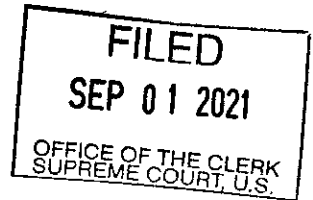


No. _____

21-5777 ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

Vance Keith Wilson, Jr. — PETITIONER
(Your Name)

vs.

State of Louisiana — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

22nd Judicial District Court, Parish of St. Tammany, State of Louisiana
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Vance Keith Wilson, Jr.
(Your Name)

PO Box 908 c/o St. Tammany Parish Jail
(Address)

Covington, LA 70434
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Is a district court authorized to, *sua sponte*, but without a warrant or any quantum of suspicion, order a pretrial defendant, whose bond agreement contains no special conditions related to drug testing and who has already been at liberty without an issue for ten months, to urinate in front of a bailiff in a courthouse bathroom as a condition of continuing his case?
2. To what extent can pretrial defendants rely on the express conditions of their bond?
3. What are the non-express conditions pretrial defendants implicitly consent to as conditions of release?
4. Is a district court authorized to impose the most extreme criminal penalty, revocation of bond and remand to jail without setting a new bond, within minutes of ordering the defendant to provide said urine sample without affording a fair opportunity to contest the result of the test or submitting into the record anything to support the authenticity of the test?

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:

RELATED CASES

- State of Louisiana v. Vance Wilson, No. 3284-F-2020 & 3285-M-2020, Louisiana 22nd Judicial District Court Parish of St. Tammany. Interlocutory judgement entered on January 13, 2021
- State of Louisiana v. Vance Keith Wilson, No. 2021-KW-0167, Louisiana First Circuit Court of Appeals. Judgement entered on February 24, 2021
- State of Louisiana v. Vance Wilson, No. 2021-KK-00455, Supreme Court of Louisiana. Judgement entered on April 20, 2021

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	8
CONCLUSION.....	16

INDEX TO APPENDICES

APPENDIX A	Decision of State District Court 1-13-21 Minutes
APPENDIX B	Decision of Louisiana 1 st Circuit Court of Appeals Denying Review
APPENDIX C	Decision of Supreme Court of Louisiana Denying Review
APPENDIX D	Order 594 U.S. extending time limitation
APPENDIX E	Transcript of Proceedings 1-13-21
APPENDIX F	Felony Bill of Information

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Dunn v. United States, 442 U.S. 100, 49 S.Ct. 240, 60 L.Ed.2d 743 (1970)	10
Katz v. United States, 389 U.S. 347, 361 (1967)	13
Kolender v. Lawson, 461 U.S. 352, 357 (1983)	11
Melendez-Diaz v. Massachusetts, 557 U.S. 305, 129 S.Ct. 95, 27 (2009)	12
New Jersey v. T.L.O., 464 U.S. 325, 339-40 (1985)	14
O'Connor v. Ortega, 480 U.S. 709 (1987)	14
Skinner v. Ry. Labor Executives' Ass'n 489 U.S. 602, 616-17 (1989)	13
State v. Carr, 99-2204, p4 (La.5/26/00), 761 So.2d 1271, 1274	10
United States v. Scott, 450 F.3d 863, 865 (9th Cir 2006)	13
Wolff v. McDonnell, 418 U.S. 539, 558 (1974)	11
STATUTES AND RULES	
Fed. Sup. Ct. Rule 10	8
La. C. Cr. P. Art. 320(D)	3
La. C. Cr. P. Art. 320(E)	12
La. C. Cr. P. Art. 895	14
La. R.S. 14:108.2	4
La. R.S. 32:79	4
La. R.S. 40:967(C)(1)	4
La. R.S. 40:1023(C)	4
La. R.S. 40:1025(A)(1)	4

OTHER

- Cathryn Jo Rosen, John S. Goldkemp, The Constitutionality of Drug Testing at the Bail Stage, 80 S. Crim. L. & Criminology 114, 169 (1989-1990) 12, 13
- Redwood Toxicology Laboratory, <https://www.redwoodtoxicology.com/devices/doa-panel-dip> 15

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 N/A to the petition and is

☐ reported at N/A; 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 N/A to the petition and is

☐ reported at N/A; 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 C to the petition and is

☒ reported at 313 So. 3d 1228; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the 1st Circuit Court of Appeals of Louisiana court appears at Appendix B to the petition and is

☐ reported at N/A; 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 N/A.

☐ 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

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

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

☒ For cases from state courts:

The date on which the highest state court decided my case was April 20, 2021.
A copy of that decision appears at Appendix C.

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

☒ An extension of time to file the petition for a writ of certiorari was granted to and including July 19, 2021 (date) on July 19, 2021 (date) in Application No. A 594 U.S. In Appendix D.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

La. C. Cr. P. § 320(D) - "Drug offenses and crimes of violence. Every person arrested for a violation of the Uniform Controlled Dangerous Substance Law or a crime of violence as provided in R.S. 41:2(B) shall be required to submit to a pretrial drug test for the presence of designated substances in accordance with the provisions of this Article and rules of court governing such testing. (Source: Art 336(A)(1)). Every person arrested for any other felony may be required to submit to a pretrial drug test for the presence of designated substances in accordance with the provisions of this Article and rules of court governing such testing. (Source: Art. 336(A)(2)). Every person arrested for a misdemeanor may be required to submit to a pretrial drug test for the presence of designated substances in accordance with the provisions of this Article and rules of court governing such testing (Source: Art. 336(A)(3)).

STATEMENT OF THE CASE

On June 24, 2020, the Commissioner set Mr. Wilson's bond without any special conditions at \$2,500.00 after his arrest for one count of resisting with force (R.S. §14:108.2), one count of possession of a schedule II COS less than 2 grams (La. R.S. §40:967(C)(1)), possession of paraphernalia (La. R.S. §§ 40:1023(C) & 1025(A)(1)), and improper lane use (R.S. §32:79). App at F. Mr. Wilson posted a commercial surety bond on June 27.

Mr. Wilson was present in court for every date after bonding out: arraignment on August 3, trial on October 12 and pretrial on December 16. He timely applied to be represented by the public defender's office and the court certified his indigency status.

On January 1, 2021, pursuant to the local rules of the Louisiana 22nd Judicial District Court, the Honorable William H. Burris, Division E, rotated from Washington Parish to St. Tammany Parish and assumed all open criminal cases that had previously been allotted to the Honorable August J. Hand, Division B.

Mr. Wilson was present on the morning of January 11 for trial but due to this Court's order concerning COVID-19 restrictions, no jury venire was subpoenaed. Therefore, counsel submitted written motions to continue each of his cases that were not expected to resolve by plea agreement, including Mr. Wilson's case. App. at E, 39. At about 4:30 PM, the court ordered counsel to instruct each of his clients whose cases were not resolving to return the next day pursuant to their weeklong trial subpoena. Mr. Wilson returned to court on January 12 and again sat in the hallway from approximately 9 AM until 4:30 PM when the court ordered counsel again to instruct his clients whose cases were not resolving to return the next day. App at E, 39.

On Wednesday, January 13, Mr. Wilson again was present at 9 AM along with several other of counsel's clients. The court ordered, "All those individuals on the docket who are present and are facing a charge under the Uniform Controlled Dangerous Substances law will be taking a

drug test today." Appat E, 2. Every client in court that day was counsel's client, although the court indicated that it had drug screened all UCDSL clients with private counsel on the first day of the trial week. Appat E, 5-6. None of the individuals ordered to drug screens displayed any signs of intoxication or disruption in court.

The court directed its order first towards Mr. Paul Darby, citing Code of Criminal Procedure article 320(1) for the authority to drug test every defendant charged with a UCDSL violation who was not pleading guilty. App at E, 3-4. Counsel objected to this order in Mr. Darby's case based on the plain language of article 320(1), app at E, 4-5, 7, 9, 11-13, and because the court's interpretation of article 320(1) violated constitutional rights to due process, app at E, 5, 9, and to be free from unreasonable search and seizure, app at E, 21-23.

The court overruled counsel's objection and eventually directed the same order to Mr. Wilson, also solely because he was charged with a UCDSL violation. App at E, 23. Mr. Wilson did not show any signs of intoxication and in no way disrupted court order. App at E, 39. Bailiffs then seized Mr. Wilson and the other affected defendants and escorted them to the misdemeanor probation office in the courthouse. There they were commanded to urinate in a specimen cup under observation and a Reditest Panel Dip Screening Device was dipped into the cup. After waiting five minutes, the bailiff wrote down whether each of the panels indicated one or two lines, positive or negative.

Each of the defendants were escorted back to the courtroom and the bailiff handed the Reditest Panel Dip Devices and note sheets to the court. The court then granted Mr. Darby's motion to continue because "his drug test has come back negative on all accounts," app. at E, 27, and requested that the State put Mr. Darby's plea offer and speculated maximum habitual offender liability on the record. App at E, 28-29. The court then informed Mr. Wilson that "his pretrial drug test as authorized by the statute previously indicated, came back positive for amphetamines, methamphetamines, marijuana, oxys, and buprenorphines," revoked his bond, and remanded him to jail without bond, "noting the

standing objection made by Mr. Ginnetty at the beginning of the day today." App at E, 31
The court then had the State put on the record Mr. Wilson's offer of seven years at hard labor as a second offender, the fact that the offer expired at the end of the day, and his speculated maximum habitual offender liability. App at E, 31-32. The court introduced the Reditest drug test and note sheet into the record, app at E, 26, but refused counsel's request to inquire about or introduce "documentation pertaining to the authenticity of the drug screens." App at E, 40-41. Each of the other affected defendants pled guilty.

Mr. Wilson was handcuffed and detained in the holding cell adjacent to the courtroom. Counsel then argued that, pretermittting his objection to the lawfulness of the drug screen itself, the court should consider a lesser sanction than remand without bond. Counsel also introduced a pharmacy printout of prescriptions that Mr. Wilson's grandmother had provided to counsel during the lunch recess after the court had remanded Mr. Wilson. App at E, 33-36. The court disputed that it was holding Mr. Wilson without bond, stating "It's a misstatement. He can move to set bond, or the State can move to set bond at any time. I'm not holding him without bond. I'm revoking his bond for failure to meet bond conditions." App at E, 37. The court refused to consider lesser sanctions, insisting that revocation of bond was required by law because of Mr. Wilson's positive drug test pursuant to article 320. App at E, 39.

On January 21, counsel filed a motion to set bond which the court set for hearing on March 15. On that day, the court denied the motion and ordered that Mr. Wilson be held without bond. App at E 32. On February 12, Mr. Wilson timely sought expedited consideration for a writ of review from the Louisiana First Circuit Court of Appeal, which that court denied without opinion on February 24, 2021. Mr. Wilson subsequently sought expedited consideration for a writ of certiorari from the Supreme Court

of Louisiana, which that court denied with two justices siding with Mr. Wilson and entering an opinion. App at C. The State has not filed any motions in Mr. Wilson's case and did not file an opposition in the First Circuit or Supreme Courts of Louisiana. Mr. Wilson remains incarcerated in the St. Tammany Parish Jail without bond. He has not been physically present either in person or via Zoom hearing at any court date since his arrest and does not have a court date set despite several recent pro-se motions. On March 25, 2021, counsel obtained a court order to view the Reditest Panel Dip Screening Device which the court submitted into evidence.

REASONS FOR GRANTING THE PETITION

Writ Grant Considerations Fed. Sup. Ct. Rule 10(c) a state court... has decided an important question of federal law that has not, 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.

There are no cases, Federal or state, that uphold any program remotely like the district court's drug test policy here. The United States Supreme Court has long held that a drug test constitutes a search which must be justified by a warrant, an exception to the warrant requirement, or a re-classification of the search as administrative or special needs. Here, there was no warrant, no exception to the warrant requirement applies, and the harsh criminal punishment imposed firmly removed the district court's drug test policy outside of the special needs or administrative search arena.

This case is of national importance because a decision by this Court would firmly set guidelines on what courts can and cannot do in relation to implied bond conditioning.

Assignments of Error: 1. The district court erred by interpreting La.C.C.P. Art. 320(D) to authorize drug testing every defendant on a trial docket charged with a UCDSL violation and to mandate revocation of bond as the only possible sanction for a positive drug test.

2. The district court's application of Art 320(D) violates State and Federal Constitutions:

a. The district court's interpretation violated defendant's rights to due process because it imposed a severe criminal penalty without any notice of basic procedural fairness.

b. The district court's drug test policy violated rights to privacy and to

be free from unreasonable search and seizure because it subjected him to the humiliation of a public seizure for an observed drug test without any individualized suspicion of criminal wrongdoing.

3. The district court erred by using the drug test as a threat by not requiring those who took the State's plea offer to take an observed drug test and using the drug test as a condition of granting defendant's motions to continue.

4. The district court erred by interpreting the results of the drug tests without a professional opinion and not allowing a laboratory confirmation.

Law and Argument - 1. The plain language of article 320(D) does not authorize drug testing every defendant on a trial docket charged with a UCJSL violation, nor does it mandate revocation of bond as a sanction for a positive drug test.

The plain language of Code of Criminal Procedure article 320(D) clearly does not authorize drug testing pre-trial defendants on a trial docket without regard to the express conditions of their bond; nor does it mandate or even authorize revocation of bond for a positive drug test. The district court's interpretation of article 320(D) to authorize such a policy is manifestly unreasonable for at least three reasons:

(i) If 320(D) pertains to post-arraignment drug testing then the district court's policy is illegally under-inclusive since the article's mandatory language leaves no room for judicial discretion.

(ii) Article 320(D) only authorizes a single drug test, which would be irrational if subsection (D) were meant to enable drug testing every defendant on every trial docket—but it is completely rational if it is meant to authorize a single drug test upon arrest to determine the conditions of bond.

(iii) Article 320(D) does not designate substances to be tested for, establish procedures for testing, or specify a consequence for a positive test, making it meaningless to quote as a free-standing provision to drug test pre-trial defendants.

"It is a well-established tenet of statutory construction that criminal statutes are subject to strict construction under the rule of lenity... given narrow interpretation and any ambiguity in the substantive provisions of a statute as written is resolved in favor of the accused and against the state." "This rule is based on principles of due process" State v. Carr, 99-2209, p.4 (La. 5/26/00), 761 So. 2d 1271, 1274 citing Dunn v. United States, 442 U.S. 100, 99 S.Ct. 2190, 60 L.Ed. 2d 743 (1970). Article 320(D) is a criminal statute, and the district court imposed a harsh criminal sanction in applying its interpretation of that article to Mr. Wilson. Therefore, article 320(D) must be strictly construed in light of the rule of lenity to determine whether interpreted narrowly, it yields the authority which the district court claimed it for, and to consider whether there are any alternative resolutions of its ambiguities in favor of Mr. Wilson. There is no narrow interpretation of article 320(D) that would authorize the district court's drug test policy. Article 320(D) contains at least three parts that count against the district court's interpretation, as stated earlier, but it should be noted that Subsection (D) applies the mandatory "shall" both to individuals "arrested" for UCDSL violations and crimes of violence, but the district court only ordered that defendants charged with UCDSL violations be drug tested. App at E, 2. The district court, however, insisted that it relied on article 320(D) as a freestanding authorization to drug test defendants on bail regardless of the express conditions of their bonds. App at E, 17.

There are also no "rules of court governing such testing." When counsel requested to be directed to any rules governing, the court could not quote a specific local rule, but directed counsel to consult this Court's website. App at E, 7-8. Neither the Rules for Louisiana District Courts, nor the appendix for the 22nd Judicial District Court listed there provide any rules for pretrial drug testing.

Further, two justices in the Louisiana Supreme Court would have granted Mr. Wilson's petition and assigned the reason, "I do not find that the State adequately demonstrated which 'rules of court,' required by the statute, are applicable here. App at C.

2. The district court's drug test policy violated Mr. Wilson's basic constitutional rights - a. The district court's application of its interpretation of article 320(B) violated Mr. Wilson's right to due process because it imposed a severe criminal penalty without any notice of basic procedural fairness.

Due process requires that a person have fair notice of conduct and that an ambiguous statute not be arbitrarily enforced against him. See Kolender v. Lawson, 461 U.S. 352, 357 (1983); Wolff v. McDonnell, 418 U.S. 539, 558 (1974) ("the touch stone of due process is protection of the individual against arbitrary action of the government."). In this case, Mr. Wilson had neither constructive nor actual notice that he might be drug tested as a condition of his bond, and he is being held in jail without bond based on the district court's unreasonable construction of an ambiguous statute. Therefore, the district court's application of article 326(D) to Mr. Wilson violated his right to due process.

The district court claimed that Mr. Wilson had at least constructive notice that he might be drug tested, but this claim relied on the erroneous assumption that some general condition of bail authorized drug testing. The court said, "No notice is not a valid argument. It's a general condition of bond. It's in the law. Ignorance of the law is no excuse." App at E, 20. However, as demonstrated above, this claim is incorrect: there is no general condition of bond that puts a pretrial defendant on constructive notice that he might be drug tested.

The court's drug test policy also violated Mr. Wilson's due process right

to basic fairness because there are no procedures or rules in place to implement that policy fairly or reliably. Mr. Wilson's bond was revoked because a person, who did not testify in court, signed a paper that he or she observed indications of a positive result on a rapid-result dip panel test that the manufacturer advises is only presumptive and should be confirmed, that does not meet the standards for federal workplace drug testing. See Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009), 129 S. Ct. 2527 (2009).

"Subjects should, at the least, be given an opportunity to challenge the evidence at the release hearing; questions about use of legal prescription and non-prescription drugs and other facts that may cause a false positive result should come before the test is performed. Scrupulous procedures must be developed and followed to maintain the confidentiality of the information obtained in response to pretest questioning and in test results." Cathryn Jo Rosen, John S. Goldkamp, 'The Constitutionality of Drug Testing at the Bail Stage, 80 J. Crim. L. & Criminology 114, 169 (1989-1990).

Counsel requested proof of the reliability of the drug tests used by the court, but the court only offered its assurance that they were authorized by law, without being able to specify the authorizing rules or any standards for reliability Appat E, 18. The court refused to offer evidence pertaining to the reliability of the test prior to or even contemporaneously with the hearing to revoke Mr. Wilson's bond, Appat E, 39. The court interpreted the results of the test, evaluated the merits of prescriptions submitted, appat E, 38, and ultimately imposed the punishment based on the positive presumptive test. Appat E, 31.

The pretrial drug testing programs authorized by article 320(E), by contrast, mandates certain procedures to ensure at least a minimum of due process, including "reasonable testing procedures to ensure the fair administration of the test and

protection for the chain of custody for any evidence obtained." La. Code of Criminal Procedure Article 320(E)(4). Obviously, there were no "reasonable testing procedures to ensure the fair administration of the Redistrict that the district court used to remand Mr. Wilson without bond; yet the court deflected this argument by staking its authority to drug test on subsection (D) in order to avoid the plain language requirements of (E)(3)-(4). Appel E, 14

b. The district court's drug test policy violated Mr. Wilson's right to privacy and to be free from unreasonable search and seizure because it subjected him to the humiliation of public seizure for an observed drug test without any individualized suspicion of wrongdoing.

The Fourth Amendment protects individuals from government intrusions into reasonable expectations of privacy. See Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). Drug tests constitute a "search" for Fourth Amendment purposes. Siskner v. Ry. Labor Executives' Ass'n, 489 U.S. 602, 616-17 (1989). It is undeniable that "requiring an individual to urinate on demand and to produce urine for scientific examination is degrading and humiliating." Cathryn Jo Rosen, John S. Goldkamp, "The Constitutionality of Drug Testing at the Bail Stage", 80 J. Crim. L. & Criminology 114, 161 (1989-1990).

The United States Supreme Court has never ruled whether warrantless pretrial drug testing programs, such as the type authorized by 320(E), are reasonable. No federal Court of Appeal had weighed on the issue until the Ninth Circuit held in 2006 that a pretrial defendant's written consent to drug testing as a condition of his release on bond did not permit the police to subject him to a drug test without probable cause. United States v. Scott, 450 F.2d 863, 865 (9th Cir. 2006). Mr. Wilson, however, was never ordered to participate in a pretrial drug testing program; he was ordered to submit a drug test without notice on January 3 solely because he

was charged with a UCDSL violation, he was on the trial docket, and he had not accepted the State's plea offer. It appears that no court has ever considered the legality of such a drug testing regime. Moreover, even such searches typically involve at least "reasonable grounds for suspecting that a search will reveal evidence of a violation of law." New Jersey v. T.L.O., 469 U.S. 325, 339-40 (1985); O'Connor v. Ortega, 480 U.S. 709 (1987). Here, there was no suspicion whatsoever, no disruptive conduct in court, no visible sign of intoxication. Appat E, 39. In Louisiana, even probationers cannot be subjected to searches unless their probation officer has at least "reasonable suspicion to believe that the person who is on probation is engaged in or has been engaged in criminal activity." La C. Cr. P. art 895(13)(a). Only those individuals convicted of a UCDSL violation can be drug tested if the court adds a special condition of probation. La C. Cr. P art 895(C)(1).

3. The district court attempted to coerce Mr. Wilson to take a guilty plea, using the drug test as a threat.

The district court invoked an absolute authority to subject pretrial defendants to a particularly humiliating search under the Fourth Amendment without any individualized suspicion, months after they had posted bond, without regard for their express conditions of their bond, only if they chose not to accept the State's plea offer. In response to counsel's selective enforcement argument, the court stated: "The reason why I'm not doing it to those individuals who are accepting the plea deal that has been offered to them is simply of a financial concern." Appat E, 6.

4. The district court erred by interpreting the results of the drug test without allowing a laboratory confirmation.

The district court employed a five-minute, rapid result drug test; the

Redtest Panel Dip Screening Device produced by Redwood Toxicology Laboratory, which the court submitted into evidence. Notably, Redwood's website advertising this product advises: "Any positive result obtained with this on-site screening test is presumptive and should be confirmed by an alternate method such as GC/MS or LC-MS/MS." Redwood Toxicology Laboratory, <https://www.redwoodtoxicology.com/devices/doc-panel-dip> (last visited March 26, 2021). However, Mr. Wilson's presumptive drug test ~~was~~ never confirmed by a more reliable method.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Vance Keith Wilson, Jr

Date: September 1st, 2021