22-5089

No. 21-_____

In The
Supreme Court of the United States

MAJOR MIKE WEBB, D/B/A FRIENDS FOR MIKE WEBB (C00591537),
A/K/A MAJOR MIKE WEBB FOR U.S. CONGRESS (H8V08167),
Pro Se Petitioner,

v.

U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT
Respondent.

***In Re: Major Mike Webb*, Record No. 22-1422 (4th Cir. 2022), on petition for writ of mandamus from *Webb v. Northam*, Civil Action No. 3:22-cv-00222-DJN, (E.D.Va. 2022)**

MAJOR MIKE WEBB, D/B/A FRIENDS FOR MIKE WEBB (C00591537),
A/K/A MAJOR MIKE WEBB FOR U.S. CONGRESS (H8V08167),
Pro Se Petitioner,

v.

RALPH S. NORTHAM
Respondent.

***In Webb v. Northam*, Record No. 22-1627 (4th Cir. 2022), on appeal from *Webb v. Northam*, Civil Action No. 3:22-cv-00222-DJN, (E.D.Va. 2022)**

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

"Globally, as of 6:19pm CEST, 6 July 2022, there have been 548,990,094 confirmed cases of COVID-19, including 6,341,637 deaths, reported to WHO", Staff, "WHO Coronavirus (COVID-19) Dashboard," *WHO*, https://covid19.who.int/ (accessed July 6, 2022), and, the present case rises on appeal, to raise assignments of error, in an action brought, on petition for writ of mandamus, Fed.R.App.Pro. 21, based upon facts alleged in complaint, triggering compulsory action by the Trial Court under Fed.R.Crim.Pro.6(a), which provides, in relevant part, that, "[w]hen the public interest so requires, the court must order that one or more grand juries be summoned", and presenting the following questions:

1. Whether, upon presentment of a *prima facie* case, arising under the *Freedom of Access to Clinic Entrances (FACE) Act*, 18 U.S.C. § 248(a)(2), or, in the alternative, violations of 18 U.S.C. § 1512, establishing a pattern of racketeering activity, beyond a reasonable doubt, demonstrating "a clear and indisputable right to the requested relief," *In Re: Murphy-Brown, LLC*, 907 F.3d 788 (4th Cir. 2018) (internal quotation marks omitted), is entitled to issue of a writ of mandamus, under Fed.R.App.Pro. 21, for the same. Order, *In Re: Major Mike Webb*, Record No. 22-1422 (4th Cir. June 27, 2022).

2. Whether it is improper for a Court of Appeals to dismiss an action, under Fed.R.App.Pro. 45, for failure to prosecute, where the Trial Court, of record, has refused to issue a summons, pursuant to a duly filed praecipe with the Trial Court to effect the same at the commencement of the action, continuing a pattern demonstrated in prior litigations presented by the same unrepresented litigant. Order, Webb v. Fauci, Record No. 22-1627 (4th Cir. June 27, 2022).

PARTIES AND RULE 29.6 STATEMENT

Appellant is MAJOR MIKE WEBB, hereinafter referred to as "WEBB". Appellant has no parent corporation, and there is no publicly held corporation owning 10% of more of its stock.

The Appellee is s are: RALPH S. NORTHAM, the former Governor of Virginia.

DECISIONS BELOW

All decisions in this case in the lower courts are styled *Webb v. Northam*, in reference to the original court action, and *In Re: Major Mike Webb*, in reference to the

related petition for writ of mandamus. A Verified Complaint was filed with the U.S. District Court for the Eastern District of Virginia (Richmond Division) on April 13, 2022, denied permission to proceed *in forma pauperis*, as attached hereto, and in departure from prior approvals, and an Order to Amend, dated April 15, 2022, as attached hereto.

On the same day that an Amended Complaint was filed, June 2, 2022, the matter was dismissed, by Order, dated June 2, 2022, without prejudice, consequent to a petition for writ of mandamus, under Fed.R.App.Pro. 21, to compel the invocation of Fed.R.Crim.Pro. 6(a), filed on April 29, 2022, to which Appellant timely appealed, docketed on June 21, 2022, as attached hereto.

Noting a consistent course of dealing, in due diligence, Appellant had early filed a petition for writ of mandamus, under Fed.R.App.Pro. 21, with the Fourth Circuit Court of Appeals, on April 20, 2022, following up with an application for prejudgment, *Webb v. U.S. Dist. Ct. for E.D.Va.*, Record No. 21-7806, which was denied permission to proceed *in forma pauperis*, by order dated June 26, 2022, as attached hereto, and dismissed by the Fourth Circuit, by Order dated June 29, 2022, as attached hereto, subsequent to the denial of the petition for writ of mandamus, by order, dated June 27, 2022, as attached hereto.

JURISDICTION

Appellant had a pending appeal, in the U.S. Court of Appeals for the Fourth Circuit, pursuant to 28 U.S.C. § 1295(a)(1), and a writ of certiorari may only be granted for compelling reasons, to include when a "court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the

same important matter; has *decided an important federal question in a way that conflicts with a decision by a state court of last resort*; or *has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power*", S.Ct.R. 10(a) (emphasis added), or when "a United States court of appeals 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*". S.Ct.R. 10(c). (emphasis added)

I. An Important Question of Federal Law

A. A Showing of Good Cause

Article III Courts have recognized that "[t]he increase in statutory crimes often makes it possible that a single transaction gives rise to criminal liability for multiple offenses", *U.S. v. Pelullo*, 14 F.3d 881 (3d Cir. 1994) (citing Comment, *The Use of Collateral Estoppel against the Accused*, 69 Colum.L.Rev. 515 (1969), a judicial reality acknowledged under Fed.R.Crim.Pro. 6(a), which provides, in relevant part, that "[w]hen the public interest so requires, the court must order that one or more grand juries be summoned."

And, for purposes of a grand jury, in the Courts of the Commonwealth, at least probable cause had been established to believe that an attorney had "rescheduled a federal court sentencing hearing knowing that it would conflict with his obligation to appear in this Court for the trial of Michael Angelo Foulks", that the attorney "did not appear for the trial or receive any continuance by the Court excusing his absence", and that the attorney's "letter to the Suffolk Clerk of Court, no doubt intended to be

passed on to this Court, did not disclose that the 'Federal Trial' was not a trial at all, but a mere sentencing hearing", and that the attorney's "letter failed to disclose that his federal court sentencing hearing had only days before been rescheduled." *Commonwealth v. Foulks*, 56 Va. Cir. 449 (Va. 2001).

And, at least that appellate court had determined that that attorney's "actions appear even less pardonable than those of the attorney found in contempt of court in *Brown*, who claimed he 'wasn't aware' of the hearing because he failed to make the proper notation in his personal 'docket book.'" *Id.* (quoting *Brown v. Commonwealth*, 26 Va.App. 758 (1998)).

B. A Clear and Indisputable Right

Yet, in the matter raised on appeal in assignments of error, the lower court had concluded that Appellant had failed to present "a clear and indisputable right to the requested relief," Order, *In Re: Major Mike Webb*, Record No. 22-1422 (4 th Cir. June 27, 2022) (quoting *In Re: Murphy-Brown, LLC*, 907 F.3d 788 (4th Cir. 2018) (internal quotation marks omitted), in a petition for writ of mandamus to trigger Fed.R.Crim.Pro. 6(a), where, with regard to allegations averring violation of the *Freedom of Access to Clinic Entrances (FACE) Act*, 18 U.S.C. § 248(a)(2), the Appellee, Ralph Northam, had, of public record, "conceded that he could not legally limit in-person worship ceremonies, noting that the recent Supreme Court decision against the state of New York prevented him from doing that", Charlie Spiering, "Gov. Ralph Northam Tightens Coronavirus Restrictions: You Don't Have to Sit In Church for God to Hear Your Prayers," *Breitbart*, December 10, 2020, while a violation would have required that Appellee had "by force or threat of force or by physical obstruction,

intentionally injure[d], intimidate[d] or interfere[d] with or attempt[ed] to injure, intimidate[d] or interfere[d] with any person lawfully exercising or seeking to exercise the *First Amendment* right of religious freedom at a place of religious worship", 18 U.S.C. § 248(a)(2), a fact pattern akin to a recent indictment handed down for violations of the *FACE Act* against nine prolife advocates, apparently indicted for a misdemeanor first offense. Press Release, "Nine Defendants Indicted on *Federal Civil Rights Conspiracy* and *Freedom of Access to Clinic Entrances Act (FACE Act)* Offenses for Obstructing Patients and Providers of a Reproductive Health Services Facility," *DoJ*, March 30, 2022, transforming this matter into a fact pattern of disparate treatment in equal protection, or, in the alternative, a violation of the *Citizenship Clause*, a topic of current relevance before the nation's highest court. Mark Joseph Stern, "Clarence Thomas' Jurisprudence Is Only Getting More Chaotic," *SLATE*, April 22, 2022.

Appellant readily concedes the fact that a first offense under the *FACE Act* is only punishable as a misdemeanor, 18 U.S.C. § 248(b)(1)[1] while federal precedents under the federal racketeering statute endorse that, even if extending for a length of time and involving multiple victims, a reviewing court may find that these separate offenses constitute "appear to refer to the same transaction," for purposes of defining a predicate offense under the 18 U.S.C. §§ 1961(1) and (5), *Chisolm v. Charlie Falk Auto Wholesalers, Inc.*, 851 F. Supp. 739 (E.D. Va. 1994), *vacated sub nom. Chisolm v. TranSouth Fin. Corp.*, 95 F.3d 331 (4th Cir. 1996), which, under judicial economy

[1] "Whoever violates this section shall. . . in the case of a first offense, be fined in accordance with this title, or imprisoned not more than one year, or both." *Id.*

considerations, may weigh against convening a grand jury. *But see* Press Release, "Nine Defendants Indicted on *Federal Civil Rights Conspiracy* and *Freedom of Access to Clinic Entrances Act (FACE Act)* Offenses for Obstructing Patients and Providers of a Reproductive Health Services Facility," *supra.*

The Department of Justice (DoJ) has publicly acknowledged, contemporaneously with the recent indictment announcement that, "the two primary statutes that criminalize the actions of *governmental officials who abuse their authority* to deprive their fellow citizens of their constitutional rights" are 18 U.S.C. § 241 and 18 U.S.C. § 242, under color of law described as "Reconstruction-era statutes", enacted by Congress "under its authority to enforce the protections of the *Fourteenth Amendment.* Samantha Trepel, *Prosecuting Color-of-Law Civil Rights Violations: A Legal Overview, DOJ Journal of Federal Law and Practice*, pp. 21-33 (March 2022) (citing *U.S. v. Price*, 383 U.S. 787 (1966) (the "Mississippi Burning" trial); *Screws v. U.S.*, 325 U.S. 91 (1945) (discussing legislative history of predecessor statute to section 242). *But see* Press Release, "Nine Defendants Indicted on *Federal Civil Rights Conspiracy* and *Freedom of Access to Clinic Entrances Act (FACE Act)* Offenses for Obstructing Patients and Providers of a Reproductive Health Services Facility," *supra.*

"[U]nique in that, unlike most criminal laws, they do not penalize specific conduct listed in the statute but, instead, make it a crime to willfully violate individual rights guaranteed elsewhere, either in the U.S. Constitution or in other federal laws", "[t]he scope of the conduct covered by the statutes is, therefore, in one

respect, quite broad", and "[t]his broad authority to prosecute any number of constitutional violations is, however, narrowed by the requirement that the government prove that the defendant specifically intended to violate the right at issue and that and that the right at issue be one the law has made 'specific and definite.'" Id. (quoting *Screws*, 325 U.S., at 912).

And, hence, it is clear, that even DoJ, and the Federal Bureau of Investigation (FBI) would have failed to present a showing of good cause to warrant a grand jury, as had occurred, unless they had presented evidence to an approving court officer that at least one of the persons indicted was acting under color of law, perhaps alleging a trespass at Middlesex, or under information and belief that an undisclosed operative had infiltrated the group to satisfy a minimal showing, in zealous advocacy, liberally construed, under 18 U.S.C. § 241 and 18 U.S.C. § 242.

However, in the court-ordered Amended Complaint, served upon Appellee in compliance with the controlling rule, Fed.R.Civ.Pro. 5, *but see* Order, *In Re: Major Mike Webb*, Record No. 22-1637 (4th Cir. June 27, 2022) (dismissing for failure to prosecute, pursuant to Fed.R.App.Pro. 45, acknowledging that, under 18 U.S.C. § 241, along with 18 U.S.C. § 242, "provide no basis for civil liability. *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980) (citing *Agnew v. City of Compton*, 239 F.2d 226 (9th Cir. 1956), *cert. denied* 353 U.S. 959 (1957), *overruled on other grounds*, *Cohen v. Norris*, 300 F.2d 24 (9th Cir. 1962); *see also U.S. v. Kozminski*, 487 U.S. 931 (1988), Appellant had raised related claims, under 42 U.S.C. § 1985, conspire to prevent him from accepting or holding public office, specifically in litigation brought

in an attempt to gain access to the ballot under a "pandemic exception" freely granted to other similarly situated candidates, giving rise to litigation, specifically *Webb v. State Board of Elections*, Case No. CL20-2459-00 (Richmond Cir. 2020), which, implicating state action, under color of law, would work to raise felonious conduct, under 18 U.S.C. § 241, and/or 18 U.S.C. § 242, even liberally construing the "inartfully pleaded" allegations, "subjected to 'less stringent standards than formal pleadings drafted by lawyers'", *Brice v. Jenkins*, 489 F. Supp. 2d 538 (E.D. Va. 2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (quoting *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972).

C. The Benefit of Mankind and the Honour of God

One historical figure of contemporary controversy who had engaged in sober retrospection prayed that he "may be spared to accomplish something for the benefit of mankind and the honour of God", Staff, "Our Name," *WLU*, https://www.wlu.edu/the-w-l-story/university-history/ (accessed June 17, 2022), and it was his thought that "[t]rue patriotism sometimes requires of men to act exactly contrary, at one period, to that which it does at another, and the motive which impels them—-the desire to do right—-is precisely the same." Robert E. Lee, *Letter to General P. G. T. Beauregard*, October 3, 1865.

Yet, in the present age, in another election year, according to some elected representatives, vested with the separated power of the legislature, "[t]he cause of our democracy remains in danger", and "[t]he conspiracy to thwart the will of the people is not over," and, according to news sources, "[t]he House January 6 committee plans. . . to produce shocking new evidence about Donald Trump's bid to steal the last

presidential election", while it is the claim that the former President "and his loyalists don't care" and "[t]hey are already positioning to fix the next one, undercutting the panel's mission of saving American democracy." Stephen Collinson, "Trump-allied candidates threaten democracy as January 6 probe tries to protect it," *CNN*, June 16, 2022, while some report that the ruling of this Honorable Court on the issue of abortion "will determine control of Congress and the future of President Biden's agenda — the court's expanded conservative majority has injected new volatility into an already turbulent political atmosphere, leaving both parties to game out the potential consequences." Carl Hulse & Lisa Lerer, "Supreme Court Case Throws Abortion Into 2022 Election Picture," *New York Times*, May 20, 2021.

Meanwhile in the patchwork fabric of freedom called America, "months of discord about the coronavirus epidemic have transformed the cloth mask into a potent political symbol, touted by Democrats as a key part of communal responsibility, labeled by some GOP leaders as a sign of government overreach and as a scarlet letter pinned on the weak", Ben Guarino, Chelsea Janes & Ariana Eunjung Cha, "Spate of new research supports wearing masks to control coronavirus spread," *Washington Post*, June 13, 2020, prompted by a virus that "isn't stupid", while public health officials, included amongst the named Appellees, have said "[w]hat we can't really predict is human behavior", adding that "human behavior in this pandemic hasn't served us very well." Meg Tirrell, "CDC director says the Covid pandemic's end date depends on human behavior," *MSNBC*, October 8, 2021.

"My trust is in the mercy and wisdom of a kind Providence, who ordereth all

things for our good," Staff, "Robert E. Lee Quotes," *American Civil War History*, http://www.americancivilwarstory.com/robert-e-lee-quotes.html (accessed June 17, 2022), and it is disturbingly compelling in this panoply of human affairs, the fact remains that 1,014,027 American deaths have been attributed to a novel coronavirus, Staff, "COVID Data Tracker," *CDC*, July 7, 2022, https://covid.cdc.gov/covid-data-tracker/#datatracker-home (accessed July 7, 2022), including some 20,716 residents of Virginia, Staff, "COVID-19 Data in Virginia," July 7, 2022, https://www.vdh.virginia.gov/coronavirus/see-the-numbers/covid-19-in-virginia/ (accessed December 7, 2022).

D. A Novel, Chimeric Coronavirus

It has once been written that "the beast which I saw was like unto a leopard, and his feet were as the feet of a bear, and his mouth as the mouth of a lion: and the dragon gave him his power, and his seat, and great authority", Revelation 13:2 (KJV), literally a chimerical creation, and, over 80% of those fatalities were over the age of 65, Meredith Freed , Juliette Cubanski & Tricia Neuman, "COVID-19 Deaths Among Older Adults During the Delta Surge Were Higher in States with Lower Vaccination Rates," *Kaiser Family Foundation*, October 1, 2021, despite the reported fact that "[c]lose to 100% of U.S. adults ages 65 and older have now received at least a first dose of a Covid-19 vaccine, according to the Centers for Disease Control and Prevention," Alison Durkee, "Stunning Vaccine Stat: 98.5% Of U.S. Seniors Have Had Shot," *Forbes*, November 11, 2021, and a known high fatality risk from the inception of the public health crisis, and for whom all nations were diligently advised that there were "guidelines for elderly care specifically targeting prevention in individuals and

introduction of COVID-19 to nursing homes", *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19),* dated February 16-24, 2020.

On the first anniversary of the pandemic declaration, *see* WHO, *Coronavirus disease 2019 (COVID-19) Situation Report – 51*, March 11, 2020, one day before which it had been reported that the " WHO Director- General in his regular media briefing on 9 March stated that the threat of a pandemic has become very real; however, this would be the first pandemic in history that could be controlled", WHO, *Coronavirus disease 2019 (COVID-19) Situation Report – 50*, March 10, 2020, placing this nation on "a war footing", the President had said "we know what we need to do to beat this virus: Tell the truth." Briefing Room, "Remarks by President Biden on the Anniversary of the COVID-19 Shutdown," *The White House*, March 11, 2021.

The President's top medical adviser, coincidentally recently afflicted with the same, Dan Mangan, "Dr. Anthony Fauci tests positive for Covid, is having mild symptoms," *CNBC*, June 15, 2022, has conceded that "this virus has fooled us before," Eamon Barrett, "'This virus has fooled us before': Here's how Fauci predicts stealth Omicron will spread across the U.S.," *Fortune*, March 24, 2022, while world public health authorities have advised that "[s]urely we have learned by now, that we underestimate this virus at our peril." Staff, "2021 Year in Review: 'We underestimate this virus at our peril'," *UNSDG*, December 28, 2021.

However, "[h]ow long their subjugation may be necessary is Known & ordered by a wise & merciful Providence", Robert E. Lee, *Letter to Mary Randolph Custis Lee,* December 27, 1856, but it is abundantly clear throughout that "groups tend to be less

moral than individuals." Martin Luther King, Jr., *Letter from a Birmingham Jail*, April 3, 1963.

E. Tell the Truth

It was known early a chimeric virus was involved, a coronavirus with an ophidian codon usage bias, Wei Ji, *et al.*, *Cross-species transmission of the newly identified coronavirus 2019-nCoV*, J. Med. Vir. (April 2020), *epub.* February 19, 2020, an aberration for coronaviruses that only infect mammalian and avian species, Justyna Miłek & Katarzyna Blicharz-Domańska, *Coronaviruses in Avian Species – Review with Focus on Epidemiology and Diagnosis in Wild Birds,* J. Vet. Res. (September 2018), *epub.*, December 10, 2018, raising a reasonable inference of suspicion, *Terry v. Ohio*, 392 U.S. 1 (1968), as to a chimerical departure from nature, *see Association for Molecular Pathology v. Myriad Genetics*, Docket No. 12-398, 566 U.S. ___ (2013); *Diamond v. Chakrabarty*, 447 U.S. 303 (1980), in conceded injury to places of worship. Charlie Spiering, "Gov. Ralph Northam Tightens Coronavirus Restrictions: You Don't Have to Sit In Church for God to Hear Your Prayers," *Breitbart*, December 10, 2020.

Moreover, if such phenomenon were to be if classified, it could only be owned and/or controlled by the government, Executive Order 12,958, *Classified National Security Information*, April 17, 1995; yet, as well as attributed to the fatalities of some 22,132 veterans, Staff, "Department of Veterans Affairs COVID-19 National Summary," *Veterans Administration*, June 11, 2022, https://www.accesstocare.va.gov/Healthcare/COVID19NationalSummary, (accessed June 11, 2022), despite a proactive decision on March 10, 2020, to prohibit " visitors

to enter its 134 nursing homes and 24 major spinal cord injury and disorder centers", Press Release, "Timeline on how VA prepared for COVID-19 outbreak and continues to keep Veterans safe", *Veterans Affairs*, April 2020, the day before the pandemic declaration, Staff, *Coronavirus disease 2019 (COVID-19), Situation Report – 51*, WHO, March 11, 2020.

While "the scope of [a court's] review . . . must be limited to a determination of whether the [executive's] actions were taken in good faith and whether there is some factual basis for [the Governor's] decision that the restrictions he imposed were necessary to maintain order", Opp. Brief, *Hughes v. Northam*, Civil Action No. CL20-415 (Russell Cy. Cir.) (quoting *U.S. v. Chalk*, 441 F.2d 1277 (4th Cir. 1971)), "'[a]ll power may be abused if placed in unworthy hands'", *Chalk*, 441 F.2d, at 1277 (quoting *Luther v. Borden*, 48 U.S. 1 (1849), and that "[t]he courts cannot prevent abuse of power, but can sometimes correct it". *Id.*

"The fundamental requisite of due process of law is the opportunity to be heard", *Grannis v. Ordean*, 234 U.S. 385 (1914), and that such should occur "at a meaningful time and in a meaningful manner", *Armstrong v. Manzo*, 380 U.S. 545 (1965).

II. Has Not Been, But Should Be, Settled by This Court

A. Inartfully Pleaded Allegations

This Honorable Court has provided that, "[i]f this choice [of a regulatory agency] represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one

that Congress would have sanctioned", *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984) (citations omitted), that "'[j]udicial review of agency action. . . is limited to 'the grounds that the agency *invoked when it took the action*,'" *DHS v. Regents of the University of California*, 591 U.S. ___ (2020) (quoting from *Michigan v. EPA*, 576 U. S., at 743) (emphasis added), that, without more, mere "views could not affect the validity of the statute, nor entitle him to be excepted from its provisions". *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (citing *Commonwealth v. Connelly*, 163 Massachusetts 539; *Commonwealth v. Has*, 122 Massachusetts 40; *Reynolds v. United States*, 98 U.S. 145; *Regina v. Downes*, 13 Cox C.C. 111.), or that "[t]he only 'competent evidence' that could be presented to the court to prove these propositions was the testimony of experts, giving their opinions." *Id.* (quoting *Commonwealth v. Jacobson*, 183 Massachusetts 242 (1904). *See also* Fed.R.Evid. 701.

And, in that case, learned and licensed practitioners, Mssrs. George Fred William and James A. Halloran, for plaintiff in error, had raised a claim, granted certiorari, but devoid of any expert witness or substantiating evidence, averring the ludicrous assertion of rights alleged to have been derogated under the *Preamble*, invoking swift and terse rebuke at the outset, finding Justice Harlan remark, "We pass without extended discussion the suggestion that the particular section of the statute of Massachusetts now in question (§ 137, chap. 75) is in derogation of rights secured by the preamble of the *Constitution of the United States*." *Jacobson*, 197 U.S., at 11.

B. Follow the Science

It has oft been repeated that "'[i]t is emphatically the province and duty of the

judicial department to say what the law is'," *U.S. v. Nixon*, 418 U.S. 683 (1974) (quoting *Marbury v. Madison*, 1 Cranch 137 (1803)), and, empirically, the suspected wet market is the size of nine American football fields, Jeremy Page, "Virus Sparks Soul-Searching Over China's Wild Animal Trade," *WSJ*, January 26, 2020, but in which only a total of 27, Mandy Zuo, *et al.*, "Hong Kong takes emergency measures as mystery 'pneumonia' infects dozens in China's Wuhan city," *South China Morning Post*, December 31, 2019, of the total 41 cases in China had been associated by January 14, 2020, Staff, "Archived: WHO Timeline - COVID-19," WHO, April 27, 2020, https://www.who.int/news/item/27-04-2020-who-timeline---covid-19 (accessed January 15, 2021), and only 43 by May 17, 2020, Kenji Mizumoto, Katsushi Kagaya Gerardo Chowell, *Effect of a wet market on coronavirus disease (COVID-19) transmission dynamics in China, 2019–2020*, 97 Int. J. Infect. Dis., pp. 96-101, June 2, 2020, doi: 10.1016/j.ijid.2020.05.091, which were international news about , in the 42nd largest city in the world, Staff, "Wuhan: The London-sized city where the virus began," *BBC*, January 23, 2020, a disproportionate response resulted in sharing of the genetic sequence around the world by January 12, 2020. Staff, "Archived: WHO Timeline - COVID-19," WHO, April 27, 2020, https://www.who.int/news/item/27-04-2020-who-timeline---covid-19 (accessed January 15, 2021), with few fatalities. Amy Qin & Javier C. Hernández "China Reports First Death From New Virus," *NYT*, January 10, 2020, *updated* January 21, 2020.

Viruses are the most abundant biological particles in the world, Patrick Forterre, *Defining Life: The Viral Viewpoint*, 40 Orig. Life Evol. Biosph. 2, pp. 151-

160 (April 2010), but, around the time of the emergence of MERS, there were only a total of 219 viruses harmful to mankind. Mark Woolhous *et al.*, *Human viruses: discovery and emergence*, Phil. Trans. R. Soc. B, 367, pp. 2864-2871 (2012), infinitesimally small, when considering the Law of Large Numbers. *See generally* Kelly Sedor, *The Law of Large Numbers and Its Applications*, Lakehead University (2015); Juan M. Sanchez, *An Exercise in Sampling: The Effect of Sample Size and Number of Samples on Sampling Error*, 4 World Journal of Chemical Education 2, pp. 45-48 (2016).

Beyond the early doubts expressed by Kristian G. Andersen, Kristian Andersen Email to Anthony Fauci, "Re: FW: Science: Mining coronavirus genomes for clues to outbreak's origin," January 31, 2020, which directly contradict what has become the most relied upon zoonotic evolution report advocating the zoonotic evolution theory, Kristian G. Andersen, *et al.*, *The proximal origin of SARS-CoV-2*, 26 Nature Medicine, pp. 450-455 (April 2020), and beyond the intriguing reports regarding HIV inserts, Prashant Pradhan, *et al., Uncanny similarity of unique inserts in the 2019-nCoV spike protein to HIV-1 gp120 and Gag*, bioRxiv, February 2, 2020, a reasonable trier of fact might expect in a discipline in which "[r]eproducibility and replicability are fundamentally important aspects of the scientific method", Robert Gerlai, *Reproducibility and replicability in zebrafish behavioral neuroscience research*, 178 Pharmacol. Biochem. Behav., pp. 30-38, March 2019, doi: 10.1016/j.pbb.2018.02.005, *Epub.* February 23, 2018, far more than just seven human coronaviruses, Staff, "Human Coronavirus Types," *CDC*, February 15, 2020,

https://www.cdc.gov/coronavirus/types.html (accessed October 1, 2021), of which a total of five emerged between 2003 and 2005. Jeffrey S. Kahn & Kenneth McIntosh, *History and recent advances in coronavirus discovery*, 24 Pediatr Infect Dis J. 11(Suppl.), S223-7, discussion S226 (November 2005), doi: 10.1097/01.inf.0000188166.

It is of at least probative value that not one of the Appellees have yet entered an appearance, and, as stated in *U.S. v. Burr*, 25 F. Cas. 55 (C.C.D. Va. 1807), "if the gentleman had believed this decision to be favorable to him, we should have heard of it in the beginning of his argument, for the path of inquiry in which he was led him directly to it", and "evidence of . . . flight. . . [is] admissible even if offered solely to prove his consciousness of guilt as to that predicate act." *U.S. v. Pungitore*, 910 F.2d 1084 (3d Cir. 1990).

C. An Opportunity to Be Heard

A right to some level of due process has been afforded under various circumstances, of less significance, *Greene v. McElroy*, 360 U.S. 474 (1959); *Goldberg v. Kelly*, 397 U.S. 254 (1970), and any citizen is afforded "the process that is due," *Sec'y of Labor v. T.P. Mining, Inc.*, 8 FMSHRC 687 (1986), an irreparable harm, in derogation or abnegation thereof. *Cohen v. Rosenstein*, 691 F. App'x 728, (Mem)–730 (4th Cir. 2017).

"The first step in risk management is to identify the hazards associated with a task and/or subtask, operation, process, facility, or equipment", DA Pam 385-30, *Safety: Risk Management*, Chapter 2-1, December 2, 2014, and this Honorable Court has suggested that, "[u]nless it has that effect on her right of choice, a state measure

designed to persuade her to choose childbirth over abortion will be upheld if reasonably related to that goal." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), and, here, there is no need to consider abstract considerations "advanced to explain historically the enactment of criminal abortion laws in the 19th century and to justify their continued existence", *Roe v. Wade*, 410 U.S. 113 (1973).

On petition for certiorari, "[a]ll we say to America is, 'Be true to what you said on paper.'" Martin Luther King, Jr., *I've Been to the Mountaintop*, April 3, 1968

III. Decided in a Way That Conflicts with Relevant Decisions of This Court

As this Honorable Court has stated, "[a]lthough that *Preamble* indicates the general purposes for which the people ordained and established the *Constitution*, it has never been regarded as the source of any substantive power conferred on the Government of the United States or on any of its Departments", *Jacobson*, 197 U.S., at 11, and, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid", *U.S. v. Salerno*, 481 U.S. 739 (1987).

Accordingly, in review of what may be perceived in complaint as a departure from established norms and precedent, this Court had prudently determined, in the past, that the test is whether there is "no reasonable basis for the state court to deny relief." *Estep v. Ballard*, 502 F. App'x 234 (4th Cir. 2012) (citing *Harrington v. Richter*,131 S.Ct. 770 (2011). *See also Strickland v. Washington*, 466 U.S. 668 (1984).

Under Fed.R.Crim.Pro. 6(a), "[w]hen the public interest so requires, *the court must* order that one or more grand juries be summoned" (emphasis added), and one jurist has opined that, "[w]here the language of a statute is plain and unambiguous,

courts give effect to the statute as written, without engaging in statutory construction", *In re Adoption of Doe*, 156 Idaho 345 (2014), and, it is abundantly clear to Appellant, that the plain language of the federal law suggests that mandatory rule that "'racketeering activity' means. . . any act or threat involving murder, . . . which is chargeable under State law and punishable by imprisonment for more than one year", 18 U.S.C. § 1961(A), and may further include as a predicate offense conspiracy to commit transnational terror, in violation of 18 U.S.C. § 2332b. 18 U.S.C. § 1961(G).

Equally clear notice, at least to a member of the laity, outside the profession of litigation, is the requirement for not simply an efficacy test, as was used for the release of the COVID-19 countermeasures for an *Emergency Use Authorization (EUA)*, *see* Marion F. Gruber, *Emergency Use Authorization (EUA) for an Unapproved Product Review Memorandum (Pfizer-BioNTech COVID-19 Vaccine/ BNT162b2)*, December 11, 2020, but rather a test of satisfactory effectiveness, 21 CFR § 314.125, which, under a plain word meaning would preclude a mere preprint of an efficacy study, Stephen J. Thomas, *et al.*, *Six[-]Month Safety and Efficacy of the BNT162b2 mRNA COVID-19 Vaccine*, MedRxIV, July 28, 2021, https://doi.org/10.1101/2021.07.28.21261159, but yet reasonably comprehensible to an amateur sleuth, perhaps, where , "[t]he infectious dose of SARS-CoV-2 needed to transmit infection has not been established", Staff, "Scientific Brief: SARS-CoV-2 Transmission," *CDC*, May 7, 2021, a metric required to determine the proper correlates of protection to develop an effective vaccine, without the requirement for large stage three clinical trials, Shuo Feng, *et al.*, *Correlates of protection against*

symptomatic and asymptomatic SARS-CoV-2 infection, MedRix, June 24, 2021, doi: https://doi.org/10.1101/2021.06.21.21258528, a metric not even discussed by Dr. Anthony Fauci in a White House Briefing, Joe La Palca, "New Evidence Points To Antibodies As A Reliable Indicator Of Vaccine Protection," *NPR*, August 23, 2021, until the same day that the Pfizer vaccine was rushed to approval at the Food & Drug Administration. New Release, "FDA Approves First COVID-19 Vaccine; Approval Signifies Key Achievement for Public Health," *FDA*, August 23, 2021.

Granting the deference due, under *Chevron*, how might one explain an assignment of an R-Naught of 2 to 2.5, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, a measure of transmissibility risk that had, in the past, been expressly rejected by the Centers for Disease Control & Prevention (CDC), Paul Delameter, *et al.*, *Complexity of the Basic Reproduction Number (R_0)*, 25 Emerging Infectious Diseases 1 (January 2019), and clinically determined to possess a SAR, the standard measure, *Principles of Epidemiology in Public Health Practice, Third Edition: An Introduction to Applied Epidemiology and Biostatistics*, "Lesson 3: Measures of Risk: Section 2: Morbidity Frequency Measures," *CDC*, May 18, 2012, in revalidation in the largest sample size tracer contacts study to date, over three million laboratory cases, which found an SAR of only 4.6%. Ramanan Laxminaraya, *Epidemiology and transmission dynamics of COVID-19 in two Indian states*, pp. 691-697, Science 370 (2020)?

In an "evolving science", Gregory S. Schneider and Laura Vozzella, "Despite Northam's public health credentials, some Virginians question his leadership during

pandemic," *Washington Post*, May 30, 2020, would this validated threat assessment no longer be four times too low to confirm the presence of a virus being transmitted from person-to-person, Julia Belluz, "China's cases of Covid-19 are finally declining. A WHO expert explains why," *Vox*, March 2, 2020, *updated* March 3, 2020, and 12 times too low to set off a superspreader event. Martin J. Blaser & Lee S. Newman, *A Review of Human Salmonellosis: I. Infective Dose*, 4 Reviews of Infectious Diseases 6, pp. 1096–1106 (November 1982)?

Like the classification of the yet unknown infectious dose, Staff, "Scientific Brief: SARS-CoV-2 Transmission," *supra*, for a biological agent that had increased in infectiousness, with "no wider community spread," a clinically aberrant finding for a "highly contagious disease", even after the attempts of school administrators to employ a "de-densification process" to decrease on campus population during an outbreak that found, Genevive R. Meredith, *Routine Surveillance and Vaccination on a University Campus During the Spread of the SARS-CoV-2 Omicron Variant*, 5 JAMA Netw Open. 5, pp. e2212906. doi:10.1001/jamanetworkopen.2022.12906, a robust household trace contacts study in Europe had clinically determined recently that the most infectious virus that Appellee Walensky had claimed to have ever seen possessed a SAR of only 19.4%, Silje B. Jørgensen, *et al.*, *Secondary Attack Rates for Omicron and Delta Variants of SARS-CoV-2 in Norwegian Households*, *supra*, not, by the science, even an infectious virus, even if close, Julia Belluz, "China's cases of Covid-19 are finally declining. A WHO expert explains why," *supra*, and three times to low to validate as a highly contagious disease, like smallpox, with a SAR of 60%.

Staff, "Transmission," *CDC*, December 5, 2016, https://www.cdc.gov/smallpox/clinicians/transmission.html (accessed August 25, 2020), neither the fact that, under Fed.R.Civ.Pro. 6(a),

"We who are seeking truth and not victory, whether right or wrong, have no reason to turn our eyes from any source of light which presents itself, and least of all from a source so high and so respectable as the decision of the supreme court of the United States." *U.S. v. Burr*, 25 F. Cas. 55 (C.C.D. Va. 1807) (a case brought for treason), and "[t]he ultimate purpose of the judicial process is to determine the truth". *Caldor, Inc. v. Bowden*, 330 Md. 632 (1993).

It is the state policy that "[i]n-person visitation is dependent upon favorable pandemic conditions at the facility", in facilities with strict security posture protocols, and, to date, in a corrections system that includes 1,376 Department of Corrections facilities, there have been only a total of 59 fatalities in these congregant settings, Staff, COVID-19/Coronavirus Updates," *VADOC*, https://vadoc.virginia.gov/news-press-releases/2022/covid-19-updates/ (accessed June 11, 2022), compared with 22,132 fatalities amongst inpatient residents at veterans care facilities, Staff, "Department of Veterans Affairs COVID-19 National Summary," *supra*, where on March 10, 2020, to prohibit " visitors to enter its 134 nursing homes and 24 major spinal cord injury and disorder centers", Press Release, "Timeline on how VA prepared for COVID-19 outbreak and continues to keep Veterans safe", *supra*.

After the report of the first fatality to COVID-19 in China, it was reported that "[t]he coronavirus, which surfaced in the city of Wuhan, has put the region on alert,

but there is no evidence that it can spread among humans", Amy Qin & Javier C. Hernández, "China Reports First Death From New Virus," *The New York Times*, January 10, 2020, and for a biological agent with that transmissibility risk profile to cause a pandemic, it could only be deployed to provide mass exposures, a security problem, and not a public health issue. Nor would that assessment be altered after a robust examination conducted by 1,800 teams of at least five epidemiologists in China of 55,924 laboratory cases would that threat profile change, finding a less than five percent SAR, the standard measure, *Principles of Epidemiology in Public Health Practice, Third Edition: An Introduction to Applied Epidemiology and Biostatistics*, "Lesson 3: Measures of Risk: Section 2: Morbidity Frequency Measures," *CDC*, May 18, 2012, with clustered outbreak reports, prompting the clinical conclusion, belying an assignment of an R-Naught of 2 to 2.5, a measure that had, in the past, been expressly rejected by the Centers for Disease Control & Prevention (CDC), Paul Delameter, *et al.*, *Complexity of the Basic Reproduction Number (R_0)*, 25 Emerging Infectious Diseases 1 (January 2019), that "it is not clear whether this correlates with the presence of an infectious virus." *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19),* dated February 16-24, 2020.

This low threat assessment would later be validated in the largest sample size tracer contacts study, to date, finding a SAR only 4.6% for the original strain in an examination of over three million laboratory confirmed cases in India, Ramanan Laxminaraya, *Epidemiology and transmission dynamics of COVID-19 in two Indian states*, pp. 691-697, Science 370 (2020). And, claims of following the science

notwithstanding. Andy Fox, "Gov. Northam takes questions on COVID-19 vaccine one-on-one with 10 On Your Side," *WAVY*, June 17, 2021 ("'We will have to follow the science," said Northam, referring to the potential of the Delta variant of the coronavirus, which is now classified as a "variant of concern' to the CDC."), clinically, this validated threat assessment is four times too low to confirm the presence of a virus being transmitted from person-to-person, Julia Belluz, "China's cases of Covid-19 are finally declining. A WHO expert explains why," *Vox*, March 2, 2020, *updated* March 3, 2020, and 12 times too low to set off a superspreader event. Martin J. Blaser & Lee S. Newman, *A Review of Human Salmonellosis: I. Infective Dose*, 4 Reviews of Infectious Diseases 6, pp. 1096–1106 (November 1982).

Relying upon the authority of this Honorable Court, the Courts of the Commonwealth have, in the past, held that "[t]he defense of necessity traditionally addresses the dilemma created when physical forces beyond the actor's control render 'illegal conduct the lesser of two evils", *Buckley v. City of Falls Church*, 7 Va.App. 32 (1988) (quoting *U.S. v. Bailey*, 444 U.S. 394 (1980)), and, in *stare decisis*, had reiterated the rule: "The essential elements of this defense include: (1) a reasonable belief that the action was necessary to avoid an imminent threatened harm; (2) a lack of other adequate means to avoid the threatened harm; and (3) a direct causal relationship that may be reasonably anticipated between the action taken and the avoidance of the harm. [footnote omitted]" *Id.* (citing *U.S. v. Cassidy*, 616 F.2d 101 (4th Cir.1979)). And, in a time, before evolving science, it was the considered opinion of the Courts of the Commonwealth that "[o]ne principle remains constant in modern

cases considering the defense of necessity: if there is 'a reasonable, legal alternative to violating the law, 'a chance both to refuse to do the criminal act and also to avoid the threatened harm,' ' the defense is not available." *Id.* (quoting *Bailey*, 444 U.S. at 410 (quoting W. LaFave & A. Scott, *Criminal Law* § 49 at 379 (1972)).

Hence, even if it were to be determined that the Certificate of Service that appeared at the bottom of the Petition for Appeal was not present, or even that Appellant, a *pro se* litigant without authority or access to online filing, had failed to do so, while the State Supreme Court stands on the technical authority of Va.S.CtR. 5:6(a); Va.S.Ct.R. 5:1B; Va.S.Ct.R. 5:17(h)(i), presenting a claim that "the Court may dismiss an appeal 'for non-compliance with these Rules,", Order, *Webb v. Northam*, Record No. 220089 (Va. May 26, 2022), even this Honorable Court, in the past, has held that a necessity defense might be available when even the most contagious disease that the CDC Director had claimed she had ever seen, Edmund Demarche, "Delta variant one of the most infectious respiratory viruses I've seen: Walensky," *Fox News*, July 23, 2021, had been found to possess a SAR of only 19.4%, , Silje B. Jørgensen, *et al.*, *Secondary Attack Rates for Omicron and Delta Variants of SARS-CoV-2 in Norwegian Households*, 327 JAMA 16, pp. 1610–1611, April 26, 2022, doi:10.1001/jama.2022.3780, *Epub*. March 7, 2022, three times lower than validated highly contagious diseases like smallpox, Staff, "Transmission," *CDC*, December 5, 2016, https://www.cdc.gov/smallpox/clinicians/transmission.html (accessed August 25, 2020), and 70% lower than the most contagious diseases, like chickenpox, and measles. Staff, "Transmission of Measles," *CDC*, February 5, 2018,

https://www.cdc.gov/measles/transmission.html (accessed August 20, 2020), *Staff*, "Chickenpox (Varicella): For Healthcare Professionals," *CDC*, December 31, 2018, https://www.cdc.gov/chickenpox/hcp/index.html (accessed August 29, 2020) .

At least by report, "SARS-CoV-2, the causative agent of COVID-19, emerged in late 2019" and "[t]he highly contagious B.1.617.2 (Delta) variant of concern (VOC) was first identified in October 2020 in India and subsequently disseminated worldwide, later becoming the dominant lineage in the US", but it became "the dominant variant causing a wave of infections from April to May of 2021," prompting designation as a variant of concern by the World Health Organization (WHO) not until that time. Eleanora Cella, *et al.*, *Early Emergence Phase of SARS-CoV-2 Delta Variant in Florida, US*, 14 Viruses 6, p. 766, April 6, 2022, doi: 10.3390/v14040766.

When the President spoke, in sobering tones, on occasion marking the first anniversary of the pandemic declaration and announcing the American Rescue Plan, but before the arrival of the delta variant, he had publicly acknowledged that, "[a]s of now, total deaths in America 527,726[,]. . . more deaths than in World War I, World War II, the Vietnam War and 9/11 combined." The Associated Press, "Transcript: President Joe Biden on the Coronavirus Pandemic," *NBC New York*, March 11, 2021.

By the time of those official remarks, and, before the emergence of the delta variant, it was known that "COVID-19 is affecting Black, Indigenous, Latinx, and other people of color the most", and that "[w]e've lost at least 73,462 Black lives to COVID-19 to date", finding "Black people account for 15% of COVID-19 deaths where race is known." Staff, "The COVID Racial Data Tracker," *The COVID Tracking*

Project, March 7, 2021, and marking the anniversary of the decision of The Atlantic and Boston University to discontinue collecting disaggregated data on COVID-19 fatalities by race, this Court had decided to pass on proceeding to oral argument on an issue where the White House had asserted a presumptive claim of executive privilege, *see" Nixon*, 418 U.S., at 683, having elected a dubious right to remain silent in response to a *Freedom of Information Act (FOIA)*, 5 U.S.C. § 552, request, under which a requestor is deemed to have exhausted his available remedies, vesting in him a right to injunctive remedy, to determine if the metrics of SAR and infectious dose were classified information, which, under *Classified National Security Information*, April 17, 1995, could only mean, if so classified, the novel coronavirus that had he had noted that has been attributed to the deaths of 442 children under the age of four, and 815 between the ages of 5 and 18, Staff, "Provisional COVID-19 Deaths: Focus on Ages 0-18 Years: NCHS" *CDC*, June 2, 2022, https://data.cdc.gov/NCHS/Provisional-COVID-19-Deaths-Focus-on-Ages-0-18-Yea/nr4s-juj3 (accessed June 11, 2022), is, presumptively, attributed to a biological agent that the government can neither confirm nor deny it owns, *Webb v. Fauci*, Record No. 21-6868 (U.S. March 7, 2022); *see also Phillipi v. CIA*, 546 F.2d 1009 (D.C. Cir. 1976), and, it has been said, "[i]t is emphatically the province and duty of the judicial department to say what the law is'," *Nixon*, 418 U.S., at 683 (quoting *Marbury*, 1 Cranch, at 137.).

And it is clear, and consistent with relevant decisions of this Court that "the government may not establish an official or civic religion as a means of avoiding the

establishment of a religion with more specific creeds." *Lee v. Weisman*, 505 U.S. 577 (1992). And, in that case this Court observed that "[t]he mixing of government and religion can be a threat to free government, even if no one is forced to participate," because "[w]hen the government puts its imprimatur on a particular religion, it conveys a message of exclusion to all those who do not adhere to the favored belief."

Even after conceding to exceeding his lawful authority, Appellee Northam yet remained unrepentant, decreeing on God's behalf that "[y]ou don't have to sit in the church pew for God to hear your prayers", and, without specific findings, claiming only to have "heard reports", "blame[d] churches for contributing to the spread of the virus, noting that some houses of worship were not social distancing or wearing masks." Charlie Spiering, "Gov. Ralph Northam Tightens Coronavirus Restrictions: You Don't Have to Sit In Church for God to Hear Your Prayers," *supra*, encroaching upon "the extended republic of the United States, and among the great variety of interests, parties and sects which it embraces," James Madison, *Federalist No. 51*, February 6, 1788, for "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein", *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

"Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds", *Stanley v. Georgia*, 394 U.S. 557 (1969), representing unlawful pursuit of an illegitimate state interest, in violation of the

Establishment Clause.

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ON PETITION FOR CERTIORARI TO THE UNITED STATES SUPREME COURT

Pursuant to Rule 10, incorporating Rules 10-14, 29, 30, 33.2, 34 and 39 for *pro se* filers *in forma pauperis*, Guidance Concerning Clerk's Office Operations, dated November 13, 2020 and 28 U.S.C. § 1651, Appellant Major Mike Webb ("Applicant" or "Webb") respectfully petitions for grant of certiorari regarding a dismissal ordered, in error, by the Fourth Circuit Court of Appeals, for failure to prosecute, under authority of Fed.R.App.Pro. 45, and a simultaneous order in demurrer for failure to state a sufficient facts to give rise to a legal cause of action upon which relief might be brought under a petition for writ of mandamus.

STATEMENT OF THE CASE

The matters brought on appeal consist chiefly of a court-directed amended complaint, which had been dismissed, raising claims, *inter alia*, under the federal racketeering statute and the *FACE Act*, claims under the federal criminal code providing a civil remedy, and a related petition for writ of mandamus presented to the Fourth Circuit Court of Appeals, invoking Fed.R.Crim.Pro. 6(a), to compel the convening of a grand jury for the predicate criminal offenses alleged.

REASONS FOR GRANTING CERTIORARI

I. **Whether, upon presentment of a *prima facie* case, arising under the *Freedom of Access to Clinic Entrances (FACE) Act*, 18 U.S.C. § 248(a)(2), or, in the alternative, violations of 18 U.S.C. § 1512, establishing a pattern of racketeering activity, beyond a reasonable doubt, demonstrating "a clear and indisputable right to the requested relief," *In Re: Murphy-Brown, LLC*, 907 F.3d 788 (4th Cir. 2018) (internal quotation marks omitted), is entitled to issue of a writ of mandamus, under Fed.R.App.Pro. 21, for the same. Order, *In Re: Major Mike Webb*, Record No. 22-1422 (4th Cir. June 27, 2022).**

"The *Fifth [Amendment]* declares that a person shall not be held to answer for a capital or otherwise infamous crime except on a grand jury indictment", *Berger v. State of N.Y.*, 388 U.S. 41 (1967), and a presidential commission had recommended that "[a]t least one investigative grand jury should be impaneled annually in each jurisdiction that has major organized crime activity". *Id.* (quoting "The Challenge of Crime in a Free Society," *A Report by the President's Commission on Law Enforcement and Administration of Justice* (1967)).

And, while a prosecutor who "'had no information upon which to proceed to present a case to the Grand Jury, or on the basis of which to prosecute'," may be insufficient, that Commission recognized that "[a] compulsory process is necessary to obtain essential testimony or material", "most readily accomplished by an investigative grand jury or an alternate mechanism through which the attendance of witnesses and production of books and records can be ordered." *Id.*

This Honorable Court has established "the principle which justifies suits against individual defendants, who, under color of the authority of unconstitutional legislation by the state, are guilty of personal trespasses and wrongs, nor to forbid[ding] suits against officers in their official capacity either to arrest or direct their official action by injunction or mandamus, where such suits are authorized by law, and the act to be done or omitted is purely ministerial, in the performance or omission of which the plaintiff has a legal interest." *Ex parte Ayers*, 123 U.S. 443 (1887).

Under Fed.R.Crim.Pro. 6(a), unambiguously provides that "[w]hen the public

interest so requires, *the court must* order that one or more grand juries be summoned" (emphasis added), and this Honorable Court has recognized that an "officer had the right to pat down the outer clothing of. . . men, who he had reasonable cause to believe might be armed", *Terry v. Ohio*, 392 U.S. 1 (1968), as well as a provision that provides that "unless the judge for good cause shown shall order otherwise The (*sic*) clerk of the superior court shall issue a *capias* for the arrest of any defendant named in any criminal action in which a nolle prosequi has been entered when he has reasonable ground for believing that such defendant may be arrested or upon the application of the solicitor of the district." *Klopher v. N.C.*, 386 U.S. 213, n. 1 (1967) (quoting N.C.Gen.Stat. s 15—175 (1965)).

Accordingly, Appellant, having presented evidence beyond a reasonable doubt of felonious conduct, he has a right, vested under Fed.R.App.Pro. 21, to petition for writ of mandamus, invoking Fed.R.Crim.Pro. 6(a), to compel the convening of a grand jury, and a grant of certiorari to proceed to oral arguments would be proper, in addition to any and all equitable relief deemed appropriate by this Honorable Court therefor.

II. Whether it is improper for a Court of Appeals to dismiss an action, under Fed.R.App.Pro. 45, for failure to prosecute, where the Trial Court, of record, has refused to issue a summons, pursuant to a duly filed praecipe with the Trial Court to effect the same at the commencement of the action, continuing a pattern demonstrated in prior litigations presented by the same unrepresented litigant. Order, *In Re: Major Mike Webb*, Record No. 22-1637 (4th Cir. June 27, 2022).

This Honorable Court has established, with regard to personal jurisdiction, the essential element of notice is to communication the "pendency of the suit, made with an honest intention to reach" the defendant. *Pennoyer v. Neff*, 95 U.S. 714

(1878), and while in the Court Record, a duly filed praecipe at the commencement of the action is conspicuously absent, so, too, is the issue of a summons, raising a reasonable suspicion regarding a conspiracy to evade a summons, in violation of 18 U.S.C. § 1512(b)(2)(C) to (D), which provides that "[w]hoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to. . . *evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or. . . be absent from an official proceeding to which such person has been summoned by legal process. . .* shall be fined under this title or imprisoned not more than 20 years, or both" (emphasis added)[2].

However, also, if limited to the Court Record, the docket reflects, on the same date of the filing of a court-directed Amended Complaint, for which certificate of service, attached thereto, in compliance with Fed.R.Civ.Pro. 5, would have provided sufficient notice to Appellee of the pendency of the present action, but also triggering the time/decision rule, articulated in *Reid v. MSPB*, 508 F.3d 674 (Fed. Cir. 2007), wherein a complainant "need not demonstrate the existence of a retaliatory motive. . . to establish that [the protected activity]. . . was a contributing

[2] *U.S. v. Dye*, 538 F. App'x 654 (6th Cir. 2013) ("Evidence of flight that has probative value is admissible as evidence of guilt, and the jury may decide how much weight to give it. *United States v. Dillon*, 870 F.2d 1125, 1126 (6th Cir.1989).")

factor", *Kewley v. HHS*, 153 F.3d 1357 (Fed. Cir. 1998) (quoting *Marano v. DoJ*, 2 F.3d 1137(Fed. Cir. 1993))[3].

Accordingly, Appellee having been noticed of the pendency of the commenced action, pursuant to a court-directed Amended Complaint, and mandated service under Fed.R.Civ.Pro. 5, even if only under the time/decision rule, the burden is shifted to the offending party to demonstrate good cause why such actions should not be deemed retaliatory, and a grant of certiorari to proceed to oral arguments would be proper, in addition to any and all equitable relief deemed appropriate by this Honorable Court therefor.

CONCLUSION

For the reasons stated above, Appellant, Webb respectfully requests the Court to grant certiorari for oral arguments to determine whether the decision by the Fourth Circuit Court of Appeals should be reversed and remanded, as well as such other equitable relief that the Court may deem proper, under the circumstances.

[3] "Once the knowledge/timing test has been met, an administrative judge must find that the appellant has shown that. . . [the protected activity] was a contributing factor. . . , even if, after a complete analysis of all of the evidence, a reasonable factfinder could not conclude that the appellant's [protected activity]. . . was a contributing factor". *Schnell v. Department of the Army*, 114 M.S.P.R. 83 (2010).

CERTIFICATION

I declare under penalty of perjury that the foregoing is true and correct.

Name of Party (Print or Type): Major Mike Webb, 955 S. Columbus Street, Unit # 426, Arlington, Virginia 22204, GiveFaithATry@gmail.com, 856-220-1354.

Signature of Party

Executed on: 7-8-22
(Date)

Subscribed, acknowledged and sworn to before me, the undersigned Notary Public in the County of Virginia, in the Commonwealth of Virginia, this 8th day of July, 2022.

NELBIS ROXANA PALACIOS COREAS
NOTARY PUBLIC
REG. #7672164
MY COMMISSION EXPIRES
07/31/2024
COMMONWEALTH OF VIRGINIA

NOTARY PUBLIC

My commission expires: 07/31/2024 Registration Number: 7672164