No. 21-7635 ORIGINAL

In the Supreme Court of the United States

In Re William F. Kaetz — Petitioner

vs.

United States of America — Respondent

On Petition for A Writ of Certiorari To
To the United States Court of Appeals
for the Third Circuit Case No. 21-1914

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Chief Judge Wolfson of the district of New Jersey created administrative internal court operation orders in response to the covid-19 pandemic that were used to blanket all court cases with continuances. Continuance is defined as the suspension or postponement of a trial or court proceeding. Continuance is made on a case-by-case basis at the court's discretion. Courts balance giving the moving party enough time; the need to make the trial timely and speedy; and the interests of justice. 18 U.S.C. § 3161 (h)(7)(A) also states a motion is required by the parties. The proper Due Process is motion procedure. There was no Due Process motion procedure. The orders were issued in other judge's cases, interfered with those other cases, ruled directly on the legality of other judge's cases, considered matters pertaining to cases assigned to other judges. The Covid-19 Administrative Internal Court Operation Orders acted like law aimed at the suppression of particular views to manipulate the public debate about the pandemic through coercion rather than persuasion. There is content and viewpoint discrimination from misrepresentations and propaganda from the CDC, the WHO, Dr. Fauci, political parties, and social media news that suppressed the Constitution.

Are the administrative internal court operation orders in response to the covid-19 pandemic an act that lacks authority, jurisdiction, due process, a fraud on the court, a content and viewpoint discrimination manipulating public debate about Covid-19 and therefore unconstitutional?

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix PA1 -PA4.

JURISDICTION

The date on which the United States Court of Appeals decided my case was 11/01/2021. A copy of that order appears at Appendix PA5. A petition for rehearing was timely filed in my case. A timely petition for rehearing was denied by the United States Court of Appeals on 1/13/2022. The order denying rehearing appears at Appendix PA7. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Article IV, Section 4

> The United States shall guarantee to every State in this Union a Republican Form of Government and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.

United States Constitution Article VI

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

U.S. Constitution Amendment V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution Amendment VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have

been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Constitution Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Constitution Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

U.S. Constitution Amendment XIV

Section 1
All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S. Code § 1651 – Writs

(a)The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
(b)An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

STATEMENT OF THE CASE

I filed for a Writ for Mandamus to end the Covid-19 orders. The administrative internal court operation orders in response to the covid-19 pandemic overthrew Constitutional rights. The lower courts used the pandemic as means to

justify the overthrow of the constitution that conflicts with this Courts successive holdings that an emergency cannot overthrow the Constitution. The Writ petitioned for should have been granted to enforce the Constitution. The lower court errored by not enforcing the Constitution.

ARGUMENT

Chief Judge Wolfson of the district of New Jersey created administrative internal court operation orders in response to the covid-19 pandemic that were issued in other judge's cases, interfered with those other cases, ruled directly on the legality of other judge's cases, considered matters pertaining to cases assigned to other judges, and added content and viewpoint discriminations in other judges' cases.

The alleged findings of the covid-19 administrative internal court operation orders are content and viewpoints of political views of covid-19 that was inserted into cases that has nothing to do with facts of the cases and is discriminating against people's rights. The content and viewpoint discrimination in and from the covid orders suppressed the Constitution and acted like law aimed at the suppression of particular views to manipulate the public debate about the pandemic through coercion rather than persuasion and is fraud on the court.

There is no provision of law that authorizes or gives jurisdiction to Chief Judge Wolfson and collaborating defendants to do the things complained of in the complaint. These acts were done with a total lack of jurisdiction and authority, it is unconstitutional on many grounds, mainly due process violations because of a

misapplication of continuances and statute 18 U.S.C. §3161 (h)(7)(A). Judicial immunity does not apply.

The lower court dismissed the case because of my other cases and failed to right the wrongs presented in this brief and failed to enforce the Constitution.

JURISDICTION AND U.S. CONST. ARTICLE III STANDING

This is a mass tort. This Court has recognized mass tort and has held: "standing is easily recognized, for instance, in the case of a "widespread mass tort" even though "large numbers of individuals suffer the same common-law injury", *FEC* v. *Akins*, 524 U.S. 11, 24, 118 S. Ct. 1777, 141 L. Ed. 2d 10 (1998), and for good reason: "to deny standing to persons who are in fact injured, simply because many others are also injured, would mean that the most injurious and widespread government actions could be questioned by nobody," *Massachusetts* v. *EPA*, 549 U.S. 497, 526, n. 24, 127 S. Ct. 1438, 167 L. Ed 2d 248 (2007) (quoting SCPAP 412 U.S. at 688) harm to all – even in the nuanced world of standing law – cannot be logically equated with harm to no one".

This Court also recognized, "the fact that injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance, The victim's injuries from a mass tort, for example, are widely shared, to be sure, but each individual suffers a particularized harm.' *Spokeo Inc.*, v. *Robins*, 136 S. Ct. 1540 (U.S. May 16, 2016)

Also, in the *Spokeo* case, "the concrete-harm requirement does not apply as rigorously when a private plaintiff seeks to vindicate his own private rights. Our

contemporary decisions have not required a plaintiff to assert an actual injury beyond the violation of his personal legal rights to satisfy the "injury-in-fact" requirement." See, e.g., *Cary* v. *Piphus*, 435 U.S. 247, 266, 98, S. Ct. 1042 55L. Ed. 2d 252 (1978) (holding that nominal damages are appropriate when a plaintiff's Constitutional rights have been infringed but cannot show further injury)

The 1st circuit held, "Economic injury, even on indirect nature, will establish sufficient concrete adverseness to meet article III "case and Controversy" test." *Friedman* v. *Harold*, 638 F. 2d 262 1981 U.S. App. Lexis 21048 (1st Cir. 1981)

All the above support the conclusion that this court has jurisdiction and I have U.S. Const. Article III standing, this case meets the Article III "Case and Controversy" test because the matter of this case is about a mass tort that caused economic injury. The lower court misrepresented the case and controversy test.

PRECEDENTS THAT SUPPORT LACK OF AUTHORITY AND LACK OF JURISDICTION OF THE COVID -19 CONTINUANCE ORDERS

Precedents on No Authority to Interfere Another Judge's Case

Many district courts have concluded that "There is no provision of law that would authorize the undersigned judge to reassign [another judge's] case to himself; interfere in that case; or review, vacate, or declare void her judgment in that case." *Hill* v. *Dozer,* 2018 WL 1418412 at *3 (E.D. Cal., Mar. 22, 2018): "The Court cannot issue orders in another judge's case." *Shea* v. *Haley.* 2018 U.S. Dist. Lexis 190351 (D. Nev. 2018); "This Court has no authority to consider any matter pertaining to a case assigned to another judge." *Womack* v. *Pearson,* 2006 U.S. Dist. Lexis 93226,

(W.D. Tenn. 2006); "It would be inappropriate for this Court to issue any order which could affect or interfere with another judge's handling of a case on his or her docket." *Al-Ansi* v. *Obama,* 647 F. Supp. 2D 1, 13 (D.D.C. 2009); "The structure of the federal courts does not allow one judge of a district court to rule directly on the legality of another district judge's judicial acts or to deny another district judge his or her lawful jurisdiction." *Dhalluin* v. *McKibben,* 682 F. Supp. 1097 (D. Nev. 1988); "No express or implied power is granted a chief judge to affect administratively, directly or indirectly, litigation assigned to and pending before another judge of the court. 28 U.S.C.A. §§ 136, 137, 756." *United States* v. *Heath,* 103 F. Supp. I. 2 (D. Haw. 1952).

Chief Judge Wolfson created administrative internal court operation orders that were issued in other Judge's cases, interfered with those other cases, ruled directly on the legality of other judge's cases, considered matters pertaining to cases assigned to other judges, as to which there is no provision of law that authorizes or gives jurisdiction to Chief Judge Wolfson to do so in agreement with the many district court opinions quoted above.

In Agreement with this Court's Own Words, Chief Judge Wolfson's Act is with a Total Lack of Jurisdiction and Authority

Chief Judge Wolfson's act is with a total lack of jurisdiction and authority, it is unconstitutional on many grounds, mainly due process violations. Judicial immunity does not apply. There is no jurisdiction to use an emergency to overthrow the Constitution.

The Constitution guarantees these rights to us during all times, good or bad, we encounter a decades-long succession of statements from this Court that confirm there is no jurisdiction to overthrow the Constitution using an emergency (the pandemic) supported by this Court's dicta throughout the ages. "The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, [people], at all times, and under all circumstances. *Ex Parte Milligan,* 71 U.S. 2, 120-21, 18 L. Ed. 281. (1866). "The Constitution is not to be obeyed or disobeyed as the circumstances of a particular crisis in our history may suggest". *Downes* v. *Bidwell* 182 US 244. 384. 21 s. Ct. 770. 45 L. Ed. 1088, (Harlan. J. dissenting). "Our Constitution has no provision lifting restrictions upon governmental authority during periods of emergency." *Dennis* v. *United States* 341 US 494. 520. 71 S. Ct. 857. 95 L. Ed. 1137 (1951) (Frankfurther. J. concurring). Rather, "[t]he People have decreed that it shall be the supreme law of the land at all times." *Id.* Its "full operation cannot be stayed by any branch of the government in order to meet what some may suppose to be extraordinary emergencies." *Downes* 182 U.S. at 385 (Harlan, J. dissenting). This is because the drafters "foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of Constitutional liberty would be in peril, unless established by irrepealable law." *Milligan* 71 U.S. at 120. The principle that "[g]overnment is not

free to disregard the [Constitution] in times of crisis" applies in full force during this pandemic." *Roman Catholic Diocese of Brooklyn, New York.* v. *Andrew M. Cuomo. Governor of New York* 141 S. Ct. 63 (2020) (Justice Gorsuch. concurring.). "Members of this Court are not public health experts, and we should respect the judgment of those with special expertise and responsibility in this area. But even in a pandemic, the Constitution cannot be put away and forgotten." Id. At 68 (majority opinion). "Even if the Constitution has taken a holiday during this pandemic, it cannot become a sabbatical". (Gorsuch, J., concurring).

In Justice Alito's dissent (joined by Justices Thomas and Kavanaugh) to the court's denial of emergency injunctive relief in *Calvary Chapel Dayton Valley* v. *Sisolak* U.S. 2020. U.S. Lexis 3584, 2020 WL 4251360 (Jul.24.2020) (Alita, J., dissenting) Justice Alito stated, "We have a duty to defend the Constitution, and even a public health emergency does not absolve us of that responsibility. ... a public health emergency does not give Governors and other public officials carte blanche to disregard the Constitution for as long as the medical problem persists." There is no question that our founders abhorred the concept of one-person rule. But the response to a pandemic (or any emergency) cannot be permitted to undermine our system of Constitutional liberties or the system of checks and balances protecting those liberties. For the judiciary to apply an overly deferential standard would remove the only meaningful check on the exercise of power. The application of normal scrutiny will only require the government to respect the fact that the Constitution applies even in times of emergency.

As this Court has observed: "The Constitution was adopted in a period of grave emergency. Its grants of power to the federal government and its limitations of the power of the States were determined in the light of emergency, and they are not altered by emergency." *Home Building & Loan Ass'n.* v. *Blaisdell,* 290 U.S. 398, 425. 54 S. Ct. 231, 78 L. Ed. 413 (1934). "

It is clear from this Court's own words through decades-long succession of statements the Constitution cannot be overthrown with the use of the Covid-19 emergency. The defendants' actions are against this Court's own words, there is no justification for their actions.

Precedents that Prove Judicial Immunity Does Not Apply to the Covid-19 Emergency Administrative Internal Court Operation Orders that Misapplied Continuances and Defendants' Actions

In this Court's case of *Forrester* v. *White*, 484 U.S. 219, 229, 98 L Ed 2d 555 108, S. Ct. 538 (1988) A sex discrimination claim by Forrester was brought upon a state judge White. "Judge White was acting in an administrative capacity when he demoted and discharged Forrester. Those acts – like many others involved in supervising court employees and overseeing the efficient operations of a court – may have been quite important in providing the necessary condition of a sound adjudicative system. The decisions at issue however, were not themselves judicial or adjudicative... such decisions, like personnel decisions made by judges, are often crucial to the efficient operation of public institutions (some of which are at least as important as the courts) yet no one suggests that they give rise to absolute immunity from liability in damages under §1983."

In *Cameron* v. *Seitz*, 38 F. 3d 264 (6th Cir. Mich. October 21, 1994) at 271, judicial immunity analysis of the court stated, "in examining the functions normally performed by a judge, courts have found that "paradigmatic judicial acts" are those that involve "resolving disputes between parties who have invoked the jurisdiction of a court", *Forrester* 484 U.S. at 227; see also *Antoine'* 508 U.S. at 435 – 36 (recognizing that the 'touchtone' for judicial immunity has been the "performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights.") Moreover, this court has stated that whenever an action taken by a judge is not an adjudication between parties, it is less likely that the action will be deemed judicial." (*Antoine'* v. *Byrers & Anderson Inc.*, 508 U.S. 429, 432, 124 L. Ed 2d 391, 113 S. Ct. 2167 (1993)).

In *Clark* v. *Conahan*, 737 F. Supp 2d 239 (M.D. Pa. August 25, 2010) at 256, the court recognized, "for judicial immunity to apply, two requirements must be met (1) jurisdiction over dispute and (2) a judicial act... as to the first, a judge is not immune only when he has acted in the "clear absence of all jurisdiction", *Stump* v. *Sparkman* 435 U.S. 349, 98 S. Ct. 1099, 55 L Ed 2d 331 (1978), as to the second prong judicial immunity extends only to "judicial acts", not administrative, executive, or legislative ones", Id at 360 – 61, 98 S. Ct. 1099. "Acts which are traditionally done by judges include issuing orders, resolving cases and controversies, making rulings, and sentencing criminal defendants. Other actions such as sending a fax, or hiring or firing subordinates, have been found to be administrative rather than judicial acts."

In *Barnes* v. *Winchell,* 105 F 3d, 1111, 1116 (6th Cir. 1997). The court recognized, "absolute immunity may be overcome in two situations, first, a judge is liable for nonjudicial actions; second, a judge is not immune for actions taken in complete absence of all jurisdiction. Absolute judicial immunity attaches only to actions undertaken in a judicial capacity. See *Forrester* 484 U.S. at 227 – 29, whether an act is judicial depends on the nature and function of the act, not the act itself' *Mireles* 502 U.S. at 13 (quoting *Stump* 435 U.S. at 362) Typically, this functional analysis turns on two factors: (1) looking to the nature of the act itself, whether the act is a "function normally performed by a judge", and (2) regarding the expectations of the judge in his judicial capacity," 502 U.S. 9 at 12 (quoting *Stump* 435 U.S. at 362). Yet "if only the particular act in question were to be scrutinized" then the "*Stump*" formulation would broadly envelope "any mistake of a judge in excess of his authority", thereby undermining the purposes behind absolute judicial immunity. Recognizing this concern, the *Mireles* court reformulated the relevant inquiry: even if a particular act is not a function normally performed by a judge, we are directed to "look at the particular acts" relation to a general function normally performed by a judge. (*Mireles* v. *Waco*, 502 U.S. 9, 9, 116 L. Ed 2d 9, 112 S. Ct. 286 (1991))."

Congress amended 42 U.S.C. § 1983 in 1996 with "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief will not be granted unless a declaratory decree was violated, or declaratory relief was unavailable". Only when a declaratory decree is

violated, or declaratory relief is unavailable would plaintiff have an end-run around judicial immunity.

In determining immunity, we examine (1) "the nature of the function performed, not the identity of the actor who performed it", *Forrester* v. *White*, 484 U.S. 219, 229, 98 L Ed 2d 555 108, S. Ct. 538 (1988). We also must determine (2) whether there was a "clear absence of all jurisdiction", *Stump* v. *Sparkman*, 435 U.S. 349, 98 S. Ct. 1099, 55 L Ed 2d 331 (1978). We also must determine (3) if a declaratory decree was violated, and declaratory relief was unavailable. 42 U.S.C. § 1983.

The nature of the function, the Covid – 19 emergency administrative orders, are for internal court employees and for overseeing the efficient operations of a court, the nature and function is administrative and does not give rise to absolute immunity from liability in damages under 42 U.S.C. § 1983 as a Bivens Action. All Covid – 19 emergency orders are titled "In Re Court Operations" or "Administrative" that clearly classifies them as administrative in nature and function and they are not a result of paradigmatic judicial acts therefore cannot be deemed judicial acts. Parties did not deal with the judge.

There is a clear absence of jurisdiction to overthrow the Constitution using administrative orders. The civil rights protected and guaranteed to be protected by the Constitution of the United States cannot be side-stepped and stayed by any branch of government in order to meet what some may suppose to be extraordinary emergencies. The 5th Amendment due process and equal protection rights, and the

6th Amendment rights to a speedy trial and to confront witnesses have been overthrown by misapplication of continuances and "ends of justice" provisions in the speedy trial act using misrepresentations and propaganda from the CDC, the WHO, Dr. Fauci, and social media news that are not evidence or witnesses or factors or particulars to any one's case. They cannot be confronted to question authenticity. Motion practice was not done. There was no Due Process. It is clear from this Court's own words through decades-long succession of statements there is no judicial immunity for administrative functions that overthrow litigants Constitutional Rights by misapplying authority with totalitarianism style covid-19 orders.

Precedents on Content & Viewpoint Discrimination

It is established in *Turner Broadcasting Sys., Inc,* v. *FCC* 512 U.S. 622, 641 (1994) Content-based restrictions "are subject to the 'most exacting scrutiny,' ... because they 'pose the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information or manipulate the public debate through coercion rather than persuasion.'" Id. (quoting *Turner Broadcasting,* 512 U.S. At 641-642). Viewpoint discrimination is "[w]hen the government targets not subject matter, but particular views taken by speakers on a subject." Id. (quoting *Rosenberger* v. *Rector & Visitors of Univ. of Va.* 515 U.S. 819. 829 0995)). "Viewpoint discrimination is thus an egregious form of content discrimination." Id. (quoting *Rosenberger,* 515 U.S. at 829). "The government must abstain from regulating speech [the Constitution] when the

specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." Id. (quoting *Rosenberger,* 515 U.S. At 829). 'Viewpoint discrimination' is forbidden." Id. (citing *Rosenberger,* 515 U.S. at 830-831). In a concurring opinion, Justice Kennedy stated that "[t]he First Amendment [the Constitution] guards against laws 'targeted at specific subject matter,' [a] form of speech [the Constitution] suppression known as content-based discrimination." Id. at 1765-1766 (Kennedy, J., concurring) (quoting *Reed v. Town of Gilbert,* 576 U.S. 155. 169 (2015,)). "This category includes a subtype of laws that go further, aimed at the suppression of 'particular views ... on a subject.'" Id. (Kennedy, J., concurring) (quoting *Rosenberger,* 515 U.S. at 829) (alteration in original). "A law found to discriminate based on viewpoint is an 'egregious form of content discrimination,' which is 'presumptively Unconstitutional.'" Id. (Kennedy, J., concurring) (quoting *Rosenberger,* 515 U.S. At 829-830). "A law found to discriminate based on viewpoint is an 'egregious form of content discrimination,' which is 'presumptively Unconstitutional.'" Id. at 1766 (Kennedy, J., concurring) (quoting *Rosenberger,* 515 U.S. at 829-830). Therefore,"[t]he Court's finding of viewpoint bias end[s] the matter." *Iancu* v. *Brunetti.* 139 S. Ct. 2294. 2302 (2019).

The Covid-19 Administrative Internal Court Operation Orders acted like law aimed at the suppression of particular views to manipulate the public debate about the pandemic through coercion rather than persuasion. There is content and viewpoint discrimination in and from the covid orders from misrepresentations and

propaganda from the CDC, the WHO, Dr. Fauci, political parties, and social media news that suppressed the Constitution.

I personally was thrown in jail cells with Covid-19 positive people, so the gist of the "Covid-19 Orders" for "safety" did not apply to me, that's unequal protection, 8th Amendment violations, and proves the above true, there was ulterior motives, most likely political, and this interfered with access to the courts. The Federal Courts are an Essential Business, there was no reason to close the courts and eliminate Rights, especially when other courts and essential businesses stayed open. It is a totalitarian type of government behavior that is opposite of our Constitutional form of government, a breach of the Constitutional guarantee, a breach of the social contract, The Constitution.

Precedents on Fraud on the Court

This Court's Case of *Hazel-Atlas Glass Co.* v. *Hartford-Empire Co.,* 322 U.S. 238 (1944) is important for a full understanding of the meaning of the phrase "fraud on the court". In an opinion authored by Justice Black, held that: [T]he general rule [is] that [federal courts will] not alter or set aside their judgments after the expiration of the term at which the judgments were finally entered... [but]. ... [e]very element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments. This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury. Here, even if we consider nothing but Hartford's sworn admissions, we find a deliberately

planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals." Id. at 245.

Nearly all the principles that govern a claim of fraud on the court come from the *Hazel-Atlas* case. First, the power to set aside a judgment exists in every court. Second, in whichever court the fraud was committed, that court should consider the matter. Third, while parties have the right to file a motion requesting the court to set aside a judgment procured by fraud, the court may also proceed on its own motion. Indeed, one court stated that the facts that had come to its attention "not only justify the inquiry but impose upon us the duty to make it, even if no party to the original cause should be willing to cooperate, to the end that the records of the court might be purged of fraud, if any should be found to exist." *Root Refining Co.* v. *Universal Oil Prods. Co.*, 169 F.2d 514, 521-23 (3d Cir. 1948) Fourth, unlike just about every other remedy or claim existing under the rules of civil procedure or common law, there is no time limit on setting aside a judgment obtained by fraud, nor can laches bar consideration of the matter. The logic is clear: "[T]he law favors discovery and correction of corruption of the judicial process even more than it requires an end to lawsuits." *Lockwood* v. *Bowles*, 46 F.R.D. 625,634 (D.D.C. 1969).

The Model Rules of Professional Conduct provide further guidance. Lawyers are professionally and ethically responsible for accuracy in their representations to the court. Rule 3.1 of the Model Rules of Professional Conduct states that lawyers "shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which

includes a good-faith argument for an extension, modification or reversal of existing law." Model Rules of Prof'l Conduct R 3.1 (AM. BAR. ASS'N 2013) Similarly, Rule 3.3 provides that " [a] lawyer shall not knowingly ... make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Id. at 3.3(a).

In addition to the rules of professional conduct and an attorney 's duty of candor as an officer of the court, Federal Rule 11 imposes a duty on attorneys to certify that they have conducted a reasonable inquiry and have determined that any papers filed with the court are well grounded in fact, legally tenable, and not interposed for any improper purpose.

An examination of the offender and his duties is important because violations of Federal Rule 11 or even the rules of professional conduct may give rise to a fraud-on-the-court claim, even if those violations were not specifically directed to the court itself. In other words, "[s]ince attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court." *H.K. Porter Co.* v. *Goodyear Tire & Rubber Co.,* 536 F.2d 1115, 1119 (6th Cir. 1976) In order to establish fraud on the court, some courts require the movant to prove by clear and convincing evidence intentional fraudulent conduct specifically directed at the court itself. *Herring* v. *United States*, 424 F.3d 384, 386-87 (3d Cir. 2005).

A harsh approach is unreasonable, especially if courts consider the victim. This Court held in *Hazel – Atlas* made it clear that the fraud-on-the-court rule should be characterized by flexibility and an ability to meet new situations

demanding equitable intervention. Because of the equitable and flexible nature of the rule, this brief contends that courts have ample leeway and discretion to consider the victim 's status' - i.e., those parties unable to recognize or combat the fraud prejudgment - in determining whether to set aside a judgment for fraud on the court, it should not matter if it was a civil or criminal case when it comes to fraud on the court.

Covid-19 pandemic orders were a deliberately planned and carefully executed scheme to defraud the United States Constitution and peoples' inalienable rights to perpetrate a totalitarian form of government that violated the Constitutional Guarantee of Article IV Section 4, a Constitutional Republic form of government.

This Court's Directions to Deal with Bad Court Orders

Making law that is a usurpation of legislative power. In *Gamble* v. *United States*, 139 S. Ct. 1960 (U.S. June 17, 2019) Justice Thomas explained:

> "When faced with a demonstrably erroneous precedent, my rule is simple: we should not follow it. This view ... follows directly from the Constitution Supremacy over other sources of law – including our own precedents. That the Constitution outranks other sources of law is inherent in its nature, ... The Constitution's Supremacy is also reflected in its requirement that all judicial officers, executive officers, congressmen and state legislators take an oath to "support this Constitution", Art. VI, cl. 3; see also Art. II, § I, cl, 8 ..."
>
> "I am aware of no legislative reason why a court may privilege a demonstrably erroneous interpretation of the Constitution over the Constitution itself" ... "the same principle applies when interpreting statutes and other sources of law; if a prior decision demonstrably erred in interpreting such a law, federal judges should exercise the judicial power – not perpetuated a usurpation of legislative power –

and correct the error. A contrary rule would permit judges to "substitute their own pleasure" for the law...."

Pursuant to S. Ct. Justice Thomas in *Gamble* federal courts should fix demonstrably erroneous interpretations of law, not perpetrate a usurpation of power – not make law – and adhere to the Constitution. Misapplying 18 U.S.C. §3161 (h)(7)(A) ends of justice continuances using content and viewpoint discrimination that have nothing to do with the particulars to cases, one judge ruling interfering on all cases, is a demonstrably erroneous interpretation of law, a perpetration of usurpation of power, there is no immunity, my Writ for Mandamus action has standing.

Precedents on Interpreting Statute

This Court supports my reasoning. "Analysis begins, as it must, with the language of the statute." *Bailey* v. *U.S.*, 516 U.S. 137, 144-45, 133 L. Ed. 2d 472, 116 S. Ct 501 (1995); *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U.S. 469, 475, 120 L. Ed. 2d 379, 112 S. Ct. 2589 (1992); *Coronado-Durazo* v. *LN.S.*, 123 F.3d 1322, 1324 (9th Cir. 1997). "Clear and explicit statutory language is to be applied as written." *Hughes Aircraft Co.* v. *Jacobson*, 525 U.S. 432, 438, 142 L. Ed. 2d 881, 119 S. Ct. 755 (1999). "Terms utilized in the statute are to be construed according to their ordinary or natural meaning absent clearly expressed Congressional intent to the contrary." *Williams* v. *Taylor*, 529 U.S. 420, 431, 146 L. Ed. 2d 435, 120 S. Ct. 1479 (2000); *U.S.* v. *Alvarez-Sanchez*, 511 U.S. 350, 356-57, 128 L. Ed. 2d 319, 114 S. Ct. 1599 (1994). "The statute says what it means and means what it says." *Hartford*

Underwriters Ins. Co. v. *Union Planters Bank, N.A.*, 530 U.S. 1, 6, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000).

Continuances and 18 U.S.C. §3161 (h)(7)(A) have to go through the motion process, in this case, it did not. Judge Wolfson created administrative internal operation orders and procedures in response to covid-19 that continued all cases without using the motion practice procedure specifically required in the clear and explicit statutory language of the statutes and rules for continuances. There was no due process, it was a dictatorship style order. Judge Wolfson's administrative internal operation orders is a demonstrably erroneous interpretation of law, a perpetration of usurpation of power, it does not follow this Court's statutory interpretation and congresses intent of the language of the statutes and rules. The propaganda from the CDC, the WHO, Dr. Fauci, political parties, and social media news that was used as "findings" to suppress the Constitution are not factors or particulars of anyone's case and they cannot be confronted by means of due process of law that is the motion practice procedure required by the statute.

It is clear that overthrow of the Constitution during what some may suppose to be an extraordinary emergency is in an act that has a clear absence of jurisdiction. The fact the government had limitations of power to invade and trespass one's privacy and life with alleged claims and to either indict and bring to trial in a limited time or dismiss the claims, so the rights of that person is not endlessly invaded is in harmony with the right to be left alone, privacy, the 4th Amendment and the right to life, liberty, and the pursuit of happiness.

There is a Declaratory Decree that was Violated – Precedents on the Oath of Office

28 U.S.C. § 456 is the oath of office statute to uphold the United States Constitution. This Court has recognized "our oath to uphold the Constitution is tested by hard times, not easy ones. A succumbing to the temptation to sidestep the usual Constitutional rules is never costless. It does damage to faith in the written Constitution as law, to the power of the people to oversee their own government". *Democratic Nat'l Comm.* v. *Wis State Legis.,* 141 S. Ct. 28 (U.S. October 26, 2020). "Public officials sworn to uphold the Constitution may not avoid a Constitutional duty by bowing down to the hypothetical effects of private radical prejudice that they assume to be both widely and deeply held." *Palmore* v. *Sidoti,* 466 U.S. 429 (U.S. April 25, 1984) Quoting *Palmer* v. *Thompson,* 403 U.S. 217 260 – 261 (1971) (White J., Dissenting) "upholding the Constitution undeniably promotes the public interests. It is always in the public interest to prevent the violation of a party's Constitutional rights. The public as a whole has a significant interest to prevent the violation of a party's Constitutional rights. The public as a whole has a significant interest in ensuring protection of first amendment liberties. When a court protects the Constitutional rights of the few, it inures to the benefit of all". *Int'l Refugee Assistants Project* v. *Trump*, 857 F. 3d 544 (4th Cir. 2017)

In this case before you, it was not in the public interests to overthrow the Constitution with "ends of justice" continuances that were based on propaganda.

The oath of office decree, ordered by the Constitution by the people upon judges and codified in the United States statutes 28 U.S.C. § 456 has been violated.

This decree of loyalty to the Constitution is declared publicly at swearing into office ceremonies. There is not any declaratory relief for this Constitutional overthrow with the use of covid-19 administrative internal court operation orders. The lower court has bowed down to the hypothetical effects of private radical prejudices assumed to be both widely and deeply held and has succumbed to the temptation to sidestep the usual Constitutional rules and this is never costless.

Conclusion of finding of facts is that all three prongs are met, (1) the nature of the function performed does not give rise to absolute immunity (2) there is a clear absence to jurisdiction, and (3) a declaratory decree was violated, and declaratory relief is unavailable. The plaintiff has standing on his civil rights claims. 42 U.S.C. § 1983, Biven claims apply, there is mass tort, a Writ of Mandamus stopping the overthrow of the Constitution using the pandemic propaganda is warranted.

Precedents on Court Dicta

This Court in *Cohens* v. *Virginia* 19 U.S. 264, 399, 5 Ed 257 (1821) explained, "it is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision."

The third Circuit in *Official Comm. of Unsecured Creditors of Cybergenics Corp. Ex. Rel.* v. *Chinery*, 380 F. 3d, 548 3d Cir. N.J. May 29, 2003) reasoned, "although the committee is doubtless correct that the Supreme Court's dicta are not binding on us, we do not view it lightly, as we have stated: [W]e should not idly

ignore considered statements the Supreme Court makes in dicta. The Supreme Court uses dicta to control and influence the many issues it cannot decide because of its limited docket, "appellate courts that dismiss these expressions [in dicta] and strike off on their own increase the disparity among tribunals (for other judges are likely to follow the Supreme Courts marching orders) and frustrate the evenhanded administration of justice by giving litigants an outcome other than the one the Supreme Court would be likely to reach were the case heard there." *McDonald* v. *Master Fin. Inc., (In Re McDonald)* 205 F. 3d, 606, 612-13 (3rd Cir. 2000).

The U.S. district court of the Eastern District of Pa. explained in *Griswold v. Coventry First LLC,* Civil Action No. 10-5964 (E.D. Pa. Feb. 18, 2015) "the third circuit has clarified that "litigants should not totally disregard dictum, of course, because it indicates the direction or framework of an opinion writer thought, and thereby serves as a tool for predicting what the court might do when the issue is properly presented." *Chowdhurt* v. *Reading Hospital & Medical Ctr.*, 677 F. 2d 317, 324 (3d Cir. 1982) nonetheless, "dictum unlike holding, does not have the strength of a decision 'forged from actual experience by the hammer and anvil of litigation', a fact to be considered when assessing its utility in the context of an actual controversy. Similarly, appellate courts must be cautious to avoid promulgating unnecessarily broad rules of law." The third circuit has been clear that: "simply labeling a statement in an opinion as a 'holding' does not necessarily make it so. Gratuitous statements in an opinion do not implicate the adjudicative facts of the case's specific holding do not have the bite of precedent, they bind neither

coordinate nor inferior courts in the judicial hierarchy, they are classic obiter dicta; "statement[s] of law in the opinion which could not logically be a major premise of the selected facts of the decision' *U.S.* v. *Warren*, 338 F 3d 258 265 (3d Cir 2003)."

All the above is put together in a quote from *Corgis Ins. Co.*, v. *Law Offices of Carole F. Kafrissen, P.C.*, 186 F. Supp. 2d 567 (E.D. Pa. Feb. 11, 2002) "a case is important for the "what" it decides: for "the what" not for "the way" and not for "the how" ..." It is also footnoted in *Cabeda* v. *AG of the United State*s, 971 F. 3d 165 (3d. Cir. Aug. 18, 2020) that methodological stare decisis is disfavored.

The lower court used obiter methodological stare decisis to dismiss the case without acknowledging the facts and answering the Constitutional question and challenge to Judge Wolfson's administrative internal operation orders. The lower court failed to acknowledge this Court's marching orders to follow the Constitution and not to use an emergency to overthrow the Constitution.

The U.S. Constitution is a Social Contract

Social contract principle says that people live together in society in accordance with an agreement that establishes moral and political rules of behavior. Some people believe that if we live according to a social contract, we can live morally by our own choice and not because a divine being requires it.

Over the centuries, philosophers as far back as Socrates have tried to describe the ideal social contract, and to explain how existing social contracts have evolved. Philosopher Stuart Rachels suggests that morality is the set of rules

governing behavior that rational people accept, on the condition that others accept them too.

Social contracts can be explicit, such as laws, or implicit, such as raising one's hand in class to speak. The U.S. Constitution is often cited as an explicit example of part of America's social contract. It sets out what the government can and cannot do. People who choose to live in America agree to be governed by the moral and political obligations outlined in the Constitution's social contract.

This Court's findings in *In re Duncan*, 139 U.S. 449 (1891) at 461 recognized:

> "By the Constitution, a republican form of government is guaranteed to every state in the union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves; but while the people are thus the source of political power, their governments, national and state, have been limited by written constitutions, and they have themselves thereby set bounds to their own power as against the sudden impulses of mere majorities."

The government and the people have a written social contract, the Constitution, that set bounds that limit power as against sudden impulses. In this case that impulse was to discriminate a government contract, The Constitution, because of the pandemic, a breach of the social contract that this appeal is to correct.

The Oath of Office is to Uphold the Social Contract, the U.S. Constitution

This Court in *Democratic Nat'l Comm.* v. *Wis. State Legis.*, S. Ct. 28 (U.S. Oct. 26, 2020) said, "our oath to uphold the Constitution is tested by hard times, not easy ones. A succumbing to temptation to sidestep the usual Constitutional rules is

never costless. It does damage to the faith in the Constitution as law, to the power of the people to oversee their own government, and to the authority of legislatures, for more we assume their duties the less incentive they have to discharge them."

This Court also said, "Public Officials sworn to uphold the Constitution may not avoid a Constitutional Duty by bowing down to the hypothetical effects of private racial prejudice that they assume to be both widely and deeply held." *Palmore* v. *Sidoti,* 466 U.S. 429 (U.S. April 25, 1984)(Quoting *Palmer* v. *Thompson,* 403 U.S. 217, 260 – 261 (1971) (White J. Descending)

The fourth circuit also addressed the oath of office and the duty to upholding the Constitution, "the difference a court gives the coordinate branches is surely powerful, but even it must yield in certain circumstances, lest the court abdicate its own duties to uphold the Constitution... upholding the Constitution undeniably promotes the public interests. It is always in the public interest to prevent the violation of parties Constitutional Rights... the public as a whole has significant interest in ensuring protection of the first amendment liberties. When a court protects the Constitutional Rights of a few, it inures to the benefit of all." *Int'l refugee Assistance Project* v. *Trump,* 857 F. 3d 544 (4th Cir. Md. May 25, 2017).

The nineth circuit also said, "generally public interest concerns are implicated when a Constitutional Right has been violated because all citizens have a stake in upholding the Constitution." *Preminger* v. *Principi,* 422 F. 3d. 815 (9th Cir. Cal. Aug. 25, 2005)

The American people have a contract with their government–the Constitution of the United States of America. Written in 1787 and amended twenty-seven times, this document is the basis for U.S. government. (National Archives and Records Administration) The oath of office is to enforce the contract between the people and the government, the U.S. Constitution. The defendants have contracts with me, the Constitution, and breached that contract. The covenant of good faith and fair dealing must be incorporated into oath of office and the Constitution.

REASONS TO GRANTING THIS APPEAL

This Area of the Law is Badly in Need of the This Court's Authoritative Voice

This Court's Authoritative Voice in the area of using alleged emergencies to overthrow the Constitution is badly in need. Throughout the covid-19 pandemic many courts and politicians have overthrown Constitutional rights using what some may suppose to be extraordinary emergencies. They went about this illegal business of overthrowing the Constitution with a brazen assurance that the alleged emergency would justify the illegal business of overthrowing the Constitution. The voice of this Court needs to be strictly enforced therefore an Order granting this appeal is needed to show that all lower courts and inferior government officials are to properly fulfill their official duties and correct an abuse of discretion of overthrowing the Constitution. This is exceptional circumstances of peculiar emergency and public importance. It does damage to faith in the written Constitution as law, and to the power of the people to oversee their own government.

This Case is Likely to Produce an Opinion that Will Give Useful Guidance to the Lower Courts

The guidance produced by this case will produce a positive useful guidance to all Constitutional and Covid matters. Overthrowing the Constitution is a serious offence and any type of overthrowing the Constitution, including viewpoint and content discriminations, suppressing public debate, alterations and suppression of facts, fraud on the court, should not be tolerated in cases to fabricate a continuance and to keep people in jail and frustrate litigants. Business of the Courts is a serious business, this case will strengthen this fact and make it harder to overthrow the Constitution and individual rights and enforce time constraints on prosecutions.

There Would Be a Negative National Impact by this Court by Letting the Lower Court's Decision Stand

The courts are backlogged as it is, and the pandemic caused more backlog. This zealous incriminations with usurpations of power are causing more backlogs that will be a negative national impact and have serious consequences.

By letting the lower courts' decision stand, it will send a message that it's okay to disrespect the business of the courts, the Constitution is dead, fraud on the court and usurpation of power is okay, legislation does not matter, delegation of authority does not matter, we are a totalitarian nation. It is a bad message to send at any time and could cause civil unrest that is a negative national impact. The courts below committed an error so important that it must be corrected immediately. They were inconsistent with accepted Supreme Court precedents and made a procedural and technical error that can be demonstrated unequivocally.

CONCLUSION

The Certiorari should be granted or a summary reversal as an alternative remedy.

Respectfully submitted,

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