

21-7447 ORIGINAL

FILED  
MAR 18 2022

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

PETER GEORGE LIOUNIS — PETITIONER  
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PETER GEORGE LIOUNIS  
(Your Name)

REG. NO. 48332-054  
FCI - Gilmer

(Address)

P.O. Box 6000  
Glenville, WV 26351

(City, State, Zip Code)

N/A  
(Phone Number)

RECEIVED

MAR 23 2022

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SUPREME COURT, U.S.

## **QUESTION(S) PRESENTED**

WHETHER THE FAVORABLE TERMINATION REQUIREMENT OF HECK v. HUMPHREY, 512 U.S. 477 (1994), MUST FIRST BE SATISFIED IN PLAINTIFF'S CRIMINAL CASE, EMPLOYING A REASONABLE DOUBT STANDARD, PRIOR TO FILING A FEDERAL TORTS CLAIM ACT COMPLAINT, WHICH ONLY EMPLOYS A PRE- PONDERANCE OF THE EVIDENCE STANDARD, ON A CLAIM FOR THE INTENTIONAL TORT OF FALSE ARREST AND FALSE IM-  
PRISONMENT, AND THE INTENTIONAL TORT OF EMOTIONAL DIS-  
TRESS, WHEN NEITHER UNDERLINED INTENTIONAL TORT HAS A  
FAVORABLE TERMINATION ELEMENTS?

## **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**

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8/13/21

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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**

**[X] For cases from federal courts:**

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is

reported at \_\_\_\_\_; 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 is unpublished.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 "B" to the petition and is

reported at \_\_\_\_\_; 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 is unpublished.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 \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## **JURISDICTION**

**[X] For cases from federal courts:**

The date on which the United States Court of Appeals decided my case was December 22, 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: \_\_\_\_\_, 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. § 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).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Federal Tort Claims Act (28 U.S.C. § 2675(a), and 28 U.S.C. § 2674), 28 U.S.C. section 1346(b)(1), 28 U.S.C. section 2680(h), 28 U.S.C. section 2679(g)

First Amendment to the United States Constitution, and its provision guaranteeing access to the courts

## STATEMENT OF THE CASE

Petitioner - Peter Liounis, initiated this civil action on September 25, 2020, while incarcerated at the Federal Prison in Gilmer, West Virginia. The Complaint alleged that Peter Liounis was subjected to false arrest, false imprisonment, malicious prosecution, and intentional infliction of emotional distress. Prior to filing the complaint, Peter Liounis exhausted his administrative remedies with the Federal Bureau of Prisons, which rejected his claims. The civil complaint, subsequently filed in the local district court, was pursuant to the Federal Tort Claims Act.

The district court dismissed the complaint as being frivolous "because the Plaintiff has no chance of success." (Magistrate's Report and Recommendation, at page 5). The magistrate relied on Heck v. Humphrey, 512 US 477, 484 (1994). Thereafter, the district judge accepted the magistrate's Report and Recommendation. An appeal was taken to the Fourth Circuit Court of Appeals; the Court stated: "upon our review of the record, we agree that Heck applies to Liounis' claims ... Accordingly, we affirm the district court's order on that ground, though we modify the dismissal to be without prejudice because Liounis may refile his claims should his convictions ever be overturned or called into question by the appropriate court."

## REASONS FOR GRANTING THE PETITION

In order to maintain a case against the United States under the FTCA, the plaintiff must demonstrate that his action is permissible under the FTCA and satisfies the necessary elements of a TORT claim under state law. It is a jurisdictional requirement that the plaintiff file such a case and exhaust an administrative claim prior to filing suit. See 28 U.S.C. section 2675. See also Muth v. United States, 1 F.3d 246, 249 (4th Cir. 1993); Dupont v. United States, 980 F. Supp. 192, 195 (S.D. W. Va. 1997); Kielwien v. United States, 540 F.2d 676 (4th Cir. 1976), cert. denied, 429 U.S. 979 (1976).

Respectfully, here plaintiff has satisfied all requirements and here "no" favorable termination element exists regarding the following Intentional Torts: (i) False Arrest and False Imprisonment, and (ii) Infliction of Emotional Distress. Here, plaintiff concedes that Heck does apply to the Intentional Tort of Malicious Prosecution "only" because the favorable termination element does exist. Here, plaintiff must prove his injuries and prove the elements under the preponderance of evidence standard and nothing more.

Respectfully, here we also have a split in the circuits. The following circuits agree that Heck applies to the FTCA: see e.g., Erlin v. United States, 364 F.3d 1127, 1131-32 (9th Cir. 2004); Parris v. United States, 45 F.3d 383, 385 (10th Cir. 1995); O'Brien v. United States Fed Gov't, 763 F. Appx 157, 159 (3d Cir. 2019); Hinton v. United States, 91 F. Appx 491, 493 (6th Cir. 2004); Brestle v. United States, 414 Fed. Appx. 260 (11th Cir. 2011).

Here, the following circuits do not agree that Heck applies to the FTCA: Watson v. United States; 865 F.3d 123, 130 (2nd Cir. July 31, 2017); Limone v. United States, 579 F.3d 79, 86-87 (1st Cir. August 2009); Okeaya'nnéh v. United States DOJ, 789 Fed Appx. 469, 470 (5th Cir. Jan 8, 2020) ("Okeaya'nnéh's FTCA claim failed on its face to show that his imprisonment was unlawful or tortious".)

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Peter George Liounis

Date: March 17, 2022