No. 22-6202

IN THE

SUPREME COURT OF THE UNITED STATES

Peter Gakuba — PETITIONER
(Your Name)

vs.

Illinois Prisoner Review Bd. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Gakuba v. Illinois Prisoner Review Bd., 129009 (Illinois Supreme Court) (cert. denied 11/03/22)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

# PETITION FOR WRIT OF CERTIORARI

Peter Gakuba / pgakuba@gmail.com
(Your Name)

58 W. Biddle St., Apt. 103
(Address)

Baltimore, MD 21201
(City, State, Zip Code)

410-244-8100
(Phone Number)

Case No.

UNITED STATES SUPREME COURT

## ISSUES PRESENTED FOR REVIEW

### I. GAKUBA'S CRIMINAL INDICTMENT FOR 'STATUTORY RAPE' WAS VOID; NOT VOIDABLE—ALL COURTS HAD NO JURISDICTION OVER GAKUBA: THE WRONGFUL CONVICTIONS ARE VOID AB INITIO

Gakuba was maliciously prosecuted and wrongly convicted of 'statutory rape.'

Gakuba's name and birthdate—essential elements to the crime—were illegally obtained in violation of the Video Privacy Protection Act of 1988 ("VPPA") when Illinois police and prosecutors identified Gakuba via his Hollywood Video customer records without the required legal process.

See 18 USC §2710(b)(2)(C); cf. *Camfield v. City of Oklahoma City,* 248 F.3d 1214 (10th Cir. 2001) **(near identical fact pattern)**;

The VPPA has an exclusion mandate by statute.

See accord *USA v. Wilson*, 633 Fed. Appx. 750, 753 (11th Cir. 2015)

Id. at 753: "The availability of the suppression remedy for … **statutory**, as opposed to

> constitutional violations … turns on the provisions of [the statute] rather than the judicially fashioned Exclusionary Rule aimed at deterring violations of the 4th Amendment rights." *USA v. Donovan*, 429 US 413, 432 n.22 (1977) (Stored Communications Act)).

See 18 USC §2710(d); *Amazon.com LLC v. Lay*, 758 F. Supp. 2d 1154 (W.D. Wash. 2010) controls and is authoritative on Gakuba's statutory right: VPPA, 18 USC §2710(d). Jane Does 1-6 intervened and obtained injunctive relief. *Amazon*, at 1160-61, 1170-71. Contemplated or actual violations of 18 USC §2710 et seq. constitute 1st Amendment violations. *Id* at 1167-71.

And because 18 USC §2710(d) explicitly bars biographical evidence before any "grand jury" (with language nearly identical to the FISA), with Illinois police Charles O'Brien being the

culprit who flagrantly and egregiously violated 18 USC §2710(b)(2)(C) proceeded by 18 USC §2710(d), and, was the sole grand jury witness testifying to Gakuba's birthdate, the grand jury indictment was VOID—not voidable.

Every state and federal court that tried or reviewed this case was without COMPLETE jurisdiction.

See *Hoffler v. Bezio,* 726 F.3d 144 (2d Cir. 2013).

Id. at 157: An acquittal before a court having no jurisdiction is, of course, like all

> the proceedings in the case, absolutely void, and therefore no bar to subsequent indictment and trial in a court which has jurisdiction of the offense. But, although the indictment was fatally defective, yet, *if the court had jurisdiction of the cause and of the party,* its judgment is not void, but only voidable by writ of error. Id. at 669–70, 16 S.Ct. 1192 (emphasis added; citations omitted); see 6 Wayne R. LaFave et al., Criminal Procedure § 25.1(d) (3d ed.2012) (noting that *Ball* rejected broad view of jurisdictional error, instead holding that court needs only "authority ... to render judgment" for jeopardy to attach). Having concluded that the defective indictment rendered the judgment voidable, but not void, the Court held that jeopardy attached at trial and that the government could not retry the defendant for murder. See *Ball v. United States,* 163 U.S. at 670, 16 S.Ct. 1192; accord *Kepner v. United States,* 195 U.S. 100, 130, 24 S.Ct. 797, 49 L.Ed. 114 (1904) ("It is, then, the settled law of this court that former jeopardy includes one who has been acquitted by a verdict duly rendered, although no judgment be entered on the verdict, and it was found upon a defective indictment."); *Illinois v. Somerville,* 410 U.S. 458, 467–69, 93 S.Ct. 1066, 35 L.Ed.2d 425 (1973) (concluding jeopardy attached in state trial on defective indictment).

Id. at n. 11:

> The distinction between void and voidable judgments is of less significance to a defendant initially found guilty because a reversal on either ground will generally result in his retrial, either because jeopardy never attached, in the rare case of a void judgment, or because it never terminated, in the more common case of a voidable judgment. See *infra* at [159–60]. Thus, the question of whether Hoffler's reversed judgment of conviction was void or voidable is pertinent only insofar as it bears on the issue of whether a reviewing court was obliged to rule on his sufficiency challenge before ordering retrial.

See *In re B.A,* 562 S.E.2d 605 (N.C. Ct. App. 2002).

Id.: Respondent asserts that the petition failed to allege all the essential elements

of the offense, and argues that the petition was fatally defective, did not confer jurisdiction on the trial court, and the trial court erred by not dismissing the petition. We agree.

Respondent did not raise this issue at her adjudication hearing. Where an issue is raised for the first time on appeal, this Court generally reviews only for plain error. *State v. Sams,* ___ N.C. App. ___, 557 S.E.2d 638 (2001). **However, jurisdiction may be challenged at any time, and, if the petition is invalid, it does not confer jurisdiction on the trial court.** *State v. Ackerman,* 144 N.C. App. 452, 464, 551 S.E.2d 139, 147, cert. denied, 354 N.C. 221, 554 S.E.2d 344 (2001) ("where an indictment is alleged to be invalid on its face, depriving the trial court of its jurisdiction, a challenge may be made at any time").

To confer jurisdiction, a charging document must "give defendant sufficient notice of the charge against him, to enable him to prepare his defense, and to raise the bar of double jeopardy in the event he is again brought to trial for the same offenses," and "[a]n indictment not meeting these standards will not support a conviction." *State v. Ingram,* 20 N.C. App. 464, 466, 201 S.E.2d 532, 534 (1974). A juvenile petition is held to the same standard as the charging document in an adult proceeding. *In re Burrus,* 275 N.C. 517, 530, 169 S.E.2d 879, 887 (1969) ("[n]otice must be given in juvenile proceedings which would be deemed constitutionally adequate in a civil or criminal proceeding").

**Where the illegality of sexual activity is based upon the relative ages of the parties, age is an essential element. *State v. Locklear,* 138 N.C. App. 549, 531 S.E.2d 853, disc. review denied, 352 N.C. 359, 544 S.E.2d 553 (2000) (age of parties essential element of prosecution for statutory rape; new trial awarded where police officer asked defendant his date of birth without being warned of his legal rights).** Failure to allege an essential element renders a juvenile petition invalid, and deprives the trial court of jurisdiction. ***State v. Bowen,* 139 N.C. App. 18, 533 S.E.2d 248 (2000) (where indictment does not allege that defendant was at least six years older than victim, trial court lacked jurisdiction, and failure to dismiss charge of statutory sexual offense is plain error)**; *In re Davis,* 114 N.C. App. 253, 441 S.E.2d 696 (1994) (juvenile entitled to adjudication upon valid petition; subject matter jurisdiction cannot be conferred by invalid charging document, or by waiver, consent, or estoppel).

Accord *McGirt v. Oklahoma,* 140 S. Ct. 2452 (2020) (Oklahoma state had NO jurisdiction to try a crime committed in "Indian country").

Id. at 2459:

**Since then, he has argued in postconviction proceedings that the State lacked jurisdiction to prosecute him** because he is an enrolled member of the Seminole

Nation of Oklahoma and his crimes took place on the Creek Reservation. A new trial for his conduct, he has contended, must take place in federal court. The Oklahoma state courts hearing Mr. McGirt's arguments rejected them, so he now brings them here.

Ibid:

**State courts generally have no jurisdiction to try Indians for conduct committed in "Indian country."** *Negonsott v. Samuels,* 507 U.S. 99, 102–103, 113 S.Ct. 1119, 122 L.Ed.2d 457 (1993).

Id. at 2470:

**To see the perils of substituting stories for statutes,** we need look no further than the stories we are offered in the case before us. Put aside that the Tribe could tell more than a few stories of its own: Take just the evidence on which Oklahoma and the dissent wish to rest their case. First, they point to **Oklahoma's long historical prosecutorial practice of asserting jurisdiction over Indians in state court, even for serious crimes on the contested lands.**

## 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:

## RELATED CASES

*Gakuba v. Illinois Prisoner Review Bd.*, 129009 (IL S. Ct.) (cert. denied 11/03/22)

*Gakuba v. Grissom*, 20-7506 (US S. Ct.) (cert. denied)

*Gakuba v. USA*, 20-6392 (US S. Ct.) (cert. denied)

*Gakuba v. O'Brien*, 19-8395 (US S. Ct.) (cert. denied)

*Gakuba v. Neese*, 19-6543 (US S. Ct.) (cert. denied)

*Gakuba v. Illinois*, 18-9041 (US S. Ct.) (cert. denied)

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[1] https://casetext.com/case/amazoncom-llc-v-lay

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## TABLE OF AUTHORITIES – (CONT'D)

## TABLE OF AUTHORITIES – (CONT'D)



**Statutes and Constitutional Provisions**

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 _____ 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 United States district 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.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A 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 _____.

[ ] 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 11/03/2022. A copy of that decision appears at Appendix A.

[ ] 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).

Case No.

UNITED STATES SUPREME COURT

## CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution:

1st, 5th and 14th Amendments

Video Privacy Protection Act of 1988:

- 18 USC §2710(a)
- 18 USC §2710(b)(2)(C)
- 18 USC §2710(d)
- 18 USC §2710(e)

Habeas Corpus Act:

- 28 USC § 2254(d)(1)-(2)

Federal Rules of Civil Procedure:

- Fed. R. Civ. P. Rule 60(b)(6)

*per...*

*Camfield v. City of Oklahoma City,* 248 F.3d 1214 (10th Cir. 2001) **(near identical fact pattern)**

*Amazon.com LLC v. Lay*, 758 F. Supp. 2d 1154 (W.D. Wash. 2010).....4, 8, 30

*USA v. Wilson*, 633 Fed. Appx. 750, 753 (11th Cir. 2015) (cites *USA v. Donovan*, 429 US 413, 432 n.22 (1977) (Stored Communications Act))..... 34

*Hoffler v. Bezio*, 726 F.3d 144, 157, n.11 (2d Cir. 2013).....11

*In re B.A,* 562 S.E.2d 605 (N.C. Ct. App. 2002)..... 12, 28-29

**Accord** *McGirt v. Oklahoma,* 140 S. Ct. 2452, 2459, 2470 (2020).....28-30

UNITED STATES SUPREME COURT

## STATEMENT OF THE CASE

### A. Illinois Habeas Petition – *Gakuba v. Illinois Prisoner Review Bd.*, 129009 (IL S. Ct.) (cert. denied 11/03/2022)

Illinois state habeas writs are predicated upon seven (7) explicitly defined reasons for relief. 735 ILCS 5/10-124 et seq. This petition reasons that three (3) control here:

(1) Jurisdiction lacking – void indictment **(habeas reason #1)**;

(2) Due process violations – false pretense & bribery (14th Amendment, U.S. Constitution – false &/or fabricated evidence used to wrongly convict) **(habeas reason #6)**; and

(3) Subsequent act(s) taint proceedings **(habeas reason #2)**.

See **735 ILCS 5/10-124 §§ 1, 6, 2.**

Furthermore, on **April 27, 2023** Gakuba's **"in custody"** habeas relief will end—requiring **expedited review**, consideration and action by the Illinois ("IL") state courts.

Finally, this is a case of **first impression**—whereby adjudged *Franks*[1] perjurer IL state police Charles O'Brien compelled the illegal disclosure of Gakuba's biographical/pedigree/identity evidence (specifically name and birthdate) from Gakuba's Hollywood Video customer account records in violation of The Video Privacy Protection Act ("VPPA") 18 USC §§2710(a), (b)(2)(C), (d), and (e).[2]

[1] *Franks v. Delaware*, 438 US 154 (1978) (held: police perjury as search warrant affiants rendered warrants fatally defective; evidence inadmissible)

[2] See also Wikipedia https://en.wikipedia.org/wiki/Video_Privacy_Protection_Act

Thereafter, O'Brien illegally received this proscribed identity evidence before an IL state "grand jury" to then indict, maliciously prosecute, and **wrongly convict Gakuba of an age-dependent crime—statutory rape.**

Again, a flagrant violation of well established federal law: The Video Privacy Protection Act ("VPPA") 18 USC §§2710(a), (b)(2)(C), (d), and (e).[3]

See accord *Amazon.com LLC v. Lay*,[4] 758 F. Supp. 2d 1154 (W.D. Wash. 2010) (VPPA violations by NC attorney general Lay required injunctive and declaratory relief to Doe intervenors per *Ex Parte Young*, 209 US 1123 (1908)); cf *Timbs v. Indiana*, 139 S.Ct. 682, 203 L. Ed. 2d 11 (2018) (federal law is binding on states per the 14th Amendment, US Constitution).

**18 U.S. Code § 2710 - Wrongful disclosure of video tape rental or sale records:**

(visited 07/03/2021 as with all the cited sites https://www.law.cornell.edu/uscode/text/18/2710 )

**(a) Definitions.**—For purposes of this section—

**(1)** the term "consumer" means any renter, purchaser, or subscriber of goods or services from a video tape service provider;

**(2)** the term "ordinary course of business" means only debt collection activities, order fulfillment, request processing, and the transfer of ownership;

**(3)** the term "personally identifiable information" includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider; and

**(4)** the term "video tape service provider" means any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audiovisual materials, or any person or other entity to whom a disclosure is made under subparagraph (D) or (E) of subsection (b)(2), but only with respect to the information contained in the disclosure.

**(b) Video Tape Rental and Sale Records.—**

**(1)** A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d).

**(2)** A video tape service provider may disclose personally identifiable information concerning any consumer—

[3] See also Wikipedia https://en.wikipedia.org/wiki/Video_Privacy_Protection_Act

[4] https://casetext.com/case/amazoncom-llc-v-lay

**(A)** to the consumer;

**(B)** to any person with the informed, written consent (including through an electronic means using the Internet) of the consumer that—

**(i)** is in a form distinct and separate from any form setting forth other legal or financial obligations of the consumer;

**(ii)** at the election of the consumer—

**(I)** is given at the time the disclosure is sought; or

**(II)** is given in advance for a set period of time, not to exceed 2 years or until consent is withdrawn by the consumer, whichever is sooner; and

**(iii)** the video tape service provider has provided an opportunity, in a clear and conspicuous manner, for the consumer to withdraw on a case-by-case basis or to withdraw from ongoing disclosures, at the consumer's election;

**(C)** to a law enforcement agency **pursuant to a warrant issued** under the Federal Rules of Criminal Procedure, **an equivalent State warrant, a grand jury subpoena, or a court order**;

**(D)** to any person if the disclosure is solely of the names and addresses of consumers and if—

**(i)** the video tape service provider has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure; and

**(ii)** the disclosure does not identify the title, description, or subject matter of any video tapes or other audiovisual material; however, the subject matter of such materials may be disclosed if the disclosure is for the exclusive use of marketing goods and services directly to the consumer;

**(E)** to any person if the disclosure is incident to the ordinary course of business of the video tape service provider; or

**(F)** pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, if—

**(i)** the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order; and

**(ii)** the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure.

If an order is granted pursuant to subparagraph (C) or (F), the court shall impose appropriate safeguards against unauthorized disclosure.

**(3)** Court orders authorizing disclosure under subparagraph (C) shall issue only with prior notice to the consumer and only if the law enforcement agency shows that there is probable cause to believe that the records or other information sought are relevant to a legitimate law enforcement inquiry. In the case of a State government authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made

promptly by the video tape service provider, may quash or modify such order if the information or records requested are unreasonably voluminous in nature or if compliance with such order otherwise would cause an unreasonable burden on such provider.

**(c) Civil Action.—**

**(1)** Any person aggrieved by any act of a person in violation of this section may bring a civil action in a United States district court.

**(2)** The court may award—

**(A)** actual damages but not less than liquidated damages in an amount of $2,500;

**(B)** punitive damages;

**(C)** reasonable attorneys' fees and other litigation costs reasonably incurred; and

**(D)** such other preliminary and equitable relief as the court determines to be appropriate.

**(3)** No action may be brought under this subsection unless such action is begun within 2 years from the date of the act complained of or the date of discovery.

**(4)** No liability shall result from lawful disclosure permitted by this section.

**(d) Personally Identifiable Information.—**

Personally identifiable information obtained in any manner other than as provided in this section **shall not be received in evidence** in any **trial**, **hearing**, arbitration, or **other proceeding** in or before any **court**, **grand jury**, department, officer, agency, regulatory body, legislative committee, **or other authority** of the United States, **a State**, or a political subdivision of a State.

**(e) Destruction of Old Records.—**

A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (b)(2) or (c)(2) or pursuant to a court order.

**(f)Preemption.—**

The provisions of this section preempt only the provisions of State or local law that require disclosure prohibited by this section.

Supra, **18 USC §2710(d)** specifically proscribes receipt of illegally obtained identity evidence before a **"grand jury."** O'Brien was the sole grand jury witness answering leading questions from suborner asst. state's attorney ("ASA") Kate Kurtz. **See Attachment(s) #8.** (C306-332)

Consequently, all subsequent illegal obtainment and receipt of Gakuba's birthdate were / are fruit-of-the-poisonous-tree. See accord *People v. Lopez,* 112 N.E.3d 1069, 2018 IL App (1st) 15331 ¶¶ 35-37 (cites *INS v. Lopez-Mendoza*, 468 US 1032, 140 (1984)).

*Lopez* at ¶36: "[...] did not stand for the proposition that identity-related evidence was *per se* admissible over a fourth amendment objection." *Id* at ¶37: "*Lopez-Mendoza's* 'body or identity' language applies only to personal jurisdiction, not to the suppression of identifying evidence."

Gakuba too cited to these authorities throughout his criminal case in all the Illinois state and federal courts while he was *pro se* (except at trial, in flagrant violation of *Faretta's*[5] 6th Amendment's right to be *pro se*—structural error).

All the preceding courts were willfully blind to the truth, deliberately ignorant of the controlling federal law—18 USC §2710(d)—and case law(s) (e.g. *Amazon.com LLC v. Lay; Lopez-Mendoza*).

So too did all the preceding courts deliberately ignore this key material fact: the government's false/fabricated "booking process – version" was rebutted by Gakuba's "booking process" denial "affidavit" announced, filed, and hand-tendered in open court—*pro se*—on June 5, 2014. **See Attachment(s). (C40-332)**

This was approximately one year before the April 27, 2015 two day jury trial, and exactly one year after IL assoc. trial Judge John R. Truitt (as advocate) falsely contrived the illusory and conclusory ruling—*sua sponte*—that Gakuba's birthdate was obtained "independently" of the flagrantly egregious state police and prosecutorial misconduct through an "assumed ... booking process."[6]

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[5] *Faretta v. California*, 422 US 806 (1975) (structural error: the denial of a criminal defendant's right to be *pro se*)

[6] Assuming *arguendo* there was a "booking process – version", as a matter of law it fails. See *State v. Locklear*, 138 N.C. App. 549, 550 (N.C. Ct. App. 2000) (held: The trial court erred in a first-degree statutory rape case under N.C.G.S. § 14-27.7A(a) by admitting the investigating officer's testimony of defendant's statement of his date of birth during the booking process without the benefit of the *Miranda* warnings.) https://casetext.com/case/state-v-locklear-71

Thus, this is the first case in years whereby a thumb-on-the-scale biased and prejudiced IL assoc. trial judge engaged in malfeasance as a favor to IL state police and prosecutors to secure a wrongful conviction promptly used now to dismiss a pending *pro se* federal suit they're culprits (defendants) in: *Gakuba v. O'Brien*, 12-cv-7296 (USDC-ND IL) (ECF #279, ID 1476 – "*Heck*"[7] dismissal defense argument). *Gakuba v. O'Brien*, 711 F.3d 751 (7th Cir. 2013).

This favoritism / malfeasance satisfies **"#6"** of the Illinois state **habeas** statute's "false pretense … bribery" reason, for, "corrupt" and "bribe" are synonymous.

The Illinois Appellate Court – 2nd District had failed to vacate these convictions both on direct and post-conviction appeals by ignoring Gakuba's "booking process" denial "affidavit".

See accord *McShane v. Cate*, 636 Fed. Appx. 410 (9th Cir. 2016) (habeas grant – ineffective assistance of trial counsel) (at 412: "A state court's fact-finding process is fatally undermined when the court 'has before it, yet apparently ignores, evidence that is highly probative and central to petitioner's claim.' *Milke v. Ryan*, 711 F.3d 998, 1008 (9th Cir. 2013)) (See *Miller-El v. Cockrell,* 537 US 322, 346 (2003) (noting that the state court 'had before it, and apparently ignored' testimony relevant to the correct inquiry)").

The takeaway: they're biased and prejudiced for having blackballed Gakuba because they are either grossly incompetent or insidiously complicit. Structural error.

Gakuba concludes they are witting abettors to this malicious prosecution. See contrivances *People v. Gakuba* 2017 IL App (2d) 150744-U (direct appeal); *People v. Gakuba* 2019 IL App (2d) 170794-U (post conviction appeal).

Accordingly, as any circuit court judge can issue a habeas writ—**who is fair, impartial, and considerate of the matters of fact and law**—Gakuba brings this habeas relief here;

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[7] *Heck v. Humphrey,* 512 US 477 (1994) (held: civil suits barred as collateral attacks on convictions; habeas and post conviction relief are only permissible legal avenues of pursuit challenging convictions)

especially when Gakuba expects ongoing litigation to occur in the federal district and circuit courts of Chicago.

UNITED STATES SUPREME COURT

## REASONS FOR GRANTING THE PETITION

### I. Void Indictment – Habeas Grounds 735 ILCS 5/10-124 §1

It is well settled that a void indictment divests all jurisdiction from the trial court. Period. A conviction resting upon a void indictment is a wrongful conviction.

See *Hoffler v. Bezio,* 726 F.3d 144 (2d Cir. 2013).

Id. at 157: An acquittal before a court having no jurisdiction is, of course, like all

> the proceedings in the case, absolutely void, and therefore no bar to subsequent indictment and trial in a court which has jurisdiction of the offense. But, although the indictment was fatally defective, yet, *if the court had jurisdiction of the cause and of the party,* its judgment is not void, but only voidable by writ of error. Id. at 669–70, 16 S.Ct. 1192 (emphasis added; citations omitted); see 6 Wayne R. LaFave et al., Criminal Procedure § 25.1(d) (3d ed.2012) (noting that *Ball* rejected broad view of jurisdictional error, instead holding that court needs only "authority ... to render judgment" for jeopardy to attach). Having concluded that the defective indictment rendered the judgment voidable, but not void, the Court held that jeopardy attached at trial and that the government could not retry the defendant for murder. See *Ball v. United States,* 163 U.S. at 670, 16 S.Ct. 1192; accord *Kepner v. United States,* 195 U.S. 100, 130, 24 S.Ct. 797, 49 L.Ed. 114 (1904) ("It is, then, the settled law of this court that former jeopardy includes one who has been acquitted by a verdict duly rendered, although no judgment be entered on the verdict, and it was found upon a defective indictment."); *Illinois v. Somerville,* 410 U.S. 458, 467–69, 93 S.Ct. 1066, 35 L.Ed.2d 425 (1973) (concluding jeopardy attached in state trial on defective indictment).

This was in the context of double jeopardy.

Id. at n. 11:

> The distinction between void and voidable judgments is of less significance to a defendant initially found guilty because a reversal on either ground will generally result in his retrial, either because jeopardy never attached, in the rare case of a void judgment, or because it never terminated, in the more common case of a voidable judgment. See *infra* at [159–60]. Thus, the question of whether Hoffler's reversed judgment of conviction was void or voidable is pertinent only insofar as it bears on

the issue of whether a reviewing court was obliged to rule on his sufficiency challenge before ordering retrial.

In the context of statutory rape convictions, the legal doctrines are dispositive in Gakuba's favor.

*In re B.A,* 562 S.E.2d 605 (N.C. Ct. App. 2002)[1]

Id.: Respondent asserts that the petition failed to allege all the essential elements

of the offense, and argues that the petition was fatally defective, did not confer jurisdiction on the trial court, and the trial court erred by not dismissing the petition. We agree.

Respondent did not raise this issue at her adjudication hearing. Where an issue is raised for the first time on appeal, this Court generally reviews only for plain error. *State v. Sams,* ___ N.C. App. ___, 557 S.E.2d 638 (2001). **However, jurisdiction may be challenged at any time, and, if the petition is invalid, it does not confer jurisdiction on the trial court.** *State v. Ackerman,* 144 N.C. App. 452, 464, 551 S.E.2d 139, 147, cert. denied, 354 N.C. 221, 554 S.E.2d 344 (2001) ("where an indictment is alleged to be invalid on its face, depriving the trial court of its jurisdiction, a challenge may be made at any time").

To confer jurisdiction, a charging document must "give defendant sufficient notice of the charge against him, to enable him to prepare his defense, and to raise the bar of double jeopardy in the event he is again brought to trial for the same offenses," and "[a]n indictment not meeting these standards will not support a conviction." *State v. Ingram,* 20 N.C. App. 464, 466, 201 S.E.2d 532, 534 (1974). A juvenile petition is held to the same standard as the charging document in an adult proceeding. *In re Burrus,* 275 N.C. 517, 530, 169 S.E.2d 879, 887 (1969) ("[n]otice must be given in juvenile proceedings which would be deemed constitutionally adequate in a civil or criminal proceeding").

**Where the illegality of sexual activity is based upon the relative ages of the parties, age is an essential element. *State v. Locklear,* 138 N.C. App. 549, 531 S.E.2d 853, disc. review denied, 352 N.C. 359, 544 S.E.2d 553 (2000) (age of parties essential element of prosecution for statutory rape; new trial awarded where police officer asked defendant his date of birth without being warned of his legal rights).** Failure to allege an essential element renders a juvenile petition invalid, and deprives the trial court of jurisdiction. ***State v. Bowen,* 139 N.C. App. 18, 533 S.E.2d 248 (2000) (where indictment does not allege that defendant was at least six years older than victim, trial court lacked jurisdiction, and failure to dismiss charge of statutory sexual offense is plain error)**; *In re Davis,* 114

[1] https://casetext.com/case/in-re-ba-14

N.C. App. 253, 441 S.E.2d 696 (1994) (juvenile entitled to adjudication upon valid petition; subject matter jurisdiction cannot be conferred by invalid charging document, or by waiver, consent, or estoppel).

Here, the undisputed facts are that Gakuba's Hollywood Video rental records established who Gakuba was—including his birthdate.

Any claims to the contrary are patently false.

See *People v. Gakuba,* 2017 Ill. App. 2d 150744 (Ill. App. Ct. 2017).[2]

Id. at ¶¶49-50:

¶49: "We disagree and conclude that defendant's name and age were derived from sources independent of any illegal police conduct."

¶50: "[IL state police] O'Brien testified that [] the hotel advised O'Brien that the room was registered to 'Peter Gakuba.' This occurred prior to O'Brien contacting the video store, entering defendant's hotel room, or interviewing hm at the police station."

March 13, 2009 pretrial hearing, state prosecutor ("ASA") Kate Kurtz proclaimed the true chronology **See Attachment(s) 2 (C1006-1009)**:

KURTZ: **"Oh Hollywood Video. They [(state police)] went to Hollywood Video. They find out Peter Gakuba rented videos. The same videos that [(complainant)] Matthew S. [("MS")] told them he rented. They went to the hotel. Hey, do you have a guy here by this name[?] Gee, we sure do[.] At that point they absolutely 100% had probable cause." (R484)**

January 13, 2007 pretrial hearing **See Attachment(s) 3 (C1012-1016)**—

KURTZ: "Just briefly, the defendant [] says his detention and arrest was without probable cause[.] O'Brien went through the details [] after meeting with the victim what he did to confirm. He even went to Hollywood Video, where—" (R291-292)

THE COURT: "Uh-huh." (R291-292)

[2] https://casetext.com/case/people-v-gakuba

KURTZ: "Somebody by the same name as the person renting the hotel room where Matt said this 'Phil' was, had rented the same exact name in Hollywood Video, had rented these videos[.] So there was, in fact, probable cause."

Inverting the chronological sequence of events was no mere error—in light of the overwhelming and undisputed record—but calculated judicial overreach by irrationally biased and prejudiced preceding IL state and federal judges. 5th and 14th Amendments violations.

Likewise, the ruling that the "Evidence that police learned defendant's name and birth date through routine booking process was properly admitted as it was ascertained independently from any illegally obtained evidence" is baseless. *People v. Gakuba,* 2017 Ill. App. 2d 150744 (Ill. App. Ct. 2017) at ¶1.[3]

As a matter of fact, no evidence exists of this delusion. None.

See accord *Whitfield v. Lashbrook*, 2018 US DIST LEXIS 155262 (ND. IL 09/12/2018) (at 17: Illinois recording law 725 ILCS 5/103.21 mandates that confessions resulting from custodial interrogations are presumptively inadmissible unless they are recorded. *USA v. Thurman,* 889 F.3d 356, 366 (7th Cir. 2018); *USA v. Montgomery,* 309 F.3d 1013, 1017 (7th Cir. 2009) (IL law requires the recording of custodial interrogations.)).

See accord *People v. Whitfield*, 78 N.E.3d 1015, 2018 IL App (2d) 140878 ¶¶100-101 (discusses reliability of unrecorded custodial statements) Id at ¶100 (1038): "The evidence on this point was conflicting. [Police] testified that the defendant did make these [incriminating] statements; the defendant denied that."

Id. at ¶101 (1038):

> Here[,] the state sought to present evidence of an inculpatory statement allegedly made by the defendant that was unrecorded. **Further, there were no other statements by the defendant to support either the existence or the reliability of**

[3] https://casetext.com/case/people-v-gakuba

> **the purported statement.** We believe that both of these facts, when coupled with the lack of corroboration of [the police's] testimony, weigh in favor of a conclusion that **the state did not meet its burden under the recording statute to show that the presumption against admitting the purported statement was overcome.**

Citation to *Pennsylvania v. Muniz*, 496 U.S. 582, 601 (1990) is unavailing because Muniz's "booking" was recorded. Not so here. *Muniz* at 586-86: "Muniz was informed that his actions and voice were being **recorded**."

However, Gakuba's "affidavit" *does* exist categorically denying this false/fabricated "booking process – version" Q&A and Gakuba's fabricated hearsay response. **See Attachment(s) 4 (C1019-1025).**

On June 5, 2014 it was announced and hand tendered to both the trial judge and prosecutor by *pro se* Gakuba. **See Gakuba's Habeas Pet. Attach. 5 (RC193-260).**

It was ignored by everyone, to date.

See *McShane v. Cate,* 636 Fed. Appx. 410, 412 (9th Cir. 2016) ('a state court's fact-finding process is fatally undermined when the court 'has before it, yet apparently ignores, evidence that is highly probative and central to petitioner's claim.' *Milke v. Ryan,* 711 F.3d 998, 1008 (9th Cir. 2013); see *Miller-El v. Cockrell,* 537 US 322, 346 (2003) (noting that the state court 'had before it, and apparently ignored,' testimony relevant to the correct inquiry).

As a matter of law, it fails too.

Gakuba's arrest was illegal; just as the ex post facto / post hoc fabricated search warrants were illegal because they were *Franks* perjury by IL state police O'Brien as a cover-up of the illegal 4th Amendment *Brown / Dunaway* home invasion.

The absurdity that the search of Gakuba was illegal—but not the simultaneous seizure of Gakuba—was an objectively unreasonable assessment of facts.

To date, other than wholly conclusory delusions by preceding police and court officers, no citation to *any* authority exists.

Worse still, these malfeasors recklessly disregard all the on-point dispositive case laws cited by Gakuba. See Deft.'s Mot. Dismiss "E 164"; (C705) Gakuba's Habeas Pet. p. 14 ¶52. (C32)

Specifically, accord *USA v. Hastings,* 246 F. Supp. 3d 1163, 1167-68, 1178, 1181-83 (ED. TX 2017). https://casetext.com/case/united-states-v-hastings-25

**On-point** *USA v. Hastings,* 246 F.Supp. 3d 1163 (ED. TX 2017) (suppression motion granted: illegal 4th Amendment *Brown / Dunaway* home invasion into hotel room; no warrant; no inevitable discovery)

*Id.* at 1168: Magistrate judge recommended that **"all evidence, physical and testimonial, obtained or derived from or through or as a result of the unlawful search, seizure, interrogation, arrest and detention of Hastings be suppressed."**

And the fantasy that a "booking process" was "independent" evidence is inapposite to all the prevailing case law authorities cited by Gakuba—which nobody disputes—rather they recklessly disregard.

See **on-point** (dispositive to Gakuba) ***State v. Locklear*, 138 N.C. App. 549, 550 (N.C. Ct. App. 2000)** (held: The trial court erred in a first-degree statutory rape case under N.C.G.S. § 14-27.7A(a) by admitting the investigating officer's testimony of defendant's statement of his date of birth during the booking process without the benefit of the *Miranda* warnings.) (cites *Rhode Island v. Innis*, 446 U.S. 291, 301, 64 L.Ed.2d 297, 308 (1980) (interrogation under *Miranda* consist of questions "the police should know are reasonably likely to elicit an incriminating response")). https://casetext.com/case/state-v-locklear-71

18 USC §2710(d) mandates suppression of all Gakuba's "personally identifiable information"—as relevant here, his name and birthdate. In perpetuity.

This includes a "grand jury." Gakuba's indictment is void ab initio; permanently incurable.

## II. False Pretense and Bribery – Habeas Grounds 735 ILCS 5/10-124 §6

IL state police Charles O'Brien is an adjudged *Franks* perjurer. All the search warrants ever issued in this case were quashed and, with them, so too should have quashed this malicious prosecution.

Instead, unsanctioned and unpunished for malign and criminal conduct, O'Brien perpetuated it—with suborner Winnebago Co. (then) prosecutor Kate Kurtz—at Gakuba's 1-day jury trial for witness testimony as *Napue* trial testimony perjury.[4]

See Gakuba's Habeas Pet. Attach. 7 p 24/33. (RC295-304)

Id. at p. 24/33, R2323 (RC295-304), sidebar discussion about O'Brien's witness testimony with O'Brien present:

> KURTZ: **Sergeant O'Brien would state that he asked him. I mean he would also say—he, obviously, can't say in court that he looked at his ID. He did look at his ID, but he also asked him his date of birth.**

This is undisputed *Napue* trial perjury by adjudged *Franks* perjurer O'Brien and suborner Kurtz. It violates the witness oath and affirmance known by all to "tell the truth, the whole truth, and nothing but the truth, so help you God."

And because perjury is synonymous with false pretense, it satisfies the 2nd ground sought by Gakuba for IL state habeas relief. 735 ILCS 5/10-124 §6.

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[4] *Napue v. Illinois,* 360 US 264 (1959)

See accord U.S. Attorney for S.D. New York, "California Man Charged With **Perjury** For Suing Hollywood Executives Under **False Pretenses.**" https://www.justice.gov/usao-sdny/pr/california-man-charged-perjury-suing-hollywood-executives-under-false-pretenses

Worse still, the trial judge suborned perjury too.

See Gakuba's Habeas Pet. Attach. 7 p 25/33. (RC296-304)

Id. at 25/33, R2324 (RC296-304):

THE COURT: **"He can't testify to if the defendant gave his date of birth during the statement he made to the police.**

**If it was obtained in another setting through another mechanism during the booking process, whatever, obtained independently, whether it's in his report or not, again, so what? He can be impeached that he never put that in the report.**

**But if he obtained it from some means other than the written—or the oral statement given by the defendant, that's the million dollar question."**

Undisputed subornation of perjury by the trial judge as co-conspirator; given that it was conducted at a sidebar which Gakuba's equally corrupt public defender was a witting accomplice by waiving Gakuba's right to attend.

When associate Judge Truitt was not suborning perjury, he was witness credibility vouching for his co-conspirators: ASA Kurtz and IL state police O'Brien. 5th and 14th Amendments violations.

It satisfies the "bribery" quotient because he handily steered this malicious prosecution on through to a wrongful conviction used as a *Heck* affirmative defense in pending *pro se* civil suits by Gakuba. See *Gakuba v. O'Brien,* 12-cv-7296 (USDC-ND IL) (ECF 279, Page ID #1476 "*Heck*" argument to dismiss $52 million *pro se* suit).

**See Gakuba's Habeas Pet. Attach. #5 pp. 58-59/67, R1161-62. (RC251-252)**

See July 19, 2013 pretrial hearing pp. 57-58. (RC250-251)

THE COURT: "Why is everyone out to get you? **Why you as opposed to me** or anyone else on the face of earth? What's your theory that [] **Ms. Kurtz** has targeted you as the one who **she is willing to risk her law license and her entire career over?** I just have a hard time wrapping my head around that? And every, **why every police officer would be willing to risk their career to get you[?]**" (emphasis)

Gakuba can find no case law precedence of a trial judge witness credibility vouching for an ASA and ISP.

It plainly was bribery: by Truitt to avoid loss. The loss of $52 million were Gakuba to rightfully be exonerated and his $52 million lawsuit succeed.

In *Anderson v. City of Rockford,* 932 F.3d 494 (7th Cir. 2019) the losses to Rockford, IL were $11 million. Money they did not have; requiring they issue general obligation bonds (and likely raise taxes on the taxpayer).

See WREX.com, "Rockford settles $11 million wrongful imprisonment lawsuit" https://www.wrex.com/news/rockford-settles-11-million-wrongful-imprisonment-lawsuit/article_84daa37b-6dc5-5067-8bf9-a74dc312f9cf.html (visited 05/29/22 as with all cited sites infra)

Id.:

> Mayor Tom McNamara said the settlement was one of the most difficult decisions he and City Council have had to make, but that **the case was settled to avoid the possibility of financial devastation to the City.**

If Rockford could not afford to pay $11 million to three gang bangers who, at present, are doing fed time for narcotics trafficking, they surely cannot pay $52 million (or more) to Gakuba who led an exemplary life pre- and post wrongful convictions.

The affirmance of Gakuba's wrongful conviction and sentence on direct appeal by the 2nd Dist. IL App. Ct., then, USDC-ND IL Judge Kapala (who was an appeals judge in the 2nd Dist.) was plainly a perpetuation of this bribery scheme to avoid losses to these malfeasors' hometown which they all are owing the entirety of their careers to.

Indeed, Kapala is ranked among the top 20 richest pensioners living off the dole of Illinois taxpayers, raking in an approximate $500,000 per year.

See The Committee to Expose Dishonest and Incompetent Judges, Attorneys and Public Officials, "US Judge Frederick Kapala: 2nd Circuit's 2017 Double Dipping Porker of the Year Winner." ► U.S. Judge Frederick Kapala: 2nd Circuit's 2017 Double Dipping Porker of the Year Winner (noethics.net)

He owes Rockford everything; as a former state appeals judge, circuit judge, associate judge, and state prosecutor in Rockford, IL Winnebago Co.

Truitt was cut from the very same cloth as an appointed judge of +20 years. He was a 'yes' man and lackey. The Attorney Registration and Disciplinary Commission ("ARDC") reveals Truitt ceases to exist. He no longer is licensed to practice law, when the typical post-judgeship results in easy employment at a reputable law firm.

Not to be outdone, federal Rockford prosecutor-cum-17th Cir. Ct. Judge Brendan Maher denied Gakuba's post conviction petition when he had previously been part of the federal government's criminal investigation of Gakuba.

Maher had a per se conflict of interest mandating immediate recusal; just as his colleague federal Rockford prosecutor-cum-USDC-ND IL Magistrate Margaret Schneider recused herself from all of Gakuba's cases. *Gakuba*, 22-cv-50092 (ECF 7, 13), See *Gakuba*, 12-cv-7296 (ECF 441).

Bribery is synonymous with corruption. The evidence is overwhelming: the IL state and federal preceding judges presiding over Gakuba's cases were, at best, irrationally biased and prejudiced. At worst, corrupt.

Pending is Gakuba's *pro se* federal suit against Maher. See *Gakuba v. Maher,* 22-cv-50092 (USDC-ND IL). A suit brought against Maher for self-pleading to having absolutely no jurisdiction over Gakuba or his criminal case, thus, unable to order the criminal discovery be tendered to Gakuba for additional post conviction collateral attacks.

Nonetheless, despite Maher's lack of *any* jurisdiction, Maher unlawfully orders "possible" sanctions upon Gakuba of $500 per pleading were Gakuba to file "any" pleadings in his closed criminal case. *People v. Gakuba,* 2006-CF-4324 (17th Cir. Ct., Winnebago Co.).

The corruption has no bounds: maintain a wrongful conviction to prevent Gakuba's $52 million false arrest and federal privacy law *pro se* federal suit from proceeding.

## III. Subsequent act(s) taint proceedings – Habeas Grounds 735 ILCS 5/10-124 §2

As detailed supra, Gakuba was not aware of the one (1) day jury trial for witness testimony side bar between conspirators ASA Kurtz and trial Judge Truitt with APD Gustafson a witting abettor. **See Gakuba's Habeas Pet. Attachment(s) 7 (RC271-304).**

Any unbiased, impartial, or fair minded judge can easily resolve this habeas petition in Gakuba's favor.

Resolution that only can come about by an objectively reasonable assessment of the facts then tied to an objectively reasonable application of the law. See e.g. 28 USC §2254(d)(1)-(2).

Despite being denied the absolute right to re-invoke *pro se* status 3-6 "weeks before trial" as a "delay tactic" when Gakuba never sought any delay—but APD Gustafson did on the trial date itself, due to incompetency—Gakuba proceeded *pro se* throughout all his post conviction collateral attacks.

This included Gakuba's direct appeal which the law plainly does not allow as a right, but, as a discretionary grant by the appellate court.

*People v. Gakuba,* 2017 Ill. App. 2d 150744 (Ill. App. Ct. 2017) had affirmed Gakuba's 6th Amendment *pro se* right denial "weeks before trial" without any citation to any on-point authority. Ipse dixit.[5]

> Id. at ¶88: Given the history of this case, we cannot say that the trial court's
>
> conclusion is arbitrary, fanciful, or unreasonable, or that no reasonable person would take the view adopted by the court. Accordingly, we reject defendant's claim that the trial court abused its discretion in denying his motion to represent himself less than a month prior to the scheduled trial date.

If the 2nd Dist. IL App. Ct. deliberately affirms a flagrant and egregious structural error, which no other reviewing court—state or federal—ever has, it renders the whole of their opinion untrustworthy and unreliable.

Note: the state appellate prosecutors were granted four (4) time extensions (of nearly a year) to file their appellee brief, when *pro se* Gakuba had filed his within the prescribed 30-days. From prison. With 3 hours per week "law library" time. Handwritten in overcrowded prisoner communal cells.

[5] https://casetext.com/case/people-v-gakuba

Worse still, Gakuba's *pro se* copy of the court transcripts revealed a startling *Brady* violation: the failure to disclose "negative" DNA test results. **See Attachment(s) 5 (C1028-1053).**

January 13, 2012 pretrial hearing, **See Attachment(s) 5 (C1028-1053):**

KURTZ: **"He said that actually the first test [for DNA] was negative, but the second was positive. And he called it a plus four, which meant that there was a large amount of sperm cells.**

It's self-evident, that a test result cannot go from "negative"—the complete absence of any DNA—to a "large amount" of DNA.

Frame job.

And because the one (1) day jury trial for witness testimony hammered repeatedly these DNA test results—the "positive" ones—all the while committing *Brady* violations to concealing the "negative" ones, it's axiomatic that these *Franks* affiant and *Napue* trial testimony perjurers—along with their suborners (specifically ASA Kurtz) had wrongly convicted Gakuba with false/fabricated evidence. A 14th Amendment due process violation.

April 27, 2021 Gakuba was released unto parole in Baltimore, MD.

He requested all his discovery from both the Winnebago Co. public defender's and state's attorney's offices. Both have REFUSED to give Gakuba anything.

And despite suing under FOIA for these discovery records which he is entitled to receive per the 1st, 5th, and 14th Amendments, 17th Cir. Ct., Winnebago Co. Judge Fabiano insists that Gakuba amend his complaint because she deems it general and vague. See *Gakuba v. Zimmerman,* 2021-MR-1036 (17th Cir. Ct., Winnebago Co.). **See Attachment(s) 6 (C1056-1059).**

Most disturbing is that the record plainly showing the Winnebago Co. State's Attorney's Office is now defending themselves *and* the Winnebago Co. Public Defender's Office against Gakuba. **See Attachment(s) 6 (C1056-1059).**

However, it was the Winnebago Co. Public Defender's Office whose job it was to defend Gakuba against the Winnebago Co. State's Attorney.

This flagrancy and egregiousness of 1st, 5th, 6th and 14th Amendments violations simply is unprecedented.

Unlike Chicago's Cook Co. State's Attorney which has setup a "conviction integrity unit" due to pervasive corruption by police and prosecutors, such is lacking in Rockford's Winnebago Co. State's Attorney's Office.

And because it is a prosecutor's job to seek justice, not merely to convict, the undisputed fact that state prosecutors are representing state public defenders against the public defenders' very own 'client' whom they never defended at a one (1) day jury trial for witness testimony—all were prosecutor witnesses because they refused to issue the 39 witness subpoenas (and pay for them) sought by Gakuba (their purpose for appointment by Gakuba)—it plainly taints "the proceedings."[6]

Structural error meant that Gakuba was denied his absolute right to represent himself, in order to have a mock trial before a kangaroo court with the trial judge and advocate for the State alongside the public defenders' office a witting aider-and-abettor.

**See Gakuba's Habeas Pet. Attachment 7 (RC271-304):** April 2015 one (1) day jury trial side bar.

[6] See IL S. Ct. Rules of Professional Conduct, Art. VIII, Rule 3.8: Special Responsibilities of a Prosecutor. https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/f666b1cf-3509-4cf8-935e-ead5a1bb270d/RULE%203.8.pdf

ASA Kurtz was directed by the trial judge to conduct direct examination of ISP Sgt. O'Brien "off the record, out of the well of the court." A flagrant 6th Amendment public trial violation. APD Gustafson never objected.

In Gakuba's direct appeal, Gakuba cited on-point authority: *People v. Pendleton*, 75 Ill. App. 3d 580 (1979) whereby a prosecutor coached an eyewitness over a weekend recess on how to testify at the trial of a rapist.[7]

See *People v. Gakuba,* 2017 Ill. App. 2d 150744 (Ill. App. Ct. 2017).

Id. at ¶53.

The 2nd Dist. IL App. Ct. rejects *Pendleton* as distinguishable; instead, they provide citation of their own—complete with deceitful paraphraseology.

Id. at ¶56:

> See *People v. Struck,* 29 Ill. 2d 310, 313-15 (1963) (finding that it was not error to allow State to talk to witness during recess in direct examination where defense counsel given opportunity to cross-examination).[8]

Flatly wrong. *Struck* had the prosecutor conduct direct examination of the witness in open court at the prosecutor's table—not "off the record, out of the well of the court" in total absence of Gakuba, much less his complicit public defender.

*Struck* at 314:

> Mr. Eugene T. Daly: Your Honor, I believe **I could talk to the witness in open court or Mr. Daly can sit alongside of me if he wants to.** I don't think that —
>
> The Court: Very well, he may accept that if he wishes; he doesn't have to.
>
> Mr. Eugene T. Daly: Will you step down, please.
>
> The Court: He may accept that offer, if you care to accept that offer Mr. Daly.

[7] https://casetext.com/case/people-v-pendleton-20
[8] https://casetext.com/case/the-people-v-struck

> You may accompany the witness and the prosecutors, both of them, wherever they're going, I don't know.

Mr. Eugene T. Daly: **We will go right here, Your Honor."**

**See Gakuba's Habeas Pet. Attach. #4 p. 25 ¶95 (RC153 ¶95)** of the April 28, 2015 jury trial:

> THE COURT: "If you want to interview the witness [O'Brien] and share that information? (leading)] if it was obtained [] during the booking process, whatever, independently [...] that's the million-dollar question. **We're gonna do this off the record – out of the well of the court."**

**See Gakuba's Habeas Pet. Attach. #7 pp. 13-14/33 and 26/33. (RC284-285; RC297-304)**

Accord *People v. Manuel M. (In re Manuel M.),* 71 N.E.3d 1131 (Ill. App. Ct. 2017) (6th Amendment public trial violation; structural error).[9]

## IV. Judicial and/or Equitable Estoppel Controls

On May 31, 2022 Gakuba filed his "Motion to Dismiss without Prejudice" the 17th Cir. Ct., Winnebago Co. case which the 7th Cir. Ct., Sangamon Co. was without jurisdiction to order transferred because the 7th Cir. Ct., Sangamon Co. was without jurisdiction to do so. See Gakuba's Reply: Motion per Illinois Supreme Court Rule 187 – Forum Non Conveniens, pp. 6-8 ¶¶26-47. See Attachment(s) #4 of reply pleading. (C1065-1067)

FRE 201: *Gakuba v. IPRB,* 2022-MR-10 (17th Cir. Ct., Winnebago Co.).

July 7, 2022 that case was dismissed without prejudice (erroneously transferred from Sangamon Co. after Gakuba filed his appeal notice and, thereby, divesting jurisdiction from 7th Cir. Judge Giganti. *Gakuba v. IPRB,* 2021-MR-1206 (7th Cir. Ct., Sangamon Co.).

[9] https://casetext.com/case/people-v-manuel-m-in-re-manuel-m-3

It renders moot any defenses concerning wrong venue.

Returning the focus to the undisputed fact that ALL Gakuba's biographical evidence undisputedly obtained in violation of federal privacy law—18 USC §2710(b)(2)(A)(C)—mandates suppression per federal privacy law: 18 USC §2710(d).

The false and fabricated "booking process – version" advanced by the trial judge (as advocate) and Gakuba's fabricated hearsay response, was fantastic—promoted by incorrigible fabulists: police and court officers (prosecutors and a plainly biased and prejudiced trial judge (later condoned by equally biased and prejudiced higher courts)).

Jurist nullification.

No record exists of this bald lie, by *Franks* affiant perjurers who, unsanctioned, proceeded to commit *Napue* trial perjury. Aided-and-abetted by the trial judge (as advocate) and condoned thereafter by all state and federal jurists thereafter.

Assuming arguendo, this fabrication of fact were true, it still fails as a matter of law.

See on-point (dispositive to Gakuba) *State v. Locklear,* 138 N.C. App. 549, 550 (N.C. Ct. App. 2000) (held: The trial court erred in a first-degree statutory rape case under N.C.G.S. § 14-27.7A(a) by admitting the investigating officer's testimony of defendant's statement of his date of birth during the booking process without the benefit of the *Miranda* warnings.) (cites ***Rhode Island v. Innis,* 446 U.S. 291, 301, 64 L.Ed.2d 297, 308 (1980)** (interrogation under *Miranda* consist of questions "the police should know are reasonably likely to elicit an incriminating response")) https://casetext.com/case/state-v-locklear-71

Furthermore, undisputedly neither the IPRB nor Judge Gab offers any on-point case law precedence of void—not voidable—indictments in statutory rape cases; all the while deliberately

ignoring the three (3) cited cases by Gakuba which cite US Supreme Court precedence—the ultimate legal authority.

See accord *In re B.A*, 562 S.E.2d 605 (N.C. Ct. App. 2002) (juvenile delinquency petition void where element of the crime—age / birthdate—are not in the petition resulting in trial court's lack of jurisdiction) https://casetext.com/case/in-re-ba-14 ; See also *In re Griffin*, 162 N.C. App. 487 (N.C. Ct. App. 2004) (same) https://casetext.com/case/in-re-griffin-85

As a matter of law, the Motion for Summary Judgment must be GRANTED.

## V. The IPRB's Response to Summary Judgment Contains Material Misrepresentations and Omissions in a Wanton and Reckless Disregard for the Truth

### A. Argument

#### 1. Legal Doctrines Divorced from the Facts

On-point (dispositive to Gakuba) *McGirt v. Oklahoma,* 140 S. Ct. 2452 (2020) (Oklahoma state had NO jurisdiction to try a crime committed in "Indian country"). https://casetext.com/case/mcgirt-v-oklahoma

Id. at 2459:

> **Since then, he has argued in postconviction proceedings that the State lacked jurisdiction to prosecute him** because he is an enrolled member of the Seminole Nation of Oklahoma and his crimes took place on the Creek Reservation. A new trial for his conduct, he has contended, must take place in federal court. The Oklahoma state courts hearing Mr. McGirt's arguments rejected them, so he now brings them here.

Ibid:

> **State courts generally have no jurisdiction to try Indians for conduct committed in "Indian country."** *Negonsott v. Samuels,* 507 U.S. 99, 102–103, 113 S.Ct. 1119, 122 L.Ed.2d 457 (1993).

Id. at 2470:

> **To see the perils of substituting stories for statutes,** we need look no further than the stories we are offered in the case before us. Put aside that the Tribe could tell more than a few stories of its own: Take just the evidence on which Oklahoma and the dissent wish to rest their case. First, they point to **Oklahoma's long historical prosecutorial practice of asserting jurisdiction over Indians in state court, even for serious crimes on the contested lands.**

Applying the Illinois Prisoner Review Board's ("IPRB's") fanciful arguments to *McGirt v. Oklahoma* means that Oklahoma had "personal jurisdiction" because McGirt appeared (illegally) before an Oklahoma trial court. Deft.'s Resp. Mot. S.J. p.3 ¶3, p.4 ¶1. (C1107)

And because McGirt was indicted, tried, and convicted (illegally), "subject matter jurisdiction" occurred too. Deft's Resp. Mot. S.J. p.4 ¶1. (C1108)

The U.S. Supreme Court rejected such "story telling" in *McGirt*.

The IL Circuit Court must reject these fanciful delusions here, in the instant case.

See e.g. *Gakuba v. Grisso*m, 2021-MR-63 (1st Cir Ct., Johnson Co.) (docket history 08/24/2021: "Court advises that there is no jurisdiction over Defendant. Petitioner to file Alias Summons.") (visited cited site on 06/11/2022 (as with all others)) https://www.judici.com/courts/cases/case_history.jsp?court=IL044015J&ocl=IL044015J,2021MR63,IL044015JL2021MR63P1

**See Attachment(s) 1. (C1124-1126)**

All the while IL AAGs argue that IL trial courts have jurisdiction merely by Gakuba forcibly (and illegally) appearing before them, they argue the opposite when Gakuba failed to serve IL malfeasors by sheriff (versus by hand delivery or certified mail).

Rank duplicity.

There was NO jurisdiction over Gakuba. Period. Just as the Illinois Dept. of Corrections ("IDOC") in *Grissom*, 2021-MR-63 had IL AAGs *successfully* argue that there was NO jurisdiction over the IDOC when not properly served—despite an IL AAG appearing at the hearing on the IDOC's behalf.

Judicial and equitable estoppel controls as the IL Prisoner Review Board is an adjunct to the IDOC.

### 2. Federal Law Supersedes State Law. 14th Amendment, U.S. Constitution; the Video Privacy Protection's Exclusion Mandate is Omnipotent and Absolute—18 USC §2710(d)

See *McGirt v. Oklahoma,* 140 S. Ct. 2452 (2020) (Oklahoma state had NO jurisdiction to try a crime committed in "Indian country"). https://casetext.com/case/mcgirt-v-oklahoma

Id. at 2471:

> **Start with the State's argument about its longstanding practice of asserting jurisdiction over Native Americans.** Oklahoma proceeds on the implicit premise that its historical practices are unlikely to have **defied the mandates of the federal MCA.** That premise, though, appears more than a little shaky. In conjunction with the MCA, §1151(a) not only sends to federal court certain major crimes committed by Indians on reservations. Two doors down, in § 1151(c), the statute does the same for major crimes committed by Indians on "Indian allotments, the Indian titles of which have not been extinguished." **Despite this direction, however, Oklahoma state courts erroneously entertained prosecutions for major crimes by Indians on Indian allotments for decades,** until state courts finally disavowed the practice in 1989. See *State v. Klindt,* 782 P.2d 401, 404 (Okla. Crim. App. 1989) (overruling *Ex parte Nowabbi,* 60 Okla. Crim. 111, 61 P.2d 1139 (1936)); see also *United States v. Sands,* 968 F.2d 1058, 1062–1063 (C.A.10 1992). **And if the State's prosecution practices disregarded §1151(c) for so long, it's unclear why we should take those same practices as a reliable guide to the meaning and application of §1151(a).**

See accord *Amazon.com LLC v. Lay,*[10] 758 F. Supp. 2d 1154 (W.D. Wash. 2010) (VPPA violations by NC attorney general Lay required injunctive and declaratory relief to Doe intervenors

[10] https://casetext.com/case/amazoncom-llc-v-lay

per *Ex Parte Young*, 209 US 1123 (1908)); cf *Timbs v. Indiana*, 139 S.Ct. 682, 203 L. Ed. 2d 11 (2018) (federal law is binding on states per the 14th Amendment, US Constitution).[11]

**18 U.S. Code § 2710 - Wrongful disclosure of video tape rental or sale records:**

(visited 07/03/2021 as with all the cited sites https://www.law.cornell.edu/uscode/text/18/2710 )

**(a) Definitions.**—For purposes of this section—

**(1)** the term "consumer" means any renter, purchaser, or subscriber of goods or services from a video tape service provider;

**(2)** the term "ordinary course of business" means only debt collection activities, order fulfillment, request processing, and the transfer of ownership;

**(3)** the term "personally identifiable information" includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider; and

**(4)** the term "video tape service provider" means any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audiovisual materials, or any person or other entity to whom a disclosure is made under subparagraph (D) or (E) of subsection (b)(2), but only with respect to the information contained in the disclosure.

**(b) Video Tape Rental and Sale Records.—**

**(1)** A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d).

**(2)** A video tape service provider may disclose personally identifiable information concerning any consumer—

**(A)** to the consumer;

**(B)** to any person with the informed, written consent (including through an electronic means using the Internet) of the consumer that—

**(i)** is in a form distinct and separate from any form setting forth other legal or financial obligations of the consumer;

**(ii)** at the election of the consumer—

**(I)** is given at the time the disclosure is sought; or

**(II)** is given in advance for a set period of time, not to exceed 2 years or until consent is withdrawn by the consumer, whichever is sooner; and

**(iii)** the video tape service provider has provided an opportunity, in a clear and conspicuous manner, for the consumer to withdraw on a case-by-case basis or to withdraw from ongoing disclosures, at the consumer's election;

**(C)** to a law enforcement agency **pursuant to a warrant issued** under the

[11] https://casetext.com/case/timbs-v-indiana-1

Federal Rules of Criminal Procedure, **an equivalent State warrant, a grand jury subpoena, or a court order**;

**(D)** to any person if the disclosure is solely of the names and addresses of consumers and if—

**(i)** the video tape service provider has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure; and

**(ii)** the disclosure does not identify the title, description, or subject matter of any video tapes or other audiovisual material; however, the subject matter of such materials may be disclosed if the disclosure is for the exclusive use of marketing goods and services directly to the consumer;

**(E)** to any person if the disclosure is incident to the ordinary course of business of the video tape service provider; or

**(F)** pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, if—

**(i)** the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order; and

**(ii)** the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure.

If an order is granted pursuant to subparagraph (C) or (F), the court shall impose appropriate safeguards against unauthorized disclosure.

**(3)** Court orders authorizing disclosure under subparagraph (C) shall issue only with prior notice to the consumer and only if the law enforcement agency shows that there is probable cause to believe that the records or other information sought are relevant to a legitimate law enforcement inquiry. In the case of a State government authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the video tape service provider, may quash or modify such order if the information or records requested are unreasonably voluminous in nature or if compliance with such order otherwise would cause an unreasonable burden on such provider.

**(c) Civil Action.—**

**(1)** Any person aggrieved by any act of a person in violation of this section may bring a civil action in a United States district court.

**(2)** The court may award—

**(A)** actual damages but not less than liquidated damages in an amount of $2,500;

**(B)** punitive damages;

**(C)** reasonable attorneys' fees and other litigation costs reasonably incurred; and

**(D)** such other preliminary and equitable relief as the court determines to be appropriate.

**(3)** No action may be brought under this subsection unless such action is begun within 2 years from the date of the act complained of or the date of discovery.

**(4)** No liability shall result from lawful disclosure permitted by this section.

**(d) Personally Identifiable Information.—**

Personally identifiable information obtained in any manner other than as provided in this section **shall not be received in evidence** in any **trial, hearing**, arbitration, or **other proceeding** in or before any **court, grand jury**, department, officer, agency, regulatory body, legislative committee, **or other authority** of the United States, **a State**, or a political subdivision of a State.

**(e) Destruction of Old Records.—**

A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (b)(2) or (c)(2) or pursuant to a court order.

**(f)Preemption.—**

The provisions of this section preempt only the provisions of State or local law that require disclosure prohibited by this section.

*McGirt*, 140 S. Ct. 2452, 2471:

> **By Oklahoma's own admission,** then, for decades its historical practices in the area in question **didn't even try to conform to the MCA,** all of which makes the State's past prosecutions a meaningless guide for determining what counted as Indian country. As it turns out, too, Oklahoma's claim to a special exemption was itself mistaken, yet one more error in historical practice that even the dissent does not attempt to defend.

Ibid: **But all that only underscores further the danger of relying on state practices to determine the meaning of the federal MCA.**

Here, the IPRB / IL AAG argue that because the IL courts—trial and appellate—have deliberately ignored Gakuba's *federal* statutory and constitutional rights, since the inception of his void indictment, their malicious prosecutorial prerogatives trump well established federal statutory law.

Ibid:

> Brief for United States as Amicus Curiae in *Carpenter v. Murphy,* O. T. 2018, No. 17–1107, pp. 7a–8a (Letter from Secretary of the Interior, Mar. 27, 1963) **(noting that many States have asserted criminal jurisdiction over Indians without an apparent basis in a federal law).**

Here, the IPRB / IL AAG make the same fanciful arguments as in *McGirt*: that federal law—18 USC §2710(d)'s exclusionary mandate—is extinguished by a state malicious prosecution, as occurred here.

Rather than admitting fault, due to Gakuba's pending *pro se* federal lawsuit seeking $52 million in actual, compensatory and punitive damages, they'd rather double down on their enterprise of mendacity and rank prevarications, than show a slim reed measure of prosecutorial integrity. See IL S. Ct. Rules of Professional Conduct, Art. VIII, Rule 3.8: Special Responsibilities of a Prosecutor (to seek justice, not merely to (wrongly) convict). https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/f666b1cf-3509-4cf8-935e-ead5a1bb270d/RULE%203.8.pdf

*McGirt* at 2471: As we have just seen, Oklahoma's courts acknowledge that the State lacks jurisdiction over Indian crimes on Indian allotments.

"Lacks jurisdiction" says what it means, not means what it says.

It does not require an Oxford don to distill the common meaning of "jurisdiction".

See *Garcia v. Long,* 808 F.3d 771, 777-778 (9th Cir. 2015) (habeas grant: "No" or invocation to have counsel present is the 'right to remain silent' invocation and need not be spoken with the discrimination of an Oxford don).

The subsequent (immediate) violations of federal constitutional law comes as a *secondary* layer of privacy protections. See accord *USA v. Wilson*,[12] 633 Fed. Appx. 750, 753 (11th Cir. 2015) (at 753: "The availability of the suppression remedy for … **statutory**, as opposed to constitutional violations … turns on the provisions of [the statute] rather than the judicially fashioned

[12] https://casetext.com/case/united-states-v-wilson-652

Exclusionary Rule aimed at deterring violations of the 4th Amendment rights." *USA v. Donovan*, 429 US 413, 432 n.22 (1977) (Stored Communications Act)).

The indictment is *void ab initio*; not *voidable*.

The IPRB / IL AAG deliberately ignore this undisputed fact.

The IL courts lacked jurisdiction; and with it, Gakuba's convictions must be vacated; and his immediate release must occur.

The cases cited by them implicate pretrial detainees or prisoners whose imprisonment exceeds any lawful sentence. See cf 28 USC §2241.

In fact, *Gakuba v. IPRB,* 2020-CH-6427 (Cook Co. Cir. Ct.) and *Gakuba v. IPRB,* 2021-MR-1206 (7th Cir. Ct., Sangamon Co.) had IL AAG Benton concede that habeas relief is afforded to Gakuba due to his parolee status, just not in Cook Co.; hence, why he moved to transfer, successfully.

Judicial and equitable estoppel thereby controls.

The IPRB / IL AAGs argued in preceding near identical habeas cases that Gakuba had standing to seek habeas relief as a parolee—thereby succeeded in having these preceding cases venue transferred, to only now make inapposite arguments.

Habeas relief is appropriate. As a matter of law, it must be granted due to federal law being deliberately ignored by all preceding IL and federal police and court officers.

### 3. On-point Statutory Rape Convictions Overturned on Appeal; cite Federal Constitutional Law:

- ***State v. Locklear,* 138 N.C. App. 549, 550 (N.C. Ct. App. 2000)**
- ***In re B.A*, 562 S.E.2d 605 (N.C. Ct. App. 2002)**
- ***In re Griffin*, 162 N.C. App. 487 (N.C. Ct. App. 2004) (same)**

Nowhere does the IPRB / IL AAG attack directly these cited case laws, supra.[13]

Because they are unable to make a convincing argument that they are not on-point.

Instead, they assert that because they originate from North Carolina, they're inapplicable to Illinois.

However, they cannot cite to *any* other case law that rebuts the three (3) cited by Gakuba.

None exists. Not a single one.

As these cited cases reference federal statutory and constitutional law, they're not only on-point, they're case dispositive to Gakuba.

It is illogical to assert that other cases from other geographies are irrelevant. To the contrary, they are wholly relevant. On-point. Determinative in favor of Gakuba.

In fact, state courts cite to federal case laws all the time to affirm or reverse trial court rulings.

"The booking process" was a post hoc fabricated irrationalization to evade enforcing the VPPA's statutory mandate's exclusionary authority. See accord *USA v. Zapien,* 861 F.3d 971 (9th Cir. 2017) (at 995: "This analysis includes consideration of both the questions and the context. See *USA v. Pacheo-Lopez,* 531 F.3d 420, 424-25 (6th Cir. 2008) ('The location, the nature of the questioning, and the failure to take notes or document the defendant's identity also support our conclusion that the booking exception is not applicable in this case.') In understanding this analysis, courts have looked to a range of particularized circumstances. See e.g. *Mata-Abundiz* 717 F.2d at 1280 (whether the state agency conducting the questioning ordinarily booked suspects); *USA v. Disla,* 805 F.2d 1340, 1347 (9th Cir. 1986) (whether officers knew that the questions were related to an element of the crime); *USA v. Salgado,* 292 F.3d 1169, 1174 (9th Cir.

[13] https://casetext.com/case/state-v-locklear-71 , https://casetext.com/case/in-re-ba-14 https://casetext.com/case/in-re-griffin-85

2002) (whether a 'true booking' had already occurred and the agency therefore already had access to the information); *Foster* 227 F.3d at 1103 (whether the questions were separated in time and place from the incriminating statements)").

"The booking process" was not recorded. *Muniz,* 486 US at 582; *People v. Outlaw,* 388 Ill. App. 3d 1072, 1077 (2009) [...] 'The booking process' was done by crime investigator O'Brien (not jailer 'David Huff' (C3258) (FRE 201: docket 04/21/2018)[14]); *Outlaw* at 1077. See *USA v. Sanchez,* 817 F.3d 38, 46 (1st Cir. 2016) (citing *USA v. Reyes,* 225 F.3d 71, 76-77 (1st Cir. 2000)). 'The booking process' extracted answers 'clearly' and 'directly' tied to the 'suspected' criminal activities. *Sanchez* at 46. (C1034-35 cites *USA v. Oscar-Torres,* 507 F.3d 224, 225 (4th Cir. 2007) ('[Where] both investigative and administrative purposes motivated illegal arrest and fingerprinting, suppression of fingerprints and attendant record evidence was required.')).")

See e.g. *People v. Merritt,* 2017 IL App (2d) 150219 ¶¶1, 26-30, 30-31.

Id. at ¶¶30-31:

Cites *USA v. Wright,* 682 F.3d 1088 (8th Cir. 2012) (trial date *pro se* right allowed; delay denied); cites *USA v. Ware,* 890 F.3d 1008, 1010 (8th Cir. 1989) (trial date *pro se* right allowed; delay denied).

It is self-evident: the three (3) cited cases by Gakuba are controlling.

This malicious prosecution resulting in Gakuba's wrongful convictions and, now, false imprisonment, must end with the GRANT of this habeas petition.

## VI. Conclusion

In conclusion, the IPRB / IL AAG contrive the law, when they're not misrepresenting or omitting material facts.

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[14] *People v. Gakuba,* 2006-CF-004324 (17th Cir. Ct., Winnebago Co.)

Pure pettifoggery.

The IL trial judge should have ordered the IPRB / IL AAGs to specifically brief the trial judge on why these three (3) cited case laws by Gakuba are distinguishable?

A dare Gakuba doubts the IL trial judge will carry forthwith.

See accord *People v. Johnson*, 208 Ill.2d 53, 65 (2003) (citing law articles to expose the problem of prosecutorial misconduct, "a problem that courts across the country have, for the most part, been unable or unwilling to correct.")

As a matter of law, Gakuba's summary judgment motion should have been granted.

And with it, the grant of the IL *pro se* habeas petition.

This petition for writ of certiorari should be granted.

Executed: November 12, 2022

Respectfully Submitted,

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