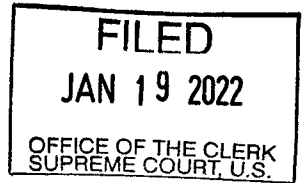


22-5611

ORIGINAL

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

William A White — PETITIONER
(Your Name)

vs.

Department of Justice, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For the Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

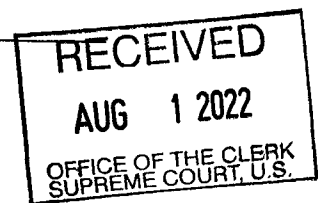
William A White #13888-084
(Your Name)

~~United States Penitentiary Marion~~
~~P.O. Box 1000~~

(Address) Federal Correctional Institution-Cumberland
P.O. Box 1000
Cumberland, MD 21501

Marion, IL 62454
(City, State, Zip Code)

na
(Phone Number)



QUESTION(S) PRESENTED

- ① Did the Seventh Circuit err in finding that "any person's" right to receive disclosure of records "promptly" from federal agencies under 5 USC § 552 (a)(3)(A) and 5 USC § 552 (a)(6)(C)(i) could be limited based upon perceived public interest in the disclosure so that the requested documents are not produced during the requestor's lifetime?
- ② Did the Seventh Circuit err in finding that a FOIA requester can properly be denied fees and costs, even when they substantially prevail, based upon a perceived lack of public interest in the requested records?

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

William A White

Department Of Justice

Federal Bureau of Investigation

US Marshals Service

Bureau Of Alcohol, Tobacco, Firearms And Explosives

Federal Bureau Of Prisons

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

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is 16F 4th 539 (7th Cir 2021)

☒ reported at 2021 USA App LEXIS; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at 2020 US Dist LEXIS; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 22, 2021.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5 USC § 552 (a)(3)(A)

"Except with respect to records made available under paragraphs (1) and (2) of this subsection, and, except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records, and (ii) is in accordance with published rules stating the time, place, fees (if any) and procedures to be followed, shall make the records promptly available to any person."

5 USC § 552 (a)(4) (E)

"(i) The Court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed;

"(ii) For purposes of this subparagraph, a complainant has substantially prevailed if the complainant has obtained relief through either -

"(I) a judicial order, or an enforceable written agreement or consent decree;
or,

"(II) a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial."

5 USC § 552 (c) (6) (C) (i)

"Any person making a request to any agency for records under paragraphs (1), (2) or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, this court may retain jurisdiction and allow the agency additional time to complete its review of records. Upon any determination by an agency to comply with a request for records, these records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or position of each person responsible for the denial of such request."

STATEMENT OF THE CASE

- 1) This case is about whether a federal judge may use a public interest test to deny a person their rights under the Freedom of Information Act ("FOIA"), 5 USC § 552.
- 2) Beginning August 9, 2013, and continuing through November 20, 2016, I made requests for records under FOIA with the Federal Bureau of Investigation ("FBI"), United States Marshals' Service ("USMS"), Bureau of Prisons ("BOP") and the Bureau of Alcohol, Tobacco, Firearms and Explosives ("BATFE"). District Court docket numbers ("Doc") 95-1 p.15 para 54; Doc 95-7 p.5 para 9(a); Doc 95-8 p.2 para 3. Years passed and I received no response. So, on August 15, 2016, I sued over the unanswered 2013 FOIA requests. Doc 1. On February 6, 2017, I amended to add the 2016 FOIA requests; leave to amend was granted July 19, 2017. Doc 11, 24-25.
- 3) More years passed, and, no records were produced. The District Court denied the defendants summary judgment January 14, 2018. Whiter v. Department Of Justice 2018 US Dist LEXIS 8075 (SD Ill 2018); Doc 59 p.4; Doc 143 p.2. This, then, finally persuaded the FBI and BOP to begin producing records in April 2018, almost five years after they were requested. The USMS would not produce any records until July 2020, about seven years after they were requested. Doc 154.
- 4) The FBI identified "over 100,000 pages" of records, really about 250,000 pages, responsive to 13 Subjects. Doc 40-1 para 3-7, 95-1 passim. The FBI began processing them at a rate of 500 pages per month in April 2018, and, will finish in about 2061, after I am likely dead. To date, the FBI has not finished processing just my personal FBI through August 2013, what was requested.

- 5) As no agency produced any documents for five to seven years, and, the FBI doesn't plan to produce all responsive documents during my lifetime, this case should have been an easy call: I won, and, the FBI needs to produce documents faster. But, the documents that have come out have shown that several "conspiracy theories" which I set out to prove are true: that the FBI and the Department of Justice ("DOJ") don't believe I committed the crimes that I'm in prison for; that senior political figures like former US Attorney General Michael Mukasey ordered me arrested as part of a "National Initiative Targeting Bill White" designed to silence my lawful political speech; and, that the FBI's Counter-Terrorism Division / Domestic Terrorism Strategic Operations Section / Domestic Terrorism Operations Units ("DTOUS") run this country's "white supremacist" movement as a "Trust Operation." See, e.g., Golitsy, Anatoly, New Lies For Old p. 13-16, 224-231 (description of the OLCPU's "Operation Trust"); Orwell, George, 1984. (description of the Goldstein-ist movement, based on Operation Trust). When these documents began to come out, suddenly the District Court did a 180°, became unwilling or unable to review the record, found it outrageous that I would dare ask for these documents, and, found it even more outrageous that I would want them in time to seek post-conviction relief on, for that matter, before I die. And, this was before it ruled that these exact same FOIA documents were so "sensitive" in revealing undercover FBI operations that I had to be banned from Court for two years to prevent me from using them as evidence. See, e.g., White v. United States, et al. 7th Cir App No: 21-2835 / -2881.
- 6) Essentially, the FBI permits Americans to organize politically within a narrow spectrum of belief defined by the far wings of the Republican and Democratic Parties, from about Donald Trump on the Libertarian Party to the Greens. Anyone outside that range of thought is an "extremist" and if they can't be silenced with soft pressure like negative media articles or economic intimidation, the FBI silences them with false arrest, torture, and, im-

prisonment.

7) I spent years infiltrating and disrupting the FBI's "counter-extremism" efforts, as I laid out in Doc 150-1 to -9, which the Clerk filed in a manner difficult to access and read, and, which I laid out more thoroughly in United States v. White MDPI Case No. 13-cr-304 Doc 208, et al. My father was a long time member of the US Intelligence Community; he served as a staffer on the Senate Intelligence Committee under Frank Church; served on the Central Intelligence Committee, now the Directorate of National Intelligence, under the elder George Bush, and, finished his career in the Central Intelligence Agency. I read the COMINT/PRO papers at a young age, became interested in "extremism" and "counter-extremism", and, as a teenager, started my own "pro-extremist" anarchist group. As an adult, I went to work covering American "extremism" for Pravda.ru in 2001, and, when the FBI continued to harass me despite my efforts to retire from "extremism" in 2004, I became actively involved in infiltrating and disrupting FBI "counter-extremism" activities in 2005. I first joined the National Socialist Movement ("NSM"), which FOIA now proves the FBI created in 1975, and, began attending FBI-organized marches and demonstrations. In 2006, I then moved onto create my own "extremist" group, which I used to target FBI informants and operations until my October 17, 2008, arrest.

8) My work in no way involved violence or hurting people, and, the FBI knew it. This, however, did not stop the FBI and DOJ for falsely arresting me for crimes of "intended" violence which I did not commit, for example:

a) regarding Count 4 of United States v. White WD Va Case No. 08-cr-054, the FBI wrote:

"Richmond further assesses that although White is the self-proclaimed [sic] leader of the American National Socialist Workers Party (ANSWP), he does

[not] have intentions of physically harming anyone and instead tries to make others react on his right-wing [sic] opinions. White's motives appear to be that of embarrassment to his intended targets."

Doc 150-1 to -4 Exh E(b).

b) regarding Court 3 of United States v. White WD Va Case No: 08-cv-054:

"Norfolk Division's JTF, Civil Rights Division and CDC reviewed the letter and identified no criminal violations - Local police and the US Postal Inspectors identified no criminal violations."

Doc 150-1 to -4 Exh D(n).

and, more like these have come out since brexit.

9) further, according to the documents released here in Court, in September 2007, US Attorney General Michael Mukasey ordered the FBI to find a pretext to find a pretext to arrest and imprison me; the FBI called this the "National Initiative Targeting Bill White." Doc 150-1 to -4 Exh D(t) is an article from CNN describing a letter that Jesse Jackson sent to Mukasey urging him to find a pretext to arrest me. Doc 150-1 to -4 Exh L(c) p2 describes the operation, stating:

"Special Agent [redacted] has opened 44A-RM-53908 and has been designated as the CO for this national initiative targeting Bill White and the ANSWP."

Despite personally participating in this national initiative, during my 28 USC § 2255 proceedings in United States v. White WD Va Case No: 13-cv-013, Assistant US Attorney Laura Jay Rottenborn falsely told the Court that I was lying and that this national initiative didn't exist, causing the Court, without any effort at evidentiary development, to find my claims "patently false and frivolous." White v. United States, 2017 US Dist LEXIS 83694 (WD Va 2017). This opinion was repeatedly cited by the United States in this matter as part of the verbal abuse which it substituted

for argument in this matter. See, e.g., Doc 143 p 12. And yet, when Doc 150-1 to -4 came out, the District Court sat on my pleadings for years before finally admitting that Rottenbarr's comments were "inaccurate", though, even though they were directly false statements within her personal knowledge, they were not "fraudulent". Whitex. United States 2020 US Dist LEXIS 232381 (LW Va 2020). How many more "inaccurate" statements by the United States could I find if the FOIA were to be enforced and the records released during my lifetime?

- 10) And, as pled in the District Court, just the documents released to date show that the FBI sat multiple Grand Juries and obtained multiple search warrants that were not disclosed in my criminal proceedings and then parallel-constructed the Grand Jury documents and search warrants that were disclosed. The documents have confirmed my allegations of cruel, inhuman and degrading treatment during my trials. See, e.g., Whitex. Bergen 709 Fed Appx 532 (11th Cir 2017); Whitex. Bergen 769 Fed Appx 784 (11th Cir 2019). The documents also affirmed my allegations that the cruel, inhuman and degrading treatment paralleled a tactical investigation by the USMS into an attempt to "assassinate" Barack Obama with a "truck bomb." Doc 90-1 para 23; Doc 175-1 Exh 6(c)-(h); Doc 185. The documents show that the FBI and the DOJ planted false smear information in a local newspaper to influence the jury during one of my trials. Doc 150-1 to -4 Exh NC5. And, there are the above mentioned documents about the National Socialist Movement. Doc 90-1 p 8 para 12 Exh F(c)(ii)-(iii), Doc 150-1 to -4 Exh A(b)-(c) (explained in the accompanying declaration)
- 11) When the DOJ called me a rat and a liar in this case, I figured that the FOIA could be enforced and I would prove my case with the released documents. Little did I know that I would never get the chance. On May 20, 2020, the District Court ruled that my purpose in seeking these documents, vindicating my word, my innocence, and, the

fact that my §2255 claims had been serious, not "patently false and frivolous", were purposes with no public interest, and, thus, I would not be entitled to the documents during my lifetime. Doc 143 p. 46. When I asked the Court to consider the records which were actually released, Doc 150-1 to -4, the Court refused. Doc 179.

12) The USMS also obtained judgment in this matter by lying. It twice falsely told the Court under oath that it would begin processing my records in July 2018. Doc 95-8 p 2 para 4; Doc 122-1 para 6. The District Court did, when this was discovered, order the USMS to show cause and issue a production order. Doc 179. But, when the USMS identified 2678 pages of records but only reviewed 1774 pages of records, the Court refused to enforce its own order. Doc 185-186. The District Court then refused to grant me costs. Doc 186.

13) I timely appealed February 2, 2021. Doc 188. On October 22, 2021, the Seventh Circuit affirmed the District Court, ruling that, while public interest technically couldn't be used to deny a FOIA request, it could be used to release records so slowly the requester doesn't get them, and, it could be used to deny the prevailing party in a FOIA case their costs.

14) I now seek certiorari.

REASONS FOR GRANTING THE PETITION

- 15) The Seventh Circuit Court of Appeals has here established the dangerous precedent that a Freedom of Information Act request can be, while not formally denied, so slow processed based on the identity of the requester that it is effectively denied. And, while it may be popular to say that "white supremacists" or "anti-Semites" have forfeited their legal rights as citizens because there is "no public interest" in such beliefs, if this is adopted and permitted to stand, the definition of "white supremacists" for whom rights will be denied will creep, as it has done in society at large, to encompass Republicans generally and any but the most extreme elements, and, FOIA will become a weapon by which one political persuasion obtains documents on their enemies while other voices are shut out. And, this corruption of the rule of law will feed into the ongoing growing tyranny in America.
- 16) The FOIA twice guarantees that "any person" requesting records from a federal agency receives those records "promptly." 5 USC § 552(a)(3)(A); 5 USC § 552(a)(6)(C)(i). This Court has never defined the term "promptly", but, it has repeatedly stated that federal agencies may not discriminate against a FOIA requester based upon their reason for requesting records. For example, in Taylor v. Stargell 553 US 880 (2008), this Court stated that:
- "No reason need be given for a FOIA request, and unless the requested materials fall within one of FOIA's enumerated exceptions, 5 USC § 552(a)(3)(E), (b), the agency must make the records promptly available to the requester."

17) Similarly, in US Department of Defense v. Fed Labor Relations Authority 510 US 487 (1994), as well as in US Department of Justice v. Reporters Committee for Freedom of the Press 489 US 749 (1989) and National Labor Relations Board v. Sears, Roebuck and Company 421 US 132 (1975), this Court stated that:

"Congress clearly intended the FOIA to give any member of the public as much right to disclosure as one with a special interest in a particular document."

18) Federal courts interpreting the FOIA, then, have generally tried to give effect to every word of the statute by requiring federal agencies to produce records "within a few days or a few weeks of a determination, not months or years." Citizens for Responsibility and Ethics in Washington v. Federal Election Commission 711 F.3d 180 (D.C. Cir. 2013). Thus, when large FOIA requests are made, courts routinely order federal agencies, particularly the Department of Justice, to produce records on a schedule that provides ~~and~~ the requester with records within three to five years. See, e.g., Clemente v. FBI 71 F. Supp. 3d 262 (D.D.C. 2014) (5000 pages of records to be produced per month); Seavey v. Department of Justice 266 F. Supp. 3d 241 (D.D.C. 2017) (2850 pages per month); Monroe v. Angelone 323 F.3d 286 (4th Cir. 2003).

19) Here, the FBI has identified "over 100,000 pages" of responsive records - likely 250,000. I made my first FOIA request in August 2013. Eight and a half years later, seven years after the criminal trials for which I needed these documents, years after the \$2255 proceedings for which I needed these documents, the very first August 2013 FOIA request has not been answered. And, the FBI does not intend to finish processing these requests during my expected lifetime. While this obviously does not treat me like any other FOIA requester and is obviously not "promptly", the Seventh Circuit and the Southern District of Illinois have arbitrarily declared that my rights under

FOIA may be denied because I am a white nationalist and more so because the documents released to date have shown both wrongdoing in my convictions - even if not yet enough to overturn them - and that the FBI's Domestic Terrorism Operations Unit has created false "extremist" groups like the National Socialist Movement and has operated that group for 47 years, including at the August 2017 Charlottesville, Virginia riots. (And, I note that I recently assisted in the defense of Sines v. Kessler in the Western District of Virginia where, despite the limited time available, I was able to assist the defendants in defeating the claims of two of the plaintiffs, Elizabeth Sines and Seth Wispelwey, defeated two counts, the federal civil rights claims, and, kept damages nominal on the state civil rights claims. Through this, I learned that my claims that the FBI organized that violence were correct; the primary undercover operatives involved were Robert Isaac, aka Ike Baker, as I pled here, Kurt Lipper aka Kurt Vandal, as pled in a separate FOIA case, and, Jack Pierce, aka Ajax. So, this was also not a "conspiracy theory").

20) Until I appeared before the Seventh Circuit, the Seventh Circuit's own binding Circuit precedent rejected the approach that was taken here. In Federal Labor Relations Authority v. US Department of the Navy 975 F2d 348 (7th Cir 1992) and US Department of the Air Force, Scott AFB v. Federal Labor Relations Authority 838 F2d 229 (7th Cir 1987) cert denied 488 US 880 (1983), the Seventh Circuit said:

"As we made clear in Scott, FOIA does not permit judges to determine which disclosure requests are in the public interest and which are not."

Thus, during the extensive left-wing terrorism of the 1970s, the FBI was ordered to turn over its left-wing domestic terror files "promptly", see e.g. Hayden v. United States Department of Justice 413 F Supp 1285 (DDC 1976). And, the Seventh Circuit recently ordered the FBI to "promptly" disclose its files on Muslim extremists. Boudaoui v.

Federal Bureau of Investigation 2020 US Dist LEXIS 74663 (NOJ 2020) (3500 pages per month on one request; 800 pages on another).

21) The courts here have also found that FOIA is a valuable tool for providing wrongfully convicted inmates with Brady material:

"FOIA plays a significant role in uncovering individual Brady material and evidence of ineffective assistance of counsel -- and, in practice, has led to uncovering records relevant to ineffective assistance of counsel claims, such as plea offers not communicated by defense counsel to clients. Price v. US DOJ Atty Office 865 F3d 676 (DC Cir 2013) citing Hare v. United States 688 F3d 878 (7th Cir 2012), Albillo-De Leon v. Gonzales 460 F3d 1090 (9th Cir 2005), as well as evidence of Brady violations. Price citing Monroe v. Angele 323 F3d 286 (4th Cir 2003), Bagley v. Lumpkin 748 F2d 1247 (9th Cir 1986), United States v. McDavid EDCal Case No: 06-cr-035 Doc 442 (EDCa 2014); Ex Parte Miles 359 SW3d 647 (Tex Ct Crim App 2012); Timothy Howard, National Registry of Exonerations."

22) So, what the Seventh Circuit has found here is that a universally applicable principle of law that is applied sympathetically to Communist bombers (Hayden and the SDS), ISIS and al-Qaeda (Boudaoui) and black death-row murderers, all progressive cause celebres, becomes inapplicable when a white nationalist bearing the good news that there is no "white supremacist threat" because the whole thing is being fabricated by the FBI comes into Court.

23) The thin pignon which the Seventh Circuit hangs its hat for this discrimination is Open America v. Watergate Special Prosecution Force 547 F2d 605 (DC Cir 1976).

There, plaintiffs requested 38,000 pages of records in October 1975, and, before the FBI could finish reviewing those records in August 1976, 10 months later, the plaintiffs sued. The majority found that FBI resources were insufficient to process 38,000 pages of records in less than 10 months and allowed federal courts to consider agency resources in setting a production schedule. Judge Leventhal's dissent, however, is considered the gold standard in explaining Congressional intent in passing FOIA, and, was ignored here.

24) I didn't ask the FBI to produce these records tomorrow. I asked for them in August 2013, waited three years to sue, and, asked the Court to Order them released within a decade of the request. Yet, processing 500 pages of records, on my request to process more than that to complete the 13 requests - turned somehow into "hundreds" of FOIA requests which "overwhelmed" the FBI's resources. This is nonsense. And, it was nonsense and deliberate misrepresentation of the record that was used to justify the Seventh Circuit's false and discriminatory ruling.

25) On the issue of fees and costs, the District Court ruled that, even though I obtained a judgment against the US Marshal's Service, I was not entitled to costs because the 1500 - really 2688 - pages of records sought from the USMS were "insubstantial" next to the over-100,000 pages of records sought from the FBI. The Seventh Circuit, rather than endorse this approach, ruled that a public interest test may be applied to 5 USC § 552(a)(4)(E). None of this has any basis in the law.

26) 5 USC § 552(a)(4)(E) plainly allows costs to be awarded to a FOIA requester under two circumstances: (i) where "a judicial order, or an enforceable written agreement or consent decree" has been obtained, or (ii) where "a voluntary or uni-

lateral change in position by the agency" has occurred "if the complainant's claim is not insubstantial."

27) The law does not permit a "substantiality" test to be applied where a court order is entered. So, while I "substantially prevailed" under 5 USC § 552 (a)(4)(E)(ii) against the FBI and BOP, I "substantially prevailed" under 5 USC § 552 (a)(4)(E)(i) against the USMS. Thus, the District Court could not deny me costs against the USMS on a theory that my claim was not "substantial", as that clause of 5 USC § 552 (a)(4)(E)(ii) does not apply to 5 USC § 552 (a)(4)(E)(i).

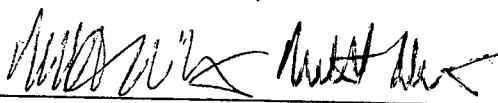
28) The issue of whether or not "public interest" may be a factor in awarding FOIA costs has split the lower courts and panels of the lower courts. Justice Kavanaugh, in dissent in Monkey v. CIA 714 F.3d 684 (D.C. 2013) stated that 5 USC § 552 (a)(4)(E) specifically does not allow for a public interest test, citing the Congressional Record showing that such a test was specifically rejected. The Ninth Circuit and other panels of the DC Circuit have also split on the interpretation of 5 USC § 552 (a)(4)(E). First Amendment Coalition v. United States Department of Justice 878 F.3d 1119 (9th Cir 2017) (Berzon, Marguia (in part) concurring) (Marguia (concurring)), Grand Canyon Trust v. Bernhardt 947 F.3d 94 (D.C. 2020) (Randolph, concur). But, no Circuit has suggested that a FOIA requester who obtains a production order can be denied costs based on a judge's view that there is no public interest in uncovering the kind of politically-motivated misconduct at issue because the judge or judges endorse that kind of misconduct, as here.

29) Left wing extremists, Islamic extremists, and black death row murderers all have rights under FOIA. The Seventh Circuit claims I do not because I challenge the elite's line on white supremacy. This is wrong and this petition should be heard.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 11/21/21 11/21/22 -remailed 5/23/22

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