

No. \_\_\_\_\_

21-6545

In The

Supreme Court of the United States

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Debra A. Nichols

Petitioner,

V.

William Paul Nichols et al

Respondents,

---

On Petition For Writ of Certiorari To The United States Court of Appeals for  
the Sixth Circuit Court of Appeal ( 19-2182)

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**PETITION FOR A WRIT OF CERTIORARI**

**In Forma Pauperis**

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Debra A. Nichols

401 W. 4th STREET

MONROE, MI 48161

734-821-4224

Supreme Court, U.S.  
FILED

NOV 29 2021

OFFICE OF THE CLERK

## QUESTIONS PRESENTED

- I. Can state actors, and/or government employees violate the equal protection Clause of the 5th Amendment of people considered disabled under the ADA?
- II. Where the petitioner had a reasonable expectation of privacy in her digital medical records, PDMP, and personal identification data, can the DEA and/or its agents, perform warrantless searches and seizures?

## TABLE OF CONTENTS

QUESTIONS PRESENTED.....	ii		
TABLE OF CONTENTS.....	iii		
LISTS OF PARTIES.....	v		
TABLE OF AUTHORITIES.....	xiii		
OPINIONS BELOW.....	P1		
JURISDICTION .....	P2		
CONSTITUTIONAL PROVISIONS			
AND STATUTES AT ISSUE .....		P4	
I. STATEMENT FOF THE CASE			
A. Facts Giving Rise To This Case.....	P4		
B. The State Court Proceedings.....	P16		
C. The District Court Proceedings.....	P17		
D. The Appellate Court Proceedings.....	P18		
II. REASONS WHY CERTIORARISHOULD BE GRANTED.....			P19
1. Illegal Search and Seizure.....			P19
III. REVIEW IS WARRANTED.....			P19
1. Strict Scrutiny Basis for Judicial Review .....			P19
2. Equal Protection.....			P20
3. Title 18, U.S.C §241.....			P23
4. Violation of Due Process.....			P24
5. Digital Data.....			P25
6. Standing .....			P28
7. Unconstitutional Conditions.....			P33

8. Warrantless Search and Seizure of Digital Data.....	P33
CONCLUSION.....	P40
CERTIFICATE OF COMPLIANCE.....	P41
CERTIFICATE OF SERVICE.....	P41

## INDEX TO APPENDICES

### APPENDIX A:

Decision of the United States Court of Appeals for the Sixth Circuit (May 24, 2021) .....	A2
---	----

### APPENDIX B:

Oder Decision of the United States Court of Appeals for the Sixth Circuit Denying Rehearing ((May 24, 2021.....	A6
---	----

### APPENDIX C: Decision of District Court

ORDER GRANTING DEFENDANTS' MOTION TO CONSOLIDATE CASES <sup>1</sup> [#16] AND SETTING February 20, 2019.....	A7
--	----

### APPENDIX D

OPINION AND ORDER REGARDING VARIOUS MOTIONS ... September 30, 2019. UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION .....	A17
---	-----

### APPENDIX E

ORDER DENYING WITHOUT PREJUDICE DEFENDANTS' MOTION TO ENJOIN STATE AND FEDERAL COURT FILINGS BY PLAINTIFFS . October 30, 2019. UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION.....	A48
---	-----

### APPENDIX F

The PDMP: Raising Issues in Data Design, Use and Implementation. Terri Lewis . <a href="https://link.medium.com/Q8YRQMWUjlb">https://link.medium.com/Q8YRQMWUjlb</a> . Aug 7 2021.....	A.55
--	------

## APPENDIX G

wpsites.maine.edu/mlipa/2021/11/15/predicting-drug-diversion-the-use-of data-  
analytics-in-prescription-drug-monitoring/.....A73

CONSTITUTIONAL PROVISIONS AND  
STATUTORY .....A97

## LIST OF PARTIES

DEBRA A NICHOLS, Pro Se

V.

MONROE COUNTY CHIEF PROSECUTING ATTORNEY WILLIAM PAUL  
NICHOLS,  
BLUE CROSS BLUE SHIELD OF MICHIGAN FOUNDATION (BCBSMF) –ID  
No. 800801281,  
BLUE CROSS BLUE SHIELD OF MICHIGAN (BCBSM)—ID No. 800801281,  
BLUE CROSS COMPLETE OF MICHIGAN (BCCM),  
BLUE CARE NETWORK OF MICHIGAN (BCNM)—ID No.800883794,  
BLUECAID OF MICHIGAN (BCM)—Id No.800891749  
BLUE CROSS BLUE SHIELD OF MICHIGAN MUTUAL INSURANCE  
COMPANY  
BLUE CROSS BLUE SHIELD ASSOCIATION  
I-PATIENTCARE INC,  
MANTIS (MONROE AREA NARCOTIC TEAM INVESTIGATION SERVICE)

LT. MARC MOORE AND OTHERS,  
DEA DIVERSION INVESTIGATOR BRIAN BISHOP  
DEA TASK FORCE OFFICER CHRISTINE HICKS  
DEA ADMINISTRATIVE JUDGE JOHN J MULRONEY AT US DISTRICT  
COURT IN DETROIT, MICHIGAN  
FIRST MERCHANTS BANK, fka Monroe Bank & Trust  
SUSAN MEHREGAN  
THOMAS SCOTT  
FORMER DEA TASK FORCE OFFICER/MONROE COUNTY POLICE  
DEPARTMENT OFFICER SHAWN KOTCH  
BLUE CROSS BLUE SHIELD INVESTIGATOR JAMES STEWART, AKA  
JAMES HOWELL  
MANTIS DETECTIVE ROBERT BLAIR  
MANTIS DETECTIVE BRENT CATHEY  
MANTIS DETECTIVE JON LASOTA AND OTHERS  
MANTIS , MCSD DETECTIVE SEAN STREET  
MANTIS ,MCSD,VICE UNIT DET. MIKE MCLAIN  
MANTIS, MONROE POLICE DEPARTMENT ( "MPD")  
MONROE COUNTY MAGISTRATE TINA TODD  
MONROE COUNTY MAGISTRATE JESSICA CHAFFIN  
MONROE COUNTY JUDGE JACK VITALE  
MONROE COUNTY JUDGE DANIEL WHITE  
BLUE CROSS BLUE SHIELD PHYSICIAN MEDICAL CONSULTANT,  
CHRISTENSEN CARL MD. PH.D  
BLUE CROSS BLUE SHIELD PHYSICIAN CONSULTANT ALAN J  
ROBERTSON MD  
BLUE CROSS BLUE SHIELD UTILIZATION REVIEW DIANE SILAS  
BLUE CROSS BLUE SHIELD MANAGER OF CLINICAL PHARMACY  
FRAUD, WASTE AND ABUSE PROGRAM, JIM GALLAGHER  
MONROE CITY POLICE DEPARTMENT VICE UNIT SGT DEREK LINDSAY  
MONROE CITY POLICE DEPARTMENT VICE UNIT OFFICER AARON  
OETJENS  
MONROE CITY POLICE DEPARTMENT VICE UNIT OFFICER MIKE  
MERKLE  
MICHIGAN STATE POLICE DETECTIVE SPROUL  
BLUE CROSS BLUE SHIELD MANAGER BRIAN ZAZADNY  
MICHIGAN STATE POLICE TROOPER WILLIAM MCMULLEN  
MONROE CITY POLICE CHIEF CHARLES F. McCORMICK IV  
MONROE CITY POLICE DEPARTMENT CORPORAL DONALD BRADY  
MONROE CITY POLICE DEPARTMENT SERGANT CHRIS MILLER  
MONROE COUNTY SHERIFF OFFICER DETECTIVE MIKE MCCLAIN  
MANTIS CPL ADAM ZIMMERMAN

DEA WILLIAM CHAMULAK  
DEA TOM FARRELL  
MANTIS, MONROE COUNTY SHERIFF'S DEPARTMENT ("MCSD"), SCOTT  
BEARD  
DEA TASK FORCE OFFICER MIKE GUZOWSKI  
DEA TASK FORCE OFFICER TIM GATES  
MANTIS TASK FORCE OFFICER SARAH BUCIAK  
ASSISTANT MONROE PROSECUTOR ALLISON ARNOLD  
ASSISTANT MONROE PROSECUTOR JEFFREY YORKEY  
CHIEF ASSISTANT PROSECUTOR MICHAEL G ROEHRIG  
MONROE COUNTY SHERIFF'S DEPARTMENT DALE MALONE  
MICHIGAN BUREAU OF PROFESSIONAL LICENSING PHYSICIAN  
EXPERT WITNESS, LEON PEDELL MD  
CARL CHRISTENSEN MD, PH.D  
MICHIGAN BUREAU OF PROFESSIONAL LICENSING PHARMACIST  
EXPERT WITNESS, VAUGHN HAFNER, R.PH.  
MICHIGAN BUREAU OF PROFESSIONAL LICENSING , KEEPER OF THE  
RECORDS, DINA YOUNG  
MICHIGAN ATTORNEY GENERAL BILL SCHUETTE  
MICHIGAN ASSISTANT ATTORNEY GENERAL JENNIFER FRITZGERALD  
MICHIGAN ASSISTANT ATTORNEY GENERAL TIMOTHY C. ERICKSON  
MICHIGAN ASSISTANT ATTORNEY GENERAL M CATHERINE  
WASKIEWICZ  
ADMINISTRATIVE LAW JUDGE, MICHAEL J ST. JOHN , MICHIGAN  
ADMINISTRATIVE HEARING SYSTEM. 611 WEST OTTAWA. LANSING ,  
MI 48933  
MICHIGAN AUTOMATED PRESCRIPTION SYSTEM , HALEY WINANS,  
UNITED STATES ATTORNEY MATTHEW SCHNEIDER  
CHIEF, HEALTH CARE FRAUD UNIT, ASSISTANT UNITED STATES  
ATTORNEY, WAYNE F. PRATT  
ASSISTANT UNITED STATES ATTORNEY, BRANDY R. MCMILLION  
JOHN(S) DOE(S), NAMES BEING FICTITIOUS AND UNKNOWN TO THE  
PLAINTIFF, BEING ALL OTHER PARTICIPATING UNDERCOVER  
DETECTIVE(S), INVESTIGATOR(S), AND LAW ENFORCEMENT  
OFFICER(S), IN BOTH THEIR INDIVIDUAL AND OFFICIAL CAPACITIES,  
JOINTLY, AND SEVERALLY  
RAY KISONAS  
KIM GADEKE  
MICHAEL ZSENYUK  
MICHAEL HENDRICKS , HHS OIG

## LIST OF RELATED PROCEEDINGS

Tracy Claire Micks -Harm, et al v. William Paul Nichols, et al. (Consolidated: 19-2173, 19-2182, 19-2207, 19-2209, 19-2226, 19-2227, 19-2228, and 19-2237). U.S. Court of Appeals, FOR THE SIXTH CIRCUIT. Judgement for rehearing entered JUNE 30, 2021.

Berry v. Nichols, 19-10648 , E.D Michigan. 2019

Blakesley v. Blue Cross, 19-10295, E.D Michigan. 2019

Blakesley v. Nichols, 19-10299, E.D Michigan. 2019

Bureau of Professional Licensing v Dr. Lesly Pompy, Michigan Office of Administrative Hearings and Rules Case No. 43-16-143670.....

19-10639, Clark v. Nichols; E.D Michigan. 2019

18-13639, Helm v. Arnold; E.D Michigan. 2019

18-13647, Helm v. Nichols; E.D Michigan. 2019

19-10125, Cook v. William; E.D Michigan. 2019

19-10126, Cook v. Nichols; E.D Michigan. 2019

19-10132, Cook v. Nichols; E.D Michigan. 2019

19-10135, Cook v. Nichols; E.D Michigan. 2019

(14,15,16)19-10785, Drummonds v. Nichols, E.D Michigan. 2019

19-10990, Jennifer v. Nichols, E.D Michigan. 2019

19-10663, Johnson v. Nichols, E.D Michigan. 2019

19-10661, Knierim v. Nichols, E.D Michigan. 2019

19-10841, Smallwood v. Nichols;

19-10995, Smith v. Nichols; E.D Michigan. 2019

19-10984, Zureki v. Nichols; E.D Michigan. 2019



Stacey Simeon Hall v. City of Monroe Police Officer R. Parese et al. 18-10877) (E.D. Mich.) (2028) (Retaliation against the process server, Mr. Stacey Hall)

Hall v. Goodnough, Case number 04-70009 (E.D. Mich. Jun. 27, 2005)

Lesly Pompy, M.D., v. Drug Enforcement Administration. Case 19-4090. U.S. Court of Appeals, FOR THE SIXTH CIRCUIT. (2019)

Lesly Pompy v. MBT Financial Corp., Case 2:19-cv-10334-DML-SDD. U.S. District Court, Eastern District of Michigan, Southern Division.

Lesly Pompy v. Monroe, Monroe Bank and Trust, et al. Case 20-2259. U.S. Court of Appeals, FOR THE SIXTH CIRCUIT.....

Monroe County Prosecutor William P. Nichols (State of Michigan ex rel. William P. Nichols, Monroe County Prosecutor, v. \$27,814.00, et al., Defendants, and Lesly Pompy, M.D., Claimant, and Interventional Pain Management Associates, P.C., et al., Intervening Third-Party Claimants, Hon. Daniel S. White, Case No. 16-139517-CF. Judgement entered 03/18/2018.

MATTER of LESLY POMPY, M.D., License No. 43-01-058720, and File No. 43-16-143670)... 19-No. 19-10649, Mills v. Nichols;

MOAHR Docket No. 19-00470. Case No.: 1800281. ALJ: ERICK WILLIAMS

Neil Anand, Lesly Pompy as Intervenor v. Independence Blue cross. (CASE NO. 20-6246-CFK) (E.D. Pa 2020).

Neil Anand, et al v. U.S. Department of Health and Human Services et al. (Case No 1: 21- 01635 (D.C (2021)

18-13206, Nichols v. Nichols, E.D Michigan. 2019

19-11980, Nichols v. Blue Cross Blue Shield Association

Pompy v MBT Financial Inc. Case No. 2:18-cv-12634

Pompy v First Merchant Bank, fka Monroe Bank and Trust; Susan Mehregan, et al , No.20-2259. (6th Cir. C. A.). Jan, 21, 2021 Final Order.

Pompy v. Todd, Case No.: 19-10334 (E.D. Mich. Oct. 30, 2020)

Portfolio Recovery Associates LLC v. Lesly Pompy, Case No 20G 1162 GC. Mich. 1st Distr. Court (2020)

Tracy Clare Micks Harm, et al v. William Paul Nichols et al, Consolidated cases 2:18-cv-12634, E.D Michigan

United States v. Pompy,

No. 18-20454 (ED Mich.)

Kaul v. Christie, 372 F. Supp. 3d 206 (D. NJ. 2019)...

.Kaul et al v. Federation of Medical Boards et al , No. 19-cv-3050 (TSC)(D.D.C. 2021

In re: Blue Cross Blue Shield Antitrust Litigation MDL 2406, N.D. Ala. Master File No. 2:13-cv-20000-RDP (the “Settlement”). 308 F. Supp. 1241 (N.D. Ala. 2018)

2:19-cv-10334-DML-MJH ECF No. 69 filed 02/11/20 PageID.950 Page 3 of 16. Section IV

United States v. First Merchants Bank, 1:19-cv-02365-JPH-MPB (S.D. Ind.) (2019)

## TABLE OF AUTHORITIES CITED

### CASES

Carpenter v. United States

138 S. Ct. 2206, 2223 (2018).....P24, 40

City of Canton v. Harris

489 U.S. 378, 109 S. Ct. 1197 (1989).....P11

*DeShaney v. Winnebago*

489 U.S. 189 (1989).....P29

29 Tumey v. Ohio

273U.S 510 (1927).....P39

## FEDERAL STATUTES

Controlled Substance Act § 802 (56 ) ( c) .....P2

42 U.S.C § 1983.....P22

## STATE STATUTES

MCL 780.655.....P15

## FEDERAL RULES

Federal Civil Rights Statutes Title 18, U.S.C., Section 241.....P23

## STATE RULES

Federation of State Medical Boards Model Policy on DATA 2000 and Treatment  
of Opioid Addiction in the Medical Office of April 2013.....P18

Rule 3:5-1 of the “RULES GOVERNING THE COURTS OF THE STATE OF  
NEW JERSEY.” .....P13

## OTHER

[https://detroit socialist.com/dsa-fights-to-remove-insurance-ceo-from-whitmer-  
transition-team-64588b045799](https://detroit socialist.com/dsa-fights-to-remove-insurance-ceo-from-whitmer-transition-team-64588b045799).....P18

## STATE OF MICHIGAN PROCUREMENT

Department of Technology, Management, and Budget

525 W. Allegan St. Lansing, MI 48933

P.O. Box 30026, Lansing, MI 48909

NOTICE OF CONTRACT NO. 190000000755

THE STATE OF MICHIGAN and BCBSM..... CONTRACT NO. 190000000755  
THE STATE OF MICHIGAN and BCBSM

STATE OF MICHIGAN PROCUREMENT Department of Technology,  
Management, and Budget 525 W. Allegan St. Lansing, MI 48933 P.O. Box  
30026, Lansing, MI 48909. NOTICE OF CONTRACT NOTICE OF CONTRACT  
NO. 190000000755 . THE STATE OF MICHIGAN and BCBSM

“The Contractor must ensure that all providers agree to the following  
appointment access times: 1. Life-threatening emergency - immediately 2. Non-  
Life-threatening emergency - within 6 hours 3. Urgent care - within 48 hours 4.  
Initial visit for routine care - within 10 business days. The Contractor will  
conduct an accessibility analysis for access to behavioral health care annually in  
accordance with the NCQA standard timeframes indicates above.

(12). HIPAA compliance. The parties acknowledge and agree that this Agreement involves the use and disclosure of HIPAA protected health information. The parties therefore agree that all uses, and disclosures of HIPAA protected health information pursuant to this Agreement will be undertaken in compliance with all applicable HIPAA requirements. BCBSM shall disclose HIPAA protected health information to a third party, other than HHS or other federal government agency in connection with the Program, only upon Sponsor’s written certification that such disclosure is permitted under HIPAA. BCBSM and Sponsor agree that this Agreement satisfies the requirements of 45 C.F.R. § 149.35(b)(2). BCBSM shall provide HIPAA protected health information directly to Sponsor or Sponsor’s designee under Section 4 only if Sponsor certifies in writing that: (A) appropriate HIPAA business associate agreements are in effect between BCBSM, Sponsor, Sponsor’s designee, and the Employment-Based Plan; (B) the plan documentation for the Employment-Based Plan permits such disclosure; and (C) the Sponsor has taken all other steps required by HIPAA in order to legally receive such protected health”. .....P18

## JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was June 30, 2021.

☐ 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: June 30, 2021, and a copy of the order denying rehearing appears at Appendix B.

☐ 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).

☐ 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).

## OPINIONS BELOW

Petitioner DEBRA A NICHOLS moves pro se, from a Final Order of Reconsideration from the Sixth Circuit Court of Appeals, dated June 30, 2021<sup>1</sup>. On May 24, 2021, the United States Court of Appeals for the Sixth Circuit improperly affirmed the District Court.

A pretextual search and seizure occurred twice on 09/26/2016<sup>7</sup> after the petitioner's doctor was targeted in November 2015. The opinion of the United States Court of Appeals appears at Appendix A and Appendix B and are not published. The opinions of the United States district court, are unpublished, and appear at Appendix C, Appendix D. Appendix E documents. Appendix "F (The PDMP: Raising Issues in Data Design, Use and Implementation. Terri Lewis. )and G (Predicting Drug Diversion: The Use of Data Analytics in Prescription Drug Monitoring. Cathleen London)" enclosed.

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1- Appeal No. Case No. 19-2209

2- 2: 18-cv-12634

7- . 2.18-cv-12634, E.D Michigan. ECF 37-1. Page ID 728. P 131 of 183

## JURISDICTION

In 2018, petitioners filed the instant case in the United States District Court for the Eastern District of Michigan. Despite complete field preemption under Controlled Substance Act (CSA 802 (56)(c)), here, the respondents are public officials, or agents of the government, who have the intent to benefit from the Controlled Substance Act. Federal Preemption, by the health care practitioner, under CSA 802 § (56) (c) controls. Under CSA 802 § (56) (c), the health care practitioner determines the appropriate dose of controlled substance pain medication prescribed to a particular patient.

Pursuant to the “Patient Rights Statute (MCLA 333.20201)”, the Health Care Portability and Accountability Act (HIPAA), the 4<sup>th</sup> Amendment, and the “Federal Privacy Act of 1974, 5 USCA 552a (1988), the petitioner had a reasonable expectation of, and was entitled to, privacy in her medical records, PDMP data, and personal identification data. Despite knowing the lack of jurisdiction <sup>31</sup> over the State of New-Jersey and Florida and false statements in the supporting affidavit, the Michigan 38th District Court issued a search warrant that caused an unlawful search and seizure of the petitioner’s possessory interest in her medical records occurred in the state of New-Jersey.

On or prior to 6/28/2018, Brandy McMillion, Wayne Pratt, Matthew Schneider used the improperly acquired medical records from the 9/23/2016 search warrant (Case 2:18-cv-

13206-DPH-RSW ECF No. 20 filed 11/16/18 PageID.193 Page 3 of 5), then disclosed the medical records to a grand jury so to obtain a federal indictment <sup>32</sup>. The medical records are in controversy in the present criminal investigation, and in the 6/28/18 federal indictment of Dr. Pompy. The resulting constitutional violations, led to litigation, Tracy Clare Micks Harm et al vs. William Paul Nichols et al. Consolidated cases 2:18-cv-12634), for which, the Civil Rights Activist, Mr. Hall initially acted as a process server. And now, due to retaliation, Mr. Hall had been added to the current case.

The Petitioner filed a timely filed Petition and Jurisdiction of this Court to review the Judgment of the Sixth Circuit is invoked under 28 U.S.C. §1254 (1). The United States court of appeals, of the Sixth Circuit, 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.

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31 2:19-cv-10334-DML-MJH ECF No. 69 filed 02/11/20 PageID.950 Page 3 of 16.

32 2:18-cv-13206-DPH-RSW ECF No. 20 filed 11/16/18 PageID.193 Page 3 of 5)



## **CONSTITUTIONAL PROVISIONS AND STATUTES AT ISSUE**

ADA

Controlled Substance Act (CSA 802 (56)(c)

Fourth Amendment to the United States Constitution

The Fifth and Eighth Amendment

Gramm Leach-Bliley Act § 501,

42 U.S.C § 1983

42 U.S.C. § 1985(3)

42 C.F.R §§ 2.61-2.67

Patient Protection and Affordable Care Act (“ACA”) (codified at 42 U.S.C. §18116)

## **STATEMENT OF THE CASE**

HFPP (Healthcare Fraud Prevention Partnership), BCBSMMIC ( Blue Cross Blue Shield of Michigan Mutual Insurance Company), BCBSA ( Blue Cross Blue Shield Association) and partners create circumstances for law enforcement to enter.

BCBSMMIC , BCBSM , BCBSA, William Chamulak, Marc Moore, Robert Blair, William Paul Nichols, Michael Hendricks, Brian Bishop, MANTIS, and MBT Financial Inc., (now known First Merchant Bank Inc. by merger in succession) formed a joint enterprise with the intent to obtain invalid search warrants on 9/23/2016, 9/27/2016, February 2018 and 5/23/2018. The members of the joint enterprise: 1) intruded into the corporate practice of medicine, and 2) codified their actions via the partnership in the HFPP (Health Care Fraud Partnership) without substantial and procedural due process safeguards. The intrusion occurred primarily in the medical offices of an African American doctor and not the offices of white doctors.

On 9/21/2016, Robert Blair of the Monroe County Sheriff's department, obtained Dr. Pompy's financial information from MBT Financial Inc., dba/Monroe Bank and Trust without consent, privilege, or notice. Despite a fiduciary relationship and Title 15 that established a reasonable expectation of privacy against a third party search, MBT Financial Inc. (now First Merchant Bank) Susan Mehregan and Thomas Scott, allowed the warrantless search and seizure by Robert Blair to proceed, without consent privilege or notice of the bank account holder. In violation of Gramm Leach-Bliley Act § 501, Robert Blair re-used the financial information obtained from Thomas Scott and Susan Mehregan of Monroe Bank & Trust. The information was used in search warrants issued on 9/23/2016,

8/14/2017, and 5/23/2018 to obtain the personal information of the treating physician related to the petitioner.

The DEA's discrimination action against doctors is: 1) not rationally related to a legitimate government outcome, and 2) is not narrowly tailored to serve a compelling government interest.

James Howell, a dishonorably discharged former police officer, reappeared under the name of James Stewart, as a BCBSMMIC employee used as a confidential informant for MANTIS, Robert Blair, and the DEA. James Stewart, aka James Howell, presented to a medical office with a medical referral from referring doctor J. Alan Robertson MD, a BCBSMMIC employee. Carl Christensen M.D., J Alan Robertson M.D., and James Howell are paid by BCBSMMIC. MANTIS and the Monroe County Sheriff's Department, the DEA task force officers, and the Michigan State police are paid by the DEA under Operation Gateway and Operation Stone Garden.

When accompanied by Marc Moore, James Stewart aka James Howell filled prescriptions for controlled substances at the Monroe Walgreens, no signs of intoxication or any signs of diversion existed to prevent the filling of the prescription for controlled substances that was paid by Blue Cross Blue Shield. Walgreens filled the James Stewart's prescription for controlled substances.

James Stewart, aka James Howell, filled out, and signed his name, on a new pain patient questionnaire and multiple pre-visit questionnaires at Doctor Pompy's office. James Stewart, aka James Howell, indicated that his physical function was limited by pain and suffering. James Stewart, aka James Howell, indicated that the intensity of the pain he experienced was at 9/10. Relying on the representation of pain made by James Stewart, he obtained admission into a medical office offering medical treatment related to pain and addiction. James Stewart, aka James Howell, lacked the court order, required under CFR 42 § 2.61-2.67, to enter into a medical office that treats substance abuse. He videotaped patients undergoing substance abuse treatment without consent, privilege, or notice. At the first visit, when asked by the physician during the gathering of a history and physical exam, he concealed the fact his status was as an informant, employed by BCBSMMIC, and that working under the direction and supervision of Marc Moore of MANTIS, Brian Bishop of the DEA. Had he told the truth that he was an informant and not a patient; the doctor would not have prescribed James Stewart prescriptions for controlled substances.

Walgreen's knew, and had a corresponding alliance, with Dr. Pompy. Walgreen's filled the prescription because James Howell appeared in pain. Walgreen's did not perform under any duty arising out of "corresponding responsibility. " Even after verifying for personal identifying data, Walgreen's saw no problems with the prescriptions Dr. Pompy wrote for James Stewart, aka James Howell.

Without consent, privilege, or notice, Robert Blair would reuse the improperly searched and seized data in an affidavit in support of a search warrant for the petitioner's medical records, her doctor's medical license, and the petitioner's PDMP (Prescription Drug Monitoring Program) data. The petitioner has not voluntarily consented to the use of her PDMP data.

On 9/23/2016, Magistrate Jessica Chaffin, under the authority of Jack Vitale, relied on false statements in the affidavit by James Stewart, aka James Howell, Sean Street, Marc Moore, and Robert Blair, to issue a state of Michigan search warrant for the medical records of Dr. Pompy, housed by the new-Jersey citizen IPatientCare Inc. The 9/23/2016 search warrant did not list IPatientCare Inc., as a location, nor the items, to be searched and seized, in particularity. MCL 780.652 provides that grounds for issuance of the search warrants be proper. Evidence of improper issued search warrants on 9/23/2016 and 8/14/26 search warrants include: 1) lacked a court transcript, 2) lacked the caption and seal of the issuing court, in violation of a violation of MCL 780.651, 3) lacked a notarized signature to prevent perjury, 4) supported by false statements in the affidavit by Robert Blair, Sean Street, James Stewart, 5) exceeded the geographical jurisdiction of the Monroe District Court, 6) exceeded the jurisdiction of the Monroe District Court by exceeding the statutory allowed dollar amount in controversy, personal jurisdiction over IPatientCare Inc., 7)

Personal jurisdiction over the New-Jersey Citizen, IPatientCare Inc., 8) violated Subject matter jurisdiction over interstate commerce between the State of Michigan and the State of New Jersey, 9) exceeded the permissible execution period of a search warrant on 5/26/2018 by Michael Hendricks of HHS/OIG. Michael Hendricks already had obtained the medical records from Brian Bishop on 4/23/2018, 10) absence of court logs documenting the location for the search warrant hearing, 11) perjured statement in the affidavit, 12) IPatientCare Inc. was not listed in particularity as a place to be searched and seized, 13) lack of the court order necessary under 42 CFR §2.61-2.67, prior to the insertion of undercover agents, such as James Stewart, in a drug treatment facility, such as Dr. Pompy's office, 14) violation of court rules, of the state of Michigan and New Jersey, regarding the use of extraterritorial search warrants, 15) diversity, personal, and subject matter jurisdiction defects, 16) proper service of process, opportunity to be heard and due process was not given in violation of Interventional Pain Management Associates property rights, 17) improper court tabulation of evidence authenticated by the evidence technician, 18) improperly executed an extra territorial warrant despite the prohibition against extraterritorial warrants under state of Michigan M.C.L §600.761 and of New Jersey Court Rules RULE 3:5-1.

In violation of Article 3 of the United States Constitution, the Judiciary branch and the law enforcement branch of government were not acting independently.

Magistrates Tina Todd and Jessica Chaffin, and Judge Jack Vitale acted outside the jurisdiction of their Monroe Michigan First District Court. Magistrates Chaffin and Tina Todd, Judge Jack Vitale acted outside of their jurisdiction, outside the scope of their employment. MCL 780.657 prohibits a court from exceeding its authority. Magistrates Tina Todd and Jessica Chaffin, and Judge Jack Vitale had no statutory jurisdiction over the state of New Jersey Citizen, IPatientCare Inc. The authority of the Monroe District Court was exceeded. Magistrates Tina Todd and Jessica Chaffin, and Judge Jack Vitale violated MCL 780.657. The action outside of their jurisdiction, vitiate absolute immunity. A pattern or practice amounting to a policy of deliberate indifference to clearly established State and federal laws, vitiate qualified immunity. The ADA provides for no absolute or qualified immunity.

Dale Malone, William Paul Nichols, Charles F. McCormick, Marc Moore, and Brian Bishop had final authority as to hiring, training, supervising, disciplining, and firing. Dale Malone provided the SWAT TEAM for the 9/26/2016 raid. These defendants had inadequate policy or a failure to distribute that policy to Officers Robert Blair, DEA Task Force Officers, Monroe County Sheriff's department, Monroe City Police, Monroe Vice, Michigan State Police, and MANTIS among others. Dale Malone, William Paul Nichols, Charles F. McCormick, Marc Moore, and Brian Bishop owed the plaintiff a duty of reasonable care, and a duty of special care due to their final authority as to

hiring, training, supervising, disciplining, and firing. Dale Malone, William Paul Nichols, Charles F. McCormick, Marc Moore, Brian Bishop failed to provide adequate hiring, training, supervision, disciplining, and the firing of the officers. As a result of the inadequate training, a defective warrant led to a constitutional injury from a violation of the 4<sup>th</sup>, 5<sup>th</sup>, and 8<sup>th</sup> amendment. In City of Canton v. Harris, 489 U.S. 378, 109 S. Ct. 1197 (1989), inadequate or improper training of police officers is often the grounds for a failure to act claim brought under tort liability or a Section 1983 civil rights claim.

It was widely known within the Monroe County law enforcement and Brian Bishop's office that the officers who participated in the 9/26/2016 raid could not reasonably have had confidence in the information sworn to in the 9/23/2016 warrant. Riddled with errors and false statements by Sean Street James Howell, and Robert Blair a second warrant was obtained and issued by the Michigan 38<sup>th</sup> District Court on 8/14/2017. Robert Blair executed that second pretextual search warrant again at IPatientCare Inc., The latter is a company located, headquartered and domiciled in the state of New-Jersey. IPatientCare Inc. had no office and no employees in the state of Michigan in 2016. The Michigan First District Court lacks personal and subject matter jurisdiction of the New-Jersey resident, IPatientCare Inc., in obtaining the medical records of the petitioner.



The second execution was faxed on 8/14/2017, ostensibly for the same medical records already in possession of Brian Bishop, Robert Blair, BCBSMMIC, Leon Pedell M.D., Carl Christensen M. D., Marc Moore, and John Does. The 8/14/2017 faxed pretextual warrant instructed IPatientCare Inc., not to actually resend the medical records already in the possession of the joint enterprise, but that the intent of the warrant was to cover the known errors associated with the 9/23/2016 warrants.

Pursuant to the Health Insurance Portability and Accountability Act (HIPAA), the 4<sup>th</sup> Amendment, and the “Federal Privacy of 1974, 5 USCA 552a (1988), the petitioner had a reasonable expectation of privacy in her medical records and her personal identification data. An individualized suspicion was necessary prior to establish probable cause for a lawful search and seizures of the medical records and personal identification data. The probable cause for the 9/23/2016, 9/27/2016, 8/14/2017, 5/23/2018 search warrants are based on material misrepresentation of past and present facts, in that: 1) the affidavits of Sean Street and Dina Young, 2) James Stewart aka James Howell’s pain questionnaires representing that he was in pain, 3) Blue Cross Blue Shield of Michigan Mutual Ins Company prescribing data analytics, 4) representation of medical status in a medical referral by Blue Cross Blue Shield of Michigan Mutual Ins Company employee, J. Alan Robertson M.D, 5) statements made by Robert Blair to Monroe Bank and Trust, 6) that Carl Christensen M.D. never

used the pain medication Subsys, 7) Leon Pedell M.D was substantially involved in the treatment of pain. Specific causation for a probable cause in the obtaining of the petitioner's medical records is lacking.

Rule 3:5-1 of the "RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY." RULE 3:5-1 provides: "A search warrant may be issued by a judge of a court having in the municipality where the property sought is located." The Statute M.C.L §600.761, and the State of New-Jersey RULE 3:5-1, do not provide for the execution of search warrants issued from the State of Michigan, to be validly executed in the State of New Jersey. Magistrates Tina Todd and Jessica Chaffin, and Judge Jack Vitale acted outside the jurisdiction of their Monroe Michigan 38<sup>th</sup> District Court. The action outside of their jurisdiction, vitiate absolute immunity. A pattern or practice amounting to a policy of deliberate indifference to clearly established State and federal laws, vitiate qualified immunity. The ADA provides for no absolute or qualified immunity.

The name of the issuing court on the 9/23/2016, 9/27/2016, 9/28/2016, 8/14/2017 search warrants was purposefully erased on the warrants. The time and date stamps on the warrants were also purposefully erased on most of the search warrants. The impression seal of the issuing court is absent. The lack of the

impression seal on the search warrant represents a violation of MCL 780.651.

With the erasing of the name of the issuing court and the time and date stamp on the search warrants, plus the absent seal of the court, the insignia of valid, reliable court documents, are lacking.

The time and date stamp on the search warrants are either: 1) inconsistent with the time and date the search warrant was signed by the judge or magistrate, or 2) inconsistent with the date and time the search warrant was actually executed. Magistrates Chaffin and Tina Todd, Judge Jack Vitale acted outside of their jurisdiction, outside the scope of their employment. MCL 780.657 prohibits a court from exceeding its authority. Magistrates Tina Todd and Jessica Chaffin, and Judge Jack Vitale had no statutory jurisdiction over the state of New-Jersey Citizen, IPatientCare Inc. The authority of the Monroe 38<sup>th</sup> District Court was exceeded. Magistrates Tina Todd and Jessica Chaffin, and Judge Jack Vitale violated MCL 780.657

A faxed package with a cover page dated 8/15/2017, 2:15 pm, from Robert Blair of the Michigan State Police and MANTIS, was faxed to IPatientCare Inc. of New-Jersey. The faxed package contains a search warrant with the name of the issuing court erased. The search warrant signed by Jessica Chaffin, is dated as issued on 8/14/2017. The court's time and date stamp on the search warrant indicate "Aug. 15. 2: 17 PM" on Page 3, and "Aug 15, 2017 2:18 PM" on page 4. This same time and date stamp appear in the same document in packages that

was not faxed to IPatientCare, Inc. The erased first sheet that would have indicated the name of the issuing court, the sequence of date and time on the search warrant, the date Magistrate Jessica Chaffin signed the search warrant, and the date on the faxed package, are inconsistent.

The state of Michigan law requires that searched and seized evidence must be entered on tabulation sheets and filed with the issuing court. MCL 780.655 provides that for the proper tabulation, chain of custody, restoration to the owners of medical records and office assets, and disposition of medical records. Marc Moore, Brian Bishop, Robert Blair, Carl Christensen M.D., Leon Pedell M.D. failed to abide by the requirements of MCL 780.655, by failing to provide tabulation of the plaintiff's medical records to the Monroe District Court.

Material searched and seized by MANTIS/MSP/DEA/ Monroe City Police/ DEA Task Force Officers were not filed as tabulation sheets and returned to the issuing magistrates Chaffin or Todd, or Judge Jack Vitale of the Monroe First District Court. The materials, including the plaintiff's medical records, were not logged in the Monroe City Police via an evidence technician in an evidence room. Evidence, including iPhone, IPAD, and IPOD has disappeared without a trace. MANTIS, the Michigan State Police, Robert Blair, and Marc Moore has not authenticated any evidence, nor have they demonstrated the absence or presence of counterfeit pills.

As the news of surrounding the defamatory statements concerning disabled patients in the Kisonas Zone of Danger expanded, physicians of the community and beyond, and of Promedica Monroe Regional Hospital and beyond, feared that they would be raided next, lose their medical license, lose their life's work and assets, abandoned their pre-existing duty to treat patients experiencing incapacitating, disabling pain and suffering. The abandonment of patients spread well beyond those patients insured by Blue Cross Blue Shield of Michigan Mutual Insurance Company and spread across other states of the United States. Medical abandonment has triggered debt, disease, disability and death which has created genocide across the Nation. The untreated pain triggers the body to experience severe emotional distress, fright, anxiety, humiliation, loss of quality of life, loss of function, suicidal ideation and variability of altered blood pressure culminating in aggravation and increase of disability and/or death.

#### **B. The State Court Proceedings**

In December 2016, a Civil Forfeiture action was filed against the physician. In March 16, of 2018, the Monroe Circuit Court ordered the release of the petitioner's medical records and electronic devices containing the petitioner's medical records.

Initially the originating case was filed in the Michigan 38<sup>th</sup> Circuit Court.

Intentional acts of evasion of service of process and retaliation against a process server occurred. The United States Attorney Generals removed the case from the state, to the United States District Court, Eastern District of Michigan. At the latter, again the petitioner raised the question of court-appointed assistance of counsel, but was denied.

Initially the plaintiffs in a related case, filed the complaint in the Michigan 38<sup>th</sup> Circuit Court. The United States Attorney Generals removed the case from state to the United States District Court, Eastern District of Michigan. Without resolving the case, summary disposition was granted to the Monroe City Police<sup>1</sup>. Despite conflict of interests<sup>15</sup>, Bureau of Professional Licensing and the Federation of Medical Boards<sup>16</sup> ratified the unconstitutional acts.

### **C. The District Court Proceedings**

1. Pursuant to the requirements of subsection (1), subrule (A) of MCR2.108, and federal laws, defendant failed to answer or file any responsive pleadings within 28 days of being properly served.

Defendant Leon Pedell M.D. after being properly served, and the Assistant Attorney General of the State of Michigan, James T Farrell, answered the complaint for Doctor Pedell. After accepting service, Dr. Pedell repudiated service of process and his initial pleading. Wherefore the plaintiffs request that

Dr. Leon Pedell is deemed served, that the previous motion on his behalf by James T Farrell are preserved, and the default judgement be entertained. Defendant Pedell had failed to appear, plead, or otherwise defend his position, until a plaintiff's default motion. In May 2019, the petitioner also sought a default against the Blue Cross Blue Shield Association for a non-responsive pleading.

As described in Appendix "C,D,E"

#### **D. COURT OF APPEALS FOR THE SIXTH CIRCUIT Court Proceedings**

As described in appendix "A and B."

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1 .2.18-cv-12634, E.D Michigan. ECF 21-1. P id 336. P 52 of 62.

6 Tumey v. Ohio, 273U.S 510 (1927)

13 Consolidated: 19-2173, U.S. CA 6. Document 61. Filled 10-21-2020. P9 -11.

15 <https://detroit-socialist.com/dsa-fights-to-remove-insurance-ceo-from-whitmer-transition-team-64588b045799>

16 Federation of State Medical Boards Model Policy on DATA 2000 and Treatment of Opioid Addiction in the Medical Office of April 2013

30 CONTRACT NO. 190000000755, STATE OF MI. and BCBSM

## REASONS FOR GRANTING THE PETITION

Pursuant the “Patient Rights Statute (MCLA 333.20201)”, the Health Insurance Portability and Accountability Act (HIPAA), the 4<sup>th</sup> Amendment, and the “Federal Privacy Act of 1974, 5 USCA 552a (1988), the petitioner had a reasonable expectation of, and was entitled to, privacy in her medical records, PDMP data, and personal identification data. The Court of Appeals erred in its decision barring a claim under a § 1983 and /or a Bivens Claim based on constitutional injury, arising out of a violation of the 4<sup>th</sup> Amendment.

### Strict Scrutiny Basis for Judicial Review

## QUESTIONS PRESENTED

- I. Can state actors, and/or government employees violate the equal protection Clause of the 5th Amendment of people considered disabled under the ADA?

Authority: 4<sup>th</sup> Amendment

The Fourth Amendment provides for :

“the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures”

5<sup>th</sup> Amendment



The 5th amendment provides for not be “deprived of life, liberty, or property, without due process of law,” and against self-incrimination

### Americans with Disabilities Act (ADA)

“To be protected by the ADA, one must have a disability or have a relationship or association with an individual with a disability. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

#### ADA Title II: State and Local Government Activities

Title II covers all activities of State and local governments regardless of the government entity's size or receipt of Federal funding. Title II requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings).

#### Rehabilitation Act of the ADA

“Section 504 states that "no qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under" any program or activity that either receives Federal financial assistance or is conducted by any Executive agency or the United States Postal Service.:

### **EQUAL PROTECTION**

#### Medical Status- Based Discrimination

The equal protection clause prevents states from discriminating against individuals based on "individual classification." Patient with heart disease, diabetes, cancer, COVID-19 are not treated as "Drug Addicts." Chronic pain patients, as summarized by Ray Kisonas, are "Drug Addicts." The government has no laws that dictate the amount of Insulin a doctor must prescribe a diabetic patient. The Center for Disease Control has placed arbitrary and capricious dosing limits on an amount of pain medication, beyond which dose, the defendants criminalized. Under that scheme, a 10lb newborn baby and a 500-pound man would be subjected to the same daily limits placed on their medications. The petitioner, and other patients deemed disabled under the ADA, are classified as a member of a "Suspect Class." The petitioner is denied the opportunity to: 1) compete in the receiving of medical care on medical-neutral basis, and: 2) receive medical care from a doctor on a "race-neutral basis."

The petitioner has a fundamental right in her possessory interest in her medical records. Pursuant to the standard of medical care, custom and usage, patients saddled by different disease types are treated by doctors who are typically classified based on their area of special training, namely their specialty. The equal protection clause prevents states from discriminating against any group being denied a fundamental right. To surpass strict scrutiny, the government must show the legislation is necessary and tailored to achieve a compelling government interest. "Under the 5<sup>th</sup> Amendment of the U.S. constitution, and the 2 Amendment § 2 of the Michigan Constitution: 1) every legal entity of the class of a natural person, 2) every medical specialist member of the physician class, has the

opportunity to compete in the practice of medicine on a race-neutral basis, 3) every patient has the right to receive medical care on a medical-neutral basis. The state actors denied the plaintiff the opportunity to compete in her receiving of medical care on a medical status-neutral basis. The defendants violated the Equal Protection Clause of the 5<sup>th</sup> Amendment of the U.S constitution, and Article 1 § 2 of the Michigan Constitution.

A joint enterprise acting under the color of law, treated African American doctors (Pompy and Mekasha), substantially different than the way the enterprise deals with white pain doctors. The Equal Protection Clause of the 5<sup>th</sup> Amendment, of the U.S. constitution, and Article 1 § 2 of the Michigan Constitution, prohibits discrimination based on race, and nation of origin. The Monroe City Police Dept., the Monroe Sheriff's dept., The Michigan state Police, MANTIS (Monroe Area Narcotic Team Investigation Service), Brian Bishop and William Chamulak of the DEA with its local DEA Task Force, Blue Cross Blue Shield of Michigan Mutual Insurance Company, James Howell aka James Stewart, Marc Moore, Robert Blair, the Bureau of Professional Licensing, Dina Young, prosecutor William Paul Nichols /Yorkey/ Arnold/Roehrig, OMNI, MANTIS and the Monroe County Courts (Chaffin, Todd, Vitale), entered into an agreement, to form a joint enterprise, to further the discrimination, thus violating the equal protection Clause of the 5<sup>th</sup> Amendment of the US constitution and Article 1 §2 of the Michigan constitution.

Under *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 684, and State of Michigan insurance laws, Blue Cross Blue Shield of Michigan Mutual Insurance

Company, have a duty to investigate the pertinent matters thoroughly, and impartially. James Stewart, aka James Howell, Carl Christensen M.D, Alan J. Robertson M.D, displayed unfairly prejudicial behavior, unfairly investigated, and caused harm to the plaintiff's doctor, and subsequently to the plaintiff. Tort remedies are available for breach of an implied covenant of good faith and fair dealing against a health insurance company.

**Federal Civil Rights Statutes Title 18, U.S.C., Section 241**

United States Code: Federal Civil Rights Statutes Title 18, U.S.C., Section 241—Conspiracy Against Rights, Sec. 241 provides:

“ Conspiracy against rights If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same;”

The petitioner had a reasonable expectation in her medical records. Acting under the color of law, under the direction, control, supervision of law enforcement as government agents, the members of the joint enterprise had an agreement to perform an invalid warrantless search and seizure and the plaintiffs medical records via remote computer means. The meeting was ratified by high managerial employees and the Board of Directors of BCBSMMIC and MBT Financial Inc. Such conduct was unreasonable. The search was unreasonable and constitutes a violation of a clearly established law, namely 4<sup>th</sup> amendment of US constitution, §11 of the Michigan constitution, search and seizure rights.

Title 42 CFR §§ 2.61-2.67 protects the rights of patients undergoing substance abuse treatment. The defendants inserted Jennifer Nash, James Stewart aka James Howell, Jeannette Beeler without the statutorily required court order under Title 42 CFR §§ 2.61-2.67. Despite being under treatment for substance use, the personal identification data of patients undergoing drug treatment was used to find and interrogate those patients. Such conducts violate Title 42 CFR §§ 2.61-2.67. The insertion of James Stewart, aka James Howell into the plaintiff's medical office represents an overt act in furtherance of the conspiracy of the joint enterprise. With the desire to infiltrate a medical office and violate the plaintiff's civil rights under CFR 42 § 2.61-2.67. On September 26, 2016 in the early morning, William Chamulak, Brian Bishop and Marc Moore, among others, showed up at Dr. Pompy's office, misrepresented a State of Michigan criminal investigation as a DEA administrative inspection of Suboxone patients. Some of these patients, namely Jes Staten and John Hernandez, were visited. Without a warrant, the group searched and seized the name and addresses of patients that my doctor was keeping off heroin. Those patients were protected under Title 42 CFR §§ 2.61-2.67. The defendants violated Title 18, U.S.C., and Section 241.

#### **VIOLATION OF DUE PROCESS**

The Michigan Constitution, Article §17, and the 5<sup>th</sup> Amendment of the United States Constitution prohibit violation of Due Process. Due process requires fair notice.

Defective Software Product

Blue Cross Blue Shield of Michigan Mutual Insurance Company (“BCBSMMIC”) placed into the stream of commerce a consumer product, to law enforcement, designed to predict medical necessity for pain treatment, drug diversion, and determine criminal intent. The consumer product, opioid monitoring software, that allegedly can detect “pill mills.” The software falls below the expectation of the evidence standard of beyond a reasonable doubt. The software risks, outweighs its utility since the software is used to deny patients of their rights to medical treatment under the ADA §126, and the Controlled substance Act §802 (56) (d) without a hearing, 2) fabricate probable cause to induce criminal proceedings against doctors and patients without a hearing, or chance to confront the accuser. The software is not common in the health care industry. The software represents a defective product.

#### Inability to Confront Accusers

BCBSMMIC never called the plaintiff to find out her medical problems. How then without a hearing, can the software determine whether or not, the plaintiff needed treatments? The software represents a defective consumer product. Such intentional misrepresentation, without notice or the ability to confront the BCBSMMIC, represents a violation of due process. The Michigan Constitution, Article §17, prohibits violation of Due Process. The parties above violated the Michigan Constitution, Article §17.

#### **DIGITAL DATA**

The digital data at issue—personal location information maintained by a third party.

On September 26, 2016, Brian Bishop, Mark Moore, Robert Blair, and about 15 other officers raided my doctor's office at Promedica Monroe Regional Hospital. The Cell phones and their contents for Erica Shawn, Jordan Rippee, Diana Knight, Lesly Pompy M.D. among others, were searched and seized at the beginning of the raid; the pass codes and the contents of the cell phone were obtained by coercion and violate the Stored Communication Act. Such conduct is an official intrusion into that sphere generally qualifies as a search and requires a warrant supported by probable cause. (*Smith v. Maryland*, 442 U. S. 735, 740). The 9/23/2016 search warrant, nor affidavits, did not list in particularity the cell phones and cell phone contents of Erica Shawn, Jordan Rippee, Diana Knight, and Lesly Pompy M.D. Such conduct does not represent fair treatment during an investigation The Michigan Constitution, Article §17, provides for fair treatment during investigations. The parties above violated The Michigan Constitution, Article §17.

The defendants did not know about the existence of IPatientCare Inc. hosting their medical records, prior to 9/26/16. IPatientCare Inc. was not listed in particularity. "Everything to be searched or seized must be specified in the warrant itself." *Groh v. Ramirez*, 540 U.S. 551, 557 (2004). "If the scope of the search exceeds that permitted by the terms of a validly issued warrant or the character of the relevant exception from the warrant requirement, the subsequent seizure is unconstitutional without more." *Horton v. California*, 496 U.S. 128, 140 (1990).

In addition to exceeding the scope of its amount in controversy limit, of \$25,000, the Michigan's 38st District court lacked personal jurisdiction, subject matter jurisdiction, amount in controversy requirement, and diversity jurisdiction over the New-Jersey, headquartered and domiciled IPatientCare Inc., and Federal Question Jurisdiction involving interstate Commerce. The respondents did not obtain a warrant supported by probable cause in their acquiring the plaintiff's medical records from IPatientCare Inc. Subject to jurisdictional and probable cause, the search and seizure of the petitioner's medical record, PDMP, and personal identifying information was improper.

The respondents acquired the plaintiff's medical records pursuant to a facially defective, extraterritorial warrant that exceeded the scope of the jurisdiction of the State of Michigan 38th District Court. That showing falls well short of the probable cause required for a valid extraterritorial warrant. Consequently, an order issued under the State of Michigan First District Court is not a permissible mechanism for accessing historical off-site records. Not all orders compelling the production of documents will require a showing of probable cause. A warrant is required only in the rare case where the suspect has a legitimate privacy interest in records held by a third party. The plaintiff had a legitimate privacy and property interest. The plaintiff had a property interest, and a reasonable expectation of privacy, in her medical records. Official intrusion into that sphere of property interest and reasonable expectation of privacy, generally qualifies as a search and requires a warrant supported by probable cause. (*Smith v. Maryland*, 442 U. S. 735, 740). The search and seizure of the plaintiff's



medical records occurred after the violation of the Stored Communication Act on 9/26/2016.

The above-named respondents have violated the plaintiff's Civil Rights under the Michigan Constitution Article-1, declaration of Rights, §2, and the Equal Protection and Discrimination Clause.

Blue Cross Blue Shield of Michigan Mutual Insurance Company, MANTIS, First Merchant Bank (formerly known as MBT Financial Inc., dba/Monroe Bank and Trust), William Paul Nichols, and the DEA's targeted lynching of black doctors, and 2) organized racketeering from a joint enterprise earning cash out from civil forfeitures and federal indictments of doctors, and 3) the excessive force and brutality unleashed against an African American.

Pursuant to *McCleskey v. Kemp*, the white petitioner has suffered from the definitive proof of impermissible racial bias raised by the facts of this particular case, and not by large-scale statistical studies. The impermissible racial bias was used by the defendants to violate the plaintiff's 4th Amendment property interest.

## **STANDING**

Whether or not Dr. Pompy is 1) convicted of criminal acts beyond a reasonable doubt, 2) whether or not Dr. Pompy's State of Michigan medical license was properly suspended for 6 months and one day on 6/2/2020, 3) whether or not Dr. Pompy's DEA and X-DEA number were properly suspended, 4) whether a

hearsay-based, involuntary PDMP (Prescriptions Drugs Monitoring Program) is admissible evidence, are irrelevant for the purpose of this action. The plaintiff suffered an injury in fact; the injury was actually and legally caused by the defendants. The court can redress the injury easily and with certainty. The plaintiff has standing as one of the people of this Nation which is a Republic, not a democracy. For a lawsuit to have Article III standing, a plaintiff must satisfy each of three elements: an injury-in-fact that is fairly traceable to the defendant's allegedly unlawful conduct and that is likely to be redressed by the requested relief.

#### **1 Injury-in-Fact – Battered Pain Syndrome**

The defendants created a peril that they unconscionably seek to avoid in a court of law. The defendants, government agencies, who created a risk, are liable under 42 U.S. C § 1983 (*DeShaney v. Winnebago*)

The plaintiff suffers from continuous, repetitive, unnecessary pain and suffering, increased debilitating disability, decreased productivity, and long-term disability, as well as having been abandoned by some of her specialists including a surgeon's group. Such conduct violates the Eighth Amendment. The injury results from the lack of the defendants to set equivalent treatment alternatives. Her esteem and reputation in the community was lowered in Monroe County due to her being a member of a group, readily identifiable with a

physician facing a federal indictment. The defendants discriminated against the plaintiff. Title II of the American Disability Act provides that no disabled person can be excluded from participating in or getting the benefits of any "services, programs or activities of a public entity," or be discriminated against by such an entity.

#### **Patient Abandonment**

Prior to 9/26/2016, the plaintiff's chronic pain was optimized to minimize pain and suffering, diversion, and addiction. After 9/26/2016, my quality of life tumbled. Fearing Civil Forfeitures, loss of medical license, loss of DEA registration, many physicians stopped treating patients such as me, who are considered disabled under the ADA. The plaintiff was abandoned by Dr. Murshed. The abandonment resulted in unnecessary pain and suffering. The defendants created, coordinated a peril in Monroe County that they unconscionably seek to avoid in a court of law. The defendants, government agencies, who created a risk, are liable under 42 U.S.C. § 1983 (*DeShaney v. Winnebago*). The plaintiff lives in constant high impact disabling pain, with loss of ability to carry on activities of daily living, severe reduction of the quality of life, and lack of pain relief.

#### **II. Irreparable Harm**

Dr. Pompy was the only full-time interventional pain and addiction medicine specialist in Monroe. Patients with state insurance Medicaid have difficulty finding access to medical care, Dr. Pompy treated all patients with impaired functions, regardless of the type of medical insurance the patient had.

In the face of a lack of medical professionals to reduce their anxiety and distress, people in emotional and physical pain have no fear of death or incarceration. Such people may express their emotional distress via external violent acts, such as mass shootings. Or, they may express their emotional distress internally, by suicidal street drug overdoses.

The plaintiff suffers from recurrent intrusive, emotionally distressing flashback, of the death of former patients, such as Renay Blakesley, Marie Brown, Janet Loruss, and Richard Johnson, from their lack of medical care. The plaintiff suffers fright, nervousness, anxiety, panic attacks, nightmares, cold sweats, weight gain from lack of mobility, from the emotional flashback of Renay Blakesley, Greg Glasser, Marie Brown, and Richard Johnson. Other former patients, turned informants, i.e. Joshua Cangliosi, have died.

### III. Causation and Redressability

BCBSMMIC, HFPP, GDIT, and Qlarant Solutions introduced into the stream of commerce an opioid monitoring software product that classify physicians, involved in the treatment of pain. The classification scheme uses race, nation of origin, level of assets to coordinate the prosecution of selected physicians for prosecution. The software speculates as to the existence of “pill mills”. While its error rate is unknown, the software is made for the purpose of litigation and not for the purpose of conducting independent research.

Law enforcement unjustifiably relies on software product to raid, incarcerate, and forfeit the assets of physicians. The targeted physicians are shut down,

while the patients loose access to entitled medical care under the ADA. As But for the lack of appropriate pain treatment, the petitioner would not have lost the opportunity for pain control. Unrelieved pain is known to cause many harmful effects, including impaired activities of daily living, high blood pressure, strokes, heart attack, desperation, depression, and stigmatization, aggravation of pain and suffering, and aggravation of disability.

### III. Statutory and Prudential Standing

The petitioner suffered an actual violation of her 5th Amendment liberty interest to medical treatments. The plaintiff was entitled to treatment as a matter of law: under the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., the Rehabilitation Act of 1973, 29 U.S.C. §701, et seq., and the Affordable Care Act, 42 U.S.C. §18116, et seq, Nuremberg Code §§4 and 44 Code of the Geneva Convention, Joint Commission on Hospital Accreditation Organization (JACHO) "pain as the 5<sup>th</sup> Vital Sign," EMTALA laws, Human Rights Under Article 32 of the 1949 Geneva Convention IV. A duty to treat patients afflicted with chronic pain and/or addiction, is established under Federal Law, The American Disability Act, as well as the Drug Addiction Treatment Act of 2000

(Data

2000).

### **CONFLICT PREEMPTION UNDER THE CSA 802 (56) (c)**

HFPP, CDC, FDA, DEA , Appriss Health, Medical Medicare Pill Mill analysis, OIG, and the Federation of Medical Board display conflicts in in unsettled laws.

### **STATE INVOLVEMENT DOCTRINE**

The private entities respondents and their employees defendants, were acting at all times relevant to this complaint, under the color of law, sufficiently intertwined with HFPP, and under direction and control of the government so to invoke the State Involvement Doctrine. (APPENDIX F and G).

### **UNCONSTITUTIONAL CONDITIONS**

#### **DEA/Local Narcotic Team Drug Task Forces**

The federal DEA often provides technical assistance and federal funds to local drug team's task forces. As a condition precedent to obtain additional federal funds, major initiatives, such as Operation Gateway and Operation Stone Garden, were launched. Local state narcotic task forces, such as MANTIS (Monroe Area Narcotic Team Investigation Services) searched for alleged "drug dealers." Lacking the pre-requisite knowledge to determine medical necessity for a medical prescription, medical use versus illegal use of a substance, guilty action versus status as a chronic pain patient, fatal level versus non-fatal drug levels at death, different results resulting from site specific blood collection for drug testing, was confounded by those teams. Fueled by the desire to continue the receiving of the additional federal funds, the narcotic task forces partnered with the Insurers in the participating, in a custom, or practice, amounting to a policy of deliberate indifference to constitutional rights.

The narcotic task forces, and the BCBSMMIC, have a strong financial incentive, and are under pressure, to find alleged drug dealers. The narcotic team will lose *major federal funding* associated with an independent *preexisting program*. Pressure that amounts to “*coercion*” will cause the new program to go beyond the spending power.

#### The Insurer BCBSMMIC

BCBSMMIC is awarded public funding for the Insurers privately run health insurance plan. BCBSMMIC provides, operates, manages, or provide prior-authorization services, to the majority of health insurance plans to the employees of state and federal governments. In return, the BCBSMIC and other HFPP partners provide employees, such as James Stewart aka James Howell, as agents of the government. These agents allow state and federal agencies to bypass constitutional safeguards, via false documents. As payers and keepers of medical metadata, BCBSMMIC know, or should know, that the majority of deaths from this “Opioids Crisis” arises from, or is related to, illegal street Opioids. The Insurers know that such a message about the cause of death would be unpopular with the DEA, MANTIS, and other narcotics task forces. Where government decides to award public funding for a privately-run program the doctrine of “unconstitutional condition” may prevent government from conditioning the funding on the recipient’s agreement to (i) give up its right to speak on certain topics, or (ii) deliver certain messages with which recipient doesn’t agree. BCBSMMIC consciously choose to participate in an unconstitutional condition.

#### Michigan Compiled Laws, Chapter 333. Health § 333.7403a

MANTIS, BCBSMMIC, Brian Bishop, Marc Moore reached an agreement with the intent to commit unlawful acts , in furtherance of the agreement. Michigan Compiled Laws, Chapter 333. Health § 333.7403 (a) provides: (1) A person shall not fraudulently obtain or attempt to obtain a controlled substance or a prescription for a controlled substance from a health care provider. James Stewart, aka James Howell obtained controlled substances via a medical referral for pain management services prescribed by BCBSMMIC’s physician J. Alan

Robertson. Under the pharmacist's corresponding responsibility under CFR 1306.04 , The Monroe Walgreens ratified James Stewart prescription for controlled substances. The medical referral intentionally misrepresented the medical condition of James Stewart, Aka James Howell. James Howell consumed controlled substances which appear on his urine drug screen. Walgreens, BCBSMMIC, J. Alan Robertson M.D, James Stewart, Aka James Howell, and MANTIS violated M.C.L § 333.7403 9 (a).

#### GRAMM –LEACH-BLILEY ACT

BCBSMMIC and MBT Financial Corp., BCBSM, and BCBSMMIC are health insurers, financial holding companies that brokers financial information. MBT Financial Corp., (First Merchant Bank, as Successor to MBT Financial Corp,) is financial holding companies. Under such status, BCBSM, and BCBSMMIC operate under the Gramm-Leach-Bliley Act. Robert Blair performed a warrantless search and seizure on BCBSMMIC, BCS Financial, MBT Financial . The fruits of the unlawful 4th Amendment search and seizure was used on search warrants. Those warrants were executed to obtain the petitioner's medical records, PDMP data, and PII ( Personal Identifying Information). State actors, Robert Blair, among others, presented or caused to be presented, at Monroe Bank and Trust Inc., misrepresented the relation of various financial entities (Lesly Pompy, IPMA, United Administrative Services of Monroe , Monroe Medical Consulting, Travel and Lodging Professional Management) performed a warrantless invalid search and seizure unrelated financial information related to different bank accounts. The respondents violated the Gramm-Leach-Bliley Act.

#### Conclusion



Where state actors, and/or government employees violate the equal protection Clause of the 5<sup>th</sup> Amendment of people considered disabled under the ADA, judicial review under a strict scrutiny basis of judicial review is warranted.

Strict Scrutiny Basis for Judicial Review

## QUESTIONS PRESENTED

II .Where the petitioner had a reasonable expectation of privacy in her digital medical records, PDMP, and personal identification data, can the DEA and/or its agents, perform warrantless searches and seizures?

Authority:

The Fourth Amendment provides for :

“the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures”

*Carpenter v. United States*, 138 S. Ct. 2206, 2223 (2018)

Government acquisition of cell-site records is a Fourth Amendment search, and, thus, generally requires a warrant. *Carpenter v. United States*, No. 16-402, 585 U.S. \_\_\_\_ (2018), was a **landmark United States Supreme Court case concerning the privacy of historical cell site location information (CSLI).**

Strict Scrutiny basis is a judicial review and indicated where a fundamental right has been violated, or where:

The Fourth Amendment protects not only property interests but certain expectations of privacy as well. (*Katz v. United States*, 389 U. S. 347, 3510). Where the plaintiff had a reasonable expectation of privacy of her medical records pursuant to the 4<sup>th</sup> Amendment, the search and seizure of the plaintiff's medical records represents an illegal search and seizure by defendants. The improper search and seizure were unreasonable under *Carroll v. United States*, 267 U. S. 132, 149. The petitioner requests the return of her property interest which was searched and seized.

Each time the cell phone connects to a cell site, it generates a time-stamped record known as cell-site location information (CSLI). The plaintiff's electronic medical records connect a doctor's office via cloud computing to the medical record -site provider, namely IPatientCare Inc. Each time the health care provider placed privileged personal identification information in the plaintiff's medical record, it adds to the repository of personal identification data of the plaintiff. In mechanically applying the third-party doctrine to this case the

Government fails to appreciate the lack of comparable limitations on the revealing nature of the electronic medical records, and the involuntary nature of the PDMP data. Pursuant to *Carpenter v. United States* (*Carpenter v. United States*, 138 S. Ct.2206 (2018)) , a warrant is

required only in the rare case where the suspect has a legitimate privacy interest in records held by a third party. The plaintiff had a legitimate privacy interest in the medical records held by the third party, IPatientCare Inc. The Government's acquisition of plaintiff's medical records was a Fourth Amendment search. The defendants search and seizure violated the 4<sup>th</sup> Amendment, per Carpenter.

Where the petitioner had an expectation of privacy under State of Michigan HIPAA and the 4<sup>th</sup> Amendment of the U.S Constitution, the above parties used the defective 9/23/2016 search warrants, search and seized my medical records. The name of the issuing court, the date and time stamp on the search warrant, were erased. Such search was unreasonable. The Michigan Constitution, Article §11, prohibits unreasonable searches and seizures. The parties above violated the Michigan Constitution, Article §11.

Pursuant to CFR 42 § 2.61-2.67, the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., the Rehabilitation Act of 1973, 29 U.S.C. §701, et seq., and the Affordable Care Act, 42 U.S.C. §18116, et seq, Nuremberg Code §§4 and 44 Code of the Geneva Convention, Joint Commission on Accreditation of Healthcare Organizations (JCAHO) "pain as the 5<sup>th</sup> Vital Sign," EMTALA ( Emergency Treatment and Labor Act) laws, and the Controlled Substance Act (CSA 802 (56)(c)), the plaintiff was entitled to medical care. A duty to treat patients, burdened by disabling chronic pain, is established under The American

Disability Act §126. A duty to treat the addicted patients, by Data Waived Physicians, arise under the Drug Addiction Treatment Act of 2000 (Data 2000) under SAMSHA. The plaintiff has fundamental rights to medical care. The actions of the defendants unduly burden the right to medical care of the plaintiff. The government has not shown a compelling state interest to survive a constitutional challenge. The plaintiff is entitled to judicial review under a strict scrutiny basis of review.

The plaintiff had a fundamental right in the possessory interest of her medical records and personal identification data. A joint enterprise, acting under the color of law, participated, funded, aided, abetted, encouraged an illegal search and seizure of the plaintiff's medical records. Where reasonable expectation of privacy existed in the medical records, the improper search and seizure constitutes a violation of the 4<sup>th</sup> amendment. The 4th Amendment prohibition against search and seizure represents fundamental rights. Does the government have a compelling interest in committing the unlawful search and seizure? The plaintiff has standing for judicial review under a strict scrutiny basis.

Under Carpenter (where data is involuntarily given by the person, the Supreme Court invalidated the third party doctrine. The plaintiff has a reasonable expectation of privacy in her PDMP data. Where PDMP data of a patient is involuntarily given to the state of Michigan and an unconsented, warrantless,