Virginia
- ii. The order sought to be reviewed is also a rehearing order for a decision on December 8, 2020 by the Supreme Court of Virginia in which the appellant's appeal was refused
- iii. This is a petition for a writ of certiorari
- iv. 28 U.S.C. § 1257 (a), 28 U.S.C. § 1651, 28 U.S.C. § 1652 and U.S. Supreme Court Rule 10 (c) are the statutory provision confer on this

Court jurisdiction to review on a writ of certiorari the judgment or order in question

- v. Statement of notifications as required by Rule 29.4 (b) or (c) have not been made

VI. CONSTITUTIONAL PROVISION AND STATUES

The case involves a state lower court rulings on res judicata assertion by the defense in a plea in bar in a subsequent civil cause of action. Federal Rule of Civil Procedure 8 (c) (1) state that res judicata can be assert as a defense. Res judicata is too a Supreme Court of Virginia rule of court in civil procedure. 28 U.S.C. § 1652 – State laws as rules of decision said that in this case res judicata can be use by a state court to render decision in a civil action and that decision is not immune from a U.S. Supreme Court jurisdiction to review a state court decision based on a federal law of res judicata and a statue.

This case originated from a general district court nolle prosequi. Petitioner filed a defamation civil lawsuit and a malicious prosecution civil lawsuit against the respondent afterward. The constitutional provisions and statues involve are the U.S. Constitution fourteenth amendment :

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

provision an individual right to due process, right to file suit on Va. Code § 8.01-45 for the defamation action and Va. Code § 8.01-249.3 for the malicious prosecution action, and right to appeal a highest court of a state decision, and right to file a writ for certiorari. Res judicata was used incorrectly to terminate civil action in the lower courts decisions. Their decisions may affect this case and future cases. U.S. Supreme Court may review res judicata elements “claim preclusion”, “issue preclusion” “common nucleus of facts” and “defense preclusion” with the fourteenth amendment “due process” provision and statutes 28 U.S.C. § 1257 (a), 28 U.S.C. § 1651, 28 U.S.C. § 1652 and U.S. Supreme Court Rule 10 (c).

VII. CONCISE STATEMENT MATERIALS TO THE QUESTIONS

- i. The res judicata issue was raised in a motion hearing in Fairfax County Circuit Court. It was ordered that the petitioner argument is not sustained against the defense plea in bar as in order Fairfax County Circuit Court CL2019-14766, Khai Bui v. Abdul Alshaer proceeding (5)

“Plaintiff’s claim is barred by res judicata, it is hereby adjudged, ordered, and decreed that the plea in bar is sustained and case is dismissed with prejudice. The request for sanction is denied. “

Res judicata issues was raised in the respond to motion plea in bar, Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer proceeding (4) and in plea in bar, Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer proceeding (3). Issue

was that judgment of the defamation case was not on merit of the case but rather it was on plea in bar single issue of fact. Plea in bar motion Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer proceeding (13) cannot hear all the merit facts of the case because it is a hearing on a single issue of fact. On the merits refers the decision rests upon the law as it applied to the particular evidence and facts presented in the case. It is here the order Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer proceeding (17) dismissed with prejudice applied to the evidences and facts in the plea in bar. Plea in bar presents magistrate report as its main evidence to attack the defamation action. There were other facts in the pleadings of plea in bar but defense did not present evidence in the hearing. It is accordingly by law was an order to dismissed with prejudice because the magistrate report is absolute privilege and plaintiff cannot bring another same charge. See. Va. Code § 19.2-265.6 (Effective until March 1, 2021) Effect of dismissal of criminal charges:

“No dismissal of any criminal charge by a court shall bar subsequent prosecution of the charge unless jeopardy attached at the earlier proceeding or unless the dismissal order explicitly states that the dismissal is with prejudice.”

but “with prejudice” meaning a plaintiff is not bar from subsequent lawsuit with a different cause of action and different evidences. Defense continue using the case Fairfax County Circuit Court

CL2017-16518 Khai Bui v. Abdul Alshaer (April 6, 2018) order proceeding (17); the order bar the use of magistrate report:

“this matter came to be heard on defendant’s plea in bar, and, it appearing that the plea in bar is well taken, it is hereby adjudged, ordered, and decreed that the plea in bar is sustained and this case is dismissed with prejudice.”

In the appellate court assignment of errors of the petition and petition rehearing Supreme Court of Virginia record number 200989 Khai Bui v. Abdul Alshaer proceeding (1) and petition rehearing Supreme Court of Virginia record number 200989 Khai Bui v. Abdul Alshaer proceeding (3), Supreme Court of Virginia record number 200989 Khai Bui v. Abdul Alshaer petitions raised the issues of res judicata - claim preclusion and issue preclusion, different causes of action, different subject matter and err decisions by the circuit court. After reviewing the errors, highest court of state Virginia refused the petition after granting petition oral argument and denied a petition rehearing completely on February 5, 2021. Federal question of separate and distinct cause of action may overrule res judicata was raised timely and properly and this Court has jurisdiction to review the judgment of the lower courts on a writ of certiorari.

- ii. This is not a review of a judgment of a United States court of appeals.

VIII. DIRECT AND CONCISE STATEMENT

U.S. Supreme Court of a country has the power to review lower court decisions to ensure that the federal question is not broken. U.S. Supreme Court can

review judgment of the highest court of a state when it cannot reverse an order that does not capture the law of res judicata. Res judicata is a federal law and many elements of res judicata must be met for an assertion of res judicata affirmative defense. Separate causes of action are not the same matter if the causes of action are distinct and involve distinct materials and evidences. Petitioner filed different actions in the courts of Fairfax County, Virginia and Federal District Court Eastern District of Virginia. The federal district court eastern district of Virginia ordered dismissed both cases for their lack of subject matter jurisdiction and effectively nulled them. The Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer proceeding (12) defamation cause of action and Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer proceeding (1) malicious prosecution cause of action are claim preclusion and issue preclusion because they are separate cause of action and have distinct issues. The lower court order that the subsequent case is res judicata bar because of the previous case ruling on another plea in bar. The previous plea in bar ruling was on another libel statement respondent made to the magistrate court. Respondent inclusion of police officer name in the magistrate report shows that he intentionally creates a false statement. It does not show that the petitioner should know about the existence of any police investigative report until after the defamation case. This malicious prosecution case is about another libel statement made to the Fairfax County police which has not been made part of an evidence in previous cases. Res judicata does not

exist if the defense pleadings and argument does not show the existence of the same evidence to a cause of action or a damage claim, common nucleus of facts, suits are the same, and claims for relief are the same. The order and opinion of the United States Supreme Court confirm that the laws of res judicata involves claim preclusion, issue preclusion, common nucleus of facts, and defense preclusion with claim preclusion and issue preclusion as the law of res judicata See. *Lucky Brand Dungarees Inc., ET AL v. Marcel Fashions Group Inc.*, 590 U.S. (2020). Claim preclusion “describes the rules formerly known as ‘merger’ and ‘bar.’” *Taylor v. Sturgell*, 553 U. S. 880, 892, n. 5 (2008). “If the plaintiff wins, the entire claim is merged in the judgment; the plaintiff cannot bring a second independent action for additional relief, and the defendant cannot avoid the judgment by offering new defenses.” Wright & Miller §4406. But “if the second lawsuit involves a new claim or cause of action, the parties may raise assertions or defenses that were omitted from the first lawsuit even though they were equally relevant to the first cause of action.”.

Malicious prosecution is a subsequent cause of action in the case. Legal claim is a means for a plaintiff to show the court how the actions of the defendant had caused the plaintiff to suffer loss. Petitioner is suing the respondent for making false police report. See. Supreme Court of Virginia record number 200989 Khai Bui v. Abdul Alshaer proceeding (3) appendix C p 46 as evidence that defendant act caused plaintiff to suffer loss. It is itself an occurrence that is unfamiliar with previous cause of action or claims of relief because plaintiff

obtain the report in November 16, 2018 which is after the April 6, 2018 order. The defense must satisfy the stricture of issue preclusion and claim preclusion to raise a res judicata affirmative defense See. *Davis v. Brown*, 94 U. S. 423, 428 (1877) (holding that where two lawsuits involved different claims, preclusion operates “only upon the matter actually at issue and determined in the original action”) The defamation and malicious prosecution were grounded on different conduct, occurring at different times, involve different libel evidences, and thus did not share a “common nucleus of operative facts”. If a later suit advances the same claim as an earlier suit between the same parties, the earlier suit’s judgment “prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding.” *Brown v. Felsen*, 442 U. S. 127, 131 (1979). The magistrate report was the center of the defamation case. The police report is the center of malicious prosecution case. They are not the same operative facts for the cases. Res judicata cannot bar another cause action base on previous not litigated claims or issues or “claim preclusion” and “issue preclusion” according to the ruling cases in the authorities of this petition.

Supreme Court of Virginia review a petition of appeal record no. 200989 Khai Bui v. Abdul Alshaer proceeding (1). The court order in Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer Fairfax Circuit Court No.CL2019-14766 December 8, 2020 the complained judgment is not reversible and refused

the petition of appeal. Supreme Court of Virginia record number 200989 Khai Bui v. Abdul Alshaer proceeding (3) rehearing was denied as Supreme Court of Virginia Khai Quang Bui v Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 February 5, 2021 order. The law of res judicata is “claim preclusion” and “issue preclusion” as in the cite cases on *p. 25 Id.* The cases identified other issues when does “common nucleus of facts” applied and when an evidence proffer is “defense preclusion”. When the “malicious prosecution” case was rule res judicata bar rule of Supreme Court of Virginia 1:6 in Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer January 31, 2020 order, lower court opinion and order is transcribed as Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer opinion order January 31, 2020 transcribed on [page 13-14] quote:

“My basis for it is the plain language of Rule 1:6 when read in conjunction with Judge Bellow’s order dismissing the claim with prejudice on April 16 th, 2008.

And I conclude that that claim that was dismissed with prejudice was a claim or cause for action that arose out of the same conduct in this case which is the incident in 2017 that is common to both complaints.

I do not find that the exceptions apply in this case as this is a malicious prosecution claim.

I also do not find that the factual scenario is similar to that of D’ambrosio v Wolf because one of the claim in D’ambrosio did not exist at the time of the ruling in the dismissed claim. This claim did exist. That is the basis for my ruling.”

Res judicata cannot bar the malicious prosecution case base on previous case order “...with prejudice” *p. 22 Id.* same conduct – common facts, existing claim or claims, and not yet litigate claim of relief as in cite cases on *p. 25 Id.* and

Taylor v. Sturgell, 553 U. S. 880, 892, n. 5 (2008). The defense of res judicata Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer “response to plea in bar” filed January 23, 2020 did generally state that malicious prosecution lawsuit was a different cause of action and distinct issues. Res judicata is recognized in precedent cases as mainly “claim preclusion” and “issue preclusion” *p. 25 Id.* Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer April 6, 2018 order was not appeal to a higher court and it was on plea in bar. Plea in bar is a motion for close the case with a single argument of fact so it is not on merit of a case. Previous arguments and precedent cases *p. 25 Id.* state that res judicata is judicially recognized as “claims preclusion” and “issue preclusion”. A plaintiff may bring a judicially recognized cause of action if it is a different cause of action See. *Davis v. Brown*, 94 U. S. 423, 428 (1877) (holding that where two lawsuits involved different claims, preclusion operates “only upon the matter actually at issue and determined in the original action”) The defamation and malicious prosecution were grounded on different conduct, occurring at different times, involve different libel evidences, and thus did not share a “common nucleus of operative facts”. Res judicata cannot bar the case from the proffer and litigation of a false police statement of the malicious prosecution case See. *Lucky Brand Dungarees Inc., ET AL v. Marcel Fashions Group Inc.*, 590 U.S. (2020).

Wherefore, petitioner asks See. 28 U.S.C. § 2106 this Court to grant the writ of certiorari to the Supreme Court of Virginia and reverse the orders of the court; the Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer January 31, 2020 order would be reversed and the case remanded to Fairfax County Circuit Court following the higher court of state reverse orders.

IX. APPENDIX

- i. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 February 5, 2021 order
- ii. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 December 8, 2020 order
- iii. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer January 31, 2020 order
- iv. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer proceeding (5)
- v. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer Transcript of hearing transcribed order on [page 13-14]
- vi. Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer April 6, 2018 order
- vii. Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer proceeding (13)
- viii. Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer proceeding (17)

- ix. Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer complaint "civil libel defamation tort" file February 12, 2018
- x. Fairfax County Circuit Court CL2017-16518 Khai Bui v. Abdul Alshaer proceeding (12)
- xi. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer complaint "Malicious prosecution" filed October 29, 2019
- xii. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer proceeding (1)
- xiii. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer "response to plea in bar" filed January 23, 2020
- xiv. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer proceeding (4)
- xv. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer plea in bar filed November 21, 2019
- xvi. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul Alshaer proceeding (3)
- xvii. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 February 5, 2021 order
- xviii. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 proceeding (1)
- xix. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record No.200989 Circuit Court No.CL2019-14766 proceeding (3)

- xx. Supreme Court of Virginia Khai Quang Bui v. Abdul Alshaer record
No.200989 Circuit Court No.CL2019-14766 petition rehearing
appendix C p. 46
- xxi. General Rules of Pleading, 28a U.S.C. Rule 8 (c) (1) (2010)
- xxii. Determination, 28 U.S.C. § 2106 (1948)
- xxiii. State courts; certiorari, 28 U.S.C. § 1257 (a) (1988)
- xxiv. Writs, 28 U.S.C. § 1651 (1948)
- xxv. State laws as rules of decision, 28 U.S.C. § 1652 (1948)
- xxvi. Va. Code § 8.01-249.3
- xxvii. Va. Code § 8.01-45
- xxviii. Va. Code § 19.2-265.6
- xxix. Supreme Court of Virginia rule 1:6
- xxx. County of Fairfax Virginia police report (can only be retrieve through
court process)
- xxxi. Fairfax County Circuit Court CL2019-14766 Khai Bui v. Abdul
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 7-8-2021

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