22-6413

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Rajul Ruhbayan---PETITIONER

vs.

Robert B. King, App. judge
Allyson K. Duncan, App. judge
William W. Wilkins, App. judge
Rebecca B. Smith, Dist. judge---RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO:
FOURTH CIRCUIT COURT OF APPEALS---at--RICHMOND, VIRGINIA

PETITION FOR WRIT OF CERTIORARI

Rajul Ruhbayan
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QUESTIONS PRESENTED

1. Whether this Supreme Court or Solicitor General should invoke its supervisory powers to deter the illegal acts of and implement a remedy for the Fourth Circuit Court of Appeals and four Defendant judges', ongoing 17 years, cover up or violations of Petitioner's prospective denial of access claims' two constitutional underlying claims of both a Sixth Amendment right to trial by jury and a Fifth Amendment right to a Legitimate Expectation of Finality as to the severity of his instant sentence and detention's legality not to exceed beyond 21 months or a date of October 2003?

2. Whether the Circuit Court's, ongoing 17 years, cover up, overlooking or not deciding of the cause's only presented two grounds of prospective claims, and yet its deciding of the same cause soley based upon the Circuit Court's unpresented and fabricated single ground of a retrospective claim, so far departed from the proper standards in the administration of justice, to call for this Court's supervisory powers in light of Christopher v. Harbury, 536 U.S. 403, 413-15 (2002); United States v. Kordel, 397 U.S. 1, 11 (1970); Mcnabb v. United States, 318 U.S. 332, 340-41 (1943); and United States v. Hastings, 461 U.S. 499, 505 (1983)?

LIST OF PARTIES

[x] 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

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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

[x] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

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[x] is unpublished.

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] 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

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 15, 2022.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October, 17, 2022, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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

1. FIFTH AMENDMENT right to due process, under the legal tenets of Christopher v. Harbury (" Harbury "), 536 U.S. 403 at 413-415 (2005), presented (see herein pages 7-20) two prospective claims of:

   A. Prospective declaratory relief claims that are ancillary to

   B. Prospective denial of access claims that are ancillary to the following immediate below two underlying 5th and 6th Amendment claims;

2. FIFTH AMENDMENT right to due process, under the legal tenets of the United States v. Lundien, 769 f.2d 981 at 987 (4th cir/App. ct./ 2005), presented (see herein pages 4-20) a prospective underlying Legitimate Expectation of Finality claim of:

   A. Legitimate Expectation of Finality as to the severity of Petitioner's instant sentence and detention's legality not to exceed beyond 21 months or a date of October 2003 based upon the Directive of Booker (" DOB "), 543 U.S. 220 at 268 (2005), and its directive imperative that the four defendant or respondent judges "must apply" the mandatory legal tenets of 18 U.S.C. §§ 3553(b)(1), 3585(b) and 3624(a) of the Sixth Amendment holding of Booker (" SAHB "), 543 U.S. at 226-234, to Petitioner's supplemental brief's pages 11-12's contested calculation facts to the sentence and detention's legality exceeding beyond 21 months or a date of Oct. 2003. E.g. see Lundien, 769 f.2d at 987 (Recognizing " due process may be denied when a sentence is enhanced after defendant has served so much of his sentence that **expectations as to finality have crystalized** and it would be fundamentally unfair to defeat them. ");

3. SIXTH AMENDMENT right to trial by jury, under the mandatory legal tenets of the SAHB, 543 U.S. at 226-234, presented (see herein pages 4-20) a prospective SAHB claim of:

   A. Prospective underlying SAHB claim based on the DOB, 543 U.S. at 268; the DOB, at 268, in quote reads:

      (" We **must apply today's holdings-both the Sixth Amendment and remedial** interpretation of the Sentencing Act---**to all cases on direct review.** Griffith, 479 U.S. 314,328 (1987)(" (A) new rule for the conduct of criminal prosecution is to be applied retroactively to all cases on direct review or **not yet final.** ")).

S T A T E M E N T O F T H E C A S E

1. The seminal origin of the case sub judice springs from the operative legal landscape of the Sixth Amendment holding in U.S. v. Booker, 543 U.S. 220, 226-234 (2005). Booker recognizes that the federal guidelines "are binding on judges" and that "the guidelines have the force and effect of laws. Minstretta, 488 U.S. 361 (1989)." Id. at 234. From November 1987 to January 12, 2005, based on the canons of IMPLIED REPEAL doctrine, Booker's (new law) legal tenets of 18 U.S.C. Sections 3553(b)(1), 3585(b), and 3624(a) declared a lesser penalty of a statutory guideline range of 15-21 months to operatively effect, an IMPLIED REPEAL of Plaintiff's indictment notice's (old law) total statutory maximum of 25 years collective statute penalty provisions of 18 U.S.C. Sections 371 (5 years), 1622 (5 years), 1623 (5 years), and 1512(b)(1). See Davis, 7 F. cas. 63, 1867 U.S. App. LEXIS 109-110 (1867):

> An [I]ndictment (or sentencing judgment) cannot be sustained upon (old law) statute which has already been repealed, unless the (new law) repealing statute has a savings clause. That the declaring of a less penalty (by a new law) for the same offense operates as a (implied) repeal of the old (law) penalty . . . . No person can be punished for a statutory offense, unless, at the moment when sentence is pronounced upon him the statute exists in FULL FORCE & VIGOR.

See also Shamblin, 323 F.Supp.2d 747, 767 (June 2004/4th Cir./Dist. Ct.) (Court reduces sentence from 240 months to 6-12 months, holding that "the guidelines are the law which binds this court in sentencing matters, and to that extent that the guidelines can be applied in a manner consistent with the Sixth Amendment (I.e. Booker, supra, at 226-234), the court shall strive to do so . . . ."); Hughes, 401 F.3d 540, 547 (2005/4th Cir./App.Ct) (Court reduces sentence from 46 months to 6-12 months due to Booker); O'Georgia, 569 F.3d 281, 286, 289 (6th Cir.2009) (The sentencing

decision was remanded in light of Booker, holding that the guidelines are now advisory, but re-imposing the same sentence of 21 months that had already been served under the mandatory guidelines. The appellate court observed: "Rather the procedural error stems from the district court's failure to recognize (Arhebamen's) completion of his custodial sentence (under the old law's mandatory legal landscape of Booker) rendered that portion moot at the re-sentencing stage (under the new law's advisory legal landscape of the Booker ruling at U.S. 245-46).").

2. Accordingly, on January 8, 2002, African American Plaintiff was charged and continually detained by his government who charged him essentially for the non-violent offense of obstruction of justice, during a federal trial, pursuant to the United States Sentencing Guideline Statute section 2J1.2 (i.e. obstruction of justice); it follows:

1) pursuant to section § 3553(b)(1) of the Sixth Amendment holding in Booker: the jury verdict alone prescribed defendant district judge Smith a limited subject matter jurisdiction of sentence authority of a guideline statutory maximum of 21 months (e.g. see, § 3553(b)(1): "The court SHALL impose a sentence of the kind and within the range.");

2) pursuant to the mandatory legal tenets of § 3585(b) of the Booker ruling: Plaintiff was accredited with 21 months he had served in pretrial detention, in the city jail of Suffolk, VA., from his initial arrest and detention, on January 8, 2002, continually through to the jury's verdict, on October 27, 2003; so Defendant judge Smith's subject matter jurisdiction of sentence authority had fully exhausted, by Oct. 2003, hence the 21 months

custodial portion, but not the assumed 0-36 months--supervised release portion, of Plaintiff's sentence became moot, by Oct. 2003 (e.g. see § 3585(b): "A defendant SHALL be given credit toward the service of a term imprisonment for any time he has spent in official detention prior to the date the sentence commences.");

3) thus, pursuant to § 3624(a) of the Booker ruling: Plaintiff was entitled to a 'Legitimate Expectation of Finalty' as to immediate release from custodial detention, not to exceed 21 months or a date of Oct. 2003. (e.g. see, § 3624(a): "A prisoner SHALL be released by the Bureau of Prisons on the date of the expiration of the term of imprisonment.").

3. Accordingly, on AUgust 20, 2004, Plaintiff filed a 14 page supplemental brief (hereafter referenced as "Supplement") with the Fourth Circuit Court of Appeals (Appx. G, pg. 1-14). The three Circuit Court Defendants supervised over the direct review. Plaintiff presented on the Supplement, pages 11-12 (Appx. G, pg. 11-12) contested calculation facts of a Base Offense Level of 12 ("BOL"), Criminal History Category ("CHC") of III and a Mandatory Guideline Range of 15-21 months; and alleged and showed the legal tenets of Sections 3553(b)(1), 3585(b), and 3624(a) of the Sixth Amendment holding in Booker at 226-234, applied to such contested calculation facts perfectly entitled him both a Sixth Amendment right to trial by jury (i.e., the mandatory legal tenets of the Booker ruling at 226-234,) and a Fifth Amendment right to a Legitimate Expectation of Finality as to the severity of his sentence and detention's legality not to exceed beyond 21 months or a date of Oct. 2003.

4. The Four Defendant judges tainted processes of administering this court's Directive of Booker, 543 U.S. 220, 268 (2005) ("DOB"), have since April 2005, for an ongoing 17 years, frustrated and roadblocked Plaintiff's access to court to have meaningful litigation and hearing on the intrinsic merits of his 5th and 6th Amend. claims.

Plaintiff's claims are "non-frivilous" and "arguable" being they were both awarded to Plaintiff by this Supreme Court's DOB, 543 U.S. at 268, and its directive to the four Defendant judges that they "MUST APPLY" the legal tenets of Sections 3553(b)(1), 3585(b), and 3624(a) of the SAHB, at 226-34, & the Remedial Holding of Booker, 543 U.S. at 245-46 ("RHB"), in a manner consistent with Griffith v. Kentucky, 479 U.S. 314, 328 (1987) ("Griffith"), to Plaintiff's filed, on August 20, 2004, Supplement, pages 11-12's, above stated, 5th and 6th Amend. underlying claims apposite calculation of facts' contest to the sentence and detention's legality beyond 21 month's or a date of Oct. 2003 (Appx. G, pg. 11-12).

5. The official court record of Ruhbayan, 406 F.3d 292, 298 n.6 (4th Cir.2005), does show the three Circuit Court Defendant judges receiving and supervising over Plaintiff's 14 page Supplement on Aug. 20, 2004 (Appx. G, pg. Cover-Page: stamped proof of filing). And it shows they buried alive his Supplement, pages 11-12's 5th and 6th Amend. claims (Appx. G, pg. 11-12), in the tiny obscure gravesite of Footnote Six to never again, at any time during any court proceeding, to consider or mention, in any court record, his Supplement, or to give it a conclusive adjudication of both the mandatory legal tenets of the Booker ruling and advisory legal

tenets of the RHB, in a manner consistent with Griffith, to Plaintiff's Supplement, pages 11-12's 5th and 6th Amend. claims' apposite contested calculation facts to the detention's legality beyond 21 months or Oct. 2003.

6. It follows the official court record of Ruhbayan, 406 F.3d at 301 n.9 (Appx. D, pg. 6-7) does show neither the DOB's Sixth Amendment ruling in Booker or RHB were applied to Plaintiff's presented 5th and 6th Amend. grounds of claims' Supplement's pages 11-12's apposite contested calculation facts of BOL of 12, CHC of III and a Mandatory Guideline Range of 15-21 months or Oct. 2003; but instead is shown Defendants applied the legal tenets of Booker's Sixth Amendment ruling to their unpresented and fabricated ground of claim's inapposite and uncontested calculation facts of a BOL of 32 to 36, CHC of VI and Mandatory Guideline Range of 210-262 months to 324-405 months; further Footnote nine of Ruhbayan, supra, shows Defendants adopted an illegal "Assuming, without deciding," adjudication posture to conduct their 'inconclusive test' of the detention's legality, despite Plaintiff/Petitioner's presented contested calculation facts of his Supplement pages 11-12, were clearly due process of and Legitimately Expecting a 'conclusive test' as to the detention's legality beyond 21 months or a date of Oct. 2003.

7. Accordingly the entire record as a whole of the case 2:02-cr-29(RBS), as such relevant records are chronologically set forth in (Appx. D, pg. 5-11 and 12-14), conclusively show that such incidences of their roadblocking access to court to frustrate a a meaningful litigation and hearing on the cause's 5th and 6th Amend. claims occurred, under their supervision during the 1st direct review of 2005 (Appx. D, pg. 6-7): 1st resentencing hearing

of November 2005 (Appx. D. pg. 7-8); 2nd direct review of May 2007 (Appx. D, pg 9); 3rd direct review of 2010: 1st 28 U.S.C. § 2255 hearing of 2011 (Appx. D, pg 10-11) and each of the successive years of his collateral habeas relief filings from 2012-2019 (Appx. D, pg. 12-14).

8. The district court Docket Record of (Appx. H, pg. 15) shows that Defendant judge Smith was utterly uninformed about Plaintiff's Supplement, pages 11-12's 5th and 6th Amend. claims' contest of the detention's legality beyond 21 months or a date of Oct. 2003, during its 1st resentencing hearing of Nov. 2005 (Appx. D, pg 7-8); 2nd resentencing of March 2009 and 1st § 2255 hearing of Apr. 2011 (Appx. D, pg. 10-11) because the record shows the district court failed to hold an evidentiary hearing and because the record of the Docket Sheet shows omission occurred as to all data involving data about plaintiff's Supplement filed on Aug. 20, 2004: the omissions occurred between 3/31/2004 to 4/22/2005, as is reflected in the docket sheet. The fact that the district court docket records omits all facts concerning the Supplement is important because it is important to be mindful that the three appellate defendant judges Robert B King, Allyson K. Duncan, and William W. Wilkins, had, as stated and earlier shown above, in FOOTNOTE SIX and FOOTNOTE NINE of Ruhbayan, 406 f.3d at 298 & 301, buried alive and put the nail in the coffin concerning Plaintiff's Supplement, page's 11 and 12's 5th and 6th Amend. claims.

9. So Plaintiff's 5th and 6th Amend. claims being both buried alive by the three appellate defendant judges and omitted from the district court docket records by the district court defendant judge or its clerk resulted in the four Defendants' cover up of

Plaintiff's Supplement and their having roadblocked it, for all times, from all air of expression before all and any competent court: further it denied Petitioner/Plaintiff access to the court to have (a)n opportunity to a meaningful litigation on the intrinsic merits of both his 5th and 6th Amend. claims.

10. Accordingly, on May 17, 2021, for all above reasons, Plaintiff in the Eastern District of North Carolina filed the instant prospective-denial-of-access suit (Appx. D), presenting in the cause two grounds of prospective claims, they were: 1) Prospective-declaratory and injunctive relief claims (Appx. D, pg. 15), that were an ancillary mechanism of a legal battering ram for and to 2) Count one (Appx. D, pg. 5) and Count Two's (Appx. D, pg. 12) prosepective denial of access claims' that were ancillary to the predicate underlying 5th and 6th Amend. claims.

Plaintiff's simple objective for his prospective declaratory relief claims and his simple justification for their being an ancillary mechanism of a battering ram for his prospective denial of access claims was simply to remove the four Defendant judges, ongoing 17 years, frustrating roadblocks so to future wise place him in a position to pursue his separate nonfrivolous arguable predicate underlying 5th and 6th Amend. claims.

The district court who supervised the cause of complaint, its decision is in (Appx. B). It summarily dismissed the cause's civil complaint, FIRST, for frivolity review reason of forma pauper status, pursuant to 28 U.S.C. § 1915 (Appx. B, pg. 2); and Secondly, for reason the court deemed the four defendant judges were "absolutely immune for acts performed in their judicial capacity." (Appx. B, pg. 2-3).

11. On July 15, 2022, the Circuit Court supervised the civil complaint's direct review (Appx. A). The Circuit Court stated that the district court's reason for dismissing the complaint were unwarranted, FIRST, because plaintiff was solvent filer, who beforehand had fully paid the filing fee (Appx. A, page 2); SECOND, because the four defendants were not absolutely immune due to the legal fact "Bivens does not bar declaratory relief against judges." (Appx. A, pg 3). However the supervising Circuit Court's decision dismissed the complaint of case, 1st, based on its decision's false premise deciding the case upon an unpresented and fabricated ground that plaintiff's cause sought only a singular ground of claim of a backward looking or retrospective "declaratory relief that past acts (Alone) that occurred within the context of his criminal proceedings violated his constitutional rights." (Appx. A, pg 3); 2nd, based on its false premise that over looked, by carelessness or design, Plaintiff's, above foresaid, two grounds of prospective declaratory relief claims and prospective denial of access claim's two predicate underlying 5th and 6th Amend. claims. (Appx. A, pg 3).

Therefore the decision's flawed conclusion (Appx. A, pg 3) found that "Ruhbayan's request for declaratory relief is purely retrospective . . . . As a result, Defendants (i.e. four federal judge collegues of the court) are protected by judicial immunity, and the district court correctly determined Ruhbayan was not entitled to relief under Bivens."

REASONS FOR GRANTING THE PETITION

I. Reasons Why the Writ Should be Granted

12. This Court's judicial supervision over the direct appeals, the administration of justice and the maintaining of the integrity of judicial review, in the federal courts, should require summary reversal of the Circuit Court's decision for the following 'three' reasons of 'A-C':

A) Harbury, 413-415 infra, supports the following two legal facts: 1) Count One (Appx. D, pg 5) and Count Two's (Appx. D, pg 12) prospective denial of access claims' predicate underlying 5th and 6th Amend. claims sufficiently established Art. III standing for their ancillary; 2) prospective declaratory releif claims (Appx. D, pg. 15);

B) Yet Harbury, 413-415, conflicts with the Circuit Court's, following two judicial procedure acts of: 1) cover up of or over-looking of such two prospective claims and 2) its deciding the cause soley based upon its unpresented and fabricated ground of a retrospective claim (Appx. A, pg. 3);

C) Hence in light of Kordel, 397 U.S. at 11 infra, Hastings, 461 U.S. at 505 infra, and Mcnabb, 318 U.S. at 34 infra, the Circuit Court's immediate above, conflicting two judicial procedural acts, denies plaintiff access to court on such two prospective claims; convincingly implies the Circuit Court's attempting to cover up the four defendant judges' ongoing 17 years, roadblocking access to court, regarding the cause's two claims; and gives a rogish blackeye of corruption and lack of INTEGRITY OF JUDICIAL REVIEW, within Art. III Halls.

13. Accordingly Petitioner/Plaintiff seeks that the Writ of Certiorari be granted to afford due administration of justice to achieve either or all of the following enumerated 'FOUR AIMS':

1) To rectify the Circuit Court's rogishly wild, lawless and unenlightened judicial procedures of its decision's premise and conclusion to conform to the "accepted and usual judicial proceedings" of civilized legal standards of this COurt's decision in Christopher v. Harbury, 536 U.S. 403,413 (1943) ("Harbury"). See also, U.S. v. Mcnabb, 318 U.S. 332, 340 (1943) ("Mcnabb") ("The scope of our reviewing power . . . (of cases) brought here from the federal courts is not confined to ascertain of constitutional validity. Judicial Supervision of the Administration of . . . justice in the federal courts implies the duty of establishing and maintaining 'civilized standards of procedure' and evidence.").

2) To restore the integrity of judicial review procedures as to the reflections of "such unfairness or want of consideration as to violate due process or constitute a departure from the proper standards in the administration of justice" regarding the Circuit Court's undue and departed processess from Harbury, at 413-415, and the four defendant judges, ongoing 17 years, undue and departed processes from the mandatory language of the Directive of Booker, 543 U.S. 220, 268 (2005) ("DOB"). See, e.g., U.S. v. Kordel, 397 U.S. 1, 11 (1970) ("Kordel") (Recognizing Supreme Court's supervisory powers cover presented issues of unfairness or want of consideration for justice as to violate due process or departures from proper standards in the administration of justice.); see also, Frazier v. Heebe, 482 U.S. 641 at footnote 6B ("Heebe") (Recognizing "The Court's supervisory power over federal courts allows the court to intervene to protect the integrity of the federal system.").

3) To deter the illegal conduct of the Circuit Court's erroneous application of Harbury at 413-415, and the Circuit Court's and four defendant judges' ongoing 17 years, cover up and road-blocking the cause's two grounds of prospective denial of access claims' underlying 5th and 6th Amendment claim. See e.g., U.S. v. Hastings, 461 U.S. 499, 505 (1983) ("The purpose underlying supervisory powers . . . [is] . . . to deter illegal conduct.").

4) To implement a remedy for the Circuit Court's decision's Conflict with Harbury, 536 U.S. at 413-415, and for the four Defendant judges', ongoing 17 years, violation of cover up and roadblocking Plaintiff's statutory and constitutional rights of the cause's prospective denial of access claims' 5th and 6th Amend. underlying claims. See, e.g., U.S. v. Hastings, 461 U.S. at 505 (1983) ("The purpose underlying supervisory powers . . . [is] . . . to implement a remedy for the violation of a recognized statutory or constitutional right.").

14. Accordingly Petitioner/Plaintiff suggest that either this Court, in light of Hastings at 505, or the Solicitor General, in light of whatsoever relevant statutory ad hoc provisions for ad hoc circumstances, immediately initiate and implement either one the following TWO REMEDIES: REMEDY ONE: Schedule order or simply initiate and invite Plaintiff/Petitioner to an impromtu IMPARLANCE meeting, so far as for the Solicitor General's delegated representative and Plaintiff to reach an amicable and private settlement of the instant suit of complaint.

REMEDY TWO: For this Court or the Solicitor General to direct the Circuit Court and four Defendant judges to immediately present, before this lofty - Supreme Court and Plaintiff a single official sentencing, direct review, or section 2255 hearing record of court,

showing a single paragraph or sentence, that conclusively and clearly verifies that the four defendant judges did give Plaintiff (a)n Opportunity to a meaningful litigation and hearing of an applied application of the mandatory legal tenets of 18 U.S.C. Sections 3553(b)(1), 3585(b), and 3624(a) of the Sixth Amendment holding of Booker, 543 U.S. at 226-234 (2005) ("SAHB"), to his Supplement's pages 11-12's 5th and 6th Amend. underlying claims' contested calculation facts of the detention's legality beyond 21 months or a date of Oct. 2003 (Appx. G, pg. 11-12).

However, in advance, Plaintiff assures this Honorable Supreme Court that the Fourth Circuit Court of Appeals and the four Defendant judges will not and can not present such single paragraph or even single sentence from an official court document of court proceedings due to their ongoing 17 years' cover up and roadblocking of access of Petitioner's/Plaintiff's 5th and 6th Amend. underlying claims.

II. FACTS SHOWN WHY THE WRIT SHOULD BE GRANTED

15. The Circuit Court's decision decided the cause soley based upon its unpresented and fabricated ground of a backward looking or retrospective declaratory relief claim, by its decision's jump from its fabricated premise (i.e. "He (Plaintiff) sought a declaratory judgment that past actions that occurred within the context of his criminal proceedings violated his constitutional rights." (Appx. A, pg. 3)) to its flawed conclusion (Ruhbayans's request for declaratory relief is purely retrospective". (Appx. A, pg. 3)). Therefore its fabricated premise and flawed conclusion overlooked, the cause's only two presented two grounds of claim, they were: 1) prospective declaratory relief claims (Appx. D, pg. 15) that were ancillary to 2) Count One (Appx. D, pg 5-11) and

Count Two's (Appx. D, pg. 12-14) prospective denial of access claims that were ancillary to the predicate underlying claims--both a 6th Amend. right to trial by jury (i.e. the legal tenets of the SAHB, 543 U.S. at 226-234) and a 5th Amend. right to a Legitimate Expection of Finality as to the severity of the sentence or detention's legality not to exceed 21 months or a date of October 2003.

16. The Supreme Court, in Harbury, 536 U.S. at 413, holds that two categories emerge where a Plaintiff, as here, sought only forward-looking declaratory and injunctive relief claims that were ancillary to a denial of access claim.

The first sort is purely prospective or forward-looking, Harbury at 413, the second sort is purely retrospective or backward-looking, Harbury at 414. Further, where a Plaintiff, as here, sought only a forward-looking declaratory and injunctive relief, a presented purely backward-looking, retrospective or past injury denial of access claim is insufficient to establish constitutional Art. III standing. Rather the Plaintiff must present a purely forward-looking, prospective or actual injury denial of access claim that is ancillary to a nonfrivolous arguable underlying claim to sufficiently establish const. Art. III standing, Harbury at 415.

17. Plaintiff's simple objective for his prospective declaratory claims and his simple justification for their being purely an ancillary mechanism of a battering ram for his prospective denial of access claims was simply to remove the four Defendant judges, ongoing 17 years, frustrating roadblocks concerning their tainted processes of administrating the DOB, 543 U.S. at 268, so to future

wise place him in a position to pursue his separate nonfrivolous arguable two predicate underlying claims--both a 6th Amend. right to jury trial (i.e. the mandatory legal tenets of the SAHB, 543 U.S. at 226-234) and a 5th Amend. right to a Legitimate Expectation of Finality as to the severity of his sentence and detention's legality not to exceed 21 months or a date of Oct. 2003. See e.g., Regal Cinemas, Inc v. Town of Culpeper, 2021 U.S. Dist. LEXIS 131191, at LEXIS 23 (July 14, 2021) (Recognizing "A Declaratory judgment is inherently a 'forward looking mechanism' intended to guide the parties behavior in the future.").

18. It follows the cause's plain text, immediately below shows, at (Appx. D, pg. 15) Plaintiff's sought declaratory and injunctive relief claims' objective was 'purely prospective' and such prospective interest extended only so far as being an ancillary mechanism of a battering ram for the cause's prospective denial of access claims; the relevant quoted excerpts of the cause's request for declaratory and injunctive relief reads: ("PROSPECTIVE DECLARATORY, INJUNCTIVE AND DAMAGES RELIEF: Declaratory relief seeking determination of the validity of procedures for imposing the legal standard of the DOB (i.e. DIRECTIVE OF BOOKER), 543 U.S. 220, 268 (2005) . . . to provide Mr. Ruhbayan a first Opportunity of access of hearing to redress . . . his 5th Amendment (underlying) claim of a Legitimate Expectation of Finality and in conclusion is, Sought any prospective declaratory, injunctive and damages relief this court deems that equity and proper carriage of justice requires in order to deter defendants (four Defendant judges) from future invalid procedures of the legal standard of the DOB (543 U.S. at 268) and to expedite restoration of Mr. Ruhbayan's sacred

1st and 5th Amend. rights of access to courts regarding the (underlying) claims of this suit." (Appx. D, pg 15)).

Specifically Harbury at 415, supports that the cause's prospective denial of access claim's underlying claims of a 5th and 6th Amend. sufficiently established const. Art. III standing for their ancillary declaratory and injunctive relief claims where Count One (App. D, pg. 5) and Count Two (Appx. D, pg. 12) alleged "elements" that FIRST, described the official acts of the four Defendant judges' roadblocking of the litigation, in the following manner of quoted language: ("1st and 5th Amendment U.S. Constitution deprivation of access of hearing, under the U.S. Supreme Court's Directive of Booker, 543 U.S. 220 at 268 (2005) . . . ."); SECONDLY, described the underlying claim and that it was not forever lost, but anticipated to be redressed in future litigation, in the following manner of quoted language: ("to redress in a federal court a Fifth Amendment claim of a Legitimate Expectation of Finality . . . ."). THIRDLY, described the official actors, four Defendant judges, in the following manner of quoted language: ("Against Art. III Defendant judges Robert B. King, Allyson K. Duncan, William W. Wilkins of the Appellate Court of Richmond VA. and District judge Rebecca B. Smith of the district court of Norfolk, VA . . . .").

19. In addition the cause's COUNT ONE AND COUNT TWO'S arguments' allegments (Appx. D, 5-11 and 12-14) and the cause's DECLARATORY RELIEF CLAIMS'allegments (Appx. D, pg. 15) and the cause's PETITION OF DIRECT APPEALS' SUPPORTING FACTS' SECTION (Appx. E, pg. 2) and its REQUESTED RELIEF SECTION (Appx. E, pg. 3) provide and describe

and exhaustive account to meet each of the immediate above 3 "elements'" requirements of Harbury, at 413 and 415. See e.g., Harbury at 415 ("We noted that even in forward looking . . . prisoner actions to future litigation the named Plaintiff must identify a "nonfrivolous" "arguable" "underlying" claim . . . . It follows that the underlying cause of action is an element that must be described in the complaint just as much as allegations must describe the official acts frstrating the litigation."). Harbury at 413 ("In causes of this sort (i.e., prospective/forward-looking), the essence of the access claim is that the official action is presently denying an opportunity to litigate . . . the opportunity is not forever lost for all time, however, but only in the short term, the object of the denial suit, and the justification for recognizing the claim, is to place the plaintiff in a position to pursue a separate claim for relief once the frustrating condition has been removed.").

It follows that the DOB, 543 U.S. at 268, in direct quote as follows reads:

> " We must apply today's holdings-both the Sixth Amendment holding and remedial interpretation of the Sentencing Act---to all cases on direct review. Griffith v. Kentucky, 479 U.S. 314, 328 (1987) (" (A) new rule for the conduct of criminal prosecution is to be applied retroactively to all cases on direct review or not yet final. ") ").

Accordingly, for an ongoing 17 years, the Circuit Court and the four Defendant judges have defied the DOB, being they have roadblocked Petitioner's access to meaningful litigation & hearing of an applied application of holdings-both the SAHB, 543 U.S. at 226-234 & the

RHB, 543 U.S. at 245-246, to petitioner's Supplement, pages 11-12's 5th & 6th Amend. claims contested calculation facts of the instant sentence & detention's legality beyond 21 months or Oct. 2003. Further nor can or will the Circuit Court or four Defendant judges produce a single paragraph or sentence from any official court proceeding of record showing, conclusively, that they, in fact, honored the DOB, by affording Petitioner such a meaningful litigation and hearing.

E.g. see, Lundien, 769 f.2d 981 at 984-985 (4th cir./App. Ct./1985)

(Recognizing Legitimate Expectation of Finality is 5th Amend. due process right; court cannot reimpose sentence, once defendant has fully served maximum lawful sentence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

RZRZ

Date: 12/19/2022