

21-7742

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

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

MARVEL JONES — PETITIONER  
(Your Name)

vs.

JOHN M. CARTER, ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

MARVEL JONES  
(Your Name)

1700 NORTH VICTORY ROAD  
(Address)

NORFOLK, NE 68702-1209  
(City, State, Zip Code)

402-370-4327  
(Phone Number)

### QUESTION(S) PRESENTED

1. WHETHER A DISMISSAL WITHOUT PREJUDICE RESULTED IN A NON-FINAL DISPOSITION AGAINST THE BACKDROP DOCTRINE OF A RES JUDICATA BAR.
2. WHETHER THIS CASE PRESENTS THE ANTECEDENT OF WHAT A COMPLAINT MUST PLEAD IN ORDER TO STATE A CLAIM UNDER FEDERAL RULE OF CIVIL PROCEDURE 8(A)(2).
3. WHETHER A DISMISSAL WITHOUT PREJUDICE UNDER STATE STATUTES SUSPENDING LIMITATIONS PERIODS FOR THOSE UNDER LEGAL DISABILITY, PRECLUDING A RES JUDICATA BAR.
4. WHETHER A COMPLAINT IS SUFFICIENT TO SURVIVE A MOTION TO DISMISS IN THIS CASE.
5. WHETHER UNDER FEDERAL RULE OF CIVIL PROCEDURE 8(A)(2), A COMPLAINT MUST CONTAIN A "SHORT AND PLAIN STATEMENT OF THE CLAIM SHOWING THAT THE PLEADER IS ENTITLED TO RELIEF.
6. WHETHER UNDER FEDERAL RULE OF CIVIL PROCEDURE 41(A)(2) PERMIT A PARTY TO BRING THE SAME CAUSE OF ACTION AGAINST THE SAME DEFENDANTS ON A MOTION OF DISMISSAL WITHOUT PREJUDICE.
7. WHETHER SUMMARY JUDGEMENT IS TO BE GRANTED ONLY IF THE RECORD BEFORE THE COURT SHOWS "THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT," UNDER FEDERAL RULE OF CIVIL PROCEDURE 56(C).

### 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

MANVEL JONES, NO. 8:19-LV-288, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA,  
JUDGMENT ENTERED JULY 30, 2019.

MANVEL JONES, NO. 8:20-LV-00062, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA,  
JUDGMENT ENTERED SEP. 1, 2020.

MANVEL JONES, NO. 8:20-LV-00062, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA,  
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6.

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was DECEMBER 1, 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: FEBRUARY 1, 2022, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

THIS CASE INVOLVES AMENDMENT IV TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES:  
THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED.

2.

THIS CASE INVOLVES AMENDMENT V TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES:  
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 OFFENSE 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.

3.

THIS CASE INVOLVES AMENDMENT VI TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES:  
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.

4.

THIS CASE INVOLVES AMENDMENT XIV TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES:  
SECTION 1. ALL PERSON 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.

SECTION 5. THE CONGRESS SHALL HAVE POWER TO ENFORCE, BY APPROPRIATE LEGISLATION, THE PROVISIONS OF THE ARTICLE.

THE AMENDMENTS IS ENFORCED BY TITLE 42, SECTION 1983, UNITED STATES CODE:

EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE, ORDINANCE, REGULATION, CUSTOM, OR USAGE, OF ANY STATE OR TERRITORY OR THE DISTRICT OF COLUMBIA, SUBJECTS, OR CAUSES TO BE SUBJECTED, ANY CITIZEN OF THE UNITED STATES OR OTHER PERSON WITHIN THE JURISDICTION THEREOF TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAWS, SHALL BE LIABLE

3.

### STATEMENT OF THE CASE

THE PETITIONER'S COMPLAINT ALLEGED THAT HE WAS FALSELY CHARGED WITH FIRST DEGREE SEXUAL ASSAULT OF A CHILD UNDER FALSE ARREST, WARRANTLESS ARREST WITHOUT PROBABLE CAUSE, ABUSE OF THE PROCESS, MALICIOUS MISUSE OF THE LEGAL PROCESS, FALSE IMPRISONMENT, MALICIOUS PROSECUTION, NEGLIGENCE, GROSS NEGLIGENCE, CIVIL CONSPIRACY, CRIMINAL CONSPIRACY, WRONGFULLY DETENTION WITHOUT PROBABLE CAUSE. IT FURTHER ALLEGED THAT PETITIONER SUBMITTED TO POLICE OFFICIALS TO TAKE A POLYGRAPH TEST, INSTEAD WERE GIVEN FIVE PRE-TEST, FIVE POLYGRAPH TEST, AND FIVE POST-TEST QUESTIONS WITHOUT MINOR WARNING DOING A CUSTODIAL INTERROGATION RESULTED IN A COERCED CONFESSION. AT THE POLICE DEPARTMENT, OFFICIAL TOOK A PICTURE OF PETITIONER WITHOUT HIS CONSENT, AND TOOK PETITIONER BASEBALL CAP AND SHOULDER BAG AND PUT THEM IN A DIFFERENT ROOM, AND TOOK PETITIONER DOWN TO THE BASEMENT OF THE POLICE STATION. THE CRIMINAL INSTRUMENTS THAT WARRANTED PETITIONER'S ARREST HAS NEVER BEEN FILED, AND THE COERCED CONFESSION OBTAINED USING LEADING QUESTIONS THAT PROVIDED DETAILS ABOUT THE CRIME.

THE DISTRICT COURT GRANTED SUMMARY JUDGMENT TO THE DEFENDANTS ON THE GROUND OF RES JUDICATA, THE DISTRICT COURT DISMISSED THE FEDERAL CLAIMS WITHOUT PREJUDICE FOR STATUTE OF LIMITATION AND AS BARRED BY HECK V. HUMPHREY, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 [1994]. THE DISTRICT COURT DECLINED TO EXERCISE SUPPLEMENTAL JURISDICTION OVER PETITIONER'S STATE LAW CLAIMS AND DISMISSED THE ENTIRE ACTION WITHOUT PREJUDICE TO SHOW PETITIONER WITHIN STATUTES OF LIMITATION. RULE 41(C)(2) PERMITS A TRIAL COURT TO GRANT A DISMISSAL WITHOUT PREJUDICE UPON SUCH TERM AND CONDITIONS AS THE COURT DEEMS PROPER. THE COURT OF APPEALS AFFIRMED THE GRANT OF SUMMARY JUDGMENT FOR THE REASONS STATED BY THE DISTRICT COURT.

## REASONS FOR GRANTING THE PETITION

### A. CONFLICTS WITH THIS COURT'S DECISIONS OF OTHER COURTS:

THE HOLDING OF THIS COURT'S DECISIONS BELOW HAS EXPLAINED THAT THE JUDGMENT BAR WAS DRAFTED AGAINST THE BACKDROP DOCTRINE OF RES JUDICATA, SEE *SEMTEK INT'L INC. V. LOCKHEED MARTIN CORP.*, 531 U.S. 497, 502, 121 S. Ct. 1021, 149 L. Ed. 2d 32 [2001]; *DAVIS V. YOUNG BLOOD*, 1929 F.2d 692 [4th Cir. 1997]; *DOHERTY V. FED. DEPOSIT INS. CORP.*, 932 F.3d 978 [7th Cir. 2019]; IN ADDITION, THIS COURT HAS HELD THAT "TO TRIGGER THE DOCTRINE OF RES JUDICATA OR CLAIM PRECLUSION" A JUDGMENT MUST BE ON THE MERITS. *CONE V. WEST VIRGINIA PULP PAPER CO.*, 330 U.S. 212, 67 S. Ct. 752, 91 L. Ed. 849 [1947]; *ACCORD, PETITIA V. 3M CO.* [IN RE BAIN HUGGER FORCED AIR WARMING DEVICES PRODS. LIAB. LITIG.] 999 F.3d 534 [8th Cir. 2021]; *KNOX BY AND THROUGH HAGBERG V. LEOENLE LABORATORIES, A DIV. OF AMERICAN CYANAMID CO.*, 4 F.3d 875 [10th Cir. 1993].

ONCE A CASE IS DECIDED, THE COURTS PREFER THAT IT REMAIN DECIDED. THE DOCTRINES OF RES JUDICATA "CLAIM PRECLUSION AND COLLATERAL ESTOPPEL" "ISSUE PRECLUSION" ARE DESIGNED TO ACCOMPLISH THIS PURPOSE. RULES CONCERNING RES JUDICATA AND COLLATERAL ESTOPPEL VARY FROM STATE TO STATE. FEDERAL COURTS APPLY STATE COURT RULES OF PRECLUSION TO STATE COURT DECISIONS UNDER THE "FULL FAITH AND CREDIT" DOCTRINE. IF THE PRIOR DECISION IS FEDERAL, THEN FEDERAL PRECLUSION RULES WILL APPLY. IN THIS CASE, PLAINTIFF DISCUSS THE GENERAL OUTLINES OF RES JUDICATA AND COLLATERAL ESTOPPEL WITHOUT MUCH EXPLANATION OF STATE-BY-STATE VARIATIONS. RES JUDICATA LATIN FOR "THING DECIDED" GENERALLY MEANS THAT PLAINTIFF CANNOT BRING HIS CIVIL ACTION IF THERE HAS ALREADY BEEN A JUDGMENT ON THE MERITS OF THE SAME CAUSE OF ACTION BY A COURT OF COMPETENT JURISDICTION IN A PRIOR SUIT INVOLVING THE SAME PARTIES OR THEIR PRIVIES.

A "JUDGMENT ON THE MERITS" IS ONE THAT DECIDES WHETHER OR NOT PLAINTIFF'S LEGAL RIGHTS WERE VIOLATED BY THE DEFENDANTS. A JUDGMENT IS GENERALLY NOT ON THE MERITS IF THE COURT HOLDS THAT IT LACKS JURISDICTION, THAT THE CASE IS MOOT, THAT THE PLAINTIFF FAILED TO EXHAUST ADMINISTRATIVE REMEDIES. IF AN ISSUE WAS PRESENTED IN AN EARLIER CASE BUT NOT ACTUALLY DECIDED, YOU GENERALLY WILL NOT BE COLLATERALLY ESTOPPED. FOR ESTOPPEL TO APPLY, SOME COURTS HOLD IT MUST BE PROVEN THAT THE ISSUE WAS ESSENTIAL TO THE DECISION IN THE EARLIER CASE. IF IT IS IMPOSSIBLE TO TELL WHAT WAS LITIGATED AND DECIDED IN THE PRIOR ACTION, COLLATERAL ESTOPPEL CANNOT—I.E., APPLY. THE BURDEN OF PROVING COLLATERAL ESTOPPEL—I.E., PROVING WHAT WAS DECIDED IN THE PRIOR ACTION—LIES WITH THE PARTY WHO WOULD BENEFIT FROM THE PRECLUSION. FOR COLLATERAL ESTOPPEL TO APPLY, THE PARTY BEING ESTOPPED MUST HAVE HAD A FULL AND FAIR OPPORTUNITY TO LITIGATE IN THE PRIOR CASE. *SEMTEK INT'L INC. V. LOCKHEED MARTIN CORP.*, 531 U.S. 497, 502, 121 S. Ct. 1021, 149 L. Ed. 2d 32 [2001] THIS COURT HAS EXPLAINED THAT THE JUDGMENT BAR WAS DRAFTED AGAINST THE BACKDROP DOCTRINE OF RES JUDICATA, SEE *IBID.*, TO "TRIGGER THE DOCTRINE OF RES JUDICATA OR CLAIM PRECLUSION" A JUDGMENT MUST BE ON THE MERITS. UNDER THIS DOCTRINE AS IT EXISTED IN 1946, A JUDGMENT IS "ON THE MERITS" IF THE UNDERLYING DECISION "ACTUALLY PASSED DIRECTLY ON THE SUBSTANCE OF A PARTICULAR CLAIM BEFORE THE COURT," *Id.*, AT 501-502, 121 S. Ct. 1021 [CLEARED UP]. PLAINTIFF ADOPTED "THE SECOND RESTATEMENT OF TORTS SEC. 26 CMT. b. A SUIT WHICH WAS DISMISSED WITHOUT PREJUDICE 'DROPPED' SHOULD NOT SUPPORT PRECLUSION."

PRECLUSION IS A DRASTIC STEP, WHICH GRANTS SUMMARY JUDGMENT AGAINST A PARTY WHOSE ALLEGAT

CONTINUE FROM PAGE 3. TO THE PARTY INJURED IN AN ACTION AT LAW, SUIT IN EQUITY, OR OTHER PROPER PROCEEDING FOR REDRESS, EXCEPT THAT IN ANY ACTION BROUGHT AGAINST A JUDICIAL OFFICER FOR AN ACT OR OMISSION TAKEN IN SUCH OFFICER'S JUDICIAL CAPACITY, INJUNCTIVE RELIEF SHALL NOT BE GRANTED UNLESS A DECLAMATORY DECREE WAS VIOLATED OR DECLAMATORY RELIEF WAS UNAVAILABLE. FOR THE PURPOSES OF THIS SECTION, ANY ACT OF CONGRESS APPLICABLE EXCLUSIVELY TO THE DISTRICT OF COLUMBIA SHALL BE CONSIDERED TO BE A STATUTE OF THE DISTRICT OF COLUMBIA.

CONTINUE FROM PAGE 5. FINDINGS ARE TO BE TAKEN AS TRUE. SEE *ANDERSON V. LIBERTY LOBBY*, 477 U.S. 242, 255, 106 S. Ct. 2505, 2513-14, 91 L. Ed. 2d 202 [1986]. EVIDENCE OF NON-MOVANT TO BE TAKEN AS TRUE ON SUMMARY JUDGMENT. FURTHER, AS ONE COMMENTATOR HAS ELABORATELY STATED, "THE FIRST LESSON ONE MUST LEARN IN THE SUBJECT OF RES JUDICATA IS THAT JUDICIAL FINDINGS MUST NOT BE CONFUSED WITH ABSOLUTE TRUTH." SEE *GRAINGER LUNNIE*, MUTUALITY OF COLLATERAL ESTOPPEL: LIMITS OF THE BERNHARD DOCTRINE, 9 STAN. L. REV. 281, 315 [1957]. PLAINTIFF CANNOT AGREE WITH THE LOWER COURTS THAT A SUMMARY JUDGMENT ORDER INVARIABLY CONSTITUTES AN ADJUDICATION ON THE MERITS. SUCH A RESULT WOULD EXALT FORM OVER SUBSTANCE. SUMMARY JUDGMENTS, OF COURSE, HAVE RES JUDICATA EFFECT IF THEY "REST ON THE LACK OF ANY GENUINE ISSUE OF MATERIAL FACT GOING TO THE MERITS OF A CLAIM OR DEFENSE." 18 WRIGHT, MILLER-COOPER SEC. 4444 AT 391 WHERE, HOWEVER, SUMMARY JUDGMENT "IS NOT RENDERED AFTER AN ASSESSMENT OF THE RELATIVE MERITS OF A CLAIM BUT RATHER IS PREDICATED UPON, FOR EXAMPLE, A PROCEDURAL OMISSION, THEN RES JUDICATA IS NOT APPLICABLE AND WILL NOT PREVENT RECONSIDERATION." *RUFFIN V. ITT CONTINENTAL BAKING CO.*, 636 F. SUPP. 857, 858 [N.D. MISS. 1986]. SEE ALSO, 18 WRIGHT, MILLER-COOPER SEC. 4444 AT 392 [DECISION SHOULD NOT BE GIVEN INCREASED PRECLUSIVE EFFECT MERELY BECAUSE LABELLED "SUMMARY JUDGMENT"].

THE PRIMARY MEANING OF "DISMISSAL WITHOUT PREJUDICE," IS THAT DISMISSAL WITHOUT BARRING THE PLAINTIFF FROM RETURNING LATER, TO THE SAME COURT, WITH THE SAME



COURT, WITH THE SAME UNDERLYING CLAIM, THAT WILL ALSO ORDINARILY "THOUGH NOT ALWAYS" HAVE THE CONSEQUENCE OF NOT BANNING THE CLAIM FROM OTHER COURTS, BUT ITS PRIMARY MEANING RELATES TO THE DISMISSING COURT ITSELF. THUS, BLACK'S LAW DICTIONARY [7TH ED. 1999] DEFINES "DISMISSED WITHOUT PREJUDICE" AS "REMOVED FROM THE COURT'S DOCKET IN SUCH A WAY THAT PLAINTIFF MAY REFILE THE SAME SUIT ON THE SAME CLAIM." *id.*, AT 482. AND DEFINES "DISMISSAL WITHOUT PREJUDICE" AS "A DISMISSAL THAT DOES NOT BAN THE PLAINTIFF FROM REFILEING THE LAWSUIT WITHIN THE APPLICABLE LIMITATIONS PERIOD." *ibid.* *SIMMONS V. BUESCHEN*, 979 F. 2d 354 [8TH CIR. 1992] THE DISTRICT COURT'S ORDER DISMISSING WITHOUT PREJUDICE HIS 42 U.S.C. § 1983 COMPLAINT. IN ORDER TO SURVIVE A MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, THE COMPLAINT MUST CONTAIN A "SHORT AND PLAIN STATEMENT OF THE CLAIM SHOWING THAT THE PLEADER IS ENTITLED TO RELIEF." *ASHCROFT V. IQBAL*, 556 U.S. 662, 677-78, 129 S. CT. 1937, 173 L. ED. 868 [2009] CITING FED. R. CIV. P. 8 (A)(2). CONCLUSIONS OR "NAKED ASSERTIONS" ARE NOT ENOUGH. *id.* AT 678, 129 S. CT. 1937 [CLEANED UP]. FACTUAL ALLEGATIONS MUST CROSS "THE LINE BETWEEN POSSIBILITY AND PLAUSIBILITY OF ENTITLEMENT TO RELIEF." *BELL ATL CORP. V. TWOMBLY*, 550 U.S. 544, 557, 127 S. CT. 1955, 167 L. ED. 2d 929 [2007] [CLEANED UP]. SEE *TWOMBLY*, 550 U.S. AT 555, 127 S. CT. 1955 "WHILE A COMPLAINT ATTACKED BY A RULE 12(b)(6) MOTION, DOES NOT NEED DETAILED FACTUAL ALLEGATIONS, A PLAINTIFF'S OBLIGATION TO PROVIDE THE GROUNDS OF HIS ENTITLEMENT TO RELIEF REQUIRES MORE THAN LABELS AND CONCLUSIONS. THE LOWER COURTS INCORRECTLY SUMMARILY AFFIRMED THE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON RES JUDICATA GROUNDS."

A COURT REVIEWING THE SUFFICIENCY OF A COMPLAINT PRESUMES ALL OF PLAINTIFF'S FACTUAL ALLEGATIONS ARE TRUE AND CONSTRUCTS THEM IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF. *HALL V. BELLMON*, 935 F. 2d 1106, 1109 [10TH CIR. 1991]. TO SURVIVE A MOTION TO DISMISS, A COMPLAINT MUST CONTAIN SUFFICIENT FACTUAL MATTER, ACCEPTED AS TRUE, TO 'STATE A CLAIM TO RELIEF THAT IS PLAUSIBILITY OF ENTITLEMENT TO RELIEF' *BELL ATL CORP. V. TWOMBLY*, 550 U.S. 544, 557, 127 S. CT. 1955, 167 L. ED. 2d 929 [2007] PLAUSIBILITY, IN THE CONTEXT OF A RULE 12(b)(6) MOTION TO DISMISS, MEANS THAT THE PLAINTIFF PLEADED FACTS WHICH ALLOW "THE COURT TO DRAW THE REASONABLE INFERENCE THAT THE DEFENDANT IS LIABLE FOR THE MISCONDUCT

ALLEGED." *Id.* THE TOTAL EVALUATION REQUIRES TWO PRONGS OF ANALYSIS. FIRST, THE COURT MUST IDENTIFY "THE ALLEGATIONS IN THE COMPLAINT THAT ARE NOT ENTITLED TO THE ASSUMPTION OF TRUTH," *i.e.*, THOSE ALLEGATIONS WHICH ARE LEGAL CONCLUSIONS, BARE ASSERTIONS, OR MERELY CONCLUSORY. *Id.* AT 1679-81. SECOND, THE COURT CONSIDERS THE FACTUAL ALLEGATIONS "TO DETERMINE IF THEY PLAUSIBLY SUGGEST AN ENTITLEMENT TO RELIEF." *Id.* AT 1681. IF THE ALLEGATIONS STATE A PLAUSIBLE CLAIM FOR RELIEF, THE CLAIM SURVIVES THE MOTION TO DISMISS. *Id.* AT 1679.

THE DOCTRINE OF RES JUDICATA, OR CLAIM PRECLUSION, WILL PREVENT A PARTY FROM LITIGATING A LEGAL CLAIM THAT WAS OR COULD HAVE BEEN THE SUBJECT OF A PREVIOUSLY ISSUED FINAL JUDGMENT. SEE *LENOX MACLAREN SURGICAL CORP. V. MEDTRONIC, INC.*, 847 F.3d 1221, 1239 [10th CIR. 2017] CLAIM PRECLUSION HAS THREE ELEMENTS: "(1) A FINAL JUDGMENT ON THE MERITS IN AN EARLIER ACTION; (2) IDENTITY OF PARTIES OR PRIVIES IN THE TWO SUITS; AND (3) IDENTITY OF THE CAUSE OF ACTION IN BOTH SUITS." *Id.* IF ALL THREE ELEMENTS ARE MET, CLAIM PRECLUSION IS APPROPRIATE. "UNLESS THE PARTY SEEKING TO AVOID PRECLUSION DID NOT HAVE A 'FULL AND FAIR OPPORTUNITY' TO LITIGATE THE CLAIM IN A PRIOR SUIT." SEE *BROWNBACK V. KING*, 141 S. CT. 740, 748 [2021] A RULING UNDER RULE 12(b)(6) CONCERNS THE MERITS.

### B. IMPORTANCE OF THE QUESTIONS PRESENTED:

THIS CASE PRESENTS A FUNDAMENTAL QUESTION OF THE INTERPRETATION OF THIS COURT'S DECISION IN *ANDERSON V. LIBERTY LOBBY, INC.*, 477 U.S. 242, 106 S. CT. 2505, 91 L. ED. 2d 202 [1986]. THE QUESTIONS PRESENTED IS OF GREAT PUBLIC IMPORTANCE BECAUSE IT AFFECTS EVERY PERSON WHOM MAY BE INJURED IN AN ACTION AT LAW, SUIT IN EQUITY, OR OTHER PROPER PROCEEDING FOR REDRESS. IN VIEW OF THE LARGE AMOUNT OF LITIGATION OVER SUMMARY JUDGMENT PROCEEDINGS, GUIDANCE ON THE QUESTIONS IS ALSO OF GREAT IMPORTANCE TO THE PUBLIC, BECAUSE IT AFFECTS THEIR ABILITY TO RECEIVE FAIR DECISIONS IN PROCEEDINGS THAT MAY RESULT IN A CONTRARY DECISION.

THE ISSUE'S IMPORTANCE IS ENHANCED BY THE FACT THAT THE LOWER COURTS IN THIS

CASE HAVE SERIOUSLY MISINTERPRETED ANDERSON. THIS COURT HELD IN ANDERSON A "GENUINE" ISSUE EXISTS "IF EVIDENCE IS SUCH THAT A REASONABLE JURY COULD RETURN A VERDICT FOR THE NONMOVING PARTY." THE COURT REITERATED THIS POINT IN MATUSHITA ELECTRIC INDUSTRIAL CO., LTD. V. ZENITH RADIO CORP., 475 U.S. 574, 587, 106 S. CT. 1348 [1986] AND ADDED THAT "IN DETERMINING WHETHER THERE IS A GENUINE ISSUE OF MATERIAL FACT, THE COURT MUST VIEW ALL FACTS AND MAKE ALL REASONABLE INFERENCE IN FAVOR OF THE NONMOVING PARTY."

SUMMARY JUDGMENT IS A PROCEEDURE DESIGNED TO DISPOSE OF CASES WITHOUT TRIAL WHERE THERE ARE NO FACTUAL DISPUTES THAT REQUIRE A TRIAL. ONE COURT HAS CALLED IT "THE 'PUT UP OR SHUT UP' MOMENT IN A LAWSUIT, WHEN A PARTY MUST SHOW WHAT EVIDENCE IT HAS THAT WOULD CONVINCE A TRIER OF FACT TO ACCEPT ITS VERSION OF THE EVENTS. SEE CELOTEX CORP. V. CATRETT, 477 U.S. 317, 323, 106 S. CT. 2548, 91 L. ED. 2D 265 [1986]. SEE ALSO NEITZKE V. WILLIAMS, 490 U.S. 319, 325, 109 S. CT. 1827, 104 L. ED. 2D 338 [1989] A CLAIM LACKS AN ARGUABLE BASIS IN LAW WHEN IT IS "BASED ON AN INDISPUTABLY MERITLESS LEGAL THEORY." ID. AT 327, 109 S. CT. 1827.

SUMMARY JUDGMENT IS TO BE GRANTED IF THE RECORD BEFORE THE COURT SHOWS "THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT THE MOVANT IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW. IF THE COURT FINDS THAT THERE IS A GENUINE ISSUE OF MATERIAL FACT, THEN THERE WILL BE A TRIAL TO DETERMINE THE FACTS. SCHEUER V. RHODES, 416 U.S. 232, 236, 94 S. CT. 1683, 40 L. ED. 2D 90 [1974]; AMAKER V. FOLEY, 274 F.3D 677, 681 [2D CIR. 2001].

THE LOWER COURTS IS TO: SUPPOSED TO DECIDE DISPUTED FACTS OR ASSESS CREDIBILITY ON A SUMMARY JUDGMENT MOTION. THUS, A COURT MAY NOT GRANT SUMMARY JUDGMENT BECAUSE IT THINKS THE PLAINTIFF'S ASSERTIONS ABOUT AN INJURY ARE INCONSISTENT PURSUANT TO THE EVIDENCE. COURTS HAVE HELD THAT A LITIGANT CANNOT CREATE A FACTUAL DISPUTE BY CONTRADICTING HIS OWN EARLIER SWORN STATEMENT, BUT THEY HAVE CAUTIONED THAT THIS RULE MUST BE LIMITED TO CASES OF CLEAR CONTRADICTION AND THOSE WHERE IT APPEARS THAT A SUMMARY JUDGMENT AFFIDAVIT IS INTENDED TO CREATE A SHAM FACTUAL ISSUE. WILSON V. WILLIAMS, 997 F.2D 348, 350-51 [7TH CIR. 1992].

C. UNDER FEDERAL RULES OF CIVIL PROCEDURE 8(A)(2), A COMPLAINT MUST CONTAIN "A SHORT AND PLAIN STATEMENT OF THE CLAIM SHOWING THAT THE PLEADER IS ENTITLED TO RELIEF." A COMPLAINT MUST CONTAIN SUFFICIENT FACTUAL MATTER, ACCEPTED AS TRUE, TO STATE A CLAIM TO RELIEF THAT IS PLAUSIBLE ON ITS FACE. U.S. EX REL, RAYMON V. NAT'L RURAL UTILITIES CO-OP. FIN. CORP., 1690 F.3d 951, 955 [8TH CIR. 2012]. A CLAIM HAS FACIAL PLAUSIBILITY WHEN THE PLAINTIFF PLEADS FACTUAL CONTENT THAT ALLOWS THE COURT TO DRAW THE REASONABLE INFERENCE THAT THE DEFENDANT IS LIABLE FOR THE MISCONDUCT ALLEGED. *Iqbal*, 556 U.S. AT 678. IN APPLYING THESE STANDARDS, THE COURT MUST "ACCEPT AS TRUE THE FACTUAL ALLEGATIONS CONTAINED IN THE COMPLAINT AND DRAW ALL REASONABLE INFERENCE IN FAVOR OF THE NONMOVING PARTY." SEE *MATHEWS V. WRIGHT*, 636 F.3d 396, 397 [8TH CIR. 2011] A WELL-PLEADED COMPLAINT MAY PROCEED EVEN IF IT STRIKES A SAVVY JUDGE THAT ACTUAL PROOF OF THOSE FACTS IS IMPROBABLE, AND THAT A RECOVERY IS VERY REMOTE AND UNLIKELY. *Twombly*, 550 U.S. AT 556.

D. FALSE ARREST AND FALSE IMPRISONMENT STATE LAW CLAIMS. A SECTION 1983 PROVIDES A FEDERAL CAUSE OF ACTION. THERE IS, HOWEVER, A REFINEMENT TO BE CONSIDERED, ARISING FROM THE COMMON LAW'S DISTINCTIVE TREATMENT OF THE TORTS OF FALSE ARREST AND FALSE IMPRISONMENT "THE CAUSE'S OF ACTION THAT PROVIDE THE CLOSEST ANALOGY TO PLAINTIFF'S CLAIMS THE TYPE CONSIDERED HERE. *MANUEL V. CITY OF JOLIET, ILL.*, 131 S. 2d 911, 197 L.ED. 2d 319, 85 USLW 4130 [2017]. SEE I.O. DOODS, LAW OF TORTS § 47, P. 88 [2012] FALSE ARREST AND FALSE IMPRISONMENT OVERLAP; THE FORMER IS A SPECIES OF THE LATTER. "EVERY CONFINEMENT OF THE PERSON IS AN IMPRISONMENT, WHETHER IT BE IN A COMMON PRISON OR IN A PRIVATE HOUSE, OR IN THE STOCKS, OR EVEN BY FORCIBLY DETAINING ONE IN THE PUBLIC STREETS; AND WHEN A MAN IS LAWFULLY IN A HOUSE, IT IS IMPRISONMENT TO PREVENT HIM FROM LEAVING THE ROOM IN WHICH HE IS." M. NEVELL LAW OF MALICIOUS PROSECUTION, FALSE IMPRISONMENT, AND ABUSE OF LEGAL PROCESS § 2, P. 57 [1892] SEE ALSO T.S. SPEISER, C. KRAUSE, AND A. GANS, AMERICAN LAW OF TORTS § 27:2, PP. 940-942 [1990]. PLAINTIFF ASK THIS COURT TO REFER TO THE TWO TORTS TOGETHER

HER AS FALSE IMPRISONMENT. THAT TORT PROVIDES THE PROPER ANALOGY TO THIS CAUSE OF ACTION AGAINST THE DEFENDANTS FOR THE FOLLOWING REASON, 'THIS SORT OF UNLAWFUL DETENTION REMEDIABLE BY THIS TORT OF FALSE IMPRISONMENT IS DETENTION WITHOUT LEGAL PROCESS, SEE W. KEETON, D. DOODS, R. KEETON, AND D. DWEN, PROSSER AND KEETON ON LAW OF TORTS §11, P. 54, §119, PP. 886-886 [5TH ED. 1984]; 7 SPEISER, SUPRA, §27:2, AT 943-944, AND THE ALLEGATIONS BEFORE THIS COURT FROM PLAINTIFF'S DETENTION OF PLAINTIFF WITHOUT LEGAL PROCESS BACK IN AUGUST 30, 1996. THE POLICE OFFICER DIDN'T HAVE A WARRANT FOR PLAINTIFF ARREST. WILSON V. LAWRENCE COUNTY, MO., 184 F.3D 757, 761 [8TH CIR. 1998] DISTRICT COURT SHOULD HAVE EXERCISED JURISDICTION OVER STATE LAW CLAIM OF FALSE IMPRISONMENT, OVIATT BY AND THROUGH WAUGH V. PEARLE, 954 F.2d 1470, 1479-80 [9TH CIR. 1992] SAME.

THE FOURTH AMENDMENT PROTECTS "THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS AGAINST UNREASONABLE SEIZURES." PLAINTIFF'S COMPLAINT PS. 3-5, SEEKS JUST THAT PROTECTION. GOVERNMENT OFFICIALS, IT RECOUNTS, DETAINED WHICH IS TO SAY "SEIZED" PLAINTIFF FOR 22 1/2 YEARS FOLLOWING PLAINTIFF ARREST. BREN-OLIN V. CALIFORNIA, 551 U.S. 249, 254, 121 S. CT. 2400, 168 L. ED. 2d 139 [2007] A PERSON IS SEIZED WHENEVER OFFICIALS "RESTRAIN HIS FREEDOM OF MOVEMENT" SUCH THAT HE IS "NOT FREE TO LEAVE" AND PLAINTIFF DETENTION IS "UNREASONABLE" PLAINTIFF COMPLAINT CONTINUES, BECAUSE IT WAS BASED SOLELY ON FALSE ARREST. RATHER THAN SUPPORTED BY PROBABLE CAUSE. BAILEY V. UNITED STATES, 568 U.S. 186, 192, 122 S. CT. 1031, 185 L. ED. 2d 19 [2013]; BROWER V. COUNTY OF INDIANAPOLIS, 489 U.S. 592, 596, 109 S. CT. 1278, 1281, 103 L. ED. 2d 628 [1989]; TENNY V. OHIO, 392 U.S. 1, 19, 88 S. CT. 1868, 1878, 20 L. ED. 2d 889 [1968]; SEE ALSO CALIFORNIA V. HODARI, 499 U.S. 621, 626, 111 S. CT. 1547, 112 L. ED. 2d 690 [1991] HOLDING THAT A SHOW OF AUTHORITY BY A GOVERNMENT ACTION DOES NOT CONSTITUTE A SEIZURE UNLESS THE SUBJECT YIELDS OR SUBMITS TO IT; SEE ALSO MANUEL V. CITY OF JOLIET, ILL. 137 S. CT. 911, 197 L. ED. 2d 312, 85 USLW 4130 [2017] THE SUPREME COURT, JUSTICE KAGAN, HELD THAT THE FOURTH AMENDMENT GOVERNS A CLAIM FOR UNLAWFUL PRETRIAL DETENTION EVEN BEYOND THE START OF LEGAL PROCESS. "THE GENERAL RULE IS THAT FOURTH

AMENDMENT SEIZURES ARE 'REASONABLE' ONLY IF BASED ON PROBABLE CAUSE TO BELIEVE THAT THE INDIVIDUAL HAS COMMITTED A CRIME." BY THEIR RESPECTIVE TERMS, THEN, PLAINTIFF'S CLAIMS FITS THE FOURTH AMENDMENT, AND THE FOURTH AMENDMENT FITS PLAINTIFF'S CLAIMS AS HAND IN GLOVE.

E. MALICIOUS PROSECUTION AND ABUSE OF PROCESS, TO MAINTAIN A §1983 CLAIM FOR MALICIOUS PROSECUTION UNDER THE FOURTH AMENDMENT, THE DEPRIVATION OF "LIBERTY" THE "SEIZURE" MUST HAVE BEEN EFFECTED "PURSUANT TO LEGAL PROCESS," HECK V. HUMPHREY, 512 U.S. 477, 114 S. CT. 2364, 2371, 129 L. ED. 2D 383 [1994]. THE ESSENCE OF MALICIOUS PROSECUTION IS THE PERVERSION OF PROPER LEGAL PROCEDURES. ORDINARILY, THIS "LEGAL PROCESS" WILL BE EITHER IN THE FORM OF AN ARREST WARRANT OR CRIMINAL CHARGING DOCUMENT, IN WHICH CASE THE ARREST ITSELF MAY CONSTITUTE THE SEIZURE, "WHEN AN UNLAWFUL ARREST HAS BEEN EFFECTED BY WARRANTLESS ARREST AND A UNFILED CRIMINAL CHARGING DOCUMENT, AN APPROPRIATE FORM OF ACTION IS MALICIOUS PROSECUTION." SEE RIVERA-GARCIA V. ROMAN-CAMERO, 938 F. SUPP. 2D 189 [D. PUERTO RICO, 2013] TO MAINTAIN A CLAIM THAT MALICIOUS PROSECUTION VIOLATED THE FOURTH AMENDMENT, A PLAINTIFF MUST ESTABLISH THAT HE SUFFERED A DEPRIVATION OF LIBERTY PURSUANT TO LEGAL PROCESS, SUCH AS UNDER AN ARREST WARRANT OR CRIMINAL CHARGING DOCUMENT; SINGER V. FULTON COUNTY SHERIFF, 63 F.3D 110 [1995] SAME; NIEVES V. MCSWENEY, 241 F.3D 46 [1ST CIR. 2001] SAME.

THE FOURTH AMENDMENT RIGHT IMPLICATED IN A MALICIOUS PROSECUTION ACTION IS THE RIGHT TO BE FREE OF UNREASONABLE SEIZURE OF THE PERSON, THE RIGHT TO BE FREE OF UNREASONABLE OR UNWARRANTED RESTRAINTS ON PERSONAL LIBERTY. A PLAINTIFF ASSERTING A FOURTH AMENDMENT MALICIOUS PROSECUTION CLAIM UNDER §1983 MUST THEREFORE SHOW SOME DEPRIVATION OF LIBERTY CONSISTENT WITH THE CONCEPT OF "SEIZURE." THIS REQUIREMENT IS NECESSARY TO ENSURE THAT THE §1983 PLAINTIFF HAS SUFFERED A HARM OF CONSTITUTIONAL PROPORTIONS, A HARM COGNIZABLE UNDER §1983. THE SUPREME COURT HAS SAID THAT THE ACCUSED IS NOT ENTITLED TO JUDICIAL OVERSIGHT OR REVIEW OF THE DE-

CLERK TO PROSECUTE. "SEE ALSO ALBUQUERQUE V. OLIVER, 510 U.S. 266, 114 S. CT. 807, 197 L. ED. 2D 144 (1994) CITING GERTSIN V. PUGH, 490 U.S. 103, 118-119, 95 S. CT. 854, 865-866, 43 L. ED. 2D 54 (1975), THAT PROSECUTEMENT IS CONSISTENT WITH THE PRINCIPLE THAT "THE ABSTRACT VALUE OF A CONSTITUTIONAL RIGHT MAY NOT FORM THE BASIS FOR 1983 DAMAGES." SEE PLAINTIFFS' EX. 9, FORMER CRIMINAL CHARGING DOCUMENT THAT WARRANTED PLAINTIFF'S ARREST, ALONG WITH THE COERCED CONFESSION.

THE PLAINTIFF NONETHELESS DENIES SUPPORT FOR HIS ARGUMENT FROM A PROSECUTORIAL ANOMALY. PLAINTIFF POINTS TO THE ANSWER TO HIS COMPLAINT IN THIS ACTION, THE ARREST IN THIS CASE WAS BOTH WARRANTLESS AND FOR A FELONY. NEBRASKA LAW LEAVES TO POLICE OFFICERS THE POWER TO MAKE WARRANTLESS FELONY ARRESTS UNDER CERTAIN SETS OF CIRCUMSTANCES. SEE NEB. REV. STAT. § 29-449 [REVISUE 2018], SEE STOLEN V. STATE, 724 SO. 2D 901 (NEB. CIV. APP., 1998) HELD THAT NEITHER DISTRICT COURT NOR CIRCUIT COURT OBTAINED SUBJECT MATTER JURISDICTION TO TRY DEFENDANT, WHERE A UNIFORM-Traffic TICKET AND COMPLAINT "UTC" WAS NEVER FILED IN DISTRICT COURT, AND A "UTC" WAS NEVER INTRODUCED IN CIRCUIT COURT. ALBUQUERQUE V. UNITED STATES, 973 U.S. 1, 47 S. CT. 950, 71 L. ED. 2D 191 (1991) A PERSON MAY NOT BE PUNISHED FOR A CRIME WITHOUT A FORMAL AND SUFFICIENT ACCUSATION EVEN IF HE VOLUNTARILY SUBMITS TO THE JURISDICTION OF THE COURT. HOWEVER, PLAINTIFF SHOULD BE ABLE TO BRING HIS CLAIM MALICIOUS PROSECUTION BASED UPON HIS ARREST BECAUSE PLAINTIFF'S ARREST CONSTITUTE THE "INITIATION OF PROSECUTION" AGAINST PLAINTIFF. UNDER NEBRASKA LAW, SEE ALSO MEEHAN V. TOWN OF PLYMOUTH, 167 F.3D 86 (1999) IT ORDERED TO SUCCEED ON HIS MALICIOUS PROSECUTION CLAIM UNDER 42 U.S.C. § 1983, MEEHAN MUST PROVE: (1) STATE ACTION; AND (2) A DEPRIVATION OF CONSTITUTIONAL RIGHTS. STATE V. CUNNEY, 1994 WL 90517 (NEB. CT. APP., 1994) WE ARE CONSIDERING ONLY THE SUFFICIENCY OF THE COMPLAINT; SEE ALSO HANSEN V. DOE, 378 F.2D 490, 229 F.2D 809, 810 WL 2568095 (8TH CIR. 2009).

THE SECOND CRIMINAL CHARGING DOCUMENT IS DEFECTIVE AS WELL, BECAUSE IT WERE FILED OUT OF TIME PURSUANT TO NEB. REV. STAT. § 29-449 [REVISUE 2018] SEE COMPLAINT

P.6, IT IS A FUNDAMENTAL PRINCIPLE OF STATUTORY CONSTRUCTION THAT PENAL STATUTES ARE TO BE STRICTLY CONSTRUED IN FAVOR OF THE DEFENDANT. SEE STELCKELBERG V. RICE, 184 F. SUPP.3D 746 [D. NEB. 2016] TO ESTABLISH A PROCEDURAL DUE PROCESS VIOLATION, A PLAINTIFF NEED NOT ONLY SHOW A PROTECTED INTEREST, BUT MUST ALSO SHOW THAT HE OR SHE WAS DEPRIVED OF THAT INTEREST WITHOUT SUFFICIENT PROCESS, I.E., WITHOUT DUE PROCESS. BLAIR V. DOUGLAS COUNTY, 2013 WL 3400947 [D. NEB. 2013] PROCEDURAL DUE PROCESS PROHIBITS STATE AUTHORITIES FROM DEPRIVING A PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT CONFORMING TO CONSTITUTIONALLY REQUIRED PROCEDURES. SEE MOORE V. SIMS, 200 F.3D 1170 [2000] 8TH CIR. 2 DDD; GUNDERSON V. SCHLUETER, 904 F.2D 407 [1990] 8TH CIR. 1990] PLAINTIFF MUST SHOW A VIOLATION OF PROCEDURAL DUE PROCESS.

F. 42 U.S.C. § 1981 SECTION 1981 PROVIDES THAT ALL PERSONS MUST HAVE THE SAME RIGHTS TO SUE, BE PARTIES, GIVE EVIDENCE, AND TO THE FULL AND EQUAL BENEFIT OF ALL LAWS AND PROCEEDINGS FOR THE SECURITY OF PERSONS. UNLIKE 42 U.S.C. § 1983, § 1981 APPLIES TO THE CONDUCT OF PRIVATE PERSON. IN ADDITION TO PERSONS ACTING UNDER COLOR OF STATE LAW. SEE WEST V. ATKINS, 487 U.S. 42, 50, 108 S. CT. 2250 [1988] THE TRADITIONAL DEFINITION OF ACTING UNDER COLOR OF STATE LAW REQUIRES THAT THE DEFENDANT EXERCISED POWER POSSESSED BY VIRTUE OF STATE LAW AND MAKE POSSIBLE ONLY BECAUSE THE WRONGDOER IS CLOTHED WITH THE AUTHORITY OF STATE LAW. JETT V. DALLAS INDEPENDENT SCHOOL DISTRICT, 491 U.S. 701, 731-33, 109 S. CT. 2702 [1989] THE SUPREME COURT HELD THAT DAMAGES CLAIMS FOR VIOLATIONS OF § 1981 AGAINST PERSONS ACTING UNDER COLOR OF STATE LAW MUST BE PURSUED UNDER § 1983. SEE ALSO DOSSETT V. FIRST STATE BANK, 399 F.3D 940, 949 [8TH CIR. 2005].

G. TOLLING OF THE STATUTE OF LIMITATIONS, PERSONS UNDER A DISABILITY. SEE 5 NEB. PAAL. CIVIL PROCEDURE § 30; NEB. REV. STAT. § 25-213 PROVIDES THAT THE STATUTE OF LIMITATIONS WILL BE TOLLED IF THE PLAINTIFF FALLS INTO ONE OF THREE CATEGORIES AT THE TIME THE CAUSE OF ACTION ACCRUES: (1) THE PLAINTIFF IS "WITHIN THE AGE OF TWENTY YEARS." (2) THE PLAINTIFF HAS A MENTAL DISORDER, OR (3) THE PLAINTIFF IS IN PRISON. THE LIMITATIONS PERIOD WILL



BEGIN TO RUN ON THE DAY THE PLAINTIFF NO LONGER FALLS INTO THE CATEGORY THAT WARRANTED TOLLING THE PERIOD.

H.S. NEB. PRACT. CIVIL. PROCEDURES § 5:29. THE STATUTE OF LIMITATIONS NORMALLY BEGINS TO RUN WHEN THE CAUSE OF ACTION ACCUES. THAT IS NOT TRUE IF THE PLAINTIFF IS UNDER A STATUTORY DISABILITY. HOWEVER, THE STATUTE IS TOLLED FOR SUCH A PLAINTIFF UNTIL THE DISABILITY IS REMOVED.

I. THE TOLLING PROVISIONS IN THE NEBRASKA STATUTES ONLY APPLY IF A NEBRASKA STATUTE OF LIMITATIONS APPLIES. IF ANOTHER STATE'S STATUTE OF LIMITATIONS APPLIES, HOWEVER, THEN THE OTHER STATE'S TOLLING PROVISIONS ALSO APPLY.

THE SUPREME COURT HAS RECOGNIZED THE DOCTRINE OF EQUITABLE TOLLING UNDER THE DOCTRINE. A COURT MAY EXCUSE THE PARTY'S FAILURE TO FILE WITHIN THE LIMITATIONS PERIOD IF THAT FAILURE WAS THE RESULT OF CIRCUMSTANCES BEYOND THE PARTY'S CONTROL. IF A PARTY IS PREVENTED FROM ASSERTING ITS CLAIM BY A PARAMOUNT AUTHORITY, FOR EXAMPLE, THEN THE PERIOD IN WHICH THE PARTY WAS PREVENTED FROM ASSERTING ITS CLAIM IS EXCLUDED FROM THE LIMITATIONS PERIOD. SEE COMPLAINT PS. 10-14. A PARAMOUNT AUTHORITY INCLUDES A COURT THAT HAS ENJOINED THE PARTY FROM ASSERTING ITS CLAIM. SINCE 1999, PLAINTIFF HAS FILED 18 PREVIOUS STATE MOTIONS ATTACKING HIS UNLAWFUL CRIMINAL CONVICTION SEEKING JUSTICE FROM NEBRASKA'S DISTRICT STATE COURT, AND THE APPELLATE COURTS UNDER DOCKET 693 PAGE 233. THE STATE COURTS ENJOINED PLAINTIFF FROM ASSERTING HIS CLAIMS IN THIS CIVIL ACTION. SEE MANNING V. COTTON, 2015 WL 13603408 [O. NEB. 2015] WITHHOLDING EVIDENCE; NEWSOME V. MCLABE, 319 F.3d 301 [2003] CONCEALING EVIDENCE FAVORABLE TO THE DEFENSE; SEE ALSO MCMILLIAN V. JOHNSON, 88 F.3d 1554 [11TH CIR. 1996] CONCEALMENT OF EXCULPATORY EVIDENCE. SEE CIVIL COMPLAINT PS. 10-14, EXS. 6-10.

I. CONTINUING TORT CASE STATUTE OF LIMITATIONS PERIOD NEB. REV. STAT. § 25-207 [ISSUE

2018]. IN FEDERAL COURT, IF A VIOLATION OF RIGHTS TAKES PLACE OVER A PERIOD OF TIME, IT MAY BE CONSIDERED TO BE A "CONTINUING WRONG" OR CONTINUING HARM, VIOLATION, ETC., THAT MEANS THE STATUTE OF LIMITATIONS MAY NOT START TO RUN UNTIL THE END OF THE PERIOD. AND A PLAINTIFF CAN RECOVER FOR THE WHOLE COURSE OF CONDUCT EVEN IF IT STARTED OUTSIDE THE LIMITATIONS PERIOD. THE CONTINUING WRONG RULE IS APPLICABLE TO CONTINUING WRONGFUL ACTION. HOWEVER, WHEN THE BASIS OF THE COMPLAINT IS AN ONGOING FAILURE TO TREAT AN ONGOING HARM, THE CONTINUING WRONG RULE MAY BE APPLICABLE. SEE *ASTOR V. HOME FOODS CORP.*, 273 NEB. 422, 730 N.W.2d 376 [2007] WHEN AN INDIVIDUAL IS SUBJECT TO A CONTINUING, CUMULATIVE PATTERN OF TORTIOUS CONDUCT, CAPABLE OF BEING TERMINATED AND INVOLVING CONTINUING OR REPEATED INJURY, THE STATUTE OF LIMITATIONS DOES NOT RUN UNTIL THE DATE OF THE LAST INJURY OR CESSATION OF THE WRONGFUL ACTION; SEE ALSO *WELSH V. STATE OF NEB., NEBRASKA BRAND COMMITTEE*, 891 F.SUPP. 1328 [O. NEB. 1993] UNDER THE CONTINUING VIOLATION DOCTRINE IF THE ACTS CONSIDERED, FOR PURPOSES OF EMPLOYMENT CLAIM, SO LONG AS ONE OF THE ACTS FALLS WITHIN THE LIMITATIONS PERIOD; SEE *DELPH V. DR. PEPPER BOTTLING CO. OF PARAGOULD, INC.*, 130 F.3d 349 [8TH CIR. 1997]; *HEMSLEY V. CITY OF COLUMBUS*, 557 F.3d 683, 687 [6TH CIR. 2009] CONTINUOUS VIOLATION EXISTS IF (1) THE DEFENDANTS ENGAGE IN CONTINUING WRONGFUL CONDUCT, (2) INJURY TO THE PLAINTIFFS ACCRUES CONTINUOUSLY, AND (3) HAD THE DEFENDANTS AT ANY TIME CEASED THEIR WRONGFUL CONDUCT, FURTHER INJURY WOULD HAVE BEEN AVOIDED; *TIBERNI V. LIGNA CORP.*, 89 F.3d 1423, 1430-31 [10TH CIR. 1996] APPLYING NEW MEXICO LAW AND HOLDING CLAIM ACCRUES, AND LIMITATIONS PERIOD RUNS, FROM DATE OF LAST INJURY OR WHEN "THE WRONG IS OVER AND DONE WITH," SEE *HEARD V. SHEAHAN*, 283 F.3d AT 318, 320 [7TH CIR. 2001] A VIOLATION IS CALLED 'CONTINUING' SIGNIFYING THAT A PLAINTIFF CAN REACH BACK TO ITS BEGINNING EVEN IF THAT BEGINNING LIES OUTSIDE THE STATUTORY LIMITATIONS PERIOD, WHEN IT WOULD BE UNREASONABLE TO REQUIRE OR EVEN PERMIT HIM TO SUE SEPARATELY OVER EVERY INCIDENT OF THE DEFENDANT'S UNLAWFUL CONDUCT; SEE ALSO *HUGHES V. SHERIFF*, 814 F.2d 532, 535 [8TH CIR. 1987] STATE LAW THAT TOLLED THE LIMITATIONS PERIOD FOR IMPRISONED PERSONS.

K. LINCOLN POLICE OFFICERS ACTED UNDER COLOR OF STATE LAW. A DEFENDANT MUST ACT UNDER COLOR OF STATE LAW TO BE SUED UNDER §1983. GENERALLY, A PUBLIC EMPLOYEE ACTS UNDER COLOR OF STATE LAW WHILE ACTING IN HIS OFFICIAL CAPACITY OR WHILE EXERCISING HIS RESPONSIBILITIES PURSUANT TO STATE LAW. THIS IS TRUE EVEN IF THE EMPLOYEE IS ABUSING OR EXCEEDING HER AUTHORITY OR VIOLATING THE LAW. THE COLOR OF LAW REQUIREMENT OF §1983 IS GENERALLY THE SAME AS THE REQUIREMENT OF "STATE ACTION" THAT MUST BE SHOWN TO PROVE A VIOLATION OF THE FOURTEENTH AMENDMENT, AND THE TWO TERMS ARE OFTEN INTERCHANGEABLE. CITY AND COUNTY OFFICIALS ARE EMPLOYEES CONSIDERED TO ACT UNDER COLOR OF STATE LAW. SEE WEST V. ATKINS, 487 U.S. 42, 50, 108 S. CT. 2250 [1988] THE TRADITIONAL DEFINITION OF ACTING UNDER COLOR OF STATE LAW REQUIRES THAT THE DEFENDANT EXERCISED POWER POSSESSED BY VIRTUE OF STATE LAW AND MADE POSSIBLE ONLY BECAUSE THE WRONGDOER IS CLOTHED WITH THE AUTHORITY OF STATE LAW, BECK V. LAFLER, 257 F. 3d 764, 766 [8th Cir. 2001] PLAINTIFF MUST ALLEGE DEFENDANT'S PERSONAL INVOLVEMENT OR RESPONSIBILITY FOR CONSTITUTIONAL VIOLATIONS OF A STATE TO STATE §1983 CLAIM, SEE COMPLAINT Pgs. 3-5. SEE ALSO MONROE V. PAPER, 365 U.S. 167, 184, 81 S. CT. 473 [1960] CITY POLICE ACTED UNDER COLOR OF STATE LAW.

L. CITY OF LINCOLN AND POLICE DEPARTMENT. PLAINTIFF BRINGS ALL OF HIS CLAIMS UNDER 42 U.S.C. §1983, 81, 85, 86, 87, 88 AND THE 1ST, 4TH, 5TH, 6TH, 8TH, 9TH, AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND NEBRASKA CONSTITUTION ARTICLE I, SEC. 3, 7, 9, 11, AND 12. CLAIMS UNDER §1983 REQUIRE A PLAINTIFF TO SUFFICIENTLY ALLEGE THAT: (1) HE HAS BEEN DEPRIVED OF A FEDERAL RIGHT AND (2) THAT THE PERSON WHO DEPRIVED HIM OF THAT RIGHT ACTED UNDER COLOR OF STATE LAW. SEE GOMEZ V. TOLEDO, 446 U.S. 635, 640, 100 S. CT. 1920, 64 L. ED. 2d 572 [1980]. AS FOR THE SECOND PRONG, PLAINTIFF HAS PLED FACTS SUFFICIENTLY SHOWING THAT THE DEFENDANTS ARE STATE ACTORS WHO OPERATED UNDER COLOR OF STATE LAW. SEE COMPLAINT Pgs. 1-15, EXH. 6-11. MUNICIPALITIES SUCH AS THE CITY OF LINCOLN ARE DEEMED TO BE "PERSONS" UNDER §1983 AND THEREFORE, MAY BE LIABLE FOR VIOLATIONS OF AN INDIVIDUAL'S FEDERAL RIGHTS. MONELL V. DEPT. OF SOC. SERVS. OF NEW YORK, 436 U.S. 658, 690-91, 98 S. CT. 2018, 56 L. ED. 2d 611 [1978] IT IS

WHEN EXECUTION OF A GOVERNMENT'S POLICY OR CUSTOM, WHETHER MADE BY ITS LAWMAKERS OR BY THOSE WHOSE EDICTS OR ACTS MAY FAIRLY BE SAID TO REPRESENT OFFICIAL POLICY, INFLECTS THE INJURY THAT THE GOVERNMENT AS AN ENTITY IS RESPONSIBLE UNDER §1983. *MONELL, 436 U.S. AT 694, 98 S.Ct. 2018.*

PLAINTIFF'S CLAIM FOR RELIEF "CONSTITUTIONAL VIOLATIONS FROM INFORMAL CUSTOM AND POLICY" STATES THAT "THE CITY OF LINCOLN POLICE DEPARTMENT HAS AN INFORMAL CUSTOM, PRACTICE OR POLICY REGARDING ILLEGAL SEIZURE" THAT IS, IN TURN, USED TO IMPROPERLY TRAIN ITS OFFICERS. PLAINTIFF COMPLAINT FURTHER ALLEGES OFFICERS TAKE PICTURES, AND TAKE PERSONAL PROPERTY, AND ILLEGALLY CONFESSION WITHOUT RECORDING THE INTERROGATION PURSUANT TO NEBRASKA'S LAWS NEB. REV. STAT. 29-4501-29-4508. ALLEGES THAT "AS PART OF THE CULTURE, CUSTOM AND PRACTICE OF THE LINCOLN CITY POLICE OFFICERS ARE TRAINED AND EXPECTED TO VIOLATE A PERSON'S RIGHTS. PLAINTIFF'S COMPLAINT BELIEVES THE INFORMAL POLICY OR CUSTOM TO BE, INCLUDING (A). TRAINING OFFICERS TO DO WHATEVER IT'S TAKE TO GET A DEFENDANT TO MAKE A STATEMENT WHEN A PERSON VOLUNTEER TO TAKE A POLYGRAPH TEST. (B). TO SEIZURE A PERSON IN THE PROCESS OF THE TEST. (C). TO KEEP A PERSON IN THE BASEMENT OF THE POLICE DEPARTMENT FOR 3 1/2 HOURS TO 4 HOURS. (D). AND LASTLY TO TRICK A PERSON TO TAKE MORE THAN ONE (1) POLYGRAPH TEST, PRE-TEST, AND POST-TESTS. WHERE THE OFFICER WOULD PREFER TO RESTRAIN PLAINTIFF IN THE BASEMENT OF THE POLICE DEPARTMENT WHERE PLAINTIFF DIDN'T FEEL FREE TO LEAVE. IMPROPERLY TRAINING AND SUPERVISING OFFICERS IN MINISTERING POLYGRAPH TESTS. RATHER THAN TRAINING OFFICERS TO ASSESS THE TOTALITY OF CIRCUMSTANCE IN AN OBJECTIVELY REASONABLE MANNER."

TAKEN AS A WHOLE, PLAINTIFF'S DESCRIPTION OF THE CITY OF LINCOLN POLICE DEPARTMENT'S ALLEGED POLICIES DEMONSTRATES THAT AN UNCONSTITUTIONAL POLICY OR CUSTOM EXISTED. AS DISCUSSED IN PLAINTIFF'S COMPLAINT IN THE CONTEXT OF PLAINTIFF'S "ILLEGAL SEIZURE" CLAIM, IT IS UNREASONABLE, AND THUS UNCONSTITUTIONAL TO SEIZURE A PERSON WHEN THEY GO TO TAKE A POLYGRAPH TEST. IT IS CLEAR THAT "LOCAL GOVERNMENTS, LIKE EVERY OTHER

'§1983 PERSON', BY THE VERY TERMS OF THE STATUTE, MAY BE SUED FOR CONSTITUTIONAL DEPRIVATIONS VISITED PURSUANT TO GOVERNMENTAL 'CUSTOM' EVEN THOUGH SUCH A CUSTOM HAS NOT RECEIVED FORMAL APPROVAL THROUGH THE BODY'S OFFICIAL DECISIONMAKING CHANNELS." MONELL, 436 U.S. AT 690-91, 98 S. CT. 2018. BECAUSE NO HEIGHTENED STANDARD EXISTS FOR PLEADING A §1983 CLAIM AGAINST A MUNICIPALITY, PLAINTIFF MUST PLEAD SUFFICIENT FACTS TO SHOW THAT IT IS PLAUSIBLE THAT (1) THAT A MUNICIPAL EMPLOYEE COMMITTED A CONSTITUTIONAL VIOLATION, AND (2) THAT A MUNICIPAL POLICY OR CUSTOM WAS THE MOVING FORCE BEHIND THE CONSTITUTIONAL DEPRIVATION. SEE *MANIN V. WHITE*, 742 F.2D 469, 475-76 [8TH CIR. 1984] THE FAILURE OF HIGHER OFFICIALS TO TRAIN OR SUPERVISE THEIR SUBORDINATES MAY ESTABLISH THE HIGHER-UPS' LIABILITY. *FRUIT V. NORDIS*, 905 F.2D 1147, 1151 [8TH CIR. 1990]. THE FACTS AVERRED IN PLAINTIFF'S COMPLAINT SHOWS THAT IT IS PLAUSIBLE THAT A MUNICIPAL POLICY OR CUSTOM WAS THE MOVING FORCE BEHIND THE CONSTITUTIONAL DEPRIVATION. CONSEQUENTLY, IT IS AT LEAST PLAUSIBLE THAT PLAINTIFF SHOULD BE ENTITLED TO RELIEF ON HIS CLAIMS FOR RELIEF AGAINST THE CITY OF LINCOLN AND POLICE DEPARTMENT, AND ITS OFFICERS.

M. LANCASTER COUNTY AND SHERIFF'S DEPARTMENT, PLAINTIFF'S PROCEDURAL DUE PROCESS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION IS IMPLICATED WHERE AN INDIVIDUAL IS DEPRIVED OF "LIBERTY" WITHOUT DUE PROCESS OF LAW. U.S. CONST. AMEND. XIV, §1, CL. 3. THE SUPREME COURT HAS ADOPTED A TWO-STEP ANALYSIS TO EXAMINE WHETHER AN INDIVIDUAL'S PROCEDURAL DUE PROCESS RIGHTS HAVE BEEN VIOLATED. THE FIRST QUESTION "ASKS WHETHER THERE EXISTS A LIBERTY OR PROPERTY INTEREST WHICH HAS BEEN INTERFERED WITH BY THE STATE; THE SECOND EXAMINES WHETHER THE PROCEDURES ATTENDANT UPON THAT DEPRIVATION WERE CONSTITUTIONALLY SUFFICIENT." SEE *KENTUCKY DEPT. OF CORRECTIONS V. THOMPSON*, 490 U.S. 454, 460, 109 S. CT. 1904, 104 L. ED. 2D 506 [1989]; SEE ALSO *GUNDERSON V. SCHLUTER*, 904 F.2D 401 [8TH CIR. 1990] PLAINTIFF'S CIVIL RIGHTS WERE NOT VIOLATED ABSENT SHOWING OF VIOLATION OF PROCEDURAL DUE PROCESS. PLAINTIFF WERE CITED BY DEFENDANT HOWARD ON A WARRANTLESS ARREST ON AUGUST 30, 1996, SEE [EX. 2 ATTACHED TO COMPLAINT.] THE "UNIFORM CITATION AND COMPLAINT [NO. 1A447560] HAS NEVER BEEN FILED UNDER

NEBRASKA LAW, §29-423 [REISSUE 2018] THE CRIMINAL INSTRUMENT MUST BE FILED. SEE NEB. REV. STAT. §29-404 [REISSUE 2018] STATES IN PARTS: IN ORDER TO CONFER JURISDICTION UPON A MAGISTRATE IN A CRIMINAL CASE, A COMPLAINT MUST BE FILED AGREEABLE TO THE PROVISIONS OF THIS SECTION OF THE STATUTE. SEE *MONROW V. STATE*, 140 NEB. 582, 300 N.W. 2d 843 [1941] THE COMMENCEMENT OF A CRIMINAL ACTION IS BY FILING A CRIMINAL INSTRUMENT; *STOLL V. STATE*, 724 S.D. 2d 90 [ALA. CRIM. APP. 1988] HELD THAT NEITHER DISTRICT COURT NOR CIRCUIT COURT OBTAINED SUBJECT MATTER JURISDICTION TO TRY DEFENDANT, WHERE A UNIFORM TRAFFIC TICKET AND COMPLAINT WAS NEVER FILED IN DISTRICT COURT, AND WAS NEVER INTRODUCED IN CIRCUIT COURT.

A PRIMER AND COMMENTARY, 79 NEB. L. REV. 293 [2000] (343) UNDER NEBRASKA STATUTE §29-423, "CITATIONS IN LIEU OF ARREST, WHEN PROPERLY FILED IN TRIAL COURTS, SERVE AS COMPLAINTS." THE RULES RELATING TO THE SUFFICIENCY OF CHARGING INSTRUMENTS APPLY TO COMPLAINTS AND WITH ARE BASED ON THE NEBRASKA CONSTITUTION, THUS, CITATIONS FILED AS COMPLAINTS MUST CONFORM WITH THE RULES RELATING TO SUFFICIENCY OF COMPLAINTS; SEE *HANSEN V. ODE*, 342 F.2d 229 [8TH CIR. 2007]; *STATE V. CUNNEY*, 1994 WL 90517 [NEB. CT. APP. 1994] WE ARE CONSIDERING ONLY THE SUFFICIENCY OF THE COMPLAINTS; SEE ALSO *ELIZABETH M. V. MONTENEZ*, 428 F.3d 779 [8TH CIR. 2006] A SUBSTANTIVE DUE PROCESS CLAIM INVARIABLY DEMANDS AN EXACT ANALYSIS OF CIRCUMSTANCES BEFORE ANY ABUSE OF POWER IS CONDEMNED. DEFECTS IN STATE CRIMINAL COMPLAINT, INFORMATION GOING TO JURISDICTION OF COURT WHICH PRONOUNCED SENTENCE MAY BE RAISED ON HABEAS CORPUS, WHERE QUESTION IS WHETHER COMPLAINTS, INFORMATION IS SO FATALY DEFECTIVE AS TO DEPRIVE COURT OF JURISDICTION; SEE *DOGGETT V. UNITED STATES*, 505 U.S. 647, 119 S. Ct. 2686, 120 L. Ed. 2d 520 [1992] PRE-ACCUSATIONAL DELAY DOES TRIGGER FEDERAL AND STATE DUE PROCESS PROTECTIONS. SEE EX. 1, THE COUNTY SHERIFF ALONG WITH LANCASTER HAD MEETING OF THE MINDS TO TRANSPORT PLAINTIFFS TO PRISON IN VIOLATIONS OF PLAINTIFF'S RIGHTS.

THE FOURTH, FIFTH, SIXTH, AND FOURTEENTH AMENDMENT CLAIMS IS AGAINST THE STATE.

THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE PROTECTS PERSONS AGAINST DEPRIVATIONS OF "LIBERTY." *WILKINSON V. AUSTIN*, 545 U.S. 209, 221 S. Ct. 2384, 162 L.Ed.2d 174 [2005], TO STATE A CLAIM UNDER THE DUE PROCESS CLAUSE, SOME INTEREST MUST FIRST BE VIOLATED. "A LIBERTY INTEREST MAY ARISE FROM THE CONSTITUTION ITSELF, BY REASON OF GUARANTEES IMPLICIT IN THE WORD 'LIBERTY' OR IT MAY ARISE FROM AN EXPECTATION OR INTEREST CREATED BY STATE LAWS OR POLICIES. *MEYER V. NEBRASKA*, 369 U.S. 370, 379, 43 S. Ct. 625, 67 L.Ed. 1042 [1992].

PLAINTIFF STATES THAT, FAILURE OF THE STATE TO FILE CHARGING INSTRUMENTS IN ACCORD WITH STATUTORY REQUIREMENTS WERE FATAL. ON AUGUST 30, 1996, PLAINTIFF WAS CITED BY DEFENDANT JEFFERY HOWARD, ON THE OFFENSE OF FIRST DEGREE SEXUAL ASSAULT. PLAINTIFF'S COURT APPEARANCE WAS SET FOR SEPTEMBER 3, 1996, AT 2:00 P.M. SEE [EX. 3. ATTACHED TO COMPLAINT] THE CRIMINAL COMPLAINT AT [CASE NO. (1996-11375)], WAS NOT ISSUED AND FILED AT LEAST TWENTY-FOUR (24) HOURS BEFORE THE TIME SET FOR THE APPEARANCE OF THE CITED PERSON, AS REQUIRED BY NEB. REV. STAT. § 29-424 [REISSUE 2018], WHICH STATES IN PART: AT LEAST TWENTY-FOUR (24) HOURS BEFORE THE TIME SET FOR THE APPEARANCE OF THE CITED PERSON, EITHER THE PROSECUTING ATTORNEY OR OTHER PERSON AUTHORIZED BY LAW TO ISSUE A COMPLAINT FOR THE PARTICULAR OFFENSE, THE CRIMINAL COMPLAINT AND INFORMATION WERE FILED ON SEPTEMBER 3, 1996, LESS THAN ONE DAY FOLLOWING PLAINTIFF'S ARRANGEMENT IN COUNTY COURT. § 29-424, REQUIRES THAT AT LEAST TWENTY-FOUR (24) HOURS PASS BEFORE THE PROSECUTING ATTORNEY FILE [EX. 3]. SEE *STATE V. SHAWAMAM*, 296 NEB. 125, 835 N.W.2d 66 [2013] THE LEGISLATURE CREATED A TWENTY-FOUR (24) HOURS WAITING PERIOD UNDER § 29-424 IN CITATION CASES FOR CRIMINAL INFORMATION FILED IN THE COUNTY COURT BEFORE THE PLAINTIFF IS SET TO APPEAR IN COUNTY COURT. THE TRIAL COURT DIDN'T HAVE SUBJECT MATTER JURISDICTION TO TRY PLAINTIFF DUE TO THE DEFECTIVE CRIMINAL COMPLAINT AND INFORMATION. SEE NEB. REV. STAT. § 29-110 [R.N.S. 1943] (1) INFORMATION FOR ANY CRIME IS LIMITED BY ANY STATUTES SHALL BE BROUGHT WITHIN TIME LIMITED BY SUCH STATUTE. *STATE V. HOCHSTEIN*, 262 NEB. 311, 632 N.W.2d 273 [2001] PENAL STATUTES ARE TO BE STRICTLY CONSTRUED IN FAVOR OF THE DEFENDANT, SEE ALSO *PEOPLE V. BROWN*, 2003 WL 945945 [CAL. APP. 3

DIST. 2003] HELD THAT FAILURE OF PROSECUTION TO FILE CHARGING DOCUMENT IN ACCORD WITH STATUTORY REQUIREMENT WAS FATAL. (2) COUNTY COURT LACKED JURISDICTION TO PRONOUNCE JUDGMENT, WHERE PROSECUTION FAILED TO FILE CHARGING DOCUMENT IN ACCORD WITH STATUTORY REQUIREMENT; SEE ALSO ALBRECHT ET AL. V. UNITED STATES, 273 U.S. 1, 8, 47 S. CT. 250, 71 L. ED. 2150S [1927] A PERSON MAY NOT BE PUNISHED FOR A CRIME WITHOUT A FORMAL AND SUFFICIENT ACCUSATION EVEN IF HE VOLUNTARILY SUBMITS TO THE JURISDICTION OF THE COURT; DOGGETT V. UNITED STATES, 505 U.S. 647, 172 S. CT. 2686, 120 L. ED. 21520 [1992] PREACCUSATIONAL DELAY DOES NOT GOVERN FEDERAL AND STATE DUE PROCESS PROTECTIONS. SEE [EN. 2, 3.].

42 U.S.C. §§ 1985, 1986, AND PUBLIC DEFENDERS CIVIL RIGHTS CONSPIRACY CLAIMS; CONSPIRACY CLAIMS UNDER § 1985 "LIKE ALL CONSPIRACY CLAIMS" REQUIRE THAT THE PLAINTIFF ALLEGE AND PROVE THAT THE DEFENDANTS AGREED ON A COURSE OF CONDUCT THAT VIOLATED THE STATUTE. SEVERAL KINDS OF CONSPIRACIES, SOME OF WHICH MAY BE RELEVANT TO PLAINTIFF. SECTION 1985 IS NOT LIMITED TO PERSONS WHO ACT UNDER COLOR OF LAW. IT REACHES PRIVATE CONDUCT THAT FITS THE TERMS OF THE STATUTE.

OTHER PARTS OF § 1985 ARE INTENDED TO PROTECT INDIVIDUALS' EQUAL PROTECTION RIGHTS. THESE PROVISIONS REQUIRE THE PLAINTIFF TO ALLEGE AND SHOW "SOME EVIDENCE" BEHIND THE CONSPIRATORS' ACTION. THE SECOND CLAUSE OF § 1985 (2) PROVIDES FOR ACTIONS AGAINST PERSONS WHO CONSPIRE TO OBSTRUCT "THE DUE COURSE OF JUSTICE" IN STATE COURTS WITH INTENT TO DENY ANY CITIZEN THE EQUAL PROTECTION OF THE LAWS OR TO HARM A CITIZEN FOR ATTEMPTING TO ENFORCE THE RIGHT TO EQUAL PROTECTION. IN ADDITION, § 1985 (3) PROVIDES FOR DAMAGE ACTIONS AGAINST PERSONS OR WHO "CONSPIRE FOR THE PURPOSE OF DEPRIVING ANY PERSON OR CLASS OF PERSONS OF EQUAL PROTECTIONS OF LAWS, OR OF EQUAL PRIVILEGES AND IMMUNITIES UNDER THE LAWS."

THE NEXT STATUTORY SECTION, 42 U.S.C. § 1986, PROVIDES FOR DAMAGES LIABILITY FOR



ANYONE WHO, HAVING KNOWLEDGE THAT A §1985 CONSPIRACY IS ABOUT TO BE COMMITTED, DOES NOTHING ABOUT IT. HALEY V. DOWD, 845 F.2d 1488, 1490 [8th Cir. 1988] ALLEGATION OF CONSPIRACY TO RETALIATE AGAINST THE PLAINTIFF FOR LAWSUITS STATED A CLAIM, IN RE BAYSIDE PRISON LITIGATION, 190 F. SUPP. 2d 755, 766-67 [D.M.J. 2002] FINDING COMPLAINT SUFFICIENTLY PLED §1985 (3) CONSPIRACY, GRIFFIN V. BRECKENRIDGE, 403 U.S. 88, 91 S. Ct. 1790 [1971].

LIKE §§§§ 1981, 1982, 1985, 1986, THESE STATUTES GENERALLY ADD LITTLE TO THE REMEDIES PLAINTIFF ALREADY HAVE UNDER §1983. CONSPIRACY CLAIMS CAN BE BROUGHT UNDER §1983. PRIVATE PERSONS WHO CONSPIRE WITH STATE OR LOCAL GOVERNMENT EMPLOYEES OR OFFICIALS ARE CONSIDERED TO ACT UNDER COLOR OF LAW AND MAY BE SUED UNDER §1983. MOST OF THE CONSPIRACIES COVERED BY THESE STATUTES BE LITIGATED UNDER §1983 AS ACCESS TO COURTS OR EQUAL PROTECTION CLAIMS. SEE TOWER V. GLOVER, 467 U.S. 914, 104 S. Ct. 2920, 81 L. Ed. 2d 758 [1984] CLIENT FILED PRO SE ACTION ALLEGING THAT PUBLIC DEFENDERS WHO REPRESENTED HIM IN PRISON STATE CRIMINAL ACTION VIOLATED CIVIL RIGHTS STATUTES BY CONSPIRING WITH VARIOUS PUBLIC OFFICIALS TO VIOLATE THE CLIENT'S CONSTITUTIONAL RIGHT, (1) THE COMPLAINT ADEQUATELY ALLEGED CONDUCT "UNDER COLOR OF STATE LAW" IN VIEW OF THE CONSPIRACY ALLEGATIONS, AND (2) STATE PUBLIC DEFENDERS ARE NOT IMMUNE FROM LIABILITY UNDER SECTION 1983 FOR INTENTIONAL MISCONDUCT BY VIRTUE OF ALLEGED CONSPIRATORIAL ACTIONS WITH STATE OFFICIALS WHICH DEPRIVE THEIR CLIENTS OF FEDERAL RIGHTS.

N. THE STATE STATUTE OF LIMITATIONS PERIOD FOR FALSE IMPRISONMENT: NEB. REV. STAT. § 29-2813. FALSE IMPRISONMENT; PENALTIES; ACTION FOR; LIMITATION. THE PENALTIES RECOVERABLE PURSUANT TO SECTIONS 29-2801-29-2824 SHALL BE RECOVERED BY THE PARTY AGGRIEVED, HIS OR HER EXECUTORS OR ADMINISTRATORS, BY CIVIL ACTION IN ANY COURT HAVING COGNIZANCE OF THE SAME; PROVIDED, NO PERSON SHALL BE SUED OR MOLESTED FOR ANY OFFENSE AGAINST THE PROVISIONS OF SAID SECTIONS, UNLESS WITHIN TWO (2) YEARS AFTER THE TIME WHEN SUCH OFFENSE SHALL HAVE BEEN COMMITTED; BUT IF THE PARTY AGGRIEVED SHALL THEN BE IN PRISON, THEN WITHIN TWO (2) YEARS AFTER THE RELEASE OF THE PERSON IMPRISONED, OR HIS OR HER DELIVERY OUT OF PRISON. IN EVERY SUCH ACTION IT SHALL BE LAWFUL FOR THE DEFENDANT TO PLEAD THE GENERAL ISSUE, AND GIVE THE SPECIAL MATTER IN EVIDENCE. SEE

HECK V. HUMPHREY, 512 U.S. 477, 483-487, 114 S. Ct. 2364, 129 L. Ed. 2d 383 [1994].

O. RELIEF FROM JUDGMENT ON ORDER RULE 60 I-6, FED. R. CIV. P.; RULE 60, FED. R. CIV. P., PERMITS A FINAL JUDGMENT OR ORDER TO BE CORRECTED OR VACATED UNDER CERTAIN CIRCUMSTANCES. A PARTY MAY OBTAIN RELIEF FROM A JUDGMENT WITHIN ONE YEAR ON A SHOWING OF "MISTAKE, INADVERTENCE, SURPRISE, OR EXCUSABLE NEGLIGENCE, NEWLY DISCOVERED EVIDENCE, OR FRAUD, MISREPRESENTATION OR OTHER MISCONDUCT BY AN ADVERSE PARTY. PLAINTIFF HAVE STRONG EVIDENCE OF FRAUD AND NOT JUST OF A CONFLICT OF EVIDENCE. [COMPLAINT PGS. 5-6, EX. 9, 3.] A PARTY MAY ALSO OBTAIN RELIEF FROM A JUDGMENT WHICH IS VOID, WHICH HAS BEEN SATISFIED OR WHICH, FOR SOME REASON, SHOULD NOT CONTINUE TO BE EFFECTIVE, OR FOR "ANY OTHER REASON JUSTIFYING RELIEF FROM THE OPERATION OF THE JUDGMENT. RULE 60 (b) (1) THROUGH 60 (b) (3) MOTION MUST BE MADE DURING THE ONE-YEAR PERIOD. RULE 60 (b) (4) THROUGH 60 (b) (6) MOTIONS MUST BE MADE "WITHIN A REASONABLE TIME.

(1). PLAINTIFF'S 60 (a) MOTION SEEK TO CORRECT THE JUDGMENT ON JULY 30, 2018.

(2). PLAINTIFF'S 60 (b) (2) MOTION MUST SHOW THAT THE EVIDENCE WAS DISCOVERED AFTER TRIAL, SEE [COMPLAINT PGS. 10-14, EX. 6-11, THE EVIDENCE IS MATERIAL, THE EVIDENCE IS SUCH THAT A NEW TRIAL WOULD PROBABLY RESULT IN A DIFFERENT OUTCOME.

(3). PLAINTIFF'S MOTION UNDER 60 (b) (3) PLAINTIFF CRIMINAL CONVICTION WERE UNFAIRLY OBTAINED BECAUSE THIS EVIDENCE WAS DISCOVERED AFTER PLAINTIFF TRIAL [COMPLAINT PGS. 10-14, EX. 6-11,] SEE GENERAL UNIVERSAL SYSTEMS, INC. V. LEE, 379 F.3d 131, 156 [5TH CIR. 2004] THIS SUBSECTION OF THE RULE IS AIMED AT JUDGMENTS WHICH WERE UNFAIRLY OBTAINED, JORDAN V. PACCAR, INC., 97 F.3d 1459, 1996 WL 598950 [6TH CIR. 1996] OTHER MISCONDUCT MAY INCLUDE "ACCIDENTS THAT SHOULD HAVE BEEN AVOIDED, FOR INSTANCE A RECKLESS APPROACH TO SEARCHING ONE'S FILES FOR DISCOVERABLE MATERIAL."

(4). PLAINTIFF'S MOTION UNDER 60 (b) (4) ATTACK THE STATE'S JUDGMENT FOR LACK OF SUBJECT MATTER JURISDICTION IN HIS CRIMINAL CASE. SEE BRILEY V. HIDALGO, 991 F.2d 246, 249 [5TH CIR. 1993] NO TIME LIMIT ON RULE 60 (b) (4) ATTACK ON A JUDGMENT AS VOID FOR LACK OF JURISDICTION, BEAULIEU V. MINNEAPOLIS, 583 F.3d 570 [8TH CIR. 2009] FINDING THAT PETITIONER

PROCEDURALLY DEFAULTED HIS CLAIM WAS NOT PRECLUDED BY FACT THAT HIS CLAIMS WAS CHALLENGE TO SUBJECT MATTER JURISDICTION.

(5). PLAINTIFF'S MOTION UNDER RULE 60(b)(6) PLAINTIFF DIDN'T BELIEVE THE COURT'S MEMORANDUM AND ORDER UNTIL 4 MONTHS LATER, BECAUSE THE NORFOLK REGIONAL CENTER MAIL ROOM EMPLOYEES DIDN'T NOTIFY PLAINTIFF OF THE LEGAL MAIL. PLAINTIFF ONLY FOUND OUT ABOUT THE COURT'S ORDER ON NOVEMBER 25, 2018, SEE KLAPPBOTT V. U.S., 335 U.S. 601, 613-14, 69 S. CT. 384 [1949] CIVIL DEFENDANT WHO WAS ILL, PENNILESS, AND INCARCERATED, AND THEREFORE UNABLE TO APPEAR AND DEFEND HIS CASE, GRANTED RELIEF, MODIFIED, 336 U.S. 942, 69 S. CT. 877 [1950] PLAINTIFF STATE THAT THIS CASE IS "EXCEPTIONAL CIRCUMSTANCES" ON UNWAVE HANDSHIP. SEE ALSO GIL V. VOGILAND, 131 F. SUPP. 2d 486, 494 [S.D.N.Y. 2001] RELIEF HAS BEEN GRANTED UNDER THIS SECTION TO PRISONERS WHOSE CASES WERE DISMISSED WHEN THEY DID NOT RECEIVE NOTICE OF PROCEEDINGS BECAUSE THEY WERE TRANSFERRED OR FOR OTHER REASONS,

UNDER FEDERAL RULE OF CIVIL PROCEDURE 8(A)(2), A PLEADING MUST CONTAIN A "SHORT AND PLAIN STATEMENT OF THE CLAIM SHOWING THAT THE PLEADER IS ENTITLED TO RELIEF," AS THIS COURT HELD IN TWOMBLY, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929, THE PLEADING STANDARD RULE 8 ANNOUNCES DOES NOT REQUIRE "DETAILED FACTUAL ALLEGATIONS," BUT IT DEMANDS MORE THAN AN UNADORNED, THE-DEFENDANT-UNLAWFULLY-HARMED-ME ALLEGATION. *Id.*, AT 555, 127 S. Ct. 1955 QUOTING *PAPASAN V. ALLAIN*, 418 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 [1986], TO SURVIVE A MOTION TO DISMISS, A COMPLAINT MUST CONTAIN SUFFICIENT FACTUAL MATTER, ACCEPTED AS TRUE, TO "STATE A CLAIM TO RELIEF THAT IS PLAUSIBLE ON ITS FACE." *Id.*, AT 570, 127 S. Ct. 1955. A CLAIM HAS FACIAL PLAUSIBILITY WHEN THE PLAINTIFF PLEADS FACTUAL CONTENT THAT ALLOWS THE COURT TO DRAW THE REASONABLE INFERENCE THAT THE DEFENDANT IS LIABLE FOR THE MISCONDUCT ALLEGED. *Id.*, AT 556, 127 S. Ct. 1955. THE PLAUSIBILITY STANDARD IS NOT A "PROBABILITY REQUIREMENT," BUT IT ASKS FOR MORE THAN A SHEER POSSIBILITY THAT A DEFENDANT HAS ACTED UNLAWFULLY. *Ibid.* WHERE A COMPLAINT PLEADS FACTS THAT ARE "MEREY CONSISTENT WITH" A DEFENDANT'S LIABILITY, IT "STOPS SHORT OF THE LINE BETWEEN POSSIBILITY AND PLAUSIBILITY OF 'ENTITLEMENT TO RELIEF.'" *Id.*, AT 557, 127 S. Ct. 1955. THE IMPORTANCE OF THE CASE IS IN CONFLICT WITH THE DECISIONS OF ANOTHER APPELLATE COURT ON THE ISSUE OF SUMMARY JUDGMENT.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: APRIL 18, 2022