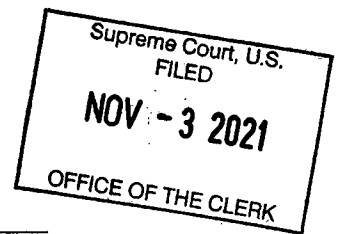


No. 21-673



In The
Supreme Court of the United States

ROBERT ALLEN AUSTIN,

Petitioner,

v.

JAMES WALTER MCCANN,
ELIZABETH ROSE MCHUGH,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

PETITION FOR A WRIT OF CERTIORARI

ROBERT ALLEN AUSTIN
Counsel of Record
6526 SW Kanner Hwy., # 164
Stuart, Florida 34997
Tel.: (772) 882-5114
E-Mail: robert_austin@aol.com

I. QUESTION PRESENTED

What Statute grants Federal and State Judges the use of Defamation 18 U.S.C. § 4101(1) in part or as a whole to deprive a United States Citizen of a Protected Right under the United States Constitution 14th Amendment Clause (1).

II. RELATED CASES

Austin v. McCann No. 20-14426 U.S. Court of Appeals for the 11th Circuit Judgment entered September 9th 2021.

Austin v. McCann No. 20-14367 U.S. District Court for the Southern District of Florida Judgment entered November 1st 2020.

Vargas v. Austin No. 562013DR000026 In the Circuit Court of the Nineteenth Judicial Circuit in and for Saint Lucie County, Florida Judgment entered June 1st 2020 and Judgment entered.

III. TABLE OF CONTENTS

	Page
I. QUESTION PRESENTED	i
II. RELATED CASES	ii
III. TABLE OF CONTENTS	iii
IV. TABLE OF AUTHORITIES	iv
V. PETITION FOR WRIT OF CERTIORARI....	1
VI. OPINIONS BELOW	1
VII. JURISDICTION	1
VIII. CONSTITUTIONAL PROVISION INVOLVED	1
IX. STATEMENT OF THE CASE	2
X. REASON FOR GRANTING THE WRIT FOR THIS COURT TO UPHOLD MY RIGHT TO CHALLENGE THE JURISDICTION OF THE JUDGMENT OF THE APPEALS COURT FOR THE 11TH CIRCUIT. UNDER THE JURISDICTION OF THE UNITED STATES CONSTITUTION 14TH AMENDMENT CLAUSE (1).....	9
XI. CONCLUSION	9

APPENDIX

Appellate Court	App. 1
District Court.....	App. 6
Appellate Court	App. 13
Appellate Court Petition for Rehearing.....	App. 15

IV. TABLE OF AUTHORITIES

Page

CASES

<i>Main v. Thiboutot</i> , 100 S. Ct. 2502 (1980).....	1
<i>Stump v. Sparkman</i> , 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978).....	2
<i>Rankin v. Howard</i> , 633 F. 2d 844 (1980).....	2

CONSTITUTIONAL PROVISIONS

United States Constitution Amendment XIV	1, 6, 7, 9
---	------------

STATUTES

18 U.S.C. § 242	6
18 U.S.C. § 1519	6
18 U.S.C. § 4101(1).....	7
28 U.S.C. § 1257	1
Florida Rule of Civil Procedure 1.070(j)	3
Florida Supreme Court Rule 12.960	3, 7, 8

V. PETITION FOR WRIT OF CERTIORARI

The law provides that one's State and Federal jurisdiction has been challenged it must be proven. *Main v. Thiboutot*, 100 S. Ct. 2502 (1980) Therefore I Robert Allen Austin respectfully petition this court for a writ of certiorari to review the judgment of the 11th Circuit Court of Appeals.

VI. OPINIONS BELOW

The decision by the 11th Circuit Court of Appeals is an unpublished citation of a direct appeal that was dismissed on 6/23/2021 that shows a defamation was used in part dismissing the appeal. That order of the 3 judge panel is attached at appendix (App.) at 1-5.

VII. JURISDICTION

I Robert Austin petition for a rehearing en banc to the 11th Circuit Court of Appeals was denied on 9/1/2021. And I Robert Austin invoke this court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within the ninety days of the 11th Circuit Court of Appeals judgment.

VIII. CONSTITUTIONAL PROVISION INVOLVED

United States Constitution Amendment XIV;

All persons born or naturalized in the United States, and subject court's to the jurisdiction thereof, are citizens of the United States and

of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

IX. STATEMENT OF THE CASE

I Robert Allen Austin challenge the jurisdiction of the 11th Circuit Court of Appeals and the 19th District Court on the Dismissal of this case to be frivolous on the legal grounds that neither the Appeals Court nor the District Court have stated in their dismissals that both Florida State Judges in this suit where acting in their judicial capacity and they where vested. Furthermore neither the Appeal Court nor the District Court were unable to state case law *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978) in which the United States Supreme Court held that a judge will remain absolutely immune from a damage suit if he acted within his jurisdiction, or even in excess of his jurisdiction, but not in the clear absence of all jurisdiction and the act he performed was a judicial act. When a judge knows that he lacks jurisdiction or acts in the face of a clearly valid statute expressly depriving him of jurisdiction, judicial immunity is lost. *Rankin v. Howard*, 633 F.2d 844 (1980). On 6/1/2020 Circuit Judge James McCann did in fact sign a recommendation Order filed by Magistrate Judge Elizabeth McHugh of a hearing on

5/26/2020 granting former wife motion for civil contempt enforcement filed on 10/28/2019. The scheduled hearing on 5/26/2020. Did not include the court will be addressing pending actions in conjunction with the scheduled hearing for 5/26/2020. In their notice to appear Filed on 5/13 /2020. That is part of the Federal District court filing DE 1-1 at 11 filed on 10/19/2020. that clearly shows the subject matter that was to be addressed on 5/26/2020 and there is nothing stating that the court will be addressing any pending filing that are to be heard in conjunction with that hearing on 5/26/2020. Therefore former wife motion was not part of that scheduled hearing on 5/26/2020 being the motion was no longer a judicial act of subject matter or personal jurisdiction it had expired on 2/24/2020. Under the (Florida Rule of Civil Procedure 1.070(j) clearly states. (If service of the initial process and initial pleading is not made not made upon a defendant within 120 days after filing of the initial pleading directed to that defendant the court, on its own initiative after notice or on motion, must direct that service be effected within a specified time or must dismiss the action without prejudice or drop that defendant as a party.)

The former wife failed to execute a proper legal summons within the 120 days required by Florida law being former wife failed to state in her motion for civil contempt enforcement the party the motion was to be served upon that rendered that motion not in compliance with Florida Supreme Court Rule 12.960. district DE 1-1 at 15 that states on its face (A copy of this form must be *personally served* by a sheriff or

private process server or mailed, *e-mailed*, or hand delivered to any other party(ies) in your case. That is clearly stated on the face of that document. And DE 1-1 at 16 clearly shows that I Robert Allen Austin was not a named party to be served or any other party(ies) for that subject matter of law filed by former wife that is clear as shine. If the former wife had executed the motion in compliance with the exhibits stated above the two state judges would in fact have acted in excess of their jurisdiction being that court would have had personal and subject matter jurisdiction prior to the scheduled hearing on 5/26/2020 and failed to act on it that would show that the act was a legal judicial act. A legal judicial act must have both Personal and subject matter jurisdiction to adjudicate.

Example of (in clear absence of all jurisdiction) is DE 1 at 24, DE 1 at 28, DE 1 at 32, DE 1 at 33, DE 1 at 34. these DE entries show Magistrate Elizabeth McHugh and Circuit Judge dismissing a case matter they had no jurisdiction to do so they were not assigned to that case matter by a case manager and DE 1 at 28 clearly shows I Robert Austin file a timely objection to Magistrate filed on 6/4/2020. Therefore the recommendation by Magistrate Elizabeth Mc Hugh and signed by Circuit Judge James McCann on 8/14/20 20 where in fact acting with no legal jurisdiction to dismiss that subject matter. The court had already address the matter to be heard by a scheduled judge and not by Magistrate judge. That establishes on 6/1/2020 that Florida Circuit Judge James McCann acted in clear absence of all jurisdiction when signing

Magistrate Elizabeth McHugh court recommendation for former wife motion for civil contempt enforcement on 10/28/2020. This brings rise to a substantial evidence that federal Judge Middlebrooks did not state a substantial jurisdiction that both Magistrate Judge Elizabeth McHugh and Circuit Judge James McCann where acting under.

DE 15-15 at 1, 2, 3, 4, 5 Sua Sponte order dismissing case on 10/30/2020 Federal Judge Middlebrooks dismissal shows that he was acting in excess of his jurisdiction being he failed to state a substantial jurisdiction that the two Florida State Judges in his dismissal it only states they are entitled to absolute immunity this would be true if absolute immunity was a right and not a privilege. Being a court judge is a privilege and not a right. And there is substantial proved evidence they qualify in District Judge Middlebrooks dismiss of the case on 10/30/2020. It does show in DE 1-1 at 20 the contempt of court filed by I Robert Austin on 5/27/2020 against magistrate Elizabeth McHugh for the motion for the civil contempt/enforcement filed by former wife that lacked subject matter jurisdiction. DE 1-1 at 20 that shows substantial evidence that tangible property was agreed to be paid under duress as to avoid a false imprisonment. DE 1-1 at 29, Statement 3 shows that consent was used to gain subject matter jurisdiction on motion for civil contempt/enforcement that was a NULL motion as of midnight 2/24/2020 it was no longer in compliance with Florida rules of civil procedure.

Therefore that brings rise for an appeal to be filed with the 11th Circuit Court of Appeals on 11/23/2020. And in the initial brief it clearly states in the appeals court file DE 8-8 at 8 states on its face before entering a guilty verdict against Austin on 5/26/2020 of a motion for contempt enforcement for Attorney fees owed by (Austin) that lacked absolute jurisdiction that McCann and McHugh used the motion of the hearing of an amended child support arrears jurisdiction and used consent to gain motion on 5/26/2020 to gain personal subject matter jurisdiction over the subject matter of the of the contempt of court enforcement motion for attorney fees. Appeals court DE 12-12 at 6 states on its face. Being that the hearing on 5/26/2020 was based on an oversight by the court filed by Austin in state and was not solely based on contempt of court that the motion for contempt lacked legal jurisdiction to summons Austin to court just on the contempt alone and could not gain jurisdiction by consent. The 3 panel Appellate judges made a falsification in their DE 15-15 at on its face states. Austin argues that the district erred by dismissing his complaint because the judges lacked jurisdiction over his state court child support proceeding that they resided over. Being that the appellate court failed to state any substantial document entry filed in either the district court or the appellate court that supports that statement to be a true statement by Robert Austin. That makes it a false statement that is a direct violation under 18 U.S.C. § 1519 and a violation under 18 U.S.C. § 242. That is a protected right under the United States Constitution 14th Amendment due process of law as well as equal

justice under law. Therefore that would constitute acting in excess of their jurisdiction. There is clear evidence that the dismissal on 6/23/2021. That constitutes a libel act that is a violation under 18 U.S.C. § 4101 – Definitions (1) Defamation that is a libel act. And all prongs are present (1) statement by appellate judges stated (Austin argues that the district erred by dismissing his complaint because the judges lacked jurisdiction over his state court child support proceeding) is false. (2) The opinion is an unpublished citation and is published in the Federal appendix that is public knowledge and can be used as unpublished case law under FRAP Rule 32.1. (3) the appellate judges where acting in excess of their jurisdiction on 6/23/2021 when dismissing I Robert Austin Appeal. (4) harm is the deprivation of due process of law and equal justice under law protected under the United States Constitution 14th Amendment. Being they used a false statement to impede as part of their dismissal of the appeal. Under legal proper law that would render the dismissal on 6/23/2021 Null. The appellate judges statement DE 15-15 at 4 (nothing in those exhibits or complaint supports a plausible finding that they were acting in clear absence of all jurisdiction.) Federal district court DE 1-1 at 11 shows the subject matter to be addressed on 5/26/2020 there is no substantial evidence of any pending judicial acts in conjunction with what is stated in the order to appear. DE 1-1 at 14, 15, 16, 17, 18 clearly shows a Florida Supreme Court Approved Family Law Form 12.960. Motion for civil contempt/enforcement that is required by Florida law. as well as former wife motion for civil

contempt/enforcement filed on 10/28/2019 that fails to show substantial evidence that no other person or party was served a copy of that motion for it to be in compliance with form 12.960. Therefore that would render that motion Null. That it lacked personal and subject jurisdiction to adjudicate by a Florida court of law. Federal District court DE 1-1 at 29, 30, 31 shows substantial evidence that both state judges did in adjudicate former wife motion for civil/enforcement without the any legal jurisdiction. Therefore that brings rise to I Robert Austin to file an en banc on 7/2/2021 that has substantial evidence that shows plausible proof that a summons was required to be served that has a statute of limitation of 120 days. Appeal DE 16-16 at 4. Therefore the mandate DE 28-28 at 1, 2, 3, 4, 5, 6, 7, show the appellate judges wish to continue to act in excess of their jurisdiction even after substantial and plausible proof has been addressed.

That challenges the jurisdiction of the 2 Florida state judges the jurisdiction of the District judge and the jurisdiction Appellate Circuit Court that is now the record before this United States Supreme Court.

X. REASON FOR GRANTING THE WRIT FOR THIS COURT TO UPHOLD MY RIGHT TO CHALLENGE THE JURISDICTION OF THE JUDGMENT OF THE APPEALS COURT FOR THE 11TH CIRCUIT. UNDER THE JURISDICTION OF THE UNITED STATES CONSTITUTION 14TH AMENDMENT CLAUSE (1).

XI. CONCLUSION

I Robert Austin Pray that the foregoing reasons, and respectfully request that this court issue a writ of certiorari to review the judgment of the 11th Circuit Court of Appeals.

DATED this 3d day of November 2021

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert Allen Austin", written over a horizontal line.

ROBERT ALLEN AUSTIN

Counsel of Record

6526 SW Kanner Hwy., # 164

Stuart, Florida 34997

Tel.: (772) 882-5114

E-Mail: robert_austin46@aol.com