

09/15/21
MD

No. 21-841

In The
Supreme Court of the
United States

Michael Smallwood for Heidi Smallwood

Petitioner,

vs.

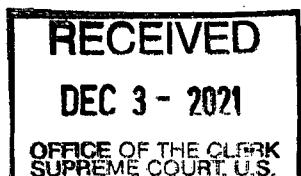
William Paul Nichols et al

Respondents,

On Petition For Writ of Certiorari To The
United States Court of Appeals for the
Sixth Circuit Court of Appeal (19-2237)

PETITION FOR A WRIT OF CERTIORARI

Michael Smallwood for Heidi Smallwood, Pro se
5981 Newport South Road
Newport, MI 48166



QUESTIONS PRESENTED

I Can state and federal agencies use private entities, as agents of the government to commits acts of unlawful search and seizure, and deprivation of a liberty interest to medical care, that the government agencies themselves, are not permitted to commit under the U.S constitution ?

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	ii
TABLE OF CONTENTS.....	iii
LISTS OF PARTIES.....	vi
TABLE OF AUTHORITIES.....	xiii
OPINIONS BELOW.....	P1
JURISDICTION	P2
CONSTITUTIONAL PROVISIONS AND STATUTES AT ISSUE	P3

I. STATEMENT FOF THE CASE

A. Facts Giving Rise To This Case.....	P4
B. The State Court Proceedings.....	P16
C. The District Court Proceedings.....	P16
D. The Appellate Court Proceedings.....	P16

II. REASONS WHY CERTIORARISHOULD BE GRANTED.....	P17
1. Illegal Search and Seizure.....	P21
III. REVIEW IS WARRANTED.....	P23
1. Strict Scrutiny Basis for Judicial Review	P23
2. Unreasonable Search and Seizure.....	P31
3. Standing	P28
4. Malice.....	P32
5. Equal Protection.....	P33
CONCLUSION.....	P40
CERTIFICATE OF COMPLIANCE.....	P41
CERTIFICATE OF SERVICE.....	P41

INDEX TO APPENDICES

APPENDIX A: Decision of the United States Court of Appeals for the Sixth Circuit (May 24, 2021)	A2
APPENDIX B: Oder Decision of the United States Court of Appeals for the Sixth Circuit Denying Rehearing ((May 24, 2021. A135.....	A6
APPENDIX C: Decision of District Court	

ORDER GRANTING DEFENDANTS' MOTION
TO CONSOLIDATE CASES¹ [#16] AND SETTING
February 20, 2019.....A7

APPENDIX D

OPINION AND ORDER REGARDING VARIOUS
MOTIONS ... September 30, 2019.....A17

APPENDIX E

The PDMP: Raising Issues in Data Design, Use and
Implementation.

Terri Lewis <https://link.medium.com/Q8YRQMwUjlB>

Aug 7 2021 10 min readA.48

CONSTITUTIONAL PROVISIONS AND
STATUTORYA66

LIST OF PARTIES

MICHAEL SMALLWOOD FOR HEIDI
SMALLWOOD, Pro Se

V.

MONROE COUNTY CHIEF PROSECUTING
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BLUE CROSS BLUE SHIELD OF MICHIGAN
FOUNDATION (BCBSMF) –ID No. 800801281,
BLUE CROSS BLUE SHIELD OF MICHIGAN
(BCBSM)—ID No. 800801281,
BLUE CROSS COMPLETE OF MICHIGAN (BCCM),
BLUE CARE NETWORK OF MICHIGAN (BCNM)—
ID No.800883794, BLUECAID OF MICHIGAN
(BCM)—Id No.800891749
BLUE CROSS BLUE SHIELD OF MICHIGAN
MUTUAL INSURANCE COMPANY
BLUE CROSS BLUE SHIELD ASSOCIATION
I-PATIENTCARE INC,
MANTIS (MONROE AREA NARCOTIC TEAM
INVESTIGATION SERVICE)
LT. MARC MOORE AND OTHERS,
DEA DIVERSION INVESTIGATOR BRIAN BISHOP
DEA TASK FORCE OFFICER CHRISTINE HICKS
DEA ADMINISTRATIVE JUDGE JOHN J
MULRONEY AT US DISTRICT COURT IN
DETROIT, MICHIGAN
FIRST MERCHANTS BANK, fka Monroe Bank &
Trust
SUSAN MEHREGAN
THOMAS SCOTT
FORMER DEA TASK FORCE OFFICER/MONROE
COUNTY POLICE DEPARTMENT OFFICER
SHAWN KOTCH
BLUE CROSS BLUE SHIELD INVESTIGATOR
JAMES STEWART, AKA JAMES HOWELL
MANTIS DETECTIVE ROBERT BLAIR

MANTIS DETECTIVE BRENT CATHEY
MANTIS DETECTIVE JON LASOTA AND OTHERS
MANTIS , MCSD DETECTIVE SEAN STREET
MANTIS , MCSD, VICE UNIT DET. MIKE MCLAIN
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MONROE COUNTY MAGISTRATE JESSICA
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MONROE COUNTY JUDGE JACK VITALE
MONROE COUNTY JUDGE DANIEL WHITE
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CORPORAL DONALD BRADY MONROE CITY
POLICE DEPARTMENT SERGANT CHRIS MILLER
MONROE COUNTY SHERIFF OFFICER
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MANTIS CPL ADAM ZIMMERMAN
DEA WILLIAM CHAMULAK
DEA TOM FARRELL
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DEPARTMENT ("MCSD"), SCOTT BEARD
DEA TASK FORCE OFFICER MIKE GUZOWSKI
DEA TASK FORCE OFFICER TIM GATES
MANTIS TASK FORCE OFFICER SARAH BUCIAK
ASSISTANT MONROE PROSECUTOR ALLISON
ARNOLD
ASSISTANT MONROE PROSECUTOR JEFFREY
YORKEY
CHIEF ASSISTANT PROSECUTOR MICHAEL G
ROEHRIG
MONROE COUNTY SHERIFF'S DEPARTMENT
DALE MALONE
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PEDELL MD
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MICHIGAN BUREAU OF PROFESSIONAL
LICENSING PHARMACIST EXPERT WITNESS,
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MICHIGAN BUREAU OF PROFESSIONAL
LICENSING , KEEPER OF THE RECORDS, DINA
YOUNG
MICHIGAN ATTORNEY GENERAL BILL
SCHUETTE
MICHIGAN ASSISTANT ATTORNEY GENERAL
JENNIFER FRITZGERALD
MICHIGAN ASSISTANT ATTORNEY GENERAL
TIMOTHY C. ERICKSON
MICHIGAN ASSISTANT ATTORNEY GENERAL M
CATHERINE WASKIEWICZ
ADMINISTRATIVE LAW JUDGE, MICHAEL J ST.
JOHN , MICHIGAN ADMINISTRATIVE HEARING
SYSTEM. 611 WEST OTTAWA. LANSING , MI 48933
MICHIGAN AUTOMATED PRESCRIPTION
SYSTEM , HALEY WINANS,

UNITED STATES ATTORNEY MATTHEW
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CHIEF, HEALTH CARE FRAUD UNIT, ASSISTANT
UNITED STATES ATTORNEY, WAYNE F. PRATT
ASSISTANT UNITED STATES ATTORNEY,
BRANDY R. MCMILLION
JOHN(S) DOE(S), NAMES BEING FICTITIOUS
AND UNKNOWN TO THE PLAINTIFF, BEING ALL
OTHER PARTICIPATING UNDERCOVER
DETECTIVE(S), INVESTIGATOR(S), AND LAW
ENFORCEMENT OFFICER(S), IN BOTH THEIR
INDIVIDUAL AND OFFICIAL CAPACITIES,
JOINTLY, AND SEVERALLY
RAY KISONAS
KIM GADEKE
MICHAEL ZSENYUK
MICHAEL HENDRICKS , HHS OIG

LIST OF RELATED PROCEEDINGS

2 . Tracy Claire Micks -Harm, et al v. William Paul Nichols, et al. (Consolidated: 19-2173, 19-2182, 19-2207, 19-2209, 19-2226, 19-2227, 19-2228, and 19-2237). U.S. Court of Appeals, FOR THE SIXTH CIRCUIT. Judgement for rehearing entered JUNE 30, 2021.

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18-13647, Helm v. Nichols; E.D Michigan. 2019

19-10125, Cook v. William; E.D Michigan. 2019

19-10126, Cook v. Nichols; E.D Michigan. 2019

19-10132, Cook v. Nichols; E.D Michigan. 2019

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(Retaliation against the process server, Mr. Stacey Hall)

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MDL 2406, N.D. Ala. Master File No. 2:13-cv-20000-
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(1989).....P29

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138 S. Ct. 2206, 2223
(2018).....P24

Franks v. Delaware

438 U.S.
154.....P7

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134 S. Ct. 2473 (2014).....P11

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273U.S 510 (1927).....P39

Malik v. City of New York.

(20-1969-cv) U.S Court of Appeals For the Second
CircuitP4

FEDERAL STATUTES

Sherman Antitrust Act.P21

Controlled Substance Act § 802 (56) (c)P2

21 U.S.C. 841.....P5

42 U.S.C § 1983.....P22

STATE STATUTES

MCL

780.655.....P14

FEDERAL RULES

Fed. Rule of Civ. Proc. Rule 4.....P14

STATE RULES

The Michigan Health Endowment Fund, or the Health Fund for short, was created through Public Act 4 of 2013.....P8

Federation of State Medical Boards- Model Policy on DATA 2000 and Treatment of Opioid Addiction in the Medical Office of April 2013.....
.....P16

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.....P40

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STATE OF MICHIGAN PROCUREMENT

Department of Technology, Management, and Budget

525 W. Allegan St. Lansing, MI 48933

P.O. Box 30026, Lansing, MI 48909

NOTICE OF CONTRACT NO. 190000000755

THE STATE OF MICHIGAN and BCBSM.....

CONTRACT NO. 190000000755 THE STATE OF
MICHIGAN and BCBSM

STATE OF MICHIGAN PROCUREMENT

Department of Technology, Management, and Budget

525 W. Allegan St. Lansing, MI 48933 P.O. Box 30026,
Lansing, MI 48909. NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. 190000000755 . THE
STATE OF MICHIGAN and BCBSM

“The Contractor must ensure that all providers agree to the following appointment access times: 1. Life-threatening emergency - immediately 2. Non-Life-threatening emergency - within 6 hours 3. Urgent care - within 48 hours 4. Initial visit for routine care - within 10 business days. The Contractor will conduct an accessibility analysis for access to behavioral health care annually in accordance with the NCQA standard timeframes indicates above.

(12). HIPAA compliance. The parties acknowledge and agree that this Agreement involves the use and disclosure of HIPAA protected health information. The parties therefore agree that all uses, and disclosures of HIPAA protected health information pursuant to this Agreement will be undertaken in compliance with all applicable HIPAA requirements. BCBSM shall disclose HIPAA protected health information to a third party, other than HHS or other federal government agency in connection with the Program, only upon Sponsor's written certification that such disclosure is permitted under HIPAA. BCBSM and Sponsor agree that this Agreement satisfies the requirements of 45 C.F.R. § 149.35(b)(2). BCBSM shall provide HIPAA protected health information directly to Sponsor or Sponsor's designee under Section 4 only if Sponsor certifies in writing that: (A) appropriate HIPAA business associate agreements are in effect between BCBSM, Sponsor, Sponsor's designee, and the Employment-Based Plan; (B) the plan documentation for the Employment-Based Plan permits such disclosure; and (C) the Sponsor has taken all other

steps required by HIPAA in order to legally receive such protected health"P16

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.....27

How drug warriors made the “opioid epidemic

deadlier. Sullum – Chicago – Sun-Times.

<https://Chicago.suntimes.com/columnists/2021/7/28/22597967>.....P27

OPINIONS BELOW

Petitioner Michael Smallwood for Heidi Smallwood moves pro se, from a Final Order of Reconsideration from the Sixth Circuit Court of Appeals, dated June 30, 2021¹. On May 24, 2021, the United States Court of Appeals for the Sixth Circuit improperly affirmed.

A pretextual search and seizure occurred twice on 09/26/2016⁷ after the petitioner's doctor was targeted in November 2015. The opinion of the United States Court of Appeals appear at Appendix A and Appendix B and are not published. The opinions of the United States district court, are unpublished, and appear at Appendix C, Appendix D. Appendix E documents.

1-Appeal No. Case No. 19-2209

2- 2: 18-cv-12634

7- . 2:18-cv-12634, E.D Michigan. ECF 37-1. Page ID 728. P 131
of 183

JURISDICTION

In 2018, petitioners filed the instant case in the United States District Court for the Eastern District of Michigan. Despite complete field preemption under Controlled Substance Act (CSA 802 (56)(c)), here, the respondents are public officials, or agents of the government, who have the intent to benefit from the Controlled Substance Act. Federal Preemption, by the health care practitioner, under CSA 802 § (56) (c) controls. Under CSA 802 § (56) (c), the health care practitioner determine the appropriate dose of controlled substance pain medication prescribed to a particular patient.

Pursuant the “Patient Rights Statute (MCLA 333.20201)”, the Health Care Portability and Accountability Act (HIPA), the 4th Amendment, and the “Federal Privacy of 1974, 5 USCA 552a (1988), the petitioner had a reasonable expectation of, and was

entitled to, privacy in her medical records, PDMP data, and personal identification data.

HFPP (Healthcare Fraud Prevention Partnership), BCBSMMC (Blue Cross Blue Shield of Michigan Mutual Insurance Company), BCBSA (Blue Cross Blue Shield Association) and partners will make the opioid predicament catastrophically worse. The Petitioner filed a timely filed this Petition and Jurisdiction of this Court to review the Judgment of the Sixth Circuit is invoked under 28 U.S.C. §1254 (1). The United States court of appeals, of the Sixth Circuit, has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

**CONSTITUTIONAL PROVISIONS AND STATUTES
AT ISSUE**

Controlled Substance Act (CSA 802 (56)(c)

Fourth Amendment to the United States Constitution

Gramm Leach-Bliley Act § 501,

42 U.S.C § 1983

42 U.S.C. § 1985(3)

42 C.F.R §§ 2.61-2.67

Patient Protection and Affordable Care Act (“ACA”)

(codified at 42 U.S.C. §18116)

I. STATEMENT OF THE CASE

A . Facts Giving Rise To This Case

In violation of 42 U.S.C. § 1985(3) , William Paul Nichols, BCBSMMIC,BCBSM (Blue Cross Blue Shield of Michigan), BCBSA , BCS Financial Group, Brian Bishop, William Chamulak, Marc Moore, Robert Blair, Michael Hendricks, and MBT Financial Inc., (now known First Merchant Bank Inc. by merger in succession) had an express or implied agreement

between the members of the joint enterprise with the intent to obtain defective search warrants on 9/23/2016, 9/27/2016, 08/14/2017, 5/23/2018 in the state of Michigan to be executed in the state of New Jersey on 09/26/2016, 09/27/2016, 8/14/2017, 05/23/2018. On 8/24/2016, Rochelle Basinger, then prosecutor William Paul Nichols step daughter, injected the drug Fentanyl, hung herself, and subsequently killed herself in a suicide. In July of 2017, Brandon Nichols, the son of William Paul Nichols, died of an overdose of illegal drugs. In 2019, MANTIS informant Joshua Cangliosi overdosed from overdosed and died. Patients are dying from the intrusion ¹⁴

BCSA, BCBSMMIC, Qlarant Solution Inc. (formerly Qlarant Medic), General Dynamics Information Technology (GDIT), Independence Blue Cross (IBC), Appriss Health (now a subsidiary of Equifax, known as Bamboo Health) among other private companies, have intertwined themselves under HFPP, as state actors, and assumed traditional

criminal investigation of the DEA, OIG, CMS, Medicare , MANTS, the Michigan State Police, Medicaid, and the FBI in prospective criminal investigations. The above name private parties have advertised their entry, as state actors acting under the color of law, into: 1) traditional police of criminal investigation, i.e. Medicare “Pill Mills” 2) into traditional governmental prosecutorial functions by coordinating the criminal conviction of physicians, and 3) provides expert witness for the government, 4) participate in court’s function by the provision of informants, expert witnesses , 3) pursuant to HFPP, Operation Stonegarden, Operation Gateway and proprietary pecuniary gains ⁸

8 Case No. 16-139517-CF

14<https://end-overdose-epidemic.org/wp-content/uploads/2021/09/AMA-2021>

BCBSMMIC, BCBSA, DEA, OIG/CMS are commercial suppliers of defective opioid monitoring software product ¹⁵ for profits^{17,22}. In contrast to yesterday's PDMP, today's PDMP contains personal medical and personal identifying information, and credit data involuntarily given to the third parties²⁰. The PDMP is used by law enforcement in establishing probable cause of a crime. The software product use a classification scheme based on race, age, nation of origin of the physician and the medical status of patients deemed disabled under the ADA. Pursuant to *Franks*²⁶ violation, perjury of Dina Young, improper data mining ⁹, false statements by Jennifer Nash and Jeanette Beeler and James Stewart and Carl Christensen M.D¹¹ and Sean Street, disproportionate high health care administrative cost^{5,20} ratified by systemic and recurrent misconducts by the medical board ⁵, the petitioner's medical records and PDMP Data were collected on the basis of a defective¹⁰ warrant granted on the basis of a false statement ⁸.

24 Malik v. City of New York. (20-1969-cv) CA 2

15 Case No 1: 21- 01635 (D.C. (2021)) Document 9, 9-1, 9-2

17 <https://www.metrotimes.com/news-hits/archives/2019/03/08/bernie-sanders-criticizes-blue-cross-ceo-over-19m-pay>.

20 wpsites.maine.edu/mlipa/2021/11/15/predicting-drug-diversion-the-use-of-data-analytics-in-prescription-drug-monitoring/

22 Michigan Health Endowment Fund, or Public Act 4 of 20135
No. 19-cv-3050 (TSC)(D.D.C. 2021)

10 2:19-cv-10334-DML-MJH ECF No. 69 PageID.950 P. 3 of 16.

18- 2:18-cv-12634, E.D Michigan. ECF 246-2. Page ID 4482. P 15
to 19 of 27

9- *ibid.* ECF 246-2. Filed Page ID 4482. P 24 of 27, ¶90-91

11 *ibid.* ECF 37-1. Page ID 750. P 153 to 156 of 183

20 David M. Cutler, Harvard University: Reducing
Administrative Cost in U.S Health Care. The Hamilton Project.
Brookings Institute. March 2020

26 Franks v. Delaware, 438 U.S. 1

Among other defects of the 9/23/2016 and 8/14/26 search warrant include: 1) lacked a court transcript, 2) lacked the caption and seal of the issuing court, 3) lacked a notarized signature to prevent perjury, 4) supported by false statement in the affidavit by Robert Blair, Sean Street, James Stewart, 5) exceeded the geographical jurisdiction of the Monroe District Court, 6) exceeded the jurisdiction of the Monroe District Court by a) exceeding the statutory allowed dollar amount in controversy, personal jurisdiction over IPatientCare Inc., 7) Personal jurisdiction over the New Jersey Citizen, 8) violated Subject matter jurisdiction over interstate commerce between the State of Michigan and the State of New Jersey, 9) exceeded the permissible execution period of a search warrant on 5/26/2018 by Michael Hendricks of HHS/OIG. Michael Hendricks already had obtained the medical records from Brian Bishop on 4/23/2018, 10) absence of court logs determining the location for a hearing, 11.) perjured statement in the affidavit, 12)

IPatientCare Inc. was not listed in particularity as a place to be searched and seized, 13) lack of the court order necessary under 42 CFR §2.61-2.67, prior to the insertion of undercover agents, such as James Stewart, in a drug treatment facility, such as Dr. Pompy's office, 14) violation of court rules, of the state of Michigan and New Jersey, regarding the use of extraterritorial search warrants, 15) diversity, personal, and subject matter jurisdiction defects, 16) proper service of process, opportunity to be heard and due process was not given in violation of Interventional Pain Management Associates property rights, 17) improper court tabulation of evidence authenticated by the evidence technician.

At about 08:30 on 9/26/2016, a Michigan State Police custodial interrogation of the petitioner's doctor was misrepresented as a warrantless DEA administrative inspection. The name and address of patients undergoing substance abuse

treatment. The patients were to be visited later at home, without counsel. At about 10:00 am, law enforcement returned, searched and seized executed of a search warrant obtained on 9/23/2016. Cell phones of Dr. Lesly Pompy, Erica Shawn, Jordan Rippee, Diana Knight²⁵. Potential conflict of interest ^{18,29,21}, liability¹² for inadequate or improper training of police officers support a finding for punitive damages.

25 In violation of Riley v. California 134 S. Ct. 2473 (2014)

10 . 2:19-cv-10334-DML- ECF No. 69 PageID.950 Page 3 of 16.

12 *City of Canton v. Harris*, 489 U.S. 378, 109 S. Ct. 1197 (1989)

18<https://www.freep.com/story/news/local/michigan/2019/01/08/michigan-lara-director-orlene-hawks-married-lobbyist-marijuana/2499886002/>

29 <https://www.freep.com/story/money/business/2019/03/08/ceo-blue-cross-blue-shield-michigan/3071484002/>

21 <https://www.freep.com/story/money/business/2019/03/01/blue-cross-blue-shield-michigan-daniel-loepp/3028558002/?fbclid=IwAR0eEqqnSg6>

Pursuant the "Patient Rights Statute (MCLA 333.20201)", the Health Care Portability and Accountability Act (HIPA), the 4th Amendment, and the "Federal Privacy of 1974, 5 USCA 552a (1988), the petitioner had a reasonable expectation of privacy in her medical records and her personal identification data. An individualized suspicion was necessary, but not established, to establish probable cause. The probable cause for the 9/23/2016, 9/27/2016, 8/14/2017, 5/23/2018 search warrants are based on material misrepresentation of past and present facts, in that: 1) perjury in the affidavits of Sean Street and Dina Young, 2) James Stewart aka James Howell's pain questionnaires misrepresenting his pain intensity, 3) BCBSMMIC faulty prescribing data analytics, 4) misrepresentation of medical status in a medical referral by Blue Cross Blue Shield of Michigan Mutual Ins Company employee, J. Alan Robertson M.D, 5) false statements made by Robert Blair to Monroe Bank and Trust, 6) false statements that Carl

Christensen M.D. never used the pain medication Subsys, 7) false statements that Leon Pedell M.D was substantially involved in the treatment of pain.

Specific causation for a probable cause in the obtaining of the petitioner's medical records is lacking.

On 09/30/2016, DEA agent Brian Bishop filed a complaint against Dr. Pompy's State of Michigan medical license at the Bureau of Professional Licensing (BPL). On 8/04/2017, Dina Young swore in an Affidavit to have served an ISO (Immediate Suspension Order). Actually, Dr. Pompy was served with the ISO by Brian Bishop at Promedica Monroe Regional Hospital on 8/04/17. On August 4, 2017, Brian Bishop went to Promedica Monroe Regional Hospital to serve Dr. Pompy with an order of Immediate Suspension regarding his State of Michigan Medical license. BPL is an informal court, of limited jurisdiction, without collateral estoppel and res judicata authority.

Brian Bishop was both a party, and a service of process processor of the litigation against Dr. Pompy medical License , and the petitioner's privileged medical information. Fed. Rule of Civ. Proc. Rule 4 prohibits such conduct. Brian Bishop's service of process on Dr. Pompy of an ISO on 8/4/2017 leading to the acquisition, disclosure to Hafner and BPL of the petitioner's medical record, PDMP data, and personal identification data fails.

MCL 780.655 provides that for the proper tabulation, chain of custody, restoration to the owners of medical records and office assets, and disposition of medical records. Marc Moore, Brian Bishop, Robert Blair, Carl Christensen M.D., Leon Pedell M.D. failed to abide by the requirements of MCL 780.655, by failing to provide tabulation of the plaintiff's medical records to the Monroe District Court.

The name of the issuing court on the 9/21/2016, 9/23/2016, 9/27/2016, 9/28/2016, 8/14/2017 search

warrants was purposefully erased on the warrants.

The impression seal of the issuing court is absent. The lack of the impression seal on the search warrant represents a violation of MCL 780.651.

For, the time and date stamp on the search warrants are either : 1) inconsistent with the time and date the search warrant was signed by the judge or magistrate, or 2) inconsistent with the date and time the search warrant was actually executed.

Magistrates Chaffin and Tina Todd, Judge Jack Vitale acted outside of their jurisdiction, outside the scope of their employment. MCL 780.657 prohibits a court from exceeding its authority.

Michael Hendricks of HHS /OIG used the 9/23/2016 warrants to obtain petitioner's medical records on 4/26/2018 from Brian Bishop on 4/26/2018 . Those same medical records, that Brian Bishop got from New-Jersey using the void Michigan 9/23/16, third-party, extraterritorial warrant.

B. The State Court Proceedings

Without resolving the case, summary disposition was granted to the Monroe City Police ¹. Despite conflict of interests¹⁵, Bureau of Professional Licensing and the Federation of Medical Boards¹⁶ ratified the unconstitutional acts.

C. The District Court Proceedings

As described in Appendix “ C and D”

D. COURT OF APPEALS FOR THE SIXTH CIRCUIT Court Proceedings

As described in appendix “A and B.”

1 .2.18-cv-12634, E.D Michigan. ECF 21-1. P id 336. P 52 of 62.

6 Tumey v. Ohio, 273U.S 510 (1927)

13 Consolidated: 19-2173, U.S. CA 6. Document 61. Filed 10-21-2020. P9 -11.

35 <https://detroitsocialist.com/dsa-fights-to-remove-insurance-ceo-from-whitmer-transition-team-64588b045799>

16 Federation of State Medical Boards- Model Policy on DATA
2000 and Treatment of Opioid Addiction in the Medical Office of
April 2013

30 CONTRACT NO. 190000000755, STATE OF MI. and BCBSM

REASONS FOR GRANTING THE PETITION

Where the plaintiff's fundamental right to medical treatment is violated under conflict of unsettled laws, statutes and guidelines pursuant to : 1) CFR 42 § 2.61-2.67, 2) the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., the Rehabilitation Act of 1973, 29 U.S.C. §701, et seq., 3) the Affordable Care Act, 42 U.S.C. §18116, et seq, 4) the Nuremberg Code §§4 and 44 Code of the Geneva Convention, 5) Joint Commission on Accreditation of Healthcare Organizations (JCAHO) "pain as the 5th Vital Sign," 6) EMTALA (Emergency Treatment and Labor Act) laws, 6) the Controlled Substance Act (CSA 802 (56)(c)), 7) the Drug Addiction Treatment Act of 2000 (Data 2000) under SAMSHA, 8) pain societies guidelines, 9) the CDC Guidelines, particularly its amendments10) the pharmacist's corresponding responsibility under CFR 1306.04 (a) where dispensing of a prescription ratifying the validity of that prescription for controlled substances, 11) health insurance pre-authorization services of medications, 12) Pharmacy Benefit Programs (PBM) formularies, and 13) the 2019 HHS " Best Practices - Pain Management Guidelines - there a basis for the use of strict scrutiny standard for judicial review ,

regarding the release of information and affidavits supporting the search and seizure of PDMP and medical records. There are no compelling government objectives to be achieved by the discrimination practice that cannot be achieved by legal means.

HFPP : 1) selects physicians based on race and nation of origin as a suspect class, 2) prevent those physicians from practicing medicine in a race –neutral manner by coordinating selective enforcement of the Controlled Substance Act on the suspect group of physician,3) bread down the Chinese wall between the BCBSMMIC, Qlarant, DEA and OIG /CMS, while encouraging the performance of improper search and seizure of the privileged medical records and personal identification data of patients of the suspect class of physician. The participating private entities in HFPP effectively became agents of the government.

HFPP seeks to provide a means to identify health care fraud surrounding the prescription of controlled substances. There are less restrictive means where the

government can achieve the same objective without the discriminatory conducts and the constitutional violations. For example, some insurance have a “prior authorization programs” where all prescriptions can be approved prior to being filled by pharmacy.

Questionable prescriptions can trigger a lawful audit of the physician’s note. HFPP conducts studies that pool and analyze multiple payers’ claims data to identify physicians with patterns of suspect billing across payers. The HFPP works through America’s Health Insurance Plans (AHIP), American Property Casualty Insurance Association (APCIA), Association for Community Affiliated Plans (ACAP), Association of Certified Fraud Examiners (ACFE), Blue Cross and Blue Shield Association (BCBSA), Coalition Against Insurance Fraud (Coalition), Delta Dental Plans Association (DDPA), National Association of Insurance Commissioners (NAIC), National Association of Medicaid Directors (NAMD), National Association of Medicaid Fraud Control Units (NAMFCU), National

Business Group on Health (NBGH), National Health Care Anti-Fraud Association (NHCAA), National Insurance Crime Bureau (NICB). In the events of mistakes, HFPP lacks procedural due process of the accused to the opportunity to be heard, and correct mistakes. HFPP, the agents of the government, and the Respondents have the burden of persuasion that the discriminatory actions are constitutional. The Fourth Amendment applies to the states via the 14th Amendment. An intent to classify based on a suspect class can be proven by circumstantial evidence. An analysis of a data set of 1700 legally targeted physicians by the respondents reveals a statistically significant, systemic process of racial discrimination against older, colored physicians by referring them for criminal or administrative legal litigation. The USDOJ is in violation of the 14th U.S. Constitutional Amendment.

The HFPP partners, a trade organization, shared and analyzed competitive data of the most lucrative

patients to insure. The contract excluded other health insurers, in restraint of trade, such exclusion constitute a criminal violation of the Sherman Anti-Trust Act.

QUESTIONS PRESENTED

I . Can state and federal agencies use private entities, as agents of the government to commits acts of unlawful search and seizure, and deprivation of a liberty interest to medical care, that the government agencies themselves, are not permitted to commit under the U.S constitution ?

II . Authority:

A . Fourth Amendment: The Fourth Amendment to the U.S Constitution 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 thins to be seized”

B . 42 U.S.C § 1983

42 U.S.C. § 1983 (Klu Klux Klan Act) provides for:

"Section 1983 Litigation" refers to lawsuits brought under Section 1983 (Civil action for deprivation of

rights) of Title 42 of the United States Code (42 U.S.C.

... Section 1983 provides an individual the right to sue state government employees and others acting "under color of state law" for civil rights violations.

42 U.S.C. § 1985(3) provides:

"If two or more persons . . . conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving . . . any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws [and] in any case of conspiracy set forth in this section, if one or more persons engaged therein do . . . any act in furtherance of the object of such conspiracy, whereby another is injured . . . or deprived of . . . any right or privilege of a citizen of the United States, the party so injured or deprived" may have a cause of action for damages against the conspirators.

Equal Protection Clause

The Equal Protection Clause is part of the first section of the Fourteenth Amendment to the United States

Constitution. The clause provides "nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws".

III . ANALYSIS

A . I . Strict Scrutiny Basis for Judicial Review

Strict Scrutiny basis is a judicial review is indicated where a fundamental right has been violated, or where the petitioner had an fundamental in the possessory interest of her medical records and personal identification data. A joint enterprise, acting under the color of law, comprised of Blue BCBSMMIC , BCBSA, MBT Financial Corp, among others, participated, funded, aided , abetted, encouraged an illegal search and seizure of the plaintiff's medical records. Such conduct violates 42 U.S.C. § 1985(3).Where reasonable expectation of privacy existed in the medical records; the improper search and seizure constitute a violation the 4th amendment. The 4th Amendment prohibition against search and

seizure represents fundamental rights. The government lacks a compelling interest in achieving a legitimate government objective by committing the unlawful search and seizure. The petitioner has standing for judicial review under a strict scrutiny basis. Under Carpenter⁴ (where data is involuntary given by the person, the Supreme Court invalidated the third party doctrine. Where PDMP data of a patient is involuntary given to the state of Michigan and an unconsented, warrantless, search and seizure of the plaintiff's PDMP data is taken occurs issue here. Carpenter should apply here as well. Pursuant to Carpenter, an invalid search and seizure of PDMP would be the unlawful. Additionally, uncertainty²³ of PDMP data does not support a finding of probable cause for a search warrant.

⁴Carpenter v. United States, 138 S. Ct. 2206, 2223 (2018)

²³ APPENDIX E <https://link.medium.com/Q8YRQMWUjlb>

Opioids Medications are used by chronic pain patient pursuant to their liberty interest in living life in a pain-neutral environment. Patients with lung cancers from smoking, and patients with liver failure from alcohol abuse are not denied medical treatments .

The unfairly prejudicial actions of HFPP Qlarant and BCBSMMIC, in the selection of doctors involved in the treatment of pain as a suspect class based on race nation of origin, age and assets, the patient in pain suffered a harm, and a loss of an opportunity in a manner different that suffered by the general public.

B . An Unreasonable Illegal Search And Seizure Occurred.

HFPP, “Equifax acquisition of Appriss Insights,^[1] who is rebranding as Bamboo Health.^[2] How much data sharing goes on between the entities? Just as Appriss’ NarxCare score^[3] is a black box^[4], never subjected to peer review or outside scrutiny^[5], this reorganization seems designed to hide data sharing .”⁽²⁰⁾ Such actions by drug warriors made the opioid epidemic deadlier ²⁶. HFPP is not narrowly tailored to meet a compelling government objective. Pursuant to *Carpenter*, the United States Supreme Court bar the

search and seizure of warrantless cell phone tower data involuntary given to a third party. Here pursuant to an extraterritorial defective search warrant lacking probable cause, the petitioner's involuntarily held medical records and PDMP data were obtained, respectively, from the third party IPatientCare Inc., and the State of Michigan. Carpenter applies here⁴.

The petitioner had a reasonable expectation of privacy in the possessory interest in his/her medical records. Plaintiff's had a reasonable expectation of Privacy, in the property interest of their medical records, under Katz. (*Katz v. United States* 389 U.S. 347 (1967)).

4 Carpenter v. United States, 138 S. Ct. 2206, 2223 (2018)

20 wpsites.maine.edu/mlipa/2021/11/15/predicting-drug-diversion-the-use-of-data-analytics-in-prescription-drug-monitoring/

26 <https://Chicago.suntimes.com/columnists/2021/7/28/22597967>

C. STANDING

Whether or not Dr. Pompy is : 1) convicted of criminal acts beyond a reasonable doubt, 2) whether or not Dr. Pompy's State of Michigan medical license was properly suspended for 6 months and one day on 6/2/2020, 3) whether or not Dr. Pompy's DEA and X-DEA number were properly suspended, , are irrelevant for the purpose of this action. Pursuant to *Carpenter v. United States*, 138 S. Ct. 2206 (2018), the Third-Party Doctrine for disclosure of privileged information involuntarily gathered by the government from a service provider, does not apply. The plaintiff suffered an injury in fact; the injury was actually and legally caused by the defendants. The court can redress the injury easily and with certainty. The plaintiff has standing. For a lawsuit to have Article III standing, a plaintiff must satisfy each of three elements: an injury-in-fact, that is fairly traceable to the defendant's allegedly unlawful conduct, and that is likely to be redressed by the requested relief.

I. Injury-in-Fact – Battered Pain Syndrome

The defendants created, coordinated a peril in Monroe County that they unconscionably seek to avoid in a court of law. The defendants, government agencies, who created a risk, are liable under 42 U.S.C § 1983 (*DeShaney v. Winnebago*).

The petitioner suffers from continuous, repetitive, unnecessary pain and suffering, increased debilitative disability, decreased productivity, and long-term disability, as well as having been abandoned by doctors in fear of a DEA\ MANTIS raid. Such conduct violates the Eighth Amendment. The injury results from the lack of the defendants to set equivalent treatment alternatives. Her esteem and reputation in the community was lowered in Monroe County due to her being a member of a group, readily identifiable with a physician facing a federal indictment. Title II of the American Disability Act provides that no disabled person can be excluded from participating in

or getting the benefits of any “services, programs or activities of a public entity,” or be discriminated against by such an entity.

Pain Contingent v. Time Contingent Pain Relief

Prior to 9/26/2016, the plaintiff received the pain medication Subsys to counter her pain, that was of quick onset, fast to rise from baseline pain to peak pain. The handling of such “incident pain” allowed her to take her pain medication at a time when she needed to function, despite her severe limitation of walking, bending, lifting, self-hygiene, getting into a car, visiting her children and grandchildren, cooking and cleaning. Since 9/26/2016, the respondents have asserted that the Subsys was only for cancer pain. There is no basis in medical facts for the presumption that cancer pain is pathophysiologically different than non-cancer pain. The difference is arbitrary and capricious. The petitioner’s body was left in unmitigated and/or poorly controlled pain, which distressed the plaintiff to the point of suffering severe

emotional distress and anxiety, hip pain, shoulder pain, back pain, weakness, phobias of leaving the house, as well as severe sleep deprivation.

II. Causation and Redressability

But for the lack of appropriate pain treatment, the plaintiff would not have lost the opportunity for pain control. Unrelieved pain is known to cause many harmful effects, including impaired activities of daily living, aggravation of pain and suffering, causation and/or aggravation of disability. After videotaping the patients, the respondents disregarded the high probability of serious risks of the harmful effects of unrelieved pain by their failure to ensure availability of alternative full-time pain treatment in Monroe. It was foreseeable that the plaintiff's lack of care would lead to degraded health status. As an actual and proximate result of the lack of care, the plaintiff suffered a particularized injury, such as diminished

activities of daily living arising from the loss of “pain - contingent “ time release medication.”

III. Statutory and Prudential Standing

The plaintiff suffered an actual violation of her 14th Amendment liberty interest to medical treatments.

Also, the petitioner was entitled to treatment as a matter of law :under the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., the Rehabilitation Act of 1973, 29 U.S.C. §701, et seq., and the Affordable Care Act, 42 U.S.C. §18116, et seq, Nuremberg Code §§4 and 44 Code of the Geneva Convention, Joint Commission on Hospital Accreditation Organization (JACHO) “pain as the 5th Vital Sign,” EMTALA laws, Human Rights Under Article 32 of the 1949 Geneva Convention IV. A duty to treat patients afflicted with chronic pain and/or addiction, is established under Federal Law, the American Disability Act, as well as the Drug Addiction Treatment Act of 2000 (Data 2000). The final decision makers failed to properly,

train, educate, supervise, regarding privileges and duties under the ADA. Under *Clipper v. Takoma Park, Maryland*, F76 F 2d 17 (4th Circ. 1989), the defendants can be held liable for inadequate training coordinated by the County.

Patients were diagnosed with chronic painful diseases or opioid use disorders and thus these diagnosed diseases are physical and mental impairments that substantially limits one or more major life activities which include the operation of major bodily functions. 28 C.F.R. § 36.105 (b)(2) defines physical and mental impairment to include drug addiction. Opioid Use Disorder (OUD) substantially limits major life activities including care for oneself, learning, concentrating, thinking, remembering, and communicating. 42 U.S.C. §12102 (2)(A). OUD also limits the operation of major bodily functions such as neurological and brain functions. 42 U.S.C. §12102 (2)(B). The determination whether an impairment substantially limits a major life activity is

made without regard to the effect that ameliorating measures including medication may have on the impairment. (42 U.S.C. §12102 (4)(E)(i). Accordingly, persons with OUD are individuals with a disability within the meaning of 42 U.S.C. §12102 and 28 C.F.R. § 36.104 and covered by the ADA's protections. HFPP partners, MANTIS, BCBSMMIC interferes with a physician's duty to treat and denying patients who are suffering from chronic pain or OUD from the opportunity to equally participate in or benefit from the goods, services, facilities, privileges, advantages or accommodations being offered on the basis of disability in violation of 42 U.S.C. §12182(b)(1)(A)(i) and 28 C.F.R. § 36.201 and in violation of Title II and III of the ADA 42 U.S.C. §12182 et seq. and its implementing regulation, 28 C.F.R. Part 36. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, ct forbids programs or activities receiving Federal financial assistance from, among other things, discriminating against otherwise qualified individuals

with disabilities. Petitioner is a qualified individual with disabilities within the meaning of the Rehabilitation Act. As a chronic pain patient who has “a physical or mental impairment that substantially limits one or more major life activities.” The petitioner is classified as disabled under the Americans with Disabilities Act, 42 U.S.C. §12101. The defendants are subject to the Americans with Disabilities Act, 42 U.S.C. §12101. Defendants are also subject to the Rehabilitation Act due to the fact that they receive Federal financial assistance from the United States Department of Health and Human Services, including Medicare provider payments from the Centers for Medicare/Medicaid Services under Title XVIII, Part D of the Social Security Act, 42 U.S.C. §1395 et seq.

Respondents, through their discriminatory practices towards the petitioner’s disabilities, has violated and continues to violate the Rehabilitation Act by, inter alia, denying and/or impairing disabled individuals, including Plaintiff and other potential members of the

Class Members, the full and equal goods, services, facilities, privileges, advantages or accommodations for their medical care in Monroe County.

Section 1557 of the Patient Protection and Affordable Care Act (“ACA”) (codified at 42 U.S.C. §18116) makes it illegal to discriminate against individuals based upon their race, national origin, gender, age, or disability. Section 1557 of the ACA protects individuals from discrimination in any health program or activity of a recipient of federal financial assistance, such as hospitals, clinics, employers, retail community pharmacies or insurance companies that receive federal money. Section 1557 specifically extends its discrimination prohibition to entities that receive federal financial assistance in the form of contracts of insurance, credits, or subsidies, as well as any program or activity administered by an executive agency, including federal health programs like Medicare, Medicaid, and CHIP. 42 U.S.C. §18116, ACA Section 1557, provides in pertinent part as

follows: (a) an individual shall not, on the grounds prohibited under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments).

Recipients of Federal financial assistance, such as the respondents are particularly prohibited from providing “any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program.” See 45 C.F.R. §80.3(a)(ii). Security Act, 42 U.S.C. §1395 et seq.

C . MALICE

Qlarant, BCBSMMIC, IBC, BCBSA, GDIT advertised their entry into: 1) traditional police of criminal investigation, 2) into governmental prosecutorial functions by coordinating the criminal conviction of physicians, 3) depriving of medical care people considered disabled and entitled at law to medical care under the ADA, 4) prevent the government from mitigating financial loss that arise from controlled substances prescription drug diversion. BCBSMMIC exceeded the limits placed on profits under the federal statutes ²¹. BCBSMMIC can both raise health insurance premiums while inducing criminal proceedings through HFPP . The criminal proceeding generates lucrative “other income” under an accounting scheme, via substantial restitutions, civil and criminal forfeiture. Prosecutorial money grab ⁶, conflict of interest ¹⁹, often results ^{19, 24}.

Under 42 U.S.C § 1983, malice, a custom or practice amounting to an official policy of the entity, resulting from reckless or deliberate disregard to clearly

established constitutional laws negates the qualified immunity.

D . Equal Protection

HFPP, Qlarant and BCBSMMIC advertisements and documents reveal a classification scheme based on: 1) doctors involved in the treatment of pain as a suspect class based on race, nation of origin, age and level of assets owned, and 2) patients of the medical status of chronic pain. A strict scrutiny basis for judicial review, of a fundamental right under the equal protection clause, is warranted by the Court

19- 1: 21- 01635 (D.C (2021). Doc 15-1. Page 42 to 48, of 67.

21-ibid Doc 15. Filed 10-25-21. Page 23 of 31.

24 .Malik v. City of New-York. (20-1969-cv) CA 2

6 Tumey v. Ohio, 273U.S 510 (1927)

19- 1: 21- 01635 (D.C (2021). Doc 15. Filed 10-25-21. P25 of 31.

HFPP, Qlarant and BCBSMMIC harmed the petitioner, in a manner different than the harm caused to the general public, by: 1) denial of medical care, 2) improper determination of type of medical care needed without knowing the disease state of the patients, and 3) loss of an opportunity to cure and treat. The discrimination is invidious as it causes unnecessary pain and suffering.

CONCLUSION

The Petitioner for a Writ of certiorari should be granted, the order of the Sixth Circuit Court of Appeals vacated, and the case remanded to the District Court, Eastern District of Michigan.

Respectfully Submitted

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