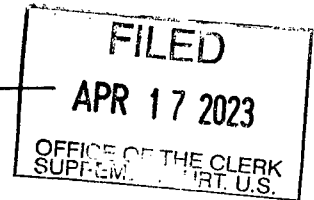


22-1046
No. _____

ORIGINAL



IN THE
Supreme Court of the United States

THOMAS J. KELLY,
PETITIONER,
v.
UNIVERSITY OF FLORIDA BOARD OF
TRUSTEES as the public body corporate and
instrumentality of the University of Florida and
JOHN HINES in his official capacity as
University of Florida Director of Public Records,
RESPONDENTS.

On Petition For A Writ of Certiorari To The
Florida First District Court of Appeal

PETITION FOR A WRIT OF CERTIORARI

Thomas J. Kelly, pro se
3108 Moss Drive
Cocoa, FL 32922
(321) 507-4254
tkelly0962@gmail.com

Dated: April 17, 2023

QUESTION PRESENTED

Whether when considering a petition for a writ of mandamus regarding a public records request, can a state civil, not criminal, circuit trial court judge at any time be allowed to, without notice of any kind, host a criminal prosecution in chambers without any party present and therefrom, without having held a prior hearing of any kind, without a jury ever being convened and upon written un-cross-examined affidavits and statements, adjudicate the petitioner in that case, this same Petitioner, to be guilty of an unspecified crime or crimes as was per curiam affirmed without a written opinion by a state appellate court when such a state civil circuit trial court judge's adjudication of criminal guilt was accomplished without the petitioner, the solely accused, ever being charged with any crime pursuant to the State of Florida's criminal laws, rules and procedures and with the statute of limitations on each and every crime petitioner was accused of having run eight months prior to the petitioner's public records request, thus violating the State of Florida's separation of powers doctrine, namely Art. II, § 3, Fla. Const., and the petitioner's due process presumption of innocence rights and other state and federal constitutional rights such as the petitioner's each and every U.S. Const. amend. VI right.

PARTIES TO THE PROCEEDING

Petitioner is Thomas J. Kelly, pro se, and is the Appellant and Petitioner for a writ of mandamus in the state courts below.

Respondents are,

UNIVERSITY OF FLORIDA BOARD OF TRUSTEES as the public body corporate and instrumentality of THE UNIVERSITY OF FLORIDA and JOHN HINES in his official capacity as University of Florida Director of Public Records,

and are the Appellees and Respondents in the state courts below.

RULE 29.6 DISCLOSURE STATEMENT

Rule 29.6 does not apply.

RELATED PROCEEDINGS

Florida First District Court of Appeal:

Thomas J. Kelly, Appellant, v. UNIVERSITY OF FLORIDA BOARD OF TRUSTEES as the public body corporate and instrumentality of the University of Florida and JOHN HINES in his

official capacity as University of Florida Director of Public Records, Appellees, Case No. 1D21-2937

Per curiam affirmed without a written opinion on January 18, 2023, Docket Date January 18, 2023.

Motion For Clarification denied on February 24, 2023, Docket Date February 24, 2023.

Eighth Judicial Circuit of Florida, Alachua County's Circuit Civil Division W Court:

Thomas J. Kelly, Petitioner, v. UNIVERSITY OF FLORIDA BOARD OF TRUSTEES as the public body corporate and instrumentality of the University of Florida and JOHN HINES in his official capacity as University of Florida Director of Public Records, Respondents, Case No. 01-2021-CA-1190 –

Final judgment granted Respondents their Marsy's Law claim thereby denying Petitioner his public records request then concluded by directing the clerk to close the case, decided on September 1, 2021, Docket List File Date, September 1, 2021.

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PETITION FOR A WRIT OF CERTIORARI

Thomas J. Kelly respectfully petitions for a writ of certiorari to review the judgment of the Florida First District Court of Appeal who per curiam affirmed without a written opinion a final judgment by an Eighth Judicial Circuit of Florida civil circuit trial court.

OPINIONS BELOW

The Florida First District Court of Appeal on January 18, 2023 per curiam affirmed without a written opinion a final judgment by an Eighth Judicial Circuit of Florida civil circuit trial court, Appendix A.

The final judgment in question by the Eighth Judicial Circuit of Florida, Alachua County's Circuit Civil Division W Court was issued on September 1, 2021, Appendix B.

JURISDICTION

The Florida First District Court of Appeal issued its final opinion on January 18, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth and Fourteenth Amendments to the United States Constitution are involved in this case as well as 28 U.S.C. § 1257(a) and the text to their pertinent sections can be found at Appendix C.

STATEMENT OF THE CASE

I: Preliminary Statement

Citations to the documents in the trial court record have been made using the abbreviation “R” followed by a colon and the corresponding page number(s) all within parenthesis.

To begin to satisfy this Court’s Rule 14(1)(g)(i), Petitioner states that with the State of Florida’s separation of powers doctrine, Art. II, § 3, Fla. Const., entirely in Petitioner’s favor, see the Trial Court Reply’s “A. Separation of Powers” in its entirety at Appendix F, Petitioner had no reason to expect that a civil court, namely the Alachua County’s Circuit Civil Division W court within the Eighth Judicial Circuit of Florida, when considering a petition for a writ of mandamus regarding a public record request in light of Respondents’ Marsy’s Law claim would in the course of such consideration, conduct a U.S. Const. amend. VI “criminal proceeding” and therefrom adjudicate Petitioner guilty of an

unspecified criminal offense, Petitioner's "acts against them", Appendix B, to reach its final judgment. Furthermore, the final judgment ordered the clerk to close the case, consequently, Petitioner's first opportunity to raise a federal question and fight against this criminal adjudication and for his reputation came on appeal and he did so fight such as at the ending of his Amended Initial Brief's Conclusion,

"Appellant went to a civil court with a mandamus petition for public records and ended up being adjudicated a Marsy's Law perpetrator by an un-juried, in-chambers, single-judge civil circuit court and therefrom denied any mandamus relief whatsoever and therefrom declared a convicted criminal with BURNEY and AUSTIN, as stated in the final order, his "crime victims" without a single hearing, evidentiary or otherwise, or conference of any kind and upon un-cross-examined written accusations. Appellant has a civic duty, at first instance before a court of law, to refute such adjudicated criminal guilt, to substantiate his innocence and to defend his reputation, constitutional public records access rights and other rights from such an outrageous abuse of judicial power from the lower tribunal, a civil court.",

and at his Amended Initial Brief's "*Argument II – Appellant's state and federal constitutional rights and the statute of limitations implications for the lower tribunal's, "Although Plaintiff was not prosecuted for his acts against them, ...".*", for its entirety see Appendix E showing Petitioner's U.S. Const. amend. VI claims and state constitutional claims, and also see the entirety of the Amended Initial Brief's "*Argument I – Lower tribunal violated the separation of powers doctrine.*" at Appendix D which discusses the above cited State of Florida's separation of powers doctrine, Art. II, § 3, Fla. Const., which reaches Petitioner's federal rights, as do all of his federal and state constitutional claims, via the U.S. Const. amend. XIV due process clause, see Appendix C.

Petitioner also closed his appellate court Reply Brief with,

"If the lower tribunal's final order is affirmed, not only will it obliterate the separation of powers doctrine, nullify the criminal statute of limitations and redefine double jeopardy and the presumption of innocence, it will also bring a reign of terror upon the falsely accused who seek to exonerate themselves by exercising their Florida constitutional right to lawfully request then receive public records.

The OTSC directed Appellees to substantiate their Marsy's Law claim, "include the factual and legal basis and address all issues contained in the Petition.", not for Appellant to subsequently submit any further "verified" or Appellee-approved "rebutting" evidence. As the record and briefs show, Appellant is the only one ever accused, he was never charged and the statute of limitations has run. This Court must reverse or remand as pleaded by Appellant in his briefs.", "OTSC" standing for the Order To Show Cause issued by the state civil circuit trial court, Appendix G.

II: Incident In Question

Part A

Having set up a protest table at the University of Florida's College of Law for two consecutive days during the Fall 2016 semester regarding a Jim Crow-era University of Florida desegregation issue, Petitioner, on April 9, 2017, informed the University of Florida's African American Studies Program by email that he had documented research which disproves their publicly promoted version of how the University of Florida, a southern public university, became desegregated during the 1940's and 1950's and that he would be

on campus sometime that week with his research. Petitioner received no response to his email, though later learned, via a University of Florida (hereinafter may be referred to as "UF") public records request, how it was internally handled by UF's African American Studies Program. On April 12, 2017, Petitioner arrived on campus with his research documents and began his protest on the lawn in front of the main campus library. The next day before continuing his protest, Petitioner stopped by UF's African American Studies Program's offices in Walker Hall to introduce himself in person, since none of the professors whom he emailed came to his protest table the previous day even though the main campus library front lawn is nearly directly across the street from Walker Hall, and to discuss and offer them a copy of the research he had mentioned in his April 9, 2017 email. UF's African American Studies Program's office manager Sharon Burney (hereinafter may be referred to as "BURNEY") and UF's African American Studies Program Director Professor Sharon Austin (hereinafter may be referred to as "AUSTIN") were the only persons at or around the main office at the time and these are the two persons whose public record employee files Petitioner is seeking in this case.

During the approximate 20 minute colloquy at their main office regarding Petitioner's research

on how UF became desegregated with mostly just Petitioner and AUSTIN in discussion, BURNEY left the colloquy, Petitioner at the time presumed it was a silent form of protest indicating that she did not agree with his research and views, however, unbeknownst to Petitioner, BURNEY's purpose, in fact, was to go upstairs to find a third-party to call 911 on Petitioner, the two eventual third-party 911 calls from non-witness UF Professor Sophia Acord are preserved in their entirety on an audio CD a copy of which is on both the trial and appellate court record below and which Petitioner believes were critical pieces of evidence in later convincing the UF Police Department (hereinafter may be referred to as "UFPD"), the State of Florida police agency who responded to the 911 calls, to rescind his trespass warning.

When the two dispatched UFPD police officers arrived on the scene, BURNEY had a few minutes earlier returned to her main office desk and Petitioner had just a few moments earlier voluntarily left this main office and was in the lobby when the two UFPD police officers first made contact with him.¹ Upon determining via

¹ During the second UFPD investigation, AUSTIN persevered in trying to get the two responding UFPD police officers to change their testimony to state that Petitioner was at the African American Studies Program office in

Petitioner's Florida driver's license that Petitioner was the person, i.e. "Tom Kelly", they were interested in, Petitioner was told by one of the UFPD police officers that he was under arrest for false imprisonment, assault and criminal trespassing and that they were going to investigate any other criminal offences he may have committed. Though stunned, Petitioner nevertheless fully cooperated with their investigation which lasted about 35 minutes and occurred with all witnesses present and with all the accused present, namely BURNEY, AUSTIN and Petitioner, the solely accused.

After the UFPD's on-the-scene investigation concluded, Petitioner, the solely accused, was not charged with any crime and was allowed to leave campus unescorted and without having to have signed anything, but was issued a trespass warning which was later rescinded by UFPD upon a 48-page, not counting exhibits, petition from this same Petitioner that also included the above two 911 calls on an audio CD.

After driving back home that day to Cocoa, Florida, about a three hour drive from the

Walker Hall, not in the lobby, when they first made contact with him. AUSTIN's attempt is documented in the record below in a formerly confidential UFPD investigative report, (R:134-135). Petitioner could have gone to prison for five years.

University of Florida, Petitioner would a few days later on Monday, April 17, 2017, begin receiving racist hate phone calls regarding his April 13, 2017 UF Walker Hall incident and was to soon discover that on that same day, April 17, his UFPD photograph taken at Walker Hall on April 13, 2017 was on a front-page, top of the fold article titled, "Man trespassed after confronting UF faculty"², in the printed version of the UF student newspaper, the Independent Florida Alligator. Furthermore, Petitioner also soon discovered that UF's president, W. Kent Fuchs, had emailed every faculty member, student and staff member regarding Petitioner's April 13, 2017 Walker Hall incident and that UF President Fuchs' social media accounts were hosting discussions about this incident, all or nearly all comments hostile towards Petitioner, the "hater" and "racist".

After several email attempts and two demand letters to get both UF and the UF student newspaper to retract their statements against Petitioner, Petitioner, a few days or so before the statute of limitations would have run on the matter, filed two defamation lawsuits pro se, one

² Early on the Independent Florida Alligator's website version, and therefore the more permanent and available version, had its title changed to the more racially provocative, "Man trespassed from UF after confronting black faculty members".

against UF, Case No.: 01-2019-CA-1260 at the Eighth Judicial Circuit of Florida, and the other against the UF student newspaper, Case No.: 01-2019-CA-1259 at the same court. Petitioner won both lawsuits on settlement with UF and the UF student newspaper agreeing to all of Petitioner's filed defamatory demands, namely for UF to take down their official spokesperson's April 14, 2017 statement titled, "Man Banned From Campus After Racial Incident", on their ufl.edu website and be a party to, not a release, but a settlement agreement signed by all parties and for the UF student newspaper to publish on their website an April 17, 2017 article retraction and an April 18, 2017 editorial retraction fully satisfactory to Petitioner.

After three separate UFPD criminal investigations into the April 13, 2017 UF Walker Hall incident, the last one lasting a full month, Petitioner was never charged with any crime pursuant to the State of Florida's criminal laws, rules and procedures and in April 2020, eight months prior to Petitioner's public records request, the statute of limitations, pursuant to the State of Florida's criminal laws, rules and procedures, had run of each and every crime Petitioner was accused of.

Part B

In 2018 Petitioner learned that as a consequence to a pair of UF Jim Crow-era court cases, the 1949-1958 state and federal Virgil D. Hawkins cases which Petitioner had done much research on and which many Floridians incorrectly believe desegregated the public universities in Florida, Florida's other flagship public university, Florida State University (hereinafter may be referred to as "FSU") in Tallahassee, the state's capital, had decided to try to persuade the Florida Legislature during the upcoming 2019 session to let them rename their main law school building, B. K. Roberts Hall, because in FSU's view B. K. Roberts while on the Florida Supreme Court during the 1940's and 1950's had written majority court opinions that confounded and illegally prohibited for as long as he possibly could the desegregation of Florida's public universities even after the *Sweatt* and *Brown* cases had been decided.

Indeed there were bills filed in the Florida Legislature for four consecutive sessions, 2019-2022, trying to accomplish this B. K. Roberts Hall name change, but they all failed, and for the current session it appears that no such bill has been filed. Petitioner was the sole voice from either the public or from UF or FSU who opposed this name change and he spoke before not only the Florida Legislature on this matter but also before

the FSU Board of Trustees during this 2019-2022 time period. However, it was while hosting a few protests at FSU's College of Law, protests similar to the ones he had held at UF's campus, that Petitioner was told by several sets of FSU law students, during 2019-2020, that they had been alerted that Petitioner was a racist and a troublemaker and that regardless of the veracity of his research Petitioner was not welcomed and was to be avoided and discouraged, their remarks and gestures mixed with much ridicule and bullying, although as at UF quite a few students showed inquisitive interest and requested copies of Petitioner's handouts.

Wondering who had convinced these FSU law students that Petitioner was a racist and a clever troublemaker prompted Petitioner on December 3, 2020, prior to the 2021 Florida Legislative session, to file a public records request for the employee files of AUSTIN and BURNEY, Petitioner's most virulent UF critics, which developed into the legal issue now before this Court.

Petitioner's hunch was proven true by a subsequent public records request, his July 2022 FSU public records request, a request whose records were, unlike with UF in this case, promptly provided by FSU, which revealed that AUSTIN was indeed exchanging derogatory emails with professors at FSU and UF and with a

member of the Florida Bar such collective emails laden with racist and other innuendo against Petitioner and falsely claiming, for example, that Petitioner had been criminally trespassed from UF, had numerous times threatened that member of the Florida Bar and that his UF trespass warning rescindment petition had been denied. Petitioner included these emails and their ramifications in his February 2, 2023 appellate court Motion for Clarification, Appendix I though without these email or other exhibits.

III: Procedural History

On December 3, 2020 Petitioner made a public records request with Respondents, a state public university in Florida, for AUSTIN's and BURNEY's employee records and on March 4, 2021 the Respondents denied this public records request citing the Florida Constitution's Marsy's Law, Art. I, § 16(b), Fla. Const., which prohibits the disclosure of information regarding victims of crime, however, the Respondents did not provide any specific information about the nature of the crime such as what was the crime, when and where did it occur, who were the victims and who were the perpetrators. Consequently, Petitioner tried to obtain this information from Respondents with two entitling Florida Statutes 119.07(1)(f)

demands for such particularity of information, yet all to no avail, (R:16-17, 28).

With no alternatives other than to quit, Petitioner on April 29, 2021, with the scant information he had been provided and not even knowing if he was the claimed Marsy's Law criminal perpetrator, brought a petition for a writ of mandamus to a state civil circuit trial court in the Eighth Judicial Circuit of Florida regarding his public records request denial and after the state civil circuit trial court on June 3, 2021 ordered the Respondents to show cause for denying Petitioner his public records, Respondents on July 14, 2021 filed their Show Cause Response then on August 5, 2021 Petitioner filed his Reply and on September 1, 2021, that state civil, not criminal, circuit trial court, adjudicated Petitioner guilty of an unspecified criminal offense, "[Petitioner's] acts against [BURNEY and AUSTIN]", which caused BURNEY and AUSTIN to be his "crime victims", thereby granting Respondents their Marsy's Law "crime victim" exemption and denying Petitioner his requested public records, Appendix B.

On September 28, 2021, Petitioner filed a timely appeal with the Florida First District Court of Appeals, then filed his Court-Ordered Amended Initial Brief on December 19, 2021. Respondents filed their Answer Brief on March 3, 2022 and

Petitioner filed his Reply Brief on April 16, 2022 then on May 2, 2022 Petitioner filed a Motion For Oral Argument, Appendix H, which Respondents did not respond to, then the next week on May 13, 2022, the motion was denied. Finally, on January 18, 2023 the Florida First District Court of Appeals per curiam affirmed without a written opinion, Appendix A, though afterwards there was one last party action in the case, Petitioner's February 2, 2023 Motion For Clarification, Appendix I, since neither the trial court nor the appellate court's per curiam affirmation without a written opinion revealed what specific and requisite crime it predicated its Marsy's Law "crime victim" exemption upon, then on February 17, 2023 the Respondents' filed their adverse response to the motion, Appendix J, and on February 24, 2024 the motion was denied.

Petitioner seeks review of the Florida First District Court of Appeals January 18, 2023 per curiam affirmed without a written opinion final judgment and has timely filed this Petition For A Writ Of Certiorari.

REASONS FOR GRANTING THE PETITION

I: Opening Statement

Petitioner made his public records request on December 3, 2020 and eight months earlier, in April 2020, the statute of limitations had run on each and every crime Petitioner had been merely accused of but was never charged with pursuant to the State of Florida's criminal laws, rules and procedures, thus by determining in her final judgment on September 1, 2021, Appendix B, that Petitioner's unspecified "acts" caused AUSTIN and BURNEY to be "crime victims",

"Although Plaintiff was not prosecuted for his acts against them, there is no requirement that a criminal proceeding must have been initiated against Plaintiff as a condition precedent to affording these crime victims their constitutional rights.",

the state civil circuit trial judge in violation of Petitioner's own "constitutional rights", such as his post-statute of limitations perpetual presumption of innocence right, ignored the State of Florida's separation of powers doctrine, Art. II, § 3, Fla. Const., when she did indeed, absent a prior "criminal proceeding" as noted in her order, choose to remedy that circumstance by conducting a criminal prosecution all on her own, which happened to be in chambers without any party present and which occurred without notice of any kind, without having held a previous hearing of any kind and without having convened a jury and

whose deliberations relied upon written, un-cross-examined statements and affidavits, wherefrom Petitioner, in absentia waiting for a ruling on the civil-court petition he filed, was criminally accused upon AUSTIN's and BURNEY's April 2017 signed UFPD statements as well as the pairs' July 2021 affidavits, then civilly charged with two crimes upon the July 2021 "prima facie" affidavit³ of Eighth Judicial Circuit of Florida State Attorney Brian S. Kramer (hereinafter may be referred to as "KRAMER"), who first came into that office in January 2021 after the statute of limitations had run, tried in chambers and then adjudicated guilty of an unspecified criminal offense, such post-statute of limitations conviction serving, as determined in the state civil circuit trial court's same final judgment, as the requisite crime necessary to uphold Respondents' Marsy's Law "crime victim" pleadings.

Finally, in adjudicating so, the state civil circuit trial court judge, an agent of the state, as well as Petitioner's non-witness accusers, namely both Respondents and a sitting state attorney, KRAMER, who are all likewise agents of the state, did indeed collectively violate each and

³ See especially Paragraph 10 from KRAMER's affidavit, "... [Petitioner's] actions during the Incident establish a prima facie case for the crimes of both [false imprisonment] and [criminal trespassing].", Appendix M.

every one of Petitioner's U.S. Const. amend. VI rights and some of his various other constitutional rights both state and federal.

Petitioner complained of this repeatedly in the record below.

II: Facts That The Parties Agree On

Petitioner's Appellate Court Reply Brief included the following uncontested list of what the parties factually agree upon and includes itemized citations from the record below, see Appendix K - "*D: What The Parties Agree On.*".

This list on its own should have vindicated Petitioner's cause, yet now before this Court, Petitioner not only asserts the state and federal constitutional rights and other rights he asserted before the state civil circuit trial and appellate courts, the most important rights being his each and every U.S. Const. amend. VI right, but Petitioner now in federal court also asserts his U.S. Const. amend. XIV due process rights.

III: Petitioner's U.S. Constitution 14th Amendment and 6th Amendment rights

**A. State civil circuit trial court judge's
U.S. Constitution 6th Amendment
"criminal prosecution" -**

In June 2021, the state civil circuit trial court judge issued an "Order To Show Cause" directing the Respondents to substantiate their Marsy's Law claim, not with a hearing or with in-court testimony which could be cross-examined or any other method of fact-finding borrowed from criminal procedure but rather, merely in writing,

"1.Respondents shall have thirty (30) days in which to show cause in writing why the relief Petitioner requests should not be granted. Such response should include the factual and legal basis and address all issues contained in the Petition.", Appendix G.

The above, Appendix K - "*D: What The Parties Agree On.*", shows irrefutably from the record below that Petitioner, the solely accused, was never charged pursuant to the State of Florida's criminal laws, rules and procedures, shows that his trespass warning was rescinded and that eight months prior to his public records request the statute of limitations had run of each and every crime he had been merely accused of.

After Respondents filed their Response on July 14, 2021, Petitioner, the solely accused, on August

5, 2021 filed his Trial Court Reply which opened with a direct refutation of the Response by laying out the requirements for a Marsy's Law exemption, asserting the State of Florida's separation of powers doctrine and emphasizing that the trial court's "Order To Show Cause", Appendix G, placed the burden upon the Respondents, without any expectations from or demands upon the Petitioner, to substantiate their Marsy's Law "crime victim" claim, see Appendix L – "*A Refutation Of Respondents' July 14, 2021 Trial Court Response*" which contains excerpts from both the Trial Court Reply and Appellate Court Reply.

With the record below all in Petitioner's Art. II, § 3, Fla. Const., the separation of powers doctrine, favor, it became quite clear that Respondents' only hope was to lure the state civil circuit trial court judge into staging a criminal prosecution wherefrom the Respondents could be granted their requisite Marsy's Law "crime victim" which the State of Florida's criminal laws, rules and procedures had determined did not exist,

"Despite the "bedrock" doctrine of the separation of powers, Respondents throughout their RESPONSE are trying to lure the Court into usurping the powers of

the executive branch of the government who determined that no crime was committed by Petitioner at UF's Walker Hall on April 13, 2017 and, moreover, Respondents are trying to lure the Court into making such a determination today even after the statute of limitations has run on the most severe, and therefore all, of the alleged crimes, namely False Imprisonment, F.S. 787.02, which is a third degree felony with a statute of limitations of three years.", from the Trial Court Reply's Page 8, (R:312).

Such procedural maneuverings directly implicate Petitioner's U.S. Const. amend. VI rights which reach him via the U.S. Const. amend. XIV due process clause and here is the evidence, emphasis added, showing that the Respondents quite openly lured then successfully persuaded the state civil circuit trial court judge into conducting a U.S. Const. amend. VI "criminal prosecution" which included the weighing of evidence regarding allegations of crime followed by the civil court's adjudication of criminal guilt,

"THIS CAUSE came before the Court for review upon the Petition for Writ of Mandamus filed by Plaintiff, and the Court having reviewed the specifics of said

petition, Defendants' Response to the Court's Order to Show Cause, the Plaintiff's Reply to Defendant's Response, and the **supporting affidavits**, audio recordings, and other documents submitted **in support or objection to the petition, the Court FINDS: ...**", opening to the state civil circuit trial court's final judgment, Appendix B,

"Subsequently, on April 29, 2021, Appellant filed his **unverified** Petition for a Writ of Mandamus (the "Petition"). [R. 7-88].", from the Answer Brief's Page 2,

"On July 13, 2021, Appellees filed their Response to the Order to Show Cause (the "Show Cause Response"), which included the Affidavits of Dr. Sharon Austin, Ms. Sharon Burney, and the State Attorney for the Eighth Judicial Circuit, Brian S. Kramer. [R. 105-230]. In the Show Cause Response, Appellees detailed why the requested records were protected from disclosure under Marsy's Law and why mandamus was inappropriate under the circumstances. [R. 105-230]. The vast majority of **the facts detailed in the Show Cause Response** were set forth in the Affidavits of Dr. Austin and Ms. Burney

(collectively, the “Austin/Burney Affidavits”).

The Austin/Burney Affidavits recount the events of April 13, 2017, and the resulting psychological and/or physiological effects of those events. [R.150-160]. The events of April 13, 2017, as sworn to by **Dr. Austin and Ms. Burney, are as follows: ...**”,

“As for the toll that the events of April 13, 2017 had on her, Dr. Austin **swore** as follows: ...”,

“Ms. Burney similarly **testified** in her Affidavit that ... “,

“In his Affidavit, State Attorney Kramer **swore: ... 10. Based on my experience, training and review of records mentioned above, I have concluded that Petitioner Kelly’s actions during the Incident establish a prima facie case for the crimes of both False Imprisonment, Section 787.02, Florida Statutes and Trespass of an Occupied Structure, Section 810.08(2)(b), Florida Statutes.**”

and

“On August 5, 2021, Appellant filed his **unverified Reply to Appellees’ Show**

Cause Response. [R. 246-383]. Notably, Appellant did not file **any affidavits or present any other evidence to the trial court rebutting or disputing** the events described in the Austin/Burney Affidavits. After reviewing the submissions of the parties, including the **unrebutted** affidavits submitted by Appellees, the trial court entered an Order denying the Petition. [R. 384-86]. Specifically, **the trial court held:**

(5) Based on the record before this court, ...

(6) Under the facts and circumstances of this case, ... [R. 384-85].

This appeal followed.”, all from the Answer’s Pages 2-8,

with more such U.S. Const. amend. VI “criminal prosecution” pleading from Respondents listed at Appendix O.

Thus as collectively shown by the civil trial court’s “Order To Show Cause”, Appendix G, Respondents’ preceding appellate court especially but also trial court pleadings, the civil trial court’s final judgment itself, Appendix B, and the case’s docket, the state civil circuit trial court judge

while in-chambers, without any party present, without notice of any kind regarding her procedural intentions or any other intentions, without having held a prior hearing of any kind and without having convened a jury did indeed render her final judgment based upon one-sided, criminal accusations, i.e. written, un-cross-examined affidavits and statements deemed “unrebutted” criminal evidence by Respondents, upon which that court consequently ruled in its final judgment, Appendix B, that Petitioner’s acts, **“his acts against them”**, caused BURNEY and AUSTIN to become Petitioner’s **“crime victims”**, proof positive from both the Respondents themselves and the state civil circuit trial court that a U.S. Const. amend. VI “criminal prosecution” did indeed occur in that civil court and that Respondents were its Marsy’s Law “crime victim” beneficiaries and Petitioner its adjudicated criminal.

Petitioner most prominently, regarding his U.S. Const. amend. VI rights, complained of this state civil circuit trial court’s criminal prosecution in his Amended Initial Brief at Page 44 under *“Argument II – Appellant’s state and federal constitutional rights ...”*, see Appendix E.

**B. U.S. Constitution 6th Amendment Case
Law -**

In *Klopper v. North Carolina*, 386 U.S. 213 (1967), the U.S. Supreme Court unanimously held that the Due Process Clause of the U.S. Const. amend. XIV bound the state courts to enforce the U.S. Const. amend. VI and that consequently those persons criminally accused by a state, in this case the state being State Attorney for the Eighth Judicial Circuit, Brian S. Kramer and the Respondent University of Florida Board of Trustees and its agent Respondent John Hines, are entitled to a speedy trial and that per *Pointer v. Texas*, 380 U. S. 400 (1965), the criminally accused are also entitled to confront the witnesses against them,

“By indefinitely prolonging this oppression, as well as the "anxiety and concern accompanying public accusation," *United States v. Ewell*, 383 U. S. 116, 383 U. S. 120 (1966), the criminal procedure condoned in this case by the Supreme Court of North Carolina clearly denies the petitioner the right to a speedy trial which we hold is guaranteed to him by the Sixth Amendment of the Constitution of the United States.

While there has been a difference of opinion as to what provisions of this Amendment to the Constitution apply to the States through the Fourteenth Amendment, that question has been settled as to some of them in the recent cases of *Gideon v. Wainwright*, 372 U. S. 335 (1963), and *Pointer v. Texas*, 380 U. S. 400 (1965). In the latter case, which dealt with the "confrontation of witnesses" provision, we said:

"In the light of *Gideon*, *Malloy*, and other cases cited in those opinions holding various provisions of the Bill of Rights applicable to the States by virtue of the Fourteenth Amendment, the statements made in *West* and similar cases generally declaring that the Sixth Amendment does not apply to the States can no longer be regarded as the law. We hold that petitioner was entitled to be tried in accordance with the protection of the confrontation guarantee of the Sixth Amendment, and that that guarantee, like the right against compelled self-incrimination, is"

"to be enforced against the States under the Fourteenth Amendment according to the

same standards that protect those personal rights against federal encroachment."

"*Malloy v. Hogan*, supra, 378 U.S. at 378 U.S. 10., 380 U.S. at 380 U.S. 406."

We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in *Magna Carta* (1215), ...", 386 U.S. 213, 222-223,

Petitioner's U.S. Const. amend. VI right to a speedy trial became violated when the state civil circuit trial court adjudicated him guilty of a criminal offense on September 1, 2021 after the statute of limitations had run on each and every crime he was merely accused of but never charged with under the State of Florida's criminal laws, rules and procedures and, furthermore, the single judge presiding never afforded him an opportunity to confront the witnesses against him, but rather relied upon written, un-cross-examined affidavits and statements, all unfavorable to Petitioner, as she made her ruling in-chambers and without ever having held a hearing, without ever having summoned a jury and without ever having

provided notice of her procedural intentions and without any party present.

Klopper also cites *Gideon v. Wainwright*, 372 U. S. 335 (1963), a landmark U.S. Const. amend. VI case which guarantees to the criminally accused in state courts the right to assistance of counsel by way of the U.S. Const. amend. XIV due process clause and requires courts to provide counsel for the accused unable to hire counsel unless the right was competently and intelligently waived, yet, Petitioner in this case was unable to ‘competently and intelligently waive[d]’ counsel because neither he nor any other party was ever notified, see the docket, that the single-judge, state civil circuit trial court was preparing to conduct a criminal prosecution which also happened to be in-chambers and without a jury having ever been convened.

As shown in the record below, Respondents never receded from their profuse accusations that Petitioner committed false imprisonment, Florida Statute 787.02, and criminal trespass of an occupied structure, Florida Statute 810.08(2)(b), as evidenced, see Appendix M, by Paragraph 10 from State Attorney for the Eighth Judicial Circuit, Brian S. Kramer’s affidavit at the Trial Court Response’s Appendix Page 39-41, (R:161-

163), and the Response's Page 8-9, (R:112-113) ⁴, to substantiate their Marsy's Law "crime victim" claim and as shown by the statutes these crimes carry a penalty of imprisonment of up to five years for false imprisonment and up to one year for criminal trespass of an occupied structure, both exceeding the "right to trial by jury where the possible penalty exceeds six months' imprisonment.", as enunciated in *Baldwin v. New York*, 399 U.S. 66 (1970),

"We cannot, however, conclude that these administrative conveniences, in light of the practices that now exist in every one of the 50 States, as well as in the federal courts, can similarly justify denying an accused the important right to trial by jury where the possible penalty exceeds six months' imprisonment. The conviction is Reversed.", 399 U.S. 66 (1970), 73-74.

Petitioner's remaining U.S. Const. amend. VI rights have been upheld by the U.S. Supreme Court in *In re Oliver*, 333 U.S. 257 (1948),

⁴ The state civil circuit trial court's final judgment, Appendix B, makes no mention of Respondents' "false imprisonment" or "criminal trespassing" accusations, but rather in their stead the judge utilized unspecified "acts", a term never used by Respondents, to accomplish her Marsy's Law "crime victim" ruling.

“The secrecy of petitioner's trial for criminal contempt violated the due process clause of the Fourteenth Amendment.”,

“An accused is entitled to a public trial, at least to the extent of having his friends, relatives and counsel present -- no matter with what offense he may be charged.”,

“As a minimum, due process requires that an accused be given reasonable notice of the charge against him, the right to examine the witnesses against him, the right to testify in his own behalf, and the right to be represented by counsel.”, 333 U.S. 257 (1948).

and

“Under these circumstances of haste and secrecy, petitioner, of course, had no chance to enjoy the benefits of counsel, no chance to prepare his defense, and no opportunity either to cross examine the other grand jury witness or to summon witnesses to refute the charge against him.”, , 333 U.S. 257 (1948), 259.

Further to *In re Oliver*, the U.S. Supreme Court also provides historical context for a criminal trial court conducting an in-chambers, “in camera”, criminal prosecution whereas in this case,

something even more inconceptual and unprecedented occurred, a civil trial court held such an “in camera” criminal prosecution,

“First. Counsel have not cited, and we have been unable to find, a single instance of a criminal trial conducted in camera in any federal, [Footnote 12] state, or municipal court during the history of this country. Nor have we found any record of even one such secret criminal trial in England since abolition of the Court of Star Chamber in 1641, and whether that court ever convicted people secretly is in dispute.”, *In re Oliver*, 333 U.S. 257 (1948), 266.

IV: Petitioner’s U.S. Constitution 14th Amendment rights, the presumption of innocence and Florida’s Separation of Powers doctrine

The only benefits Petitioner recognizes from being adjudicated guilty of a criminal offense by a state civil circuit trial court is that the civil court was powerless to sentence then incarcerate Petitioner and that Petitioner’s criminal record with the Florida Department of Law Enforcement, a state agency under the executive, not judicial, branch of the government, is still perfectly clean as he alleges at Paragraph 25, (R:14), in his April

2021 petition for a writ of mandamus, a redemptive paragraph which he also refers to in his Appellant Reply Brief on Page 17. These two “benefits” were due solely to Art. II, § 3, Fla. Const., Florida’s separation of powers doctrine, not any clemency from the state civil circuit trial court judge who as a member of the judicial branch of government had no control over the executive machinery of the state namely its jails, prisons and record keeping.

Petitioner profusely argues in the record below that the civil trial court’s September 1, 2021 final judgment violated the State of Florida’s separation of powers doctrine, Art. II, § 3, Fla. Const., such as in his Amended Initial Brief at Page 28 which references his Trial Court Reply’s 10-page, “A. Separation Of Powers”, see Appendix F for the 10-page entirety, and see also Appendix D for the entirety of “*Argument I – Lower tribunal violated the separation of powers doctrine.*” from the same Amended Initial Brief.

Furthermore, Florida has ample separation of powers case law rulings which conclude that only the executive branch of the government, typically through a state attorney, can charge or prosecute someone for an alleged criminal offense which Petitioner lists in the record below such as in his Amended Initial Brief at Pages 37-38, see again Appendix D but specifically Pages D1-D2.

Indeed the eagerness to prosecute shown in sitting Eighth Judicial Circuit of Florida State Attorney Brian S. Kramer's affidavit, Appendix M, is in fact bright-line evidence favoring Petitioner since only the statute of limitations, specifically Florida Statutes 775.15(2)(b) and 775.15(2)(c), could have prevented such an eager state attorney from charging Petitioner pursuant to the State of Florida's criminal laws, rules and procedures.

This case's facts and circumstances of elapsed time, i.e. the statute of limitations having run, and the failure by the executive branch of the State of Florida to either charge or prosecute within that time window implicates Petitioner's U.S. Const. amend. XIV due process presumption of innocence rights via Art. I, § 15(a), Fla. Const., titled "Prosecution for crime", and Art. I, § 9, Fla. Const., Florida's due process and double jeopardy clause, when it is paired with Petitioner's Art. I, § 24(a), Fla. Const. right to access and acquire public records which are his rightful property which Petitioner, like all who have been criminally accused, hopes will contain further evidence to exonerate his reputation, see Pages 40-45 from the Amended Initial Brief which is the entirety of "*Argument II – Appellant's state and federal constitutional rights ...*", Appendix E.

Petitioner further fought for his due process presumption of innocence rights as shown in the record below such as at Pages 35-36 of his Amended Initial Brief, see Appendix N.

Finally, this Court in *Coffin v. United States*, 156 U.S. 432 (1895), recognizes that an accused's presumption of innocence is foundational and has a long tradition in Western culture,

“The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.

It is stated as unquestioned in the textbooks, and has been referred to as a matter of course in the decisions of this Court and in the courts of the several states.”,

“Greenleaf traces this presumption to Deuteronomy, and quotes Mascardius Do Probationibus to show that it was substantially embodied in the laws of Sparta and Athens. Greenl.Ev. part 5, section 29, note. Whether Greenleaf is correct or not in this view, there can be no question that the Roman law was pervaded with the results of this maxim of criminal

administration, as the following extracts show: ... ", 156 U.S. 432 (1895), 453-454, and

"Ammianus Marcellinus relates an anecdote of the Emperor Julian which illustrates the enforcement of this principle in the Roman law. Numerius, the Governor of Narbonensis, was on trial before the emperor, and, contrary to the usage in criminal cases, the trial was public. Numerius contented himself with denying his guilt, and there was not sufficient proof against him. His adversary, Delphidius, "a passionate man," seeing that the failure of the accusation was inevitable, could not restrain himself, and exclaimed, "Oh, illustrious Caesar, if it is sufficient to deny, what hereafter will become of the guilty?" to which Julian replied, "If it suffices to accuse, what will become of the innocent?" *Rerum Gestarum*, L. XVIII, c. 1. The rule thus found in the Roman law was, along with many other fundamental and human maxims of that system, preserved for mankind by the canon law.", 156 U.S. 432 (1895), 455.

V: Florida's "Marsy's Law" for the accused

As immediately evidenced by its short September 1, 2021 final judgment, Appendix B, which was per curiam affirmed without a written opinion by the state appellate court, Appendix A, the state civil circuit trial court relied entirely upon *Florida Police Benevolent Association, Inc., v. City of Tallahassee*, 314 So.3d 796 (Fla. 1st DCA 2021), (hereinafter may be referred to as "FPBA"), and Marsy's Law when imposing its verdict, i.e. an adjudication of criminal guilt, upon Petitioner which thereby denied him his public records request. FPBA, the first pillar of this final judgment, has been on appeal since July 2020 which is prior to Petitioner's December 2020 public records request and as pointed out by Petitioner in his February 2, 2023 Motion For Clarification, Appendix I, the case is still pending before the Florida Supreme Court, SC2021-0651. Petitioner notified the state appellate court of FPBA's status in his mandatory state appellate court docketing statement filed on October 12, 2021.

Marsy's Law, the second of the two September 1, 2021 trial court pillars, replaced the prior Art. I, § 16(b), Fla. Const. as a result of a November 2018

statewide general election ballot amendment⁵, thus Marsy's Law is not as often colloquially misstated the entirety of Art. I, § 16, Fla. Const., see Respondents' "References to "Marsy's Law" refer to Art. 1, § 16, Fla. Const." at Page V of their Answer, but rather only 16(b). Specifically, Art. I, § 16, Fla. Const. is titled "Rights of accused and of victims." with 16(a) being a recitation of the rights of a criminally accused such as Petitioner and 16(b) those of a crime victim. Upon review, one can readily see that 16(a) is the State of Florida's reiteration of the U.S. Const. amend. VI. 16(a)'s enactment well precedes that of the present 16(b) and the entirety of Art. I, § 16(a), Fla. Const. is provided at Appendix C.

Though not directly raised below, both the state civil circuit trial court and the state appellate court ignored all of the 16(a) enumerated rights supposedly to be enjoyed by Petitioner, the criminally accused, while at the same time those courts granted the Respondents the entirety of their 16(b) claims, such a selective weaponization of the law has, so far, imposed a stark injustice upon Petitioner and a grim and dire future for all.

⁵ Petitioner voted for Marsy's Law at this election and is still a proponent, though only when "properly" applied by the courts.

For example, whenever Petitioner asserted his specific 16(a) “In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, ... ” right via its mirroring U.S. Const. amend. VI right, he was routinely deprived such as on May 2, 2022 when he motioned the state appellate court, Motion For Oral Argument, Appendix H, to determine the single issue of whether the record below showed probable cause of a crime,

“Did the University of Florida Police Department, the state attorney during the statute of limitations or any other arm of the executive branch of government ever find probable cause that a crime was either committed or attempted during the incident in question, namely the April 13, 2017 University of Florida Walker Hall incident?”,

yet was promptly denied with the Respondents never even filing a response. Furthermore, instead of filing a ubiquitous motion for rehearing, Petitioner on February 2, 2023 filed a Motion For Clarification⁶, Appendix I, requesting to be told

⁶ Petitioner was prohibited from filing with the trial court a similarly available motion, Fla. R. Civ. P. 1.530(g), since the trial court’s final judgment ordered the clerk to, “The Clerk

what specific Florida Statute-based crime did the state civil circuit trial court and then state appellate court rely upon to satisfy the requisite Marsy's Law crime that they predicated their rulings upon. Petitioner was again promptly denied, though this time Respondents did file a response, Appendix J.

Similar to Petitioner's U.S. Const. amend. VI claims for a fair trial when appealing an adjudication of criminal guilt before a state appellate court who is bent on affirming a judgment which required the state civil circuit trial court to on its own substitute the Respondents' false imprisonment and criminal trespass accusations into "[Petitioner's] acts", Petitioner, having not directly raised or asserted his Art. I, § 16(a), Fla. Const. rights below only its mirroring U.S. Const. amend. VI rights, nevertheless wants to document before the highest court of the land what often faces pro se litigants who as in this case received no discretionary benefit regarding 16(a) whereas the same judgment in citing 16(b), proactively found a way to grant Respondents everything that they had asked for.

VI: The "crimeless, crime victim"

of Court is requested to CLOSE this action as there is no further judicial labor required, Appendix B.

Since the demise of the ecclesiastical courts, Western intellectuals have been allowed to pose as reformers by debating the concept of the “victimless crime”, whereas the two courts below have ushered in an entirely new paradigm of enlightenment, the “crimeless, crime victim”.

The state civil circuit trial court’s **“Order on Appeal”**, its final judgment, Appendix B, cites no crime at all, not even the Respondents claims of false imprisonment and criminal trespassing, but merely refers to unspecified “acts” committed by Petitioner, the solely accused, which caused, according to the judgment, BURNEY and AUSTIN to become “crime victims”, consequently, such as in their Answer Brief and Response To Motion For Clarification, Appendix J, Respondents were allowed to prevail with the argument that you can have a Marsy’s Law crime victim without either a Marsy’s Law crime or an accused charged with such a Marsy’s Law crime, emphasis and bracketed words to the following have been added,

“Summary Of Argument - The Order on Appeal should be affirmed because Appellant is not entitled to mandamus relief. The Record amply demonstrates that Dr. Austin and Ms. Burney are “[**crime**] victims” as defined by Marsy’s Law. As [**crime**] victims, Dr. Austin and Ms.

Burney are entitled to the protections enumerated in the law. These protections apply **even though Appellant [, the solely accused,] has not been charged with** or convicted of **a crime [and the statute of limitations has run]**.”, the Answer’s “Summary Of Argument” at Pages 8-9,

“Appellant seems to believe that the trial court’s ruling that Dr. Austin and Ms. Burney are “crime victims” equates to the court convicting him **[, the solely accused,]** of a crime. Such a belief is nonsensical.”, the Answer’s Pages 21-22,

with more examples at Appendix P.

Indeed, preface any of Respondents’ arguments with the following and it will fall apart,

“After three separate UFPD investigations, Petitioner, the solely accused, was never charged by any arm of the executive branch of the government pursuant to the State of Florida’s criminal laws, rules and procedures and, furthermore, the statute of limitations on all crimes Petitioner was merely accused of had run eight months prior to his public records request, ...”, see Appendix K - “*What The Parties Agree On.*” for the substantiating evidence.

The helter-skelter implications of a civil trial court's adjudication of criminal guilt were contemplated by the Florida Supreme Court in *Anderson v. State*, 291 So.3d 531 (291 So.3d 531 (Fla. Sup Ct. 2020), which Petitioner cites to throughout the record below such as at Page 45 of the Amended Initial Brief, specifically see the last sentence of Appendix E, and at the Amended Initial Brief's Conclusion,

“The U.S. Constitution Amendment VI speaks of “criminal prosecutions” and indeed once a civil court adjudicates someone guilty of a crime, a possibility contemplated by *Anderson v. State*’s “would constitute a substantive change in Florida law” at 535, many legal terms and phrases and their former presumptions fall into question. For example, Black’s Law Dictionary, 11th Edition, gives one definition of “criminal proceeding” as,

“A judicial hearing, session or **prosecution** in which a court adjudicates whether a person has committed a crime or, having already fixed guilt, decides on the offender’s punishment;” (emphasis added),

with no mention of a criminal court and similarly one of its definitions of “conviction”

has, “The act or process of judicially finding someone guilty of a crime;”. ”.

Thus this case before the Court along with Black’s Law Dictionary show, as anticipated by *Anderson*, that it is to be expected that one day a state civil circuit trial court may, on its own, conduct then enforce the results of its own “criminal prosecution” and especially since the U.S. Const. amend. V requires a “criminal case”, yet the U.S. Const. amend. VI has no such requirement and begins with,

“In all criminal prosecutions, the accused shall enjoy the right to ...”.

At trial and on appeal, Respondents were routinely allowed to argue when establishing their Marsy’s Law claims that Marsy’s Law still applies even though the accused in this case, the solely accused Petitioner, had not been prosecuted or convicted, yet such arguing presumes that the accused had at least been charged, yet as the record below plainly shows, see Appendix K - “*D: What The Parties Agree On.*”, Petitioner, the solely accused, was never charged pursuant to the State of Florida’s criminal laws, rules and procedures and the statute of limitations had run eight months prior to his public records request.

Petitioner complained of this deceptive arguing at both trial and appeal,

“ARGUMENT

A. Appellees Agree That Appellant Was Never Charged.

The Response’s alluring “never arrested or prosecuted” SEQUENCE, so labeled and discussed in the Initial Brief on Pages 41-42 and 46, carried the presumption that Appellant had at least been charged with a crime and that the University of Florida Police Department (may be referred to as “UFPD”) had found probable cause that a crime was committed or attempted on April 13, 2017 at the University of Florida’s Walker Hall, the incident in question, now however, Appellees for the first time in this litigation agree with Appellant that he was never even charged,

“These [Marsy’s Law] protections apply even though Appellant has not been charged with or convicted of a crime.”, from the Answer Brief’s opening paragraph to “Summary Of Argument” on Page 8.”, the opening to the Appellant Reply Brief’s “A. Appellees Agree That Appellant Was Never Charged.”.

Finally, another irksome practice was Respondents' falsifying Petitioner's argument such as at,

“Contrary to Appellant's suggestion, there simply is no requirement of a criminal conviction, or even a criminal prosecution, before a crime victim may invoke the law's protections.”, from the Answer's Page 18.

Petitioner never argued that either a prosecution or a conviction was necessary to be granted a Marsy's Law exemption but rather that he, the solely accused, had to at least have been charged pursuant to the State of Florida's criminal laws, rules and procedures and as the record below shows Petitioner was never so charged.

CONCLUSION

Many of our states, including our most populous state, California, have enacted Marsy's Law provisions, see California Constitution, Article I, Section 28(b) which mirrors many of the Florida Constitution, Article I, Section 16(b), Marsy's Law provisions and issues central to this case, consequently, many criminally accused who were criminally exonerated by their state's criminal laws, rules and procedures, i.e. the presumed innocent, may nevertheless in the future, even

after the statute of limitations has run, become adjudicated guilty of a criminal offense by a state civil trial court if they dare to subsequently request a public record that may implicate one of their accusers, i.e. show him or her to be a “false accuser”, as has happened in this case to Petitioner.

For all of the foregoing reasons, Petitioner respectfully requests that the Court grant this Petition For A Writ Of Certiorari.

Respectfully submitted,

Thomas J. Kelly, pro se
3108 Moss Drive
Cocoa, FL 32922
(321) 507-4254
tkelly0962@gmail.com