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No. 21-7948

IN THE SUPREME COURT OF THE UNITED STATES

FEMI ISIJOLA,
PETITIONER,

vs.

ELIZABETH BIELECKI, DIRECTOR, NEW HAMPSHIRE
DIVISION OF MOTOR VEHICLES,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF NEW HAMPSHIRE

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

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QUESTIONS PRESENTED

New Hampshire Revised Statute Annotated 260:10, the New Hampshire Motor Vehicles Administration of Application Act responsible for suspension of both Petitioner's Driver's License and Motor Vehicle Registration has a Criminal Code that provides that a Driver's License and Motor Vehicle Registration may only be suspended after conviction for material false statement in connection of an Application procuring the operating and registration privileges for the offense of unsworn falsification in a Court of Law under the Motor Vehicle Code and only after a hearing and whereby the Director, New Hampshire Division of Motor Vehicles failed to provide a pre-suspension hearing prior to those privileges being suspended and the Petitioner **was never presented with charges in a Court of Law or indicted by the Grand Jury for the false accusation of procuring a New Hampshire Driver's License and Vehicle Registration nor convicted in a Court of Law in New Hampshire before the suspension of his Driver's License and Motor Vehicle Registration privileges.**

1. Whether NH. Revised Statute Ann. 260:10, violates the Due Process Clause of the Fifth and Fourteenth Amendment to the United States Constitution by failing to provide a non-convicted person falsely accused of procuring his Driver's license and Motor vehicle registration, pre suspension hearing prior to suspension of his privileges?
2. Whether the Due Process Clause of the United States Constitution was violated by the actions of the Supreme Court of New Hampshire or its actions, arbitrary and capricious when it failed to issue a statement of the reasons in a mandatory appeal by right that it automatically accepted for review?
3. Whether an innocent or non-convicted Petitioner is entitled to relief when his Counsel was ineffective and such Petitioner can show both "deficient performance" and "prejudice" that arose from the ineffective assistance of counsel?
4. Whether without citation of authority either statutory or common authority makes a Judge's order illegitimate?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page

The known parties to the proceeding are:

1. The Petitioner is Femi Isijola of Hooksett, New Hampshire and a Pro Se Litigant.
2. The Respondent is Elizabeth Bielecki, Director, New Hampshire Division of Motor Vehicles.

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I. OPINION BELOW

The Supreme Court of the State of New Hampshire order did not issue an opinion, but affirmed the Superior Court of Merrimack County, New Hampshire Final order and is reported at the Case Orders Section of the New Hampshire Judicial Branch website (Case Order 2021-0045) line 10 of the Supreme Court Case Orders for year 2021 and attached as [Appendix. page 1a]. The Superior Court of Merrimack County, New Hampshire Final Order on the Merits is attached as [Appendix. page 2a-12a] and is unreported. The order of the Supreme Court of the State of New Hampshire denying Petitioner's motion for reconsideration [App. page 14a] and of the Superior Court [Appendix. page 15a] are unreported.

II. JURISDICTION

The date on which the Supreme Court of the State of New Hampshire decided Petitioner's case was November 18, 2021. [Appendix. page 1a] A timely petition for Motion for Reconsideration was thereafter denied on December 9, 2021. [Appendix. page 14a] and an extension of time to file the petition for a writ of certiorari was granted to and including May 9, 2022, on February 17, 2022, in Application No. 21A434. [Appendix. page 129a] by Justice Breyer. The Jurisdiction of this Court is invoked under 28 U.S. Code § 1257 (a) (State courts; certiorari).

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

Part 1, Article 2 and Article 15 of the State of New Hampshire Constitution. New Hampshire Revised Statutes Annotated 260:10, 261:178, 263:12V, 263:56, 263:76, 641:3, Supreme Court of New Hampshire Rule 3 and 25 are involved.

Fifth Amendment of U. S. Constitution provides in relevant part;

“No person shall be held to answer for a capital, or otherwise infamous crime, **unless on a presentment or indictment of a Grand Jury**”.

Part 1, Article 15 of the State of New Hampshire provides in relevant part;

“No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, **substantially and formally**, described to him; or be compelled to accuse or furnish evidence against himself.”

A. 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 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.

B. 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.

C. 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.

D. STATE OF NEW HAMPSHIRE CONSTITUTION PART 1, ARTICLE 2

All men have certain natural, essential, and inherent rights among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and in a word of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or natural origin.

E. STATE OF NEW HAMPSHIRE CONSTITUTION PART 1, ARTICLE 15

No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse or furnish evidence against himself. Every subject shall have a right to produce all proofs that may be favorable to himself; to meet the witnesses against him face to face, and to be fully heard in his defense, by himself, and counsel. No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land; provided that, in any proceeding to commit a person acquitted of a criminal charge by reason of insanity, due process shall require that clear and convincing evidence that the person is potentially dangerous to himself or to others and that the person suffers from a mental disorder must be established. Every person held to answer in any crime or offense punishable by deprivation of liberty shall have the right to counsel at the expense of the state if need is shown; this right he is at liberty to waive, but only after the matter has been thoroughly explained by the court.

IV. STATEMENT OF THE CASE

A. INTRODUCTION

This petition for writ of certiorari arises from the Respondent, Elizabeth Bielecki, Director, New Hampshire Division of Motor Vehicles (“Director Bielecki”) suspending Petitioner’s Driver’s License and Vehicle Registration privileges before a hearing [Appendix. page(s) 97a, 141a-145a] and accusing Petitioner of serious allegations of false statements of procuring a New Hampshire Driver’s license and Vehicle Registration **without any presentment of charges** against Petitioner in a Court of Law nor indictment by Grand Jury before suspension of his operating and registration privileges. Petitioner’s operating and registration privileges have been suspended indefinitely ever since as the State of New Hampshire Judicial branch inclusive of the Supreme Court of the State of New Hampshire have denied the Petitioner the Equal protection of the Laws in the State of New Hampshire. (emphasis added).

Despite the Petitioner’s pleadings in an Administrative Hearing and exhausting all State Court’s remedies in the State of the New Hampshire, the due process clause of the Fifth Amendment which requires a presentment before deprivation of liberty, or property and of the Fourteenth Amendment which also requires that no State deprive any person of life, liberty or property without due process of law have been violated.

B. INITIATION OF THIS LITIGATION

Petitioner, Femi Isijola, ("Petitioner") formerly known as Philip Israel Mark, an African American male, a travelling salesperson who is a citizen of the State of New Hampshire and has been a Licensed New Hampshire Driver since the year 1999. Appendix ["App."] Affidavit of Femi Isijola ["Isijola Aff."] and [Transcript. page] [Isijola Aff. page(s) 29a-30a; Transcript. page(s) 56a-57a, 65a]. Petitioner received a dated letter of June 9, 2020 from the New Hampshire Department of Safety, Division of Motor Vehicles, signed by Director Bielecki that his Vehicle Registration was going to be suspended on June 15, 2020 using Motor Vehicle criminal code N. H. RSA 261: 178 for false statement for Vehicle Registration **without a pre-suspension hearing and no presentment for any offense in a Court of Law or by indictment by Grand Jury.** [App. page(s) 17a, 63a, 75a, 142a-143a; Isijola Aff. page 30a]. Director Bielecki issued another letter of suspension on June 16, 2020, notifying that Petitioner's Driver's License will be suspended on June 22, 2020, using Motor Vehicles criminal code N. H. RSA 263:12V for false statement for Driver's License without a pre-suspension hearing and no presentment of any charges nor conviction for any offenses in a Court of Law. [App. page(s) 15a-16a, 62a-63a, 144-145a; Isijola Aff. page 31a].

C. ADMINISTRATIVE PROCEDURE

Petitioner, requested for a written request for a hearing. [App. page 31a] and on a dated letter of July 17, 2020, that he received from former Counsel, Donald Blaszka [App. page 146a] and on August 5, 2020, he participated in an administrative

hearing before the Bureau of Hearings, New Hampshire Department of Safety. [Isijola Aff. page 31a]. Petitioner was represented by former Counsel, Donald Blaszka (“Counsel”) but the former counsel performance was **deficient** and **ineffective**, the former Counsel was questioning the Petitioner instead of the State witness, Trooper First Class Aaron Richards. [App. page(s) 21a-22a] [Transcript. page(s) 50a-55a] [Transcript. page(s) 102a-107a]. Counsel said about his client, the Petitioner, **that he was going to kill him**. [Transcript. page 114a]. Counsel was interrupting Petitioner in the administrative hearing. [Transcript. page(s) 126a-127(a)]. Petitioner was told if he did not prevail in the administrative hearing, he could be subjected to **potential indefinite suspension of his privileges** and would **transfer over to all states**. [Transcript. page(s) 96a-97a]. Petitioner requested for Petition for Director’s Review on September 22, 2020, and on October 7, 2020, Director Bielecki said Petitioner’s petition for Director’s Review is not accepted, [Isijola Aff. page 32a].

Petitioner appealed the Hearing Examiner’s Determination and Director Bielecki’s Decision to suspend his Driver’s License and Vehicle Registration pursuant to N.H RSA 263:76 to the Superior Court of Merrimack County, New Hampshire on October 2, 2020. [Isijola Aff. page 33a; App. page(s) 46a, 80a-82a, 135a-136a]. On December 3, 2020, there was a judicial hearing on the merits participated telephonically by Counsel of Director Bielecki and the Petitioner. [Isijola Aff. page 33a.] [App. page(s) 45a, 137a]. At this judicial hearing, the court allowed the

Petitioner to present testimonies about his former counsel and the court suggested new administrative hearing. [App. page(s) 8a-9a, 49a-56a; 69a-70a].

The court said he was not quite sure where petitioner's suspension comes from.

"So my other question is, I'm not quite sure where the year suspension comes from. That must be from an administrative rule, right? **Because it's not in the statute.** Just as you'll suspend or revoke the license, so it must be a rule." [App. page 62a].

On January 27, 2021, the Superior Court of Merrimack County of New Hampshire entered its final order without citing **no statutory or common law authority** [Isijola Aff. page 36a], stating in part:

"Therefore, Isijola did not suffer any prejudice with respect to the outcome of the hearing. On these facts, despite the apparent breakdown in the attorney/client relationship, the court cannot find that the hearing was unfair or that the result calls the integrity of the proceeding into question. For all of these reasons the Director's decision is **AFFIRMED** and judgment is granted to the Director". [App. page 12a]

On February 9, 2021, the Superior Court of Merrimack County of New Hampshire denied Petitioner's Motion for Reconsideration stating that:

"A criminal conviction is not a prerequisite for suspension or revocation of a license and/or registration under RSA 260:10. The plaintiff had a hearing". [App. page 15a].

D. APPEAL TO THE SUPREME COURT OF NEW HAMPSHIRE

Thereafter, Petitioner appealed the Superior Court's decision and order to the Supreme Court of New Hampshire on a Notice of Mandatory Appeal by right enumerating Plain Errors, misinterpretation of New Hampshire Statutes: NH RSA 260:10; NH RSA 261:178, Ineffective Counsel, Inaccurate Hearing Examiner's decision with discrepancies on references numbers, unlawful suspensions, and

applications of State and Federal questions on Due Process Clause. [App. page(s) 39a, 41a, 43a-44a]

On November 18, 2021, the Supreme Court of New Hampshire entered its decision affirming the final order of the Superior Court of Merrimack County of New Hampshire. Its decision, states:

“Having considered the brief and reply brief of the plaintiff Femi Isijola, the memorandum of law of the defendant, the Director of the New Hampshire Division of Motor Vehicles, and the record submitted on appeal, including the trial court's well-reasoned order, the court concludes that oral argument is unnecessary in this case, and that plaintiff has not established reversible error” [App. page 1a]

E. PROCEEDINGS SUBSEQUENT TO DECISION OF THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

Petition for Motion for Clarification was subsequently filed with the Supreme Court of the State of New Hampshire on November 19, 2021. [Isijola Aff. page 36a; App. page 134a]. A timely petition for Motion for Reconsideration was also filed with the Supreme Court of the State of New Hampshire on November 23, 2021. [Isijola Aff. page 36a; App. 134a]. A timely application for an extension of time to file a petition for a writ of certiorari was filed in this court and granted by the order of this Court dated February 17, 2022 [App. page 129a]. **Federal questions were first raised in the Superior Court of Merrimack County of the State of New Hampshire. [App. page(s) 21a-22a, 25a] and were also raised with the Supreme Court of the State of New Hampshire. [App. page(s) 43a-44a].** Although it is going to two years that Petitioner has been falsely accused of procuring a New Hampshire Driver's License and Vehicle Registration, Petitioner

has never been served with presentment charges and Petitioner's Operating and Registration privileges have remained suspended since commencing this litigation.

E. FACTUAL AND PROCEDURAL BACKGROUND

On August 5, 2020, Petitioner, who was formerly known as Philip Israel Mark appeared remotely for the administrative hearing by video teleconference and through telephonic means before the Bureau of Hearings, New Hampshire Department of Safety, also in attendance was Petitioner's former Counsel, Donald Blaszka, Trooper First Class Aaron Richards, the witness for the State of New Hampshire and the Hearing Examiner for this administrative hearing, Linda Capuchino. [App. 15a-23a; Isijola Aff. page(s) 31a-32a; App. page 83a]. On September 16, 2020, Petitioner received via email of Safety-Hearings@dos.nh.gov. the report of the Hearing Examiner, Linda Capuchino who presided over the August 5, 2020, administrative hearing of the false allegation of the false statement on Driver's License and Vehicle Registration from the Bureau of Hearings, New Hampshire Department of Safety. Petitioner received two decisions, a decision that has his former name of Philip Mark with reference number NHI#11141845 and a dated decision of September 14, 2020 that states that his Driver's License and Vehicle Registration was suspended for 1 year with statutes cited for the suspensions such NH RSA 263:56 and Department of Safety Rule Saf-C 204:15(6) and NH RSA 260:10. On the same email, Petitioner received another decision that has his name and with reference number of NHI11151845 with a decision of **one year License Suspension and Indefinite suspension of Vehicle Registration**

privileges with hearing required. [App. page(s) 15a, 21a, 23a, 147a; Isijola Aff. page 32a] [Transcript. page(s) 64a-66a]. On September 22, 2020, Petitioner send via fax sent to 603-271-7800, to the Director, New Hampshire Division of Motor Vehicles and he requested for a Petition for Director's Review on the Report of the Hearing Examiner Linda Capuchino, and Petitioner mailed the same Petition to the Official address of the Director, New Hampshire Division of Motor Vehicles. [Isijola Aff. page 32a]. On a dated letter of October 7, 2020, Petitioner received a notification letter via mail from Director Bielecki, that his Petition for Director's Review is not accepted. [Isijola Aff. page 32a].

On October 2, 2020, Petitioner filed a complaint and Statutory Appeal from the Final decision of the Director, New Hampshire Division of Motor Vehicles pursuant to RSA 263:76 to the Superior Court of Merrimack County, New Hampshire. [Isijola Aff. page 33a; App. page(s) 15a, 80a-82a, 135a-136a, Index #1-Index #18]. On October 27, 2020, Petitioner filed the Transcript of the Administrative Hearing of August 5, 2020, with the Superior Court of Merrimack County. [App. page(s) 136a-137a, Index #21-#22]. On November 19, 2020, Respondent filed the Submission of Record. [App. page 137a, Index #24]. On December 2, 2020, Petitioner, file a Petitioner's response to the Respondent Response to Petitioner's Appeal. [Isijola Aff. page 33a; App. page 137a, Index #27- #28]. On December 3, 2020, Petitioner participated in a telephonic hearing on the merits that was presided by the Presiding Judge, Andrew R. Schulman of the Superior Court of Merrimack County, also in attendance was the Respondent's Counsel, Michael P. King [App. pages 17a-

21a, 137a; Isijola Aff. 33a; Transcript. page 45a]. On January 2, 2021, Petitioner file his Motion for Summary Judgment at the Superior Court of Merrimack County. [Isijola Aff. page. 33a, 137a, Index #30-#31]. On January 7, 2021, Respondent opposed Petitioner's Motion for Summary Judgment. [App. page 137a, Index #32]. On January 21, 2021, the Superior Court Judge of Merrimack County made a notation on the Motion for Summary Judgment and denied it. [App. page(s) 18a, 25a-27a; Isijola Aff. page 33a; App. page 137a]. On January 27, 2021, Petitioner receive an email notification from the Superior Court of Merrimack County Final Order decision with a dated decision of January 26, 2021, by the Presiding Justice, Andrew R. Schulman and the Clerk's Notice of Decision notation was on the order. [App. page(s) 12a, 137a, Index #33; Isijola Aff. page 33a]. On January 26, 2021, Petitioner file his Motion to Receive Hearing on the Merits Decision at the Superior Court of Merrimack County. [App. page(s) 25a-28a; Isijola Aff. page 33a; App. page 137a, Index #34 and #35]. On January 29, 2021, Petitioner filed his Motion for Reconsideration with the Superior Court of Merrimack County pursuant to New Hampshire Superior Court Rule 12(e). [App. 15a-24a; Isijola Aff. page 33a; App. page(s) 137a-138a, Index #36 and #37]. On February 9, 2021, the Superior Court Judge of Merrimack County made a notation on the Motion to Receive Hearing on the Merits Decision and moot the motion. [App. page(s) 18a, 26a, 138a; Isijola Aff. page 33a]. On February 9, 2021, the Superior Court Judge of Merrimack County made a notation on Petitioner's Motion for Reconsideration pursuant to New

Hampshire Superior Court Rule 9(e) and denied the Motion. [App. Page(s) 15a, 138 ; Isijola Aff. page 33a].

On February 11, 2021, Petitioner filed a Notice of Mandatory Appeal at the New Hampshire Supreme Court from an Appeal from a Final decision on the Merits issued by the Superior Court of Merrimack County of New Hampshire and included the Clerk's Notice of Decision and Copy of Notice and Decision of both Petitioner's Motion for Reconsideration and the Final Order of the Superior Court of Merrimack County both dated January 27, 2021, and February 9, 2021, respectively. [Isijola Aff. page 34a; App. page(s) 39a-44a, 130a, 138a, Index #38]. On February 19, 2021, Petitioner got an E-filing Docketing notice of case docketed as 2021-0045. [App. page(s) 130a, 138a, Index #39]. On March 3, 2021, Petitioner received an email notification that the Supreme Court of New Hampshire has accepted the case and that the case appears to be eligible for Mediation pursuant to New Hampshire Supreme Court Rule 12-A. [Isijola Aff. page 34a; App. page 130a, 138a, Index #40]. On February 25, 2021, Counsel for the Respondent, Jessica A. King, Esq made appearance on behalf of the Respondent, Director Bielecki. [App. page 130a]. On March 4, 2021, Petitioner reached out to the Counsel of the Respondent, Jessica. A. King about Mediation of the case as offered to the parties. [Isijola Aff. page 34a]. On March 4, 2021, Jessica A. King, Counsel for Director Bielecki replied to Petitioner's email and said she will chat with the Department and see if there is a possibility of a Mediation. [Isijola Aff. page 34a]. On March 12, 2021, Petitioner reached out again to Counsel of Director Bielecki on the Mediation Offer provided

by the New Hampshire Supreme Court, after not getting a response since March 4, 2021, when Petitioner reached out to the Counsel. [Isijola Aff. page(s) 34a-35a]. On March 15, 2021, Counsel of Director Bielecki, replied via email and said the State of New Hampshire is not amenable to Mediation and would like to move forward with a Briefing schedule. [Isijola Aff. page 35a]. On March 19, 2021, Petitioner filed the Appellate Mediation Agreement form with the Supreme Court of New Hampshire after the Respondent, Director Bielecki did not agree to the mediation offer offered to the parties. [Isijola Aff. page 35a; App. 130a]. On March 24, 2021, Petitioner received notification from the Supreme Court of New Hampshire that Petitioner should pay a deposit for preparing the Transcript of the December 3, 2020, Superior Court of Merrimack County Hearing on the merits on or before April 8, 2021. [Isijola Aff. page 35a; App. page 130a, 138a, Index #41]. On April 27, 2021, the certified copy of the proceedings of the Administrative Hearing held on August 5, 2020, before the Bureau of Hearings of the New Hampshire Department of Safety and Submission of Record by the New Hampshire Department of Safety, Division of Motor Vehicles was filed with the Supreme Court of New Hampshire. [Isijola Aff. page 35a; App. page 131a]. On May 13, 2021, Petitioner received notification that the Transcript of the Hearing on the Merits of the Superior Court of Merrimack County presided by Judge Andrew R. Schulman on December 3, 2020, with case number 217-2020-CV-00533 was filed with the Supreme Court of New Hampshire. [Isijola Aff. page 35a ; App. page(s) 45a and 131a]. On May 17, 2021, briefing schedule was set for the parties, the Petitioner brief was due on June 16, 2021, and

the Respondent brief was due on July 16, 2021. [App. page 131a]. On June 10, 2021, Petitioner filed a Motion for assented-to-notice of automatic extension of time for both parties with the Supreme Court of New Hampshire. [App. page 132a]. On June 15, 2021, Petitioner's motion for assented-to-notice of automatic extension of time to file brief was granted with a correction to dates for defendant's brief and any reply brief by the Supreme Court of New Hampshire till July 1, 2021, for the Petitioner and up till August 1, 2021, for the Respondent. [App. page 132a]. On June 2, 2021, Respondent filed a Motion to Seal the record on appeal with the Supreme Court of New Hampshire. [App. page 132a]. On June 3, 2021, Respondent filed a Motion to Seal the record with the Superior Court of Merrimack County of the State of New Hampshire. [App. page 138a, Index #42]. On June 4, 2021, Petitioner objected to both the Motion to Seal the Record on appeal by the Respondent, Director Bielecki and filed in the Supreme Court and Superior Court of Merrimack County of the State of New Hampshire. [App. page(s) 132a, 138a, Index #43-#45]. On June 10, 2021, Respondent, Director Bielecki's Motion to Seal the record was denied by the Supreme Court of New Hampshire. [App. page 132a]. On June 11, 2021, the Superior Court Judge of Merrimack County made out an order favorable to the Respondent, Director Bielecki. [App. page 138a]. On June 14, 2021, Petitioner filed a Motion to Reconsider with the Superior Court of Merrimack County. [App. page 138a, Index #46 and #47]. On June 25, Petitioner's Motion to Reconsider was granted by the Superior Court Judge of Merrimack County. [App. page 138a]. On July 1, 2021, Petitioner filed his Opening Brief and Appendices that included

Appendix 1 and Appendix 2 with the Supreme Court of New Hampshire. [Isijola Aff. page 35a; App. page 132a]. On July 21, 2021, Petitioner's supplement to Appendices I and II were filed with the Supreme Court of New Hampshire. [App. page 133a]. On August 17, 2021, Respondent filed a Memorandum of Law with the Supreme Court of New Hampshire. [App. page 134a]. On August 31, 2021, Petitioner filed his Reply Brief with the Supreme Court of New Hampshire in response to the Respondent's Memorandum of Law. [Isijola Aff. page 36a; App. page 134a]. On November 18, 2021, Petitioner received notification via email of the order of the Supreme Court of New Hampshire. [Isijola Aff. page(s) 134a, 138a, Index #48]. On November 19, 2021, Petitioner filed a Motion for Clarification with the Supreme Court of New Hampshire. [Isijola Aff. page 36a; App. page 134a]. On November 23, 2021, Petitioner filed a Motion for Reconsideration attached with Affidavit and Exhibits pursuant to Supreme Court of New Hampshire Rule 22. [Isijola Aff. page 36a; App. page(s) 134a, 138a, Index #49]. On November 30, 2021, Petitioner filed a Certification of Motion for Reconsideration with both the Supreme Court and Superior Court of Merrimack of the State of New Hampshire. [App. page(s) 134a, 138a, Index #50]. On December 9, 2021, the Supreme Court of the State of New Hampshire made an order denying Petitioner's Motion for Reconsideration and issued a Mandate. [App. page(s) 134a, 140a, Index #51- #53]. On February 22, 2022, Petitioner's application for an extension of time to file for a writ of certiorari extended to May 9, 2022, was filed with the Supreme Court of the State of New Hampshire. [App. page 134a].

V. REASONS FOR GRANTING THE PETITION

A. ADMINISTRATION OF THE MOTOR VEHICLE LAWS- APPLICATIONS

The New Hampshire Motor Vehicle Laws Applications Act applies when an application involves a Driver's License or Certificate of Registration. [See App. page(s) 151a-152a] Any person procuring a New Hampshire Driver's License or a Certificate of Registration may be falsely accused of procuring a Driver's license or Certificate of Registration and **shall be suspended** of his operating and registration privileges if any person acting under the color of State Law in New Hampshire believes or says so and shall be suspended **before the opportunity** of an hearing as it was applicable to the Petitioner. It provides any person acting the color of the State Law to suspend the Driver's License or Certificate of Registration to any person who procures a New Hampshire Driver's License or a Certificate of Registration and **apply criminal codes** to a falsely accused person who was not presented with any charges in a Court of Law or indicted by Grand Jury in New Hampshire as it was applicable to this Petitioner. Upon receipt of this form, [App. page 141a] the Department automatically and without investigation issued a "Notice of Suspension". [See App. page(s) 142a-145a]. The Notice requires the Driver and/or automobile owner addressed to comply with the Notice or face suspension of his driver's license and motor vehicle registration. Compliance is accomplished by doing all the following: (1) pay required \$25 Registration privilege restoration fee [DRC9111] (2) pay required \$100 Operating privilege restoration fee, if suspension/revocation remains in effect over fifteen days. [DRC9144] (3) any New

Hampshire License currently held must be returned to the department immediately. [DRC9144] (4) must submit a written request for hearing, however such request does not postpone the suspension/revocation [DRC9111] [DRC9144] Any Licensed Driver or a Certificate of Registration motorist who gets this notice of suspension must be prepared to have their privileges be suspended indefinitely and it does not matter if they are innocent or not as long as the official who acts under State colors believes so. Any Licensed Driver or a Certificate of Registration motorist who gets this notice of suspension do not have the chance for an opportunity for a hearing before the privileges are taken away, such Driver or motorist must only submit a written request for a hearing before the opportunity can be afforded him or her. Such Driver or motorist must pay the required fees no matter if they are falsely accused or not. N. H. RSA. 260:10 is the encompassing statute that allows the Director of the New Hampshire Division of Motor Vehicles after hearing suspend or revoke the license or certificate of registration issued to such person. [See App. page 151a]. The encompassing statute has a Criminal Code embedded in that statute RSA 641: 3 [See App. page 151a] and in New Hampshire, one can be falsely accused of procuring a Driver's license and Certificate of Registration and such false accusations can lead to having one's privileges suspended indefinitely as long as the official acting under State colors believes so and it does not matter if there was a presentment charges brought against the falsely accused in a Court of Law before such suspensions of the operating and registration privileges of the falsely accused are taken away. A New Hampshire

Judge do believe that criminal conviction is not needed before suspension of a license or revocation of a license and/or registration under RSA 260:10. [See App. page 15a]. A statute that has criminal code can simply be used to suspend a Driver's license and/or Registration in New Hampshire without no presentment charges in a Court of Law or indictment by a Grand Jury in New Hampshire and it goes against the need for presentment charges mentioned in the Fifth Amendment of the United States Constitution if a person is falsely accused of procuring a Driver's license and Certificate of Registration in the State of New Hampshire.

(B) THE DISCRETION OF THE HIGHEST COURT OF A STATE IN WRITING OPINION IN A CASE IT ACCEPTED FOR REVIEW IS UNQUESTIONABLY IMPORTANT

The Supreme Court of New Hampshire affirmed a Trial Court order [See App. page 1a] without providing a reasoned opinion in a case that it accepted for review and in this instance where the Petitioner's case was a mandatory appeal [See App. page(s) 39a- 44a, 158a-159a] and not discretionary, a review that is accepted automatically by the Supreme Court of New Hampshire.

The Supreme Court of New Hampshire in affirming a Trial Court order cited *Gallo v. Traina*, 166 N. H. 737, 740 (2014) and claimed Plaintiff has not established reversible error. Without an opinion, how can the Supreme Court of New Hampshire claim that Petitioner has not established reversible error? Even in the case, the Supreme Court of New Hampshire referred to, the New Hampshire Supreme Court **delivered an opinion in that case** before coming to conclusion

that the Trainas, the Plaintiff's in that case did not establish reversible error. [See Gallo v. Traina, 166 N. H. 737, 740 (2014)].

The Supreme Court of New Hampshire cited New Hampshire Supreme Court Rule 25(8) [See App. page 162a] as a reason that Plaintiff has not established reversible error. But it will give statement of the reasons therefore, if it reverses the decision. Thus, Petitioner thus urges that **this Court** should, exercising its supervisory powers, direct the Supreme Court of New Hampshire to issue reasoned opinions in cases where it accepted for review like in Petitioner's case, who was entitled to his case by reason of his case being a Mandatory Appeal, [See App. page 39a] where issuance of a reasoned opinion would provide the losing party with reasonable grounds for seeking rehearing, reconsideration, or certiorari.

The Supreme Court of New Hampshire **did not follow** its own standard of review for the Superior Court's order it affirmed:

"The N.H. Supreme Court will review the Superior Court's application of law to the facts **de novo**" "Wensley v. Director, N. H. Division of Motor Vehicles, 140 N. H. 560, 561 (1995). Jacobs v. Director, N. H. Division of Motor Vehicles, 149 N.H. 502, 503 (2003)"

The Superior Court of Merrimack County of the State of New Hampshire applied Motor Vehicle criminal codes to the Petitioner who was falsely accused of procuring a New Hampshire Driver's license and Vehicle Registration and without no presentment of charges in a Court of Law and without any convictions in a Court of Law, Petitioner's Driver's License and Vehicle Registration has remained indefinitely suspended. The Supreme Court of New Hampshire actions are arbitrary and Capricious. Arbitrary and capricious actions violate due process and an

arbitrary and capricious refusal of the Supreme Court of New Hampshire to evaluate the application of law to the facts **DE NOVO** of the Superior Court of Merrimack County order for **ERRORS OF LAW** violates the federal due process clause.

The Court of Appeals for the Tenth Circuit, vacated and remanded back to the U.S. District Court in Kansas when the District Court denied a Petitioner's request for **In Forma Pauperis** to proceed in the U.S District Court in Kansas without paying the filing fees **without a Statement of the reasons** it had denied IFP status. The Court of Appeals for the Tenth Circuit stated that the Petitioner has stated a cause of action and claim for relief and vacated and remand to the District Court to provide a **statement of the reasons** and be heard on the merits. [See *Olson v. Hart*, 965 F.2d 940 (10th. Cir. 1992)].

(C) INEFFECTIVE COUNSEL MEETS DEFICIENT PERFORMANCE AND PREJUDICE STANDARD

The Sixth Amendment of the Federal Constitution and Part 1, Article 15 of the State of New Hampshire [page 4] is the right to the effective assistance of counsel and the benchmark for judging any claim of ineffective assistance must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Strickland v. Washington* 466 U. S. 668 (1984).

Petitioner hired a Counsel to represent him in an administrative hearing, [Isijola Aff. page 31a] the Petitioner has no familiarity of, because he has never had to

request for a hearing since 1999 when he established his residency in the State of New Hampshire. [Isijola Aff. page 30a; App. page 57a].

Then came August 5, 2020, an administrative hearing was held, and Counsel represented Petitioner at this hearing [App. page(s) 21a-22a, 25a] The Hearing was about False Statement on Driver's License and Vehicle Registration. [App. page(s) 83a, 146a-147a]. Petitioner's Driver's License and Registration privileges have **already been suspended** before this hearing. [App. page 97a]. New Hampshire Motor Vehicle criminal codes has already been used to suspend Petitioner's Driver's License and Vehicle Registration [App. page(s) 15a-17a, 142a-146a] privileges even though the Instigating State witness **never requested Petitioner's Vehicle Registration** to be suspended in the first place [See App. page 140a] but Director Bielecki suspended the privilege anyway. [See App. page 141a] and the privilege is still suspended indefinitely [App. page 147a] as well as with Petitioner's Driver's license. So, with all this information that Petitioner provided on the background of the hearing, Petitioner is already seen as a convicted Licensed Driver and motorist. Petitioner former Counsel started his ineffectiveness in this hearing by the questioning of the state witness with only one friendly question. [App. page 100a] and then interrogation of the Petitioner who was his client [See App. page(s) 102a-106a]. Petitioner realized his best interests was not served and notified the Hearing Examiner who presided over this hearing of the deficient performance of the Counsel, then the interrogating of the Petitioner stopped. [App. page 108a].

Then later in the hearing, since the Hearing Examiner did not disqualify the Counsel from further participating in the hearing, the Counsel stated on record:

“And I just was busy reaming out my client, so—because he just doesn’t to answer questions. I want to kill him”. [See App. page 114a].

Counsel went further about interrupting his client in the administrative hearing. [App. page(s) 126a-127a]. and further testimonies from the Petitioner can be found in his testimony in the Superior Court Hearing. [App. pages 49a-55a].

The proper standard for judging attorney performance is that of reasonably effective assistance, considering all the circumstances. *Strickland v. Washington* 466 U. S. 668 (1984). With regard to the required showing of prejudice, the proper standard requires the defendant to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. A court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury. This Court held in *Strickland v. Washington*, 466 U. S. 668 (1984) that a counsel's performance must be deficient and (2) the deficient performance must have prejudiced the defense so as to deprive the defendant of a fair trial. Petitioner 's counsel meet the “deficient” and “prejudice” standard of an ineffective counsel and Petitioner was able to show that [Knowles v. Mirzayance 556 U. S 1254 (2009)]. Thus, Petitioner sixth amendment right was violated by his Counsel which clearly violated Federal established law.

(D) CITATION OF NO AUTHORITY INVALIDATES A JUDGE'S ORDER

The Supreme Court of New Hampshire affirmed a Trial Court order that cited no authorities in its applications of the law [App. page 3a] that has kept Petitioner's Driver's License and Vehicle Registration privileges suspended indefinitely and in affirming the Director's decision of September 16, 2020 [App. page 147a], the Superior Court of Merrimack County stated **without citing any authority** for its order:

"On these facts, despite the apparent breakdown in the attorney/client relationship, the court cannot find that the hearing was unfair or that the result calls the integrity of the proceeding into question. For all of these reasons the Director's decision is **AFFIRMED** and judgment is granted to the Director". [App. page 12a].

This Court said it best, "if a Court act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification, and all persons concerned in executing such judgments or sentences are considered in law as trespassers". Elliot v. Lessee of Piersol, 26 U. S. 328 (1828).

(E) RIGHTS INVOLVED IN THIS LITIGATION ARE SIGNIFICANT

Petitioner's Driver's license and Vehicle Registration privileges were suspended indefinitely. The Driver's License and Motor Vehicle Registration are properly protected by the due process clause of Section 1 of the Fourteenth Amendment and may be abridged only by constitutionally appropriate procedures.

The status of a driver's license deserving of constitutional protections was first most clearly stated in *Wall v. King*, 206 F. 2d 878 (1st Cir. 1953):

"We have no doubt that the freedom to make sure use of one's property, here a Motor vehicle, as a means of getting about from place to place, whether in pursuit of business or pleasure, is a "liberty" which under the Fourteenth amendment cannot be denied or curtailed by a state without due process of law". 206 F. 2d at 882.

The concept of liberty mentioned in *Wall*, *supra* has been buttressed by the delineation of a separate and independent constitutional right of interstate travel and free movement. *United States v. Guest*, 383 U. S. 745 (1966); *Shapiro v. Thompson*, 394 U. S. 618 (1969). Unmentioned explicitly in the language of the Constitution, this right of interstate travel and free movement is nevertheless fundamental and basic to the Constitution, *Passenger Cases*, 7 How. 283 (1949); *United States v. Guest*, *supra*; *Shapiro v. Thompson*, *supra*. It is a separate and individual right, not simply an aspect of the "liberty" guaranteed by the due process clause of the Fourteenth Amendment. In *Shapiro*, *supra*, this Court held that a state may not condition welfare benefits upon a year's residence within the state. The right of interstate travel was held so crucial that any infringement upon it

"must be judged by the stricter standard of whether it promotes a compelling state interest," 394 U.S at 638 (emphasis by the Court).

Although this Court have considered a similar case to that of the Petitioner in about fifty-one years ago when it comes to pre-suspension hearings before deprivation of such privilege, the earliest decision on the exact point presented occurred in *Bell v. Burson*, 402 U. S 535, 539 (1971) where this Court said once licenses are issued, they cannot be revoked without procedural due process required by the Fourteenth Amendment. This Court said suspension of issued licenses involves state action that adjudicates important interests of licensees, and due process is required. This Court said the Georgia Motor Vehicle Safety Responsibility Act (Act) procedure violated due process. **Petitioner believes this Court will found the New Hampshire Motor Vehicle Laws Application Act violative of due process and in addition, when falsely accused without no presentment in a Court of Law nor indicted by Grand Jury, and using criminal codes on a non-convicted person will be found violative of the due process clause of the Fifth Amendment and after about fifty one years ago when Bell v. Burson was decided, this Court will send a convincing message to all the States on acceptable due process requirements of an issued Driver's License and in this case, with Vehicle Registration certificate issued.**

Today the social and economic circumstances of many people have made a Driver's License a necessity. Petitioner's dilemma is typical. He was deprived of use of his automobile and ever since he has found it impossible to work as a travelling

salesman. Without the use of his automobile, petitioner's right to travel has been severely curtailed.

(F) THIS COURT'S PRECEDENTS AND THE DUE PROCESS DECISIONS OF THIS COURT

Certiorari is also warranted because the decision below is incorrect. This Court held in Bell v. Burson 402 U.S. 535 (1971) that before the State may deprive Petitioner of his Driver's License and Vehicle Registration, it must provide a forum for the determination of the question whether there is a reasonable possibility of a judgment being rendered against the petitioner. This Court said in Armstrong v. Manzo, 380 U. S. 545 (1965), that the hearing required by the due process clause must be meaningful and appropriate to the nature of the case. "In Sniadach v. Family Finance Corp., 395 U. S. 337 (1969) and in Goldberg v. Kelly, 397 U.S. 254 (1970) this Court found improper the withholding of wages and welfare benefits pending subsequent due process review. The lack of due process in petitioner's case is more flagrant; he has no opportunity for a meaningful hearing either before or after suspension. In Goldberg, where welfare benefits were at stake, review was again possible after suspension. Indeed the New York welfare procedures in Goldberg also provided for a presuspension hearing and this court considered not only whether that hearing was necessary, but also what it must include. 397 U. S. at 257. The interests at stake here are as significant as those in Bell, Sniadach and Goldberg. In Sniadach, this court protected the individual's wages from a taking without a proper hearing. Petitioner now asks that his right to drive and use a car

necessary to his employment as a travelling salesperson receive the same due process protections.

There is no countervailing state interest which can justify suspending petitioner's driver's license without due process. It has been demonstrated above that the New Hampshire Motor Vehicle Administration Application Act does not operate to promote public safety. The balancing test of Bell, Sniadach and Goldberg, when applied to the present case, requires a reversal of the holding of the court below.

(G) STATE COURTS HAVE CONSIDERED DUE PROCESS

The Arizona Supreme Court interpreted its act to require pre-suspension hearings to determine reasonable possibility of a damage judgment in Schechter v.

Killingsworth, 93 Ariz. 273, 380 P.2d 136 (1963) Thus, since 1963 the Arizona Highway Department has been granting hearings before suspension to those persons requesting. At these hearings, a determination of reasonable possibility of a judgment being rendered against any person who are really offenders are made. The effectiveness of these hearings is clear, many hearings are granted annually while a few appeals were taken from the decision of the hearing officer to the appropriate state court.

Similar interpretations of state responsibility acts have been to avoid the charge of unconstitutionality in both New Jersey and Utah. Williams v. Sills, N. J. 178, 260 A.2d 505 (1970) and Hague v. Utah Department of Public Safety, 23 Utah 2d. 299, 462 P. 2d 418 (1969). The actual experience of the Arizona Highway Department provides proof that an administrative agency can accurately determine possible

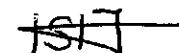
liability. Not all state courts have chosen to save their acts from constitutional infirmity through judicial interpretation. Colorado responsibility act was held unconstitutional in People v. Nothaus, 147 Colo. 210, 363 P. 2d 180 (1961). See also State v. Kouni, 58 Idaho 493, 76 P. 2d 917 (1938) holding a similar state act in conflict with state and federal due process guarantees.

VI. CONCLUSION

The petition for a writ of certiorari should be granted by this Court. For the foregoing reasons set forth within this petition for a writ of certiorari, the decision of the court below should be vacated and remanded and N.H. RSA 260:10, 261:178, 263.12V declared unconstitutional and their application enjoined insofar as they operate to allow Driver's License and Vehicle Registration suspension without a presentment in a Court of Law or indicted by Grand Jury and without a constitutionally adequate hearing procedure.

Respectfully submitted,

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