ORIGINAL

No. 22-6773

SUPREME COURT OF THE UNITED STATES

Ernest Adimora-Nweke,

Petitioner,

vs.

Texas Department of Public Safety, Harris County, *et al*

Respondent(s).

On Petition for a Writ of Certiorari to
the United States Court of Appeals for
the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Ernest Adimora-Nweke
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Pro Se Petitioner
In forma Pauperis

I. Issues Presented

(1) Whether Petitioner's *in forma pauperis* status from state court applies post removal to Federal Court.

(2) Whether Petitioner's appeal was in good faith (i.e., not frivolous)

A. Whether Petitioner failed to state a federal civil rights claim, *inter alia.*

I. Whether Texas Department of Public Safety's DIC-24 statutory warning form, required for implied consent to breath or blood draw of subjects, is void of due process fair notice for non-compliance with Tex. Transp. Code §724.015(a)(6) & §724.015(a)(8); & warrant the proposed class action injunction & rectification.

II. Whether probable cause hearings in Harris County are irreparably & harmfully void of due process for these customs and practices on citizens: (1) denial of hearing rebuttal rights for the accused, (2) denial of counsel rights for the accused, and (3) denial of impartial magistrate & tribunal rights; and *inter alia,* warrant the proposed class action injunction and rectification.

III. Whether judicial and prosecutorial **absolute immunity, a fallacy-fundamental error since 1607, must be abolished**, or rendered inapt in Petitioner's federal civil rights claims: per Magna Carta Art(s). 39 & 40; *Bowser v. Collins*, 145 Eng. Rep. 97 (1482); Decl. of Ind.; U.S. Const. Amd. V & XIV; 42. U.S.C. §1983; *Randall v. Brigham*, 74 U.S. 523 (1869); *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949), *Villages of Willowbrook v. Olech*, 528 U. S. 562 (2000); & *Taylor v. Riojas*, 141 S. Ct. 52 (2020).

B. Whether Petitioner merited independent action, class action, & claims severance.

II. List of Parties

Petitioner: Ernest Adimora-Nweke.
Respondent(s): Texas Dept. of Public Safety ("TxDPS") & Harris County ("HC").
Unserved & putative defendants:

- HC District Attorney's Office
- HC District Attorney Kim Ogg
- Houston Police Department ("HPD")
- Hannah O. Yarbrough-Smith
- Jarrod T. Walker
- Damiola Fola Akinfolain
- Former HPD Officer J.J. Barbar
- HPD Officers E.A. Blenton
- HPD Officer J.D. Tallant
- HPD Officer M. Meyer
- HPD Officer M.A. Reyes
- HPD Officer Z. Wang
- Former HPD Officer D.R. Daniel III
- HC Assistant District Attorney ("ADA") Veronica Nelson
- Former HC ADA John Patrick Denholm II
- Former HC ADA Elizabeth D. Barron
- Former HC ADA & current HC magistrate judge, Eva G. Flores
- CWS Galleria, 5250, L.P.
- HC Deputy Constable Chad Schoenvogel
- HC Deputy Constable Carmelo Aponte
- Former HC District Court Judge Randy Roll
- HC ADA Jennifer Lawrence
- HC ADA R. Allen Otto
- Former HC ADA Edekel Tecle
- HC Criminal Court at Law Judge Tonya Jones
- HC District Court Judge Barbara J. Stalder

III. Related Cases

- *Adimora-Nweke v. McGraw*, U.S. 5th Circ. Case No. 22-20472, Filed on 9/14/2022.
- *Adimora-Nweke v. McGraw*, U.S. 5th Circ. Case No. 22-20269, Filed on 6/7/2022.
    - Judgment of Dismissal for Failure to Pay Appeal Fee on 8/15/2022.
- *Adimora-Nweke v. McGraw et al*, USDC#: 4:22-cv-00765, Filed on 3/10/2022.
    - Judgment of Dismissal with Prejudice on 5/25/2022.
- *Adimora-Nweke, Ernest v. McGraw, Steven C. (Director of Texas Department of Public Safety)*, Independent Action in Equity Cause # 202209293, HC Dist. Court 133, Filed on 2/15/2022. (Transferred to HC Dist. Crt 234; Removed on 3/10/2022)
- *Adimora-Nweke v. Yarbrough-Smith et al*, USDC#: 4:22-cv-04149, Filed on 12/4/2020. (Original Removed Action)
    - Judgment of Dismissal with Prejudice on 12/27/2021.
    - Denied Fed. R. Civ. Pro. Rule 59 Motion for Reconsideration on 1/26/2022.
- *Adimora-Nweke, Ernest v. Yarbrough-Smith, Hannah O.*, Cause # 202056824, HC Dist. Court 234, Filed on 9/15/2020. (Original Action; Removed on 12/4/2020)

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V. Table of Authorities

VI. Petition for Writ Of Certiorari

Pro se & *in forma pauperis* Petitioner, Ernest Adimora-Nweke, respectfully petitions this court for a writ of certiorari to review (a) the 8/15/2022 judgment-mandate of the Fed. 5th Circ Appeals denying *in forma pauperis* Petitioner's appeal, in cause 22-20269, for failure to pay appeal fee; (b) the 5th Circ's subsequent orders denying reinstatement, reconsideration, transfer, & expedited appeal; (c) the applicable District Court's challenged judgments & orders in causes 4:22-CV-00765 & 4:20-CV-04149; & (d) Petitioner's "Related *Writ" of Certiorari* on a 28 U.S.C. §1651 petition, cause 22-20472 from Fed. 5th Circ[1]; & thereafter, grant reliefs sought.

VII. Opinions Below (all unpublished)

The 5th Cir Appeals decision denying Petitioner's appeal, post Petitioner's FRAP 24(a) motion(s), is attached at Appendix Pg. ("Appx.,") 6–7. 5th Circ's orders denying reopen, reconsideration, reinstatement, & expedited appeal, are attached at Appx. 1–5. Dist. Court's order denying Petitioner's FRAP 24(a) motion is attached at Appx., 15–16. Dist. Court's dismissal of the appealed independent action (USDC# 4:22-CV-00765) is at Appx., 17–21. The magistrate's dismissal recommendation & opinion, dismissal w/ prejudice order & judgment, & order denying reconsideration & further motions, from the original action (USDC# 4:20-CV-04149), are at Appx., 28–52.

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[1] *See, In re Ernest Adimora-Nweke, "APPELLANT'S FRAP Rules 2, 21(c), 27, & 47.7 Motion for In forma Pauperis, & Extraordinary Writ,"* Doc. 00516471675, Cause No: 22-20472, Filed on 9/14/2022, Fed. 5th Circ. Appeals Crt.; *See also*, Appx(s). 546 (State Crt. Cases); *See also*, 1/18/2023 *SCOTUS Rule 14.5 Letter* (RE: "Related *Writ" of Certiorari* on Fed. 5th Circ. 1/11/2023 Judgment Mandate on Cause #22-20472; filed w/n due 90-days; *See* said "Related *Writ*" Appx. 907-956, 966, 974-981, 990-991, 993-996, 1012-1013, 1029-1048, 1174 (Void Judgements & Orders); 590-664, 1175-1283 (Prior Writ(s)).

VIII. Jurisdiction

Petitioner's FRAP 24(a)(5) motion to the Federal 5th Circuit Appeals Court was denied on 8/15/2022, via a judgement-mandate order of dismissal.[2] Petitioner invokes this Court's jurisdiction per 28 U.S.C. §1254, upon filing this writ of certiorari petition within 90 days of Fed.[3] 5th Circuit's 8/15/2022 judgment-mandate disposition order. Petitioner's 6/6/2022 appeal notice, post U.S. Dist. Court's 5/25/2022 final judgment, gave 5th Circuit jurisdiction.[4] Writ is subject to two welcomed 1/18/2023 & 11/23/2022 Rule 14.5 extensions.

IX. Provisions Involved

TEXAS TRANSPORTATION CODE CHAPTER 724. IMPLIED CONSENT
SUBCHAPTER B. TAKING & ANALYSIS OF SPECIMEN

§724.015. INFORMATION PROVIDED BY OFFICER BEFORE REQUESTING SPECIMEN; STATEMENT OF CONSENT. (a) Before requesting a person to submit to the taking of a specimen, the officer shall inform the person orally & in writing that:

(6) if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions & for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state;...

(8) if the person submits to the taking of a blood specimen, the specimen will be retained & preserved in accordance with Article 38.50, Code of Criminal Procedure.

Amended by: Acts 2011, 82nd Leg., R.S., Ch. 674 (S.B. 1787), Sec. 1, eff. September 1, 2011. Acts 2021, 87th Leg., R.S., Ch. 840 (S.B. 335), Sec. 2, eff. September 1, 2021.

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[2] Appx., 5–7.
[3] *28 U.S.C. §1254.*
[4] *29 U.S.C. §1291.*

Legislative History:

A.

United States Senate, *Federal Bail Procedures: Hearings before the Subcommittee on Constitutional Rights & the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary*; pg. 123; 89th Congress, 1st session on S. 1357, S. 646, S. 647, & S. 648; June 15, 16, & 17 (1965).

> "III. Most importantly, we would broaden the coverage of the bill. We would expand it to include all cases removed to Federal courts from State court as well as those arising as a result of offense against the United States or a violation of the District of Columbia Code...
>
> IV(a)... No one should ever be denied release from custody solely because of a lack of money. **A not inappropriate analogy relates to appeals *in forma pauperis*. No one is ever prevented from carrying his case up because of lack of funds**..."

B.

The Congressional Globe, 42d Cong., 1st Session. (1871) (Rep. Platt, Rep. Rainey, Rep. Beatty, Rep. Garfield, Sen. Thurman, Rep. Lewis, & Rep. Arthur's congressional remarks – judicial immunity unavailable for state court judges under Civil Rights Act of 1871; congress also intended Civil Rights Act as a specific remedy to harassment litigation & unjust prosecution injustices in southern courts.)

Other Statutes & Rules of Procedures Include[5]:

- United States Constitution, Amendment(s) I, IV, V, VI, & XIV§1
- 42 U.S.C. §1983, §1985, & §1986
- Fed. Rules App. Pro. Rule 24
- Tex. Rules Civ. Pro Rule 145

APPX. CITATION #:

☐ *Writ of Cert* (on Fed. 5th Circ. Case# 22-20269) Appx. #s: 1–589, 1049-1173, & 1284-1364;

☐ "Related *Writ*" (due on 5th Cir. C# 22-20472) Cited Appx. #s: 590–1048, 1174-1283.

[5] Per *Supreme Court Rule* 14.1(f), see Appx. 1(i)(v) provisions in Appx., 68–76.

X. Statement of the Case

REASON(S) FOR GRANTING THE WRIT

By ultimately denying Petitioner his due process petition right to proceed *in forma pauperis* in trial court & appellate court, simply due to lack of funds, the Federal Fifth Circuit **(a)** departed from the accepted & usual course of judicial proceedings, & sanctioned such a departure by the trial court, as to call for an exercise of this Court's supervisory power; **(b)** effectively decided an important federal question in a way that conflicts with a decision by a state court of last resort; **(c)** effectively decided an important question of federal law that has not been, but should be, settled by this Court; & **(d)** effectively decided an important federal question in a way that conflicts with relevant decisions of this Court.

SCOTUS must also intervene to review & grant Petitioner's related yet mutually exclusive "Related *Writ*" of certiorari on a 28 U.S.C. §1651 petition from Fed. 5th Circuit.[6] The §1651 petition's writ seeks to vacate, *inter alia*, (a) void DWI & interference with public duties convictions related to this certiorari petition's **Issue 2(A)(I)** incident[7]; & (b) 7+ void liberty deprivation orders[8] & judgments, from harassment & unjust prosecutions Petitioner endured in state courts,[9] all which give rise to further 42 U.S.C §1983 *et seq* claims & damages sought in dist. court.[10]

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[6] *See, In re Ernest Adimora-Nweke, Supra*, fn. 1; *See also*, Appx. 665-1028.
[7] *Infra*, Pg. 11; *See also, supra* fn. 1 ("Related *Writ*" Appx. 974–977).
[8] *See e.g.*, **Issue 2 (A)(II)** (*Infra.*, Pg. 19.); *Supra*, fn. 1.
[9] *See, e.g., Adimora-Nweke v. Yarbrough*, "Petitioner's Brief," Case No. 21-0800, Filed on 9/20/2021, Texas Supreme Court; *See also*, Appx. **1284-1364** (Court noticed, pled, & served evidence of resulting damages (*See*, Appx. 698, 743, 759, 760, 801, 1073, 1074, 1075, 1120, 1121, 1127, 1130, 1133, 1144). These are evidence of tortiously interfered &/or harmed business & clients, per the always pled 1st, 4th, & 14th Amend. civil rights violations in, *inter alia*, **HC Cause # 201917921**.); *See also*, Appx. 435-436.
[10] *See, 42 U.S.C §1983; §1985; & §1986.*

Petitioner seeks to efficiently resolve all claims for damages upon remand of this appealed civil rights case, & via a severed docket motioned in trial court.[11]

Issue 1: Whether Petitioner's *in forma pauperis* status from state court applies post removal to Federal Court.

In summary, the federal courts do not honor *in forma pauperis* status from state courts. Petitioner's SCOTUS *in forma pauperis* motion submitted with this Writ of Certiorari, briefly proves Petitioner warrants to appeal *in forma pauperis.*

Petitioner appealed to the Federal 5th Circuit, *in forma pauperis.* The 5th circuit dismissed the appeal for failure to pay appeal fee.[12]

In America, no person is ever deprived access to court for lack of funds, including civil federal appeals post removal.[13]

Hence the 5th Circuit judgment is an unconstitutional paradox, for flagrant deprivation of Petitioner's entitled 1st Amendment appeal-petition rights[14]; & warrant this Supreme Courts intervention & supervision.[15]

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[11] Appx. 420-432; 512-515.

[12] Appx. 5-7.

[13] *United States Senate, Federal Bail Procedures: Hearings before the Subcommittee ..., Supra,* Pg. 3 ("IV(a)... No one should ever be denied release from custody solely because of a lack of money. **A not inappropriate analogy relates to appeals *in forma pauperis.* No one is ever prevented from carrying his case up because of lack of funds**..."); *See also, Tex. R. App. Pro. Rule 20.1; 20.1(b)(1)*

[14] *Hooks v. Wainwright,* 352 F.Supp. 163, 167 (M.D. Fla. 1972) ("...the constitutional protection of access to the courts is much broader, for it includes access to all courts, both state & federal, without regard to the type of petition or relief sought. *U.S. Const. Amends. I & XIV, § 1.*"); *Adams v. Carlson,* 488 F.2d. 619, 632 – 634 (7th Circ. 1973) ("'Access to the courts,' . . . is a larger concept than that put forward by the State. It encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him..."); *BEK Constr. V. NLRB,* 536 US 516, 525 (2002) (..."the right to petition extends to all departments of the Government," & that "[t]he right of access to the courts is ... but one aspect of the right of petition.").

[15] *U.S. Supreme Court Rule 10.*

The Original (1st) Action (USDC No. 4:20-CV-04149)

Petitioner filed both the original (1st) suit & the independent (2nd) action in state court, complied with all petition requirements to proceed *in forma pauperis* in the suits, & was eventually granted said right.[16] In the 1st action, the clerk only served TxDPS via Director McGraw.[17] TxDPS responded, & immediately removed the action[18] to federal court; before Petitioner noticed that none else was served process.

Post removal in said 1st action, upon Petitioner's efforts to serve additional parties, the trail court stayed the case & referred it to an unconsented & unneutrally detached federal trial court magistrate, who – with record knowledge of Petitioner's lack of funds & *in forma pauperis* status pre-removal – deceptively requested Petitioner to file a 28 U.S.C. §1915 application to proceed without costs.[19]

At the void §1915 hearing, which occurred on 4/7/2021 & after the FRCP Rule 4 90-day deadline to serve parties had lapsed, the unconsented & unneutrally detached magistrate deceptively requested that Petitioner either (a) withdraw his application, or (b) have the case dismissed for failure to state a claim.[20] The court never set a deadline to serve parties.[21] Petitioner lacked funds to serve parties,[22] yet had summary judgment ("SJ") 4th & 14th Amd U.S. Const §1983 claims[23] duly pled, with filed supporting SJ evidence[24]. Petitioner was therefore unduly coerced, or

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[16] Appx. 70–71; 90–106; 235–254.
[17] Appx. 100–106; 316.
[18] Appx. 56 (Doc. 1); 290-292; *See also*, USDC # 4:20-CV-4149, S.D. TX, Filed 12/4/2020. *Supra*, Pg. iii.
[19] Appx. Pg. 58–59; 57 (Doc #s. 11, 12, & 21). Court also lost jurisdiction. *28 U.S.C. §455(a) & (b)(1)*
[20] Appx. 59–60 (Doc. 48); 117; 116–118; 197.
[21] Appx. 56-61; 119.
[22] Appx. 100–106; 116–118; 175–177; 198; 203–204; 205; 218–219; 235–254.
[23] Appx. 107-140; 313; 317–338.
[24] Appx. 141-153; 164-171; 339–340; 341-359; 583-585.

forced, to withdraw the §1915 application – a deprivation of petition due process rights – than have the case dismissed.[25]

Hence, the unneutrally detached & unconsented magistrate, deceptively denied Petitioner of right to proceed without costs & serve additional non-TxDPS defendants post removal in federal court; & did so without a finding that Petitioner was not otherwise entitled to proceed without costs, as required under FRAP 24(a)(3).

The magistrate & the trial court judge then subsequently & wrongfully dismissed the case for failure to state a claim;[26] & disallowed service on non-TxDPS parties on the non-TxDPS claims.[27] Thereafter, they denied any further post judgment motions.[28]

The orders precluded Petitioner's opportunity to file a FRAP 24(a) post judgment motion, obtain a 24(a)(3) ruling, & if denied, be entitled to file the a FRAP 24(a)(5) motion in appellate court; in order to appeal *in forma pauperis*.[29] Else, Petitioner must pay for appeal filing & transcript costs.[30]

Hence, without funds to pay for appeal costs[31], Petitioner's *in forma pauperis* procedural appeal rights were wrongfully impeded by the trial court's preclusion of further motions;[32] & by its deceptive forced withdrawal of the §1915 application,

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[25] Appx. 175–177; 40.
[26] Appx. 41–52.
[27] Appx. 38–39; 118–119; **353–358.**
[28] Appx. 39; 534.
[29] Appx. 71–72.
[30] *FRAP R. 24(a)(1).*
[31] See, e.g., Appx. 100-101; 218-219; 234-254; 534.
[32] Appx. 39; 534.

without a finding that Petitioner was not otherwise entitled to proceed without costs for appeal,[33] as required under FRAP 24(a)(3).[34]

The Independent (2nd) Action in Equity (USDC No. 4:22-CV-00765)

Petitioner consequently refiled an independent (2nd) action & class action motion in state court,[35] & again complied with all requirements to proceed *in forma pauperis* in the suits, & was again granted the const. right.[36]

In said 2nd action, Petitioner was able to get both TxDPS & HC respondents served by the state clerk pre-transfer[37], & before any responses & removal of action.[38]

Once in federal court, the fed. court clerk refused to honor Petitioner's request to serve additional parties.[39] Respondents TxDPS & HC filed dispositive FRCP Rule 12(c) & 12(b)(6) Motions, respectively.[40] Petitioner responded.[41] The trial court dismissed the case again without an initial conference or docket scheduling.[42]

Post filing notice of appeal,[43] the 5th Circuit appeal clerk refused to honor Petitioner's uncontroverted[44] pre-removal *in forma pauperis* status from state court; & required *in forma pauperis* Petitioner to file a FRAP 24(a)(1) motion in federal trial dist. court to obtain an order allowing him to proceed *in forma pauperis* for

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[33] Appx. 40; 175-177; 316.
[34] *FRAP R. 24(a)(3).*
[35] Appx. 107-140; 313-338; 341-359; 360-382; 531-538.
[36] Appx. 90-99; *Accord, U.S. Const. Amd. XIV, §1.*
[37] Appx. 27.
[38] Appx. 23 (Doc.1).
[39] Appx. 24 (Doc. 17).
[40] Appx. 293-312; 391-410.
[41] Appx. 531-545; 419-432.
[42] Appx. 17-21; 24.
[43] Appx. 24.
[44] *FRAP Rule 24(a)(3);* Appx. 90-99.

appeal.[45] Petitioner called the clerk & informed her such wasn't proper per FRAP 24, & only gives the trial court an opportunity to controvert Petitioner's *in forma pauperis* status.[46] Yet, Petitioner complied;[47] & was invidiously treated as a prisoner;[48] as Petitioner now understands is Fed. Crt. policy to file mail-envelopes of such persons.

Petitioner also requested the transcripts of the 1st actions' 4/7/21 §1915 hearing.[49] The trial clerk & court denied the existence of the 4/7/21 hearing; even with minutes entry from the §1915 hearing docketed.[5051] The trial court also denied the application on non-good faith appeal grounds;[52] thereon officially controverting Petitioner's *in forma pauperis* status from state court[53] in the 2nd action.[54]

The 5th Circ. clerk requested Petitioner to pay or reapply per Rule 24.[55] To reapply, Petitioner only required a motion & Appx. 15-16 & 83-89.[56]

Since both action's dismissals were for failure to state a claim,[57] & since the FRAP 24(a) motion denial order was on grounds that the appeal was frivolous,[58] in order to show that Petitioner's appeal was in good faith & not frivolous, Petitioner

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[45] Appx. 11.
[46] *FRAP R. 24(a)(3)(A).*
[47] Appx. 25; 83-91.
[48] *See, e.g.*, Appx. 89.
[49] Appx. 25 (Doc. 26).
[50] Appx. 59 & 60 (Docs. 46 & 48).
[51] Such deceptive denial of transcripts for appeal petition rights, is (a) fraud by the court per false representation, & (b) irreparable harm to Petitioner's liberty to appeal or an independent action in equity; that vitiates the proceedings with causes 4:22-CV-00765 & 4:22-CV-04149, & all entered orders & judgments, for lack of jurisdictional due process for Petitioner, including lack of impartial tribunal, magistrate, & judge. *See Infra*, fn(s) 109, 110, & 111. Hence Petitioner warrants the independent action sought. *See also, Infra*, Pg. 36 (**Issue 2(B)**).
[52] Appx. 15-16.
[53] Appx. 90-99.
[54] *FRAP 24(a)(3)(A); C.f. USDC Cause # 4:20-CV-04149 (1st Action); Supra* 6-8.
[55] Appx. 9.
[56] *FRAP 24(a)(5).*
[57] Appx. 15-21; 28-52.
[58] Appx. 15-16.

had to file a FRAP Rule 24(a)(5) motion showing that Petitioner stated a valid federal civil rights claim; which is similar but limited in scope to challenging the 12(b)(6) dismissal orders as required for appeal.[59] Hence Petitioner filed his brief, & all §1651 writ remedies needed, in a comprehensive R. 24(a)(5) motion.[60]

The 5th Circuit refused to read or review the motion, & required Petitioner to refile the application & motion, with another financial affidavit requirement from Petitioner.[61] Petitioner has & had no funds.[62] Petitioner motioned & tried to explain that a new financial affidavit was unnecessary as already provided to trial court & in the disregarded-pending 24(a)(5) motion; & that the trial court's reason for denying Petitioner's FRAP 24(a) application (i.e., non-good-faith[63]) also rendered any financial affidavit issue irrelevant & moot.[64]

5th Circuit seems in support of this writ, & ultimately showed such via (a) the unconstitutional reason stated in the 8/15/2022 order[65], which was issued in light of Petitioner's FRAP 24(a)(5) *in forma pauperis* motion[66], & (b) the denied transfer & reconsideration motion issues.[67] These are all void orders & judgements due vacated.

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[59] Appx. 15; 399-400.
[60] "APPELLANT'S FRAP Rule 21 Extraordinary Writ; FRAP Rule 21(d) Motion for Additional Word Count; 24(a)(5) Motion & BRIEF," *Adimora-Nweke v. McGraw*, Case No. 22-20269, Doc. No. 00516417289, Filed on 8/2/2022, U.S. Fed. 5th Circ.; *See e.g.*, Appx. 15-16 & 77-89 (14 of 349 pgs.).
[61] Appx. 8.
[62] Appx. 77–89; 219-220.
[63] Appx. 15.
[64] *See*, "APPELLANT's FRAP Rule 27.2.1 Motion to Reinstate Appeal, Supplement, Stay Mandate, & Transfer Case to D.C. Circuit," *Adimora-Nweke v. McGraw*, Fed. 5th Circuit Case No. 22-20269, Doc. No. 00516436680, Filed on 8/17/2022.
[65] **Appx. 6.**
[66] **Appx. 77–89.**
[67] **Appx. 498–530.**

Petitioner raises issues that occur daily throughout Texas & U.S., with irreparable harm to fundamental substantive & procedural due process rights of citizens. Most issues, e.g., Issues 2(A), regard statutory notice violations by government actors, with *inter alia*, irreparable harm to citizens & their rights.[68]

The trial court granted Respondents' 12(b)(6) dismissals,[69] then issued an impediment order finding; that appealing the independent action was non-good-faith.[70] Petitioner always pled various separate §1983, §1985, & §1986 damage & class action injunction claims,[71] against separate state & local govt defendants; hailing from 7+ different incidents involving unreasonable search & seizures of Petitioner, & invidiously, & insidiously denying him liberty, privacy, petition, equal protection, & due process rights. And such still continues, as well as the severe harm.

No officer witnessed any alleged crime; & no witness duly testified to such.

Hence there is a further compelling reason for this court to intervene, & swiftly grant Petitioner's writ, & it's just remedies sought. SCOTUS is **last resort.**

Issue 2(A)(I): Whether Texas Department of Public Safety's DIC-24 statutory warning form, required for implied consent to breath or blood draw of subjects, is void of due process fair notice for non-compliance with Tex. Transp. Code §724.015(a)(6) & (a)(8); & warrant the pled-proposed class action injunction & rectification.

TxDPS's DIC-24 statutory warning lacks fair notice; a basis for §1983 claim.

The DIC-24 statutory warning form is promulgated by Texas Department of Public Safety[72], for use in situations contemplated per Tex. Transp. Code §724.002 &

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[68] *Infra,* ***Pgs. 11-35.***
[69] Appx. 17-21.
[70] Appx. 16.
[71] Appx. 107-140; 141–255; 256–276; 313; 316–336; 341–359; 360–382; 441–467; 470–482; 484–497; 512-526.
[72] *See, Tex. Transportation Code §724.001(7); §724.003; §724.032(d).*

§724.011.[73] Petitioner was subjected to the DIC-24 form contents, by HPD officers, on the night of 11/14/18, upon a suspicion of DWI arrest.[74]

Petitioner requested an irrelevant §724.041 Administrative License Revocation ("ALR") Hearing on 11/16/18 (Appx. 141–**146**); within the §724.015(a)(7) 15-day request period that statutorily lapsed on **11/29/18**. TxDPS's allegedly drafted & post-mailed a 11/26/18 notice-to-cure hearing request to Petitioner's office, not to his home address as stated on the driver's license.[75] Petitioner never received the 11/26/18 notice letter; nor could have received it by the statutory 5-days mail transmission period[76] (i.e., by **12/1/18**), to still make any modified §724.041 hearing request by the statutory request deadline: **11/29/2018**.[77] Petitioner was denied the ALR hearing,[78] his driver's license **un**justly suspended,[79] & Petitioner is subject to a $125.00 reinstatement fee;[80] all without authority,[81] nor any fair notice & hearing opportunity.[82] NOTE: Per **Appx. 168**, 1/14/2018 **Order** of Suspension was received on 01/19/**2019.** Appx. 168 errs stating that Notice was received on 1/19/2018.

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[73] *Id. at §724.002 & §724.011.*
[74] Appx. 122–126; 146–148.
[75] Appx. 166.
[76] *Id. at §724.033(b)* (mail correspondences deemed received 5-days after TxDPS' dispatch.).
[77] Appx. 179-180; 181-200; 202; 208; 216-218; **265.**
[78] Appx. 167; **259**; 262-266.
[79] Appx. 164-165; 124; 259; 265.
[80] *Tex. Transp. Code §724.046*; Appx. 124; 190; 202; 213; 259; 265; 283.
[81] *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("'The fundamental requisite of due process of law is the opportunity to be heard'... This right to be heard has little reality or worth unless one is informed that the matter is pending & can choose for himself whether to appear or default, acquiesce or contest... [Notice] must apprise interested parties of the pendency of the action & afford them an opportunity to present their objections,... must be of such nature as reasonably to convey the required information,... [&] must afford a reasonable time for those interested to make their appearance..." (Citing *Milliken* v. *Meyer,* 311 U.S. 457 (1940); *Grannis* v. *Ordean,* 234 U.S. 385 (1914); *Priest* v. *Las Vegas,* 232 U.S. 604 (1914); & *Roller* v. *Holly,* 176 U.S. 398 (1900))).
[82] *Cf., Bell v. Burson,* 402 U.S. 535 (1971) (fair due process notice & hearing required before driver's license revocations).

The applicable versions of the DIC-24 statutory warning form at issue, are the versions in place post the 2011 & 2021 Texas congress amendments of §724.015(a).[83] Houston Police Department ("HPD") Officers used a copy of the pre-2021 amendment version against Petitioner on the night of 11/14/2018.[84] It lacks §724.015(a)(6).[85]

The 2021 Texas Congressional amendment of §724.015(a), simply added an additional subsection, §724.015(a)(8); with additional statutory disclosures to be provided citizens/subjects, orally & in writing, as required under §724.015(a).[86]

Petitioner, while drafting this *certiorari* writ, noticed online at TxDPS' website (**https://www.dps.texas.gov/Internetforms/Forms/DIC-24.pdf**) that TxDPS adjusted the DIC-24 warning in 9/2021, post the 2021 amendment of §724.015(a), & during the original litigation, to unreasonably & inconspicuously include the §(a)(8) 2021 Congress amendment's addition. ***Yet*** the current version still excludes §(a)(6)[87].

Hence, Texas' DIC-24 form & statutory warnings, have been void since 2011;[88] & is *prima facie* self-authenticating proof of deliberate indifference to due process implied consent right of **each** subject, per its continued excluded §(a)(6).

The contents of the DIC-24 form, is supposed to contain the statutory required fair notice disclosures enumerated in §724.015(a); required for implied consent authority of government to vest, for the sake of blood or breath draw of subjects.[89]

The deficiency of the DIC-24 forms as to required enumerated disclosures,

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[83] Appx. 145; 465.
[84] Appx. 171.
[85] *Id.*
[86] Appx. 68-69.
[87] Appx. 68; *See also,* **https://www.dps.texas.gov/Internetforms/Forms/DIC-24.pdf**; *See also,* Appx. 508-511.
[88] *Id*; *See also,* Appx. 69; 230-232.
[89] *See, Tex. Transp. Code §724.015(a)(1)–(a)(8); §724.003*; Appx. 123; 508.

trigger both procedural due process fair notice issues, & substantive due process liberty, privacy, & bodily integrity violation issues, with remedies for the resulting harm(s) available to citizens under 42 U.S.C. §1983.[90]

Oral & written provision of the statutory warnings of §724.015(a)(1) – (a)(8), to subjected citizens, are also prerequisites before govt. can request a citizen to submit to a breath or blood draw, & before any citizen's "refusal" logically occurs.[91]

The term "refusal" is an important prerequisite on the civil aspect, as it vests any jurisdictional authority of government to (1) admit the refusal in subsequent prosecution;[92] (2) permanently or temporarily suspend, revoke, or deny the subject's license to operate a motor vehicle – including as allowed in Subchapter C;[93] (3) institute any Subchapter D Administrative Hearings,[94] or compel hearing requests by the 15-day deadline from the subject, which triggers the citizen-subject's motor vehicle license revocation, suspension, or denial;[95] or (4) require any motor vehicle license reinstatement fees, costs, or charges from or the citizen-subject.[96]

For criminal proceedings, "refusal" vests the jurisdictional authority of government to apply for or issue a search warrant authorizing a blood specimen to be taken from the citizen-subject.[97] But Ch. 724 & its provisions & proceedings, are

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[90] *See, U.S. Const. Amd. XIV, §1; See also, 42 U.S.C. §1983; Accord, Ex Parte Young*, 209 U.S. 123 (1908); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Armstrong v. Manzo*, 380 U.S. 545, 550-552 (1965) (holding that subsequent hearing is no remedy for deprivation of due process notice & hearing, but vacating the entered orders or judgments); Appx. 135.
[91] *§724.015(a)*; Appx. 128; 256; 262-263; 270.
[92] *§724.015(a)(1).*
[93] *§724.015(a)(2) & (a)(6); See also, Tex. Transp. Code Ch. 724, Subchapter C* ("SUSPENSION OR DENIAL OF LICENSE ON **REFUSAL** OF SPECIMEN"); *§724.031 et seq.*
[94] *Tex. Transp. Code Ch. 724, Subchapter D* ("HEARING"); *§724.041 et seq.*
[95] *§724.015(a)(7); §724.041 et seq.; §724.031 et seq.*
[96] *§724.046(a)-(c).*
[97] *Tex. Code of Crim. Pro. Art. 18.01(j).*

strictly civil matters, & mutually exclusive from any related criminal proceedings.[98]

Hence, *inter alia*, without the DIC-24 statutory warning notice form contents in strict compliance[99] with §724.015(a), government agents (1) lack authority to apply for or issue a warrant to obtain blood specimen from subjects; (2) lack authority to draw blood specimens from subjects; (3) lack authority to temporarily or permanently suspend, revoke, or deny subjects of motor vehicle operation privileges; (4) lack authority to institute Administrative Hearings, or compel hearing request deadlines; & (5) lack authority cause subjects any resulting penalty, fees, or costs.

Without the DIC-24 form in strict compliance with §724.015(a), the state only has authority to obtain a search warrant to collect the subject's breath sample.[100] & therefore, all or a super-majority of blood samples collected since 2011, & collected pursuant to Tex, Transp. Code. Ch. 724, & Tex Code of Crim. Pro. Art. 18.01(j), have been illegally obtained evidence,[101] unreasonably searched & seized without jurisdictional authority, from unconstitutionally invaded citizens or subjects.

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[98] *Tex. Transp. Code §724.048(a)-(c).*

[99] *Accord,* ***BankDirect Capital Finance, LLC v. Plasma Fab, LLC.*****, 519 S.W.3d 76, 78 (Tex. 2017)** ("Today's case asks whether a notice provision in the Texas Premium Finance Act should be read as written, or instead whether the Court should adopt a 'substantial compliance' approach that excuses slipups. We opt for the former. The Legislature has codified 'substantial compliance' throughout Texas law — including in other Insurance Code notice provisions — forgiving less-than-strict conformity with various statutory commands. But it did not do so here. We decline to engraft what lawmakers declined to enact... This notice requirement is unambiguous, & '[w]here text is clear, text is determinative.' Plain language disallows ad-libbing, a cardinal principle we have reaffirmed regularly...The Legislature 'expresses its intent by the words it enacts & declares to be the law.' Our refusal to engraft a 'substantial compliance' exception seems particularly prudent given how ubiquitous 'substantial compliance' is throughout Texas law."); ***Bostock v. Clayton County, Georgia*****, 140 S. Ct. 1731, 1737 (2020)** ("When the express terms of a statute give us one answer & extratextual considerations suggest another, it's no contest. Only the written word is the law, & all persons are entitled to its benefit.").

[100] *Id.; Accord, Tex. Code of Crim. Pro. Art. 18.01(j).*

[101] *Accord, Franks v. Delaware*, 438 U.S. 154, 166 – 171 (1978).

Petitioner pled & raised these issues in the governing complaints,[102] & in the class action & partial summary judgment motions filed in the original & independent actions with causes 4:20-CV-04149[103] & 4:22-CV-00765[104] respectively.

Petitioner also duly raised the issues before Fed. 5th Circ.[105] Petitioner also raised these issues in his disregarded FRAP 24(a)(5) motion for appeal & extraordinary writ,[106] in his denied motion for reinstatement, & in his denied 8/17/22 reconsideration motion;[107] all in Fed. 5th Circ Case# 22-20269.

The trial courts & appellate courts have ruled contrary to governing laws,[108] & acted contrary to basic acceptable constitutional standards.[109] Such results in (a) invidious, insidious, & irrational discrimination against Petitioner, to the deprivation of his petition[110] & due process rights, & to the deprivation of equal protection & due

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[102] Appx. 107-140; 141-255; 313-340; 341-359; 583-585.
[103] Appx. 441-467; 470-482.
[104] Appx. 256-276; 360-382; 419-440.
[105] Appx. 498; **503-530**.
[106] Appx. 503 ("Doc. 00516417289 in Case: 22-20269, filed on 8/2/22, Fed. 5th Circ.").
[107] Appx. 503 ("Doc. 00516436680 in Case: 22-20269, filed on 8/17/22, Fed. 5th Circ.").
[108] *BankDirect Capital Finance, LLC v. Plasma Fab, LLC* 519 S.W.3d 76 (Tex. 2017); *Ex Parte Young*, 209 U.S. 123 (1908); & *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Tex. Transp. Code §724.015(a); 42 U.S.C. §1983; U.S. Const. Amd. I, IV, V, XIV, §1.*
[109] *See e.g., Marshall v Jerrico Inc.*, 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial & disinterested tribunal in both civil & criminal cases. This requirement of neutrality in adjudicative proceedings safeguards... the prevention of unjustified or mistaken deprivations & the promotion of participation & dialogue by affected individuals in the decision-making process.... by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. The requirement of neutrality has been jealously guarded by this [U.S. Supreme] Court."); *See also, Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868 (2009); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Accord, Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949) ("We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction & void, & attackable collaterally by *habeas corpus* if for crime, or by resistance to its enforcement if a civil judgment for money, because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, & its courts are included in this prohibition.").
[110] *Hooks v. Wainwright*, 352 F.Supp. 163, 167 (M.D. Fla. 1972) ("...the constitutional protection of access to the courts is much broader, for it includes access to all courts, both state & federal, without regard to the type of petition or relief sought. *U.S. Const. Amends. I & XIV, § 1.*"); *Adams v. Carlson*, 488 F.2d. 619, 632 – 634 (7th Circ. 1973) ("'Access to the courts,' . . . is a larger concept than that put

process rights of similarly subjects of §725.015(a); & (b) void harmful orders.[111]

Such is sufficient compelling reason for this court to intervene, swiftly grant Petitioner's writ, & grant the class action & §1983 injunction remedies sought on the void DIC-24 form & the resulting petition, equal protection & due process rights deprivations, & irreparable harm on Petitioner & subjected-citizens.[112]

TxDPS's state-wide used DIC-24 form, & the §724.046 $125 reinstatement fee still required of Petitioner, also (a) vests legal action standing for Petitioner,[113] & (b) assures that Petitioner's continuously pled elements for class action[114] are met for Petitioner's warranted class action injunction relief sought[115].

That Petitioner filed his independent action in state court[116] was immaterial because an independent action in equity is a federal cause of action in equity;[117] federal claims can be raised in state court;[118] & logically, any requirement of

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forward by the State. It encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him..."); *BEK Constr. V. NLRB*, 536 US 516, 525 (2002) (..."the right to petition extends to all departments of the Government," & that "[t]he right of access to the courts is ... but one aspect of the right of petition.").

[111] *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949); *See also, Bradley v. Fisher*, 80 U.S. 335, 343 (1871) ("Admit that the court may proceed summarily, still summary jurisdiction is not arbitrary power; & a summons & opportunity of being heard is a fundamental principle of all justice... Without then having summoned [Petitioner], & having given to him an opportunity to be heard, the court had no jurisdiction of [Petitioner]'s person or of any case relating to *him*. It is not enough that it have jurisdiction over the subject-matter of the complainant generally; it must have jurisdiction over the particular case, & if it have not, the judgment is void *ab initio.")*.

[112] *Pulliam v. Allen*, 466 U.S. 522 (1984) (no absolute immunity from §1983 injunctions); *Accord, Ex Parte Young*, 209 U.S. 123 (1908); *See also*, Appx. **116–118**; 124; **128–135**; 149–152; **449-453**; **512-530**.

[113] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992).

[114] *See, Fed. R. Civ. Pro. Rules 23(a), 23(b), & 23(c).*

[115] Appx. 512-530.

[116] Appx. 107-414; 313; 341.

[117] *U.S. v. Beggerly*, 524 U.S. 38, 44-46 (1998) (discussing bill of review procedural remedy replaced by "independent action in equity," a federal "equity" original action.).

[118] *Driscoll v. Superior Court of Madera County*, 2014 WL 333411 (January 30, 2014, Cal. App. 5 Dist.) ("The Supreme Court has 'consistently held that state courts have inherent authority, & are thus presumptively competent, to adjudicate claims arising under the laws of the United State'... '[T]he presumption of concurrent jurisdiction can be rebutted [(1)] by an explicit statutory directive, [(2)] by unmistakable implication from legislative history, or [(3)] by a clear incompatibility between state-

Petitioner to seek review before a biased court or forum that deceptively issued the challenged void judgment, would be unconstitutionally futile.

In the latter, Petitioner would be unreasonably forced to subject himself to the same court or forum that denied him of petition rights. Any such requirement to attack, or seek review of void judgment only from the issuing court or federal courts, fails equal protection principles, & is unconstitutional due process.[119]

A void judgment is null *ab initio*; has no effect from the outset;[120] & can be collaterally attacked in any proceeding where raised.[121] Petitioner was not restricted to collaterally attack the void judgments in federal court. State court was allowed.

Post removal, the use of the term "bill of review" or "bill of review/independent action in equity" in the pleadings or documents filed[122] became irrelevant & moot. In fed. court, pleadings are construed on pled facts & *Iqbal*'s plausibility contextual standard.[123] Petitioner factually pled elements & standard for independent action,[124]

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court jurisdiction & federal interests...' citing *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990) & *Gulf Offshore Co. v. Mobil Oil Corp.* 453 U.S. 473, 478 (1981).").

[119] *See, Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949); *Marshall v Jerrico Inc.*, 446 U.S. 238, 242 (1980); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Accord, People ex rel. Brzica v. Village of Lake Barrington*, 644 N.E.2d 66, 69 – 70 (Ill. App. 2nd Dist., 1994).

[120] *Accord, Commonwealth LAND Title Ins. Co. v. Nelson*, 889 S.W.2d 312, 318 (Tex.App. – Houston [14th Dist.] 1994, writ denied) ("...when a document is void or void *ab initio* it is as if it did not exist because it has no effect from the outset...").

[121] *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949); *See also, People ex rel. Brzica v. Village of Lake Barrington*, 644 N.E.2d 66, 69 – 70 (Ill. App. 2nd Dist., 1994) ("A void judgment, 'that is, one entered by a court which lacks jurisdiction over the parties, the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, **in any court**, either directly or collaterally, provided that the party is properly before the court.'") (Bold emphasis added).

[122] *See, e.g.*, Appx. 107-414; 313; 341.

[123] *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949–1953 (2009); *See also,* Appx. 399-401.

[124] *Turner v. Pleasant*, 663 F.3d 770, 775 (5th Circ. 2011) ("...[f]ive elements of an independent action in equity: (1) a prior judgment which 'in equity & good conscience' should not be enforced; (2) a meritorious claim in the underlying case; (3) fraud, accident, or mistake which prevented the party from obtaining the benefit of their claim; (4) the absence of fault or negligence on the part of the party; & (5) the absence of an adequate remedy at law."); *U.S. v. Beggerly*, 524 U.S. 38, 47 (1998) (independent

similar to bill of review.[125]

Petitioner's proposed solution rectifies due process for all subjects.[126]

Issue 2(A)(II): Whether probable cause proceedings in Harris County are irreparably & harmfully void of due process for these customs & practices on detained citizens: (1) denial of hearing rebuttal rights for the accused, (2) denial of counsel rights for the accused, & (3) denial of impartial magistrate & tribunal rights; & *inter alia*, warrant the proposed class action injunction & rectification.

Petitioner, an American of Nigerian origin, also *inter alia*, an international business, *qui tam*, & civil rights attorney, is subject to invidious racism, harmful harassment litigations, & unjust criminal prosecution conspiracies in the southern courts; the type sought precluded by Congress in drafting §1983.[127] Amongst others, govt. co-conspirators seek to (a) falsely portray Petitioner as a felon & habitual

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action in equity "available only to prevent a grave miscarriage of justice"); *Accord, Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 244 – 245 (1944) (court of equity authority to set aside final judgments after term available "where enforcement of the judgment is "manifestly unconscionable,..." (Citing *Pickford v. Talbott*, 225 U.S. 651, 657 (1912))); *See also*, **Issue 2(B),** *Infra*, pg. 36-38.

[125] *Ross v. Nat'l Center for the Employment of the Disabled*, 197 S.W.3d 795, 797 (Tex. 2006) ("'Traditionally, a bill of review requires proof of three elements: (1) a meritorious defense, (2) that was not asserted due to fraud, accident, or wrongful act of an opponent or official mistake, (3) unmixed with any fault or negligence by the movant.'" (Citing *Baker v. Goldsmith*, 582 S.W.2d 404, 406 – 407 (Tex. 1979))").

[126] Appx. 512–529; **516–522.**

[127] *See, Supra*, Pg. 3, "United States Senate, Federal Bail Procedures..."; *See also*, Appx. 546.

criminal;[128] terrorize him & family; & (c) deprive him of all rights, remedy, & resources.[129]

Petitioner was, & is still continuously, subjected to void & harmful probable cause ("PC") detention proceedings: *Inter alia,*

- on 6/7/2019, at Mykawa Jail, Houston, TX, post a warrantless arrest of Petitioner around 4:30am, (fraudulently planned & executed against Petitioner by CWS Galleria, 5250, L.P staff Damiola Akinfolarin, resident Yarbrough, & HPD officers Blanton, Barbar, ADA Nelson; during which Petitioner was invited on 5250 property to be falsely arrested); for a **fabricated** criminal trespass charge: cause # 2210800. The case was dismissed at 1st in-Court visit, for no PC[130].

- on 7/8/2019, at Mykawa Jail, Houston, TX, after being targeted & assaulted[131], then framed, falsely arrested, charged, & detained by co-conspirators ADA

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[128] *See, e.g.*, Appx. 546; *See also, Adimora-Nweke v. Yarbrough*, "Petitioner's Brief," Case No. 21-0800, Filed on 9/20/2021, Texas Supreme Court, writ denied. (Contesting a void judgment entered without personal or subject matter jurisdiction – i.e., no notice or service or process to Petitioner of protective order ("PO") proceedings filed against him. It resulted in void two *ex-parte* POs & a void final judgment PO entered against Petitioner.).

The govt. staff (*inter alia*, HPD officers, HC Constables, Starr, & Flores (who Petitioner now understands was intimately related with the PO complainant co-conspirator Yarbrough, & was also a former DOJ intern at S.D. TX Houston Div. & affiliated with the void §1915 hearing magistrate)) fraudulently agreed & acted to interfere with & maliciously harm Petitioner, his civil rights, & his income opportunities (*see e.g., Adimora-Nweke et al* v. *Harris Health System, et al*, USDC # 4:22-CV-04352, S.D. Tex. Houston, **Doc. 1-1**, Removal Filed 12/15/2022; *see also*, Appx. 431); & harm his & his family's health, safety, & security.

Petitioner ceased & evaded Yarbrough contact efforts since ~2/7/2019. She, HPD, ADAs, *et al*, then maliciously fabricated harmful-false allegations for a PO, & filed Cause# 201917921 ~3/11/2019 in co-conspirator judge Barbara Starr's HC Court 280. (Appx. 926). They evaded serving Petitioner notice – including of two *ex-parte* orders entered against him, based on perjury-fraudulent instruments; all to obtain the two void, harmful, & unnoticed *ex-parte* orders (Appx. 908–916), & a void final judgment (Appx. 917–925) entered 44 days past Tex. Fam. Code Ch. 84 statutory deadline for any PO hearing; without notice or fair hearing opportunity for Petitioner (Appx. 917, 926–927); & to subject Petitioner to continuous malicious warrantless searches, business & home invasions, arrests, detentions, liberty & privacy harm (Appx. 942–943). There's no valid-filed TCRP Rule 107 return-of-service (Appx. 926). Cause #201917921 is another void & malicious action, done to harm.

The void judgments & orders from Cause# 201917921 (TxSCT Case No. 21-0800), & more void criminal proceedings, orders, & judgments (Appx. 546) instituted or entered against Petitioner, are now sought vacated via the §1651 5th Circuit writ petition, (originally via state *habeas corpus* writ action in 1648314AZ (Appx, 546)) as Petitioner seeks to bring §1983 claims for all direct or indirect-collateral resulting money damages (*See e.g.*, Appx. 431, 435-436, & 1284-1364), in the sought severed docket of the 1st & 2nd appealed action (Appx. 116; **193–200**; 305; 512–514 (**"The B Case"**)).

[129] *See e.g.*, Appx. 485-492; 546; *See also, In re Ernest Adimora-Nweke, Supra*, fn. 1 & fn. 6.
[130] Appx. 339; 546.
[131] Appx. 583-585. (This Affid. was appended & incorporated into 4:20-CV-04149 complaint facts).

Denholm, HPD officer Reyes, an undercover HPD officer resident of 5250 ppty, & Akinfolarin for a **fabricated** assault with bodily injury charge, cause # 2214242.[132] Akinfolarin alerted HPD upon sight of Petitioner, then proceeded to assault & harm Petitioner on the property[133]. A co-conspirator undercover officer arrived & fabricated a defense story for Akinfolarin framing Petitioner as the assailant. Co-conspirator HPD Reyes then arrived & arrested Petitioner, **refusing to review the surveillance footage available & offered him as he fabricated a statement proposed** by ADA Denholm, Akinfolarin, & the undercover, in order to falsely charge. Thereafter, Reyes & HPD officers, ADA Edekel Tecle, Akinfolarin, & CWS Galleria, 5250, L.P's counsel, tamper-altered the surveillance video footage subpoena'd to fit their **fabricated** allegations. The case was dismissed after months of harm & no hearing, via a void/false order. The false PC & terms need vacated. Petitioner's claims & injuries are actionable.[134]

- on 9/7/2019, at Mykawa Jail, Houston, TX, post a warrantless arrest of Petitioner at his home around 3:30am; for another Yarbrough, ADA & HPD Tallant **fabricated** robbery (of Yarbrough) charge; cause # 1598318. Grand jury later found no PC,[135] & the case/charge was effectively dismissed.[136]

- respectively, (a) on 10/3/2019, at HC Jail, Houston, TX, & (b) on 10/7/2019, 10/21/2019, 10/24/2019, & 11/22/2021 in HC Dist. Crt. 179, Houston, TX; post a 10/3/2019 warrantless search & seizure of Petitioner & his iPhone, at Petitioner's home around 6:30am, & for crim. cause # 1648314 (Appx. 942–944): another insidious & malicious prosec. act of Yarbrough, Flores, Hartman, Barron, Dolph, & Starr's **fabricated** agg. sex. assault (of Yarbrough) charge from civil PO case #201917921; & while the PO case was on appeal; & they knew & had exculp. evid.

- around 2/13/2020 & 10/26/2021, post void indictment proceedings & orders illegally instituted & obtained (Appx. 941, 945–952) by ADA co-conspirators Otto & Lawrence in cause #s 1648314 & # 1745037[137], case #s 1745037 & 1648314 were

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[132] Appx. 546.

[133] Appx. 583-585.

[134] 42 U.S.C. §1983, §1985 & §1986; *Heck v. Humphrey*, 512 U.S. 477, 490 (1994); *Mitchum v. Foster,* 407 U.S. 225 (1972).

[135] Appx. 340; 546.

[136] Appx. 546.

[137] Cause # 1745037, Filed on 10/26/2022, in HC Dist. Crt. #179, then transferred with cause #1648314 to Court 351, was another ADA & HPD conspired-**fabricated** burglary felony charge, filed against Petitioner, & based on the void & uninvestigated *sworn* complaint in cause #1648314 (Appx. 942-944).

Inter alia, cause # 1648314's sworn affidavit complaint is void of a credible affiant, & of PC on its face. The sworn complaint's statements also falsely alleges that HPD officer Dolph III [acting with HC], obtained a warrant & secretly collected evidence from Petitioner's iPhone, Uber account, etc. Yet, no warrant existed in fact; nor was one filed as required per Tex. Code of Crim. Pro. Art. 18.01(b). *See, Tex. Code of Crim. Pro. Art. 18.01(b)* A neutral-detached magistrate & grand jury must duly inquire on the alleged warrant, as required filed. *Accord, Franks v. Delaware*, 438 U.S. 154 (1978).

fraudulently dismissed ~ 1/14/2022; after two years of racial-terrorism on Petitioner, his business, & his family;[138] & without any notice, examining trial, or fair hearing for Petitioner.[139]

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[138] *See e.g.*, Appx. 590–664; 665–1028; *See also*, Appx: 546 (Cause #1648314A; a void bond forfeiture proceeding with a void final judgment (Appx. 937), maliciously instituted with a void Judgement *NISI* (Appx. 938); & lacks any due process fair notice or hearing for Petitioner.)

Petitioner's iPhone was fraudulently seized without warrant upon the 6:30am 10/3/2019 arrest at his home by HPD officers, for the fabricated aggravated sexual assault criminal charge filed with Cause# 1648314. Post a void initial-magistrate PC initial-detention hearing on 10/3/2019 in HC jail, Petitioner appeared in assigned Court 179 for Cause# 1648314 on 10/8/2019; was denied another rebuttal opportunity on PC; & the case reset to 11/21/2019. Petitioner then made bail, on 10/8/2019.

Co-conspirators HC clerks, Otto, & Roll, (in furtherance of the malicious harassment & harm on Petitioner & his liberty per cause 1648314 allegations, & per Issue 2(a)(I)'s DWI & interference charges simultaneously pending in HC Court 15 (cause #s 2233594 & 2233595 **(Appx. 546)**) re-set a void Crt. setting for 10/14/2019, without 10-days advanced notice entitled Petitioner. *Tex. Code of Crim. Pro Art. 28.01, §2.* **Note:** Hence the *NISI* for cause 1648314A is void; no legal basis or authority. Petitioner was alerted late on 10/14/2019; appeared on 10/15/2019 early morning to inquire; was immediately arrested & detained in HC jail without hearing or bail for a week; then kept in jail on a suppressive $200K bail while Roll, Otto, HC Clerk, & Sheriff, executed the forfeiture proceeding (i.e., HC Dist. Crt 179, Case# 1648314A) against Petitioner *without any notice to state-custody-held, targeted, & harmed* Petitioner. *See e.g.*, Appx. 431 (20191119_163050 & 20191119_163057 files))

Roll reduced Petitioner's $200K bail to $75K, after executing cause# 1648314A's void final bond forfeiture judgment. Petitioner found out about the bond forfeiture case# 1648314A after making bail & returning to his office. Notices were deceptively mailed to Petitioner's office, while *inter alia*, j. Roll, Otto, HC Sheriff & clerk knowingly conspired & kept Petitioner in HCJ; hence void acts. *See, Robinson v. Hanrahan*, 409 U.S. 38 (1972)

Per (1) Issue 2(a)(I); (2) spoliation of all cause #s 2233594 & 2233595 video evidence by HPD; & (3) co-conspirator Judge Tonya Jones (I) denying Petitioner due process notice & fair hearing, (II) knowingly admitting false & illegal created evidence pretrial & at trial (e.g., a ***forged*** warrant, that appears months later in court after an illegal & painful blood draw, & that failed Tex. Code Crim Pro. 18.01(b) file-notice requirement on its face, & was not provided Petitioner upon request before the painful illegal 11/14/2018 blood draw, & evidence based on the illegal ***forged*** warrant), (III) not certifying or filing, & denying Petitioner duly entitled **special jury instructions** on factually contested illegally obtained evidence, probable cause & warrant issues (i.e., statutory reversible errors per *inter alia*, (i) Tex. Code of Crim. Pro. Art. **36.17 (all proposed jury charges, including special charges, statutorily required certified & filed by judge as part of clerk record.)** & (ii) *Thomas v. State*, 723 S.W.2d 696, 707 (Tex.Cr.App.1986) (denial on jury charge on illegally obtained evidence, with factual dispute of illegal obtained evidence, is reversible error)), (IV) *forging* an indigency petition for Petitioner in order to appoint & pay a harmful conflict-of-interest & recent ADA counsel for Petitioner, without Petitioner's knowledge or consent, while Petitioner was held in HC jail for 1648314A, & repeatedly taken to Crt 179 & Crt 15 to be publicly humiliated; cause #s 2233594 & 2233595 **(Appx. 546)** resulted in void convictions (Appx. 974–977); convictions Petitioner seeks vacated via the §1651 or "Related *Writ*" of *Certiorari* (*Supra*, fn. 1 & fn. 6; Appx. 590–664; 665–1028).

Due to Petitioner's lack of funds, Tonya Jones & the state courts have unconstitutionally denied Petitioner the trial court proceeding transcripts, & due process rights to fair hearing & appeal, to vacate the void convictions. (Appx. 970–986, 990–991) The unreasonably denied/withheld Petitioner transcripts (Appx. 980), show *inter alia*, the *Thomas v. State* issue, lack of impartial judge-tribunal *Marshall* & *Caperton* issue, & other §1983 actionable ***no-notice*** customs & practices of HPD disclosed at trial by HPD experts (i.e., HPD does not customarily provide custody subjects with blood-draw warrants)). Without funds, Petitioner is harmfully denied evidence & justice (Appx. 970–997).

[139] Appx. 546.

Petitioner sought to vacate, *inter alia*, the void PC findings from causes 1648314 & 1745037, via a *habeas corpus* writ action in HC Crt. 179: cause # 1648314AZ.[140] Judge of Crt. 179, a former ADA, recused herself. Petitioner now leverages the §1651 petition & "Related *Writ*" to vacate the PC orders, & all other void liberty deprivation orders & judgments endured; including in cause # 201917921.

The open-dormant cause # 1648314AZ, subjects Petitioner to unreasonable liberty deprivation.[141] *Inter alia*, another void warrant can be issued in the case, Petitioner unreasonably arrested, detained, & subject to void proceedings.

Hence, Petitioner has standing (particular injury & redressability)[142] for the pled §1983 injunctions & damage claims, & class action remedies sought[143].

NOTE: In Feb 2022, Tx State Bar investigated all allegations & complaints made against Petitioner[144], including case# 201917921, & found not merit.[145]

PC determinations before Magistrate or Judge

In Harris County, TX, post an arrest, when subjects are initially presented before a magistrate or judge, the magistrate or judge first determines PC to detain the individual, before addressing bail issue. The proceeding goes as follows:

1. Detainee is presented before magistrate or judge; a HC ADA staff is present for the State of Texas ("State"); & matter goes on-the-record:

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[140] Appx. 546.
[141] Appx. 546.
[142] *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).
[143] Appx. **313–382**; **422–425**; **522–525**; 535–537; 546.
[144] **Appx. 546,**
[145] **Appx. 586.**

(1) Magistrate or judge reads cause #, & parties are identified;

(2) Magistrate or judge tells Detainee of the charges against them;

(3) State reads the allegations & State's version of the facts into record, & makes argument for PC;

(4) Detainee is not allowed to speak nor rebut;

(5) Judge finds PC.

2. Parties remain on record, & move on to bail issue.

(1) State makes argument for bail amount.

(2) Detainee, now a Defendant, is allowed to speak or rebut.

a. **Sometimes**, during hours of 9 – 5pm, Mon – Fri, Detainees are provided counsel from Harris County Public Defender's Office, **only** for representation on the bail issue.[146]

(3) Judge rules on (i.e., determines) bail amount.

Petitioner was subject to such void hearings, *inter alia*, in HC jail, on 10/3/2019, upon another void arrest & detention, for cause # 1648314's false charge.[147]

Petitioner requested, & was denied rebuttal opportunity on the PC issue.[148] The unneutrally detached magistrate found PC in the void proceeding.[149] The same magistrate had also issued a void capias warrant for Petitioner the day before, based on a void sworn affidavit-complaint filed in cause # 1648314 on 10/2/2019, that contained similar fabricated allegation as the void protective order case #201917921, & contained more aggravated perjury than one can count.

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[146] *Cf*: Appx. 347-348 (Daily probable cause hearing intervals within a 24hr period in HC: Occurs 24/7.).
[147] Appx. 342-344; 422-425.
[148] Appx. 422-423; Appx. 423 (with "12/30/2022 Notes.")
[149] *See e.g.*, Appx. 234.

The existence of §1(4) & §2(2)(a) in these proceedings, voids the proceedings for lack of detainees' equal protection & due process rights.[150] Once the judicial machinery is used against citizens, the citizen is entitled to rebut against any allegations made against them at any stage.[151] In liberty deprivation proceedings, the citizen must be ensured effective assistance of counsel at all times[152]. Any court, magistrate or judge that fails to ensure such due process, lacks jurisdiction.[153]

Hence, there exists additional compelling reason for this court to intervene[154], & prospectively enjoin such void PC proceedings – nationwide.

Petitioner's proposed solution, rectifies due process for all subjects.[155] A new "Final Settlement Hearing," date[156] (e.g., 10/10/2023, or 7 months extension from SCOTUS judgment/reversal) is circumstantially necessary, & **hereby requested**.

PC determinations before Grand Jury

Another compelling due process issue in PC proceedings nationwide, is arbitrary enforcement of fair hearing opportunities in closed grand jury proceedings; by allowing an indictment defense packet at prosecutor's discretion.

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[150] *See, Wisconsin v. Constantineau,* 400 U.S. 433 (1971) (SCOTUS invalidated a statutory scheme that labeled individuals without an opportunity for a hearing & rebuttal.); *See also,* ***Gideon v. Wainright,*** 372 U.S. 335 (1963) (right to counsel in crim. proceedings per 6th & 14th Amd. U.S. Const.).

[151] *Accord, Mathews v. Eldridge,* 424 U.S. 319, 333-348 (1976) (discussing procedural due process & its factors).

[152] *Id.*; *See also,* ***Gideon v. Wainright,*** 372 U.S. 335 (1963).

[153] *Adams,* 488 F.2d. at 632 – 634 (7th Circ. 1973); *Bass,* 172 F.2d at 209 (5th Circ. 1949).

[154] & also grant the 28 U.S.C. §1651 petition, to rectify the void orders & judgments, including void probable cause findings in cause #s 1648314, 1598318, & others, as sought in the §1651 petition. Such allows for due course expungement. *See,* Tex. Code. Of Crim. Pro. Art. 55.

[155] Appx. 313-382; **349–351**; **422–429**; **522–525**; 534–537; & **587-589**.

[156] *See,* **Appx. 521 (Proposed Plan for TxDPS & McGraw Class Action: #7)**

In cause # 1598318, Petitioner was duly noticed, allowed to, & did submit an indictment defense packet to the grand jury. The grand jury found no PC within 90 days of case filing.[157] Case was dismissed, & Petitioner's §1983 pled false arrest & false detention claims vested.[158]

Cause #1648314 was a different beast of burden; per HC ADAs, HPD officers, & judges' malice. It was dismissed over two years after its filing[159]; during which Petitioner was wrongfully indicted twice on two separate charges, for cause # 1648314 & a created # 1745037; with fabricated allegations & on the same void complaint; without evidence; without Petitioner's duly entitled examining trial; without a hearing before a neutrally detached magistrate or judge; **without notice** of a grand jury proceeding; & **without** an indictment defense packet **hearing opportunity**.[160]

Inter alia, the resulting void PC findings in the dismissed cause #s 1648314 & 1745037 – including their felony indictments that are void of due process examining trial, grand jury proceeding notice, or indictment defense packet hearing opportunity – remain liberty deprivation issues that Petitioner sought to vacate post-dismissal of the charges; via the now dormant cause # 1648314AZ habeas corpus writ action in HC Court 179[161], & the §1651 petition[162]; & for Petitioner's §1983 claims[163].

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[157] Appx. 340.
[158] *Id.*
[159] Appx. 546.
[160] *See, In re Ernest Adimora-Nweke,* Case No. 22-20472, Doc. 00516471675, Pg. 90-119, Fed. 5th Circ, Filed 9/14/22; Appx. 776-805.
[161] Appx. 546; *See also, e.g.,* Appx. 590-664; 1/3/2022 [Renewed] "Application & TCCP Art. 11.05 & 11.11 Motion for Writ of Habeas Corpus" & 1/24/2022 "Emergency Motion For Writ Request Modifications"; Filed in Cause # 1648314AZ, Harris County Court 179, Harris County, TX.
[162] *See, In re Ernest Adimora-Nweke, Supra,* fn. 1. & fn. 6.
[163] *Heck v. Humphrey,* 512 U.S. 477, 490 (1994); *See also, e.g., Gibson v. Berryhill,* 411 U.S. 564, 573 (1973); *Mitchum v. Foster,* 407 U.S. 225 (1972).

The disallowance of the indictment defense packet is an additional due process violation that voids the applicable indictments against Petitioner in cause #s 1648314 & 1745037. The indictment defense packet is a felony defendant's least fair hearing or rebuttal opportunity in the closed grand jury proceeding; & meets fair play.[164]

Govt's arbitrary enforcement of such due process hearing opportunity, (i.e., indictment defense packet allowed at prosecutors' discretion), is equal protection[165] & due process[166] violation in criminal justice administration; with harmful results.

For Petitioner, when granted the liberty at such fair hearing opportunities (i.e., liberty to present a defense packet), grand jury found no PC. When denied such liberties, the grand jury wrongfully & fatally[167] found PC.

Hence, the grand jury indictment defense packet, prepared by defendants & at no cost to govt., is due process warranted & effective fair hearing opportunity; & fatal indictments rendered without such defense hearing opportunity are void.

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[164] *Mathews*, 424 U.S. at 348 (1976); *Marshall*, 446 U.S. at 242 (1980).

[165] *Accord, Mahone v. Addicks Util Dist. of Harris County*, 836 F.2d 921, 932 (5th Circ. 1988) ("As the Supreme Court explained long ago, equal protection of the law requires not only that laws be equal on their face, but also that they be executed so as not to deny equality. *Yick Wo v. Hopkins,* 118 U.S. 356 (1886); *accord, Zeigler v. Jackson,* 638 F.2d 776, 779 (5th Cir. Unit B March 1981) ('[T]he unequal application of a state law, fair on its face, may act as a denial of equal protection.')").

[166] *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) ("But the concepts of equal protection & due process, both stemming from our American ideal of fairness, are not mutually exclusive. The 'equal protection of the laws' is a more explicit safeguard of prohibited unfairness than 'due process of law,' &, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process.").

[167] Fatal because (1) Petitioner was denied fair opportunity to vacate the probable cause findings in cause #s 1648314 & 1745037; (2) the same void complaint in cause # 1648314, with its fabricated allegations, was basis for all probable cause findings & indictments in causes 1648314 & 1745037; (3) HC had exculpatory evidence before the cause 1648314 was filed on 10/2/2019, yet refused to investigate; (4) probable cause could not be found per Cause 1648314's sworn affidavit complaint, nor did the cause # 1648314 complaint allegations ever occur; & (5) no examination trial ever allowed Petitioner in Causes 1648314 & 1745037, to dispute probable cause.

This SCOTUS must also intervene, & nationally deem such grand jury indictment defense packets as standard due process hearing opportunity, or "fair play," entitled all defendants to grand jury proceedings.[168]

Issue 2(A)(III): Whether judicial & prosecutorial **absolute immunity, a fundamental error since 1607, must be abolished**, or rendered inapt in Petitioner's federal civil rights claims: per Magna Carta Art(s). 39 & 40; *Bowser v. Collins*, 145 Eng. Rep. 97 (1482); Decl. of Ind.; U.S. Const. Amd. V & XIV; 42. U.S.C. §1983; *Randall v. Brigham*, 74 U.S. 523 (1869); *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949); *Villages of Willowbrook v. Olech*, 528 U. S. 562 (2000); & *Taylor v. Riojas*, 141 S. Ct. 52 (2020).

Respondent HC, filed a 12(b)(6) motion on all current & putative §1983 damage claims, & injunction class-action, asserting insufficient pleading, statute of limitations, Rooker-Feldman Doctrine, & absolute immunity, against Petitioner's §1983 claims.[169]

Petitioner met statute of limitations on all claims raised.[170]

Rooker-Feldman Doctrine is inapplicable as all §1983 claims are based on vested claims after the criminal proceedings were dismissed in favor of Petitioner[171]; except void civil liberty deprivation judgments or orders that are sought vacated via a §1983 injunction[172] in the severed "The B Case" docket for in USDC #s 4:20-CV-04149 & 4:22-CV-00765; via the now dormant habeas

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[168] *Mathews*, 424 U.S. at 348 (1976); *Marshall*, 446 U.S. at 242 (1980); *Bass*, 172 F.2d at 209 (5th Circ. 1949).

[169] Appx. 391-418 (*excludes attached USDC#4:22-CV-04149 (Doc. 6) Amd. Complaint, Filed on 12/8/2020.

[170] Appx. 535.

[171] Appx. 339-340; 484-496; 546; *See also, Heck v. Humphrey*, 512 U.S. 477, 490 (1994)

[172] *Dombrowski v. Pfister*, 380 U.S. 479, 485 – 486 & 490 (1965); *Gibson v. Berryhill*, 411 U.S. 564, 573 (1973); *Mitchum v. Foster*, 407 U.S. 225 (1972);

corpus[173] HC Court 179 writ action with cause # 1648314AZ[174]; via the §1651 Fed. 5th Circ. writ[175]: case# 22-20472[176]; & via this *certiorari* & the forthcoming "Related Writ."[177] Furthermore, wrongs that cause Petitioner's §1983 *et seq* claims are U.S. Const jurisdictional issues/violations; always w/n federal court jurisdiction.[178] Hence, no Rooker-Feldman Doctrine applies.

The absolute immunity issue (i.e., judicial & prosecutorial absolute immunity) is material for Petitioner's current vested & other putative 42. U.S.C. §1983, §1985, & §1986 claims. Said claims include other civil rights claims against Respondent-HC, & its Court 15, 280 & 179 judges – Tonya Jones, Barbara Stalder, & Randy Roll; & against current & past govt. staff including ADAs Nelson, Denholm II, Tecle, Barron, Flores, Lawrence, & Otto.[179]

Judicial absolute immunity is a fallacy & fundamental error; since 1607.

Judicial absolute immunity did not exist originally at common law.[180] Few are aware.[181] Judicial absolute immunity, also the source of prosecutorial absolute

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[173] *Heck v. Humphrey*, 512 U.S. 477, 490 (1994).
[174] Appx. 546.
[175] *Id.*
[176] *Supra*, fn. 1.
[177] *Id.*
[178] *See, e.g., U.S. Const. Amd. XIV; 42 U.S.C. §1983; Accord, Constantineau,* 400 U.S. at 439 (1971).
[179] *Supra*, fn(s). 1, 128-139; Appx. 485-492.
[180] *Cf, Pulliam v. Allen*, 466 U.S. 522, 529 (1984) (wrongfully assuming absolute immunity of judges at common law; citing *Pierson* v. *Ray*); *Pierson* v. *Ray,* 386 U.S. 547, 554-555 (1967) (citing *Bradley* v. *Fisher,* 13 Wall. 335 (1872) use of *Scott* v. *Stansfield,* L. R. 3 Ex. 220, 223 (1868), & also wrongfully assuming absolute immunity of judges at English common-law.).

[181] *See,* Robert Craig Waters, *Judicial Immunity Vs. Due Process...* Pg. 465, Cato Jrl (1987) Available at: *https://www.cato.org/sites/cato.org/files/serials/files/cato-journal/1987/11/cj7n2-13.pdf*; *See also,* Robert S. Irving, *Courts—Judicial Immunity*; Pg. 31, 8 U. Ark. Little Rock. L. Rev. 31 (1985); Available at: https://lawrepository.ualr.edu/cgi/viewcontent.cgi?article=1643&context=lawreview.

immunity, was a treasonous fundamental error principle, created as result of Edward Coke's fallacy in *Floyd v. Barker,*[182] & later perpetuated by Edward Coke via more fallacies in *The Marshal Sea* Case.

Upon its 1607 introduction in *Floyd*, the principle was contrary to pre-existing governing law since 1214 (i.e., Magna Carta[183] & its Art(s) 39 & 40[184]); & contrary to centuries-long-binding common-law principles of *Bowser*[185].

Magna Carta, was the basis for English common-law; & its principles adopted in U.S. of America.[186] As of 1215[187], the King lacked absolute authority himself, & was punishable via suit against his ministers or judges for Magna Carta 39 violations.[188] Hence, Coke's reasoning in *Floyd*, that unchallenged & absolute authority of judges derived from the King[189], was treasonous & false-authority fallacy – as it [deceptively] made judges' authority greater than the King's authority/limits.

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[182] 77 Eng. Rep. 1305 (Star Chamber 1607); *See, Dykes v. Hosemann*, 776 F.2d 942, **fn 11** (11th Cir. 1985).

[183] **Appx. 547-551.**

[184] **Appx. 73.**

[185] *See. Dykes*, 776 F. 2d at 955, fn. 11, (Citing Coke's *Marshal Sea Case*, 77 Eng. Rep. 1027 (C.P. 1610) borrowing of *Bowser v. Collins*, Y.B.Mich. 22 Edw. 4, f. 30, pl. 11 (1483) precedent reasoning, holding that 'actions taken by a court lacking jurisdiction were *coram non judice* — i.e., before a person who was not a judge – & rendered a judge liable for the consequences of his judicial acts.'); *Accord*, Robert. S. Irving, Courts—*Judicial Immunity*; Pg. 32 (1985)

This principle was reiterated in *Bradley v. Fisher*, 80 U.S. 335, 343-344 (1871).

SCOTUS then erred in its reasoning in the **same opinion** by committing the same centuries old fallacies: false-dilemma, red-herring, & appealing to Coke's void authority. *See, Bradley v. Fisher*, U.S. at 347-349 (Citing Chancellor Kent's *Yates v. Lansing*, 5 Johnson 282, 291 (N.Y. 1810), & Coke's *Floyd v. Barker* false-dilemma, red-herring, & appealing to void "King" absolute authority).

[186] Appx. 547.

[187] Appx. 549.

[188] *See, e.g. The Case of The Marshalsea*, 77 Eng. Rep. 1027, 1035 (K.B. 1613); *See also*, Robert Craig Waters, *Judicial Immunity v. Due Process*; Cato Jrnl. Pg. 465, fn. 16. (Fall 1987).

[189] *See e.g, Pierson v. Ray*, 386 U.S. 547 (J. Douglass Dissent, fn. 5) (1967) ("Since the King could do no wrong, the judges, his delegates for dispensing justice, "ought not to be drawn into question for any

Hence via false authority, false-dilemma & hasty-generalization reasonings[190], Edward Coke fabricated absolute authority & placed judges above the governing basis for English common-law: the Magna Carta & its Art(s) 39 & 40. He thereby made judges equal to or above the King: treason.

In *Floyd*, Coke introduced 3 sound public policies to support judicial immunity[191]; ***yet*** irrationally argues such policies in support of immunizing civil & criminal judicial actions (including scandalous, criminal, malicious, or corrupt activity of judges); contrary to the 3 policies, Magna Carta's Arts 39 & 40, & *Bowser*.

The policies, as virtuous as they sound, are irrationally related to scope of actions absolutely immunized (i.e., scandalous, criminal, malicious, or corrupt actions). E.g., Fraud by the court, does not lead to public confidence in the judiciary nor finality of judgment, but a *coram non judice* act, void *ab initio*, & duly attackable collaterally.[192] Unconstitutional, illegitimate, scandalous, fraud or fraudulent, criminal, malicious, or corrupt actions of judges & prosecutors are <u>never</u> compelling government actions (nor are they legitimate actions of any person) worth

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supposed corruption [for this tends] to the slander of the justice of the King." *Floyd & Barker*, 12 Co. Rep. 23, 25, 77 Eng. Rep. 1305, 1307 (Star Chamber 1607). Because the judges were the personal delegates of the King they should be answerable to him alone. *Randall* v. *Brigham*, 7 Wall. 523, 539")

[190] *Id.; see also, e.g., Bradley*, at 348 (***Citing*** Coke's hasty-generalization & false dilemma fallacy *Floyd*, 12 Coke, 25 ("...except before the King... [non-judicial immunity] "would tend to the scandal & subversion of all justice, & those who are the most sincere, would not be free from continual calumniations.")); *Pulliam*, at 466 U.S. at 530 (*Citing Floyd*, 77 Eng. Rep., at 1307.) *Accord, Dykes*, 776 F. 2d at 955, fn. 11; *See also*, Robert. S. Irving, <u>*Courts—Judicial Immunity*</u> ..., Pg. 32 (1985).

[191] *See. Dykes*, 776 F. 2d at 955, fn. 11 (Citing *Floyd*'s "public policy reasons for the doctrine: (1) the need for finality; (2) the need for maintaining public confidence in the system of justice; & (3) the need for maintaining the independence of the judicial system."); *See also*, Robert S. Irving, <u>*Courts—Judicial Immunity...*</u>; Pg. 31.

[192] *See, Commonwealth LAND Title Ins. Co.*, (*Supra*, fn. 120); *Bass*, (*Supra*, fn. 109); *People ex rel. Brzica*, (*Supra*, fn. 121).

immunization;[193][194] whether or not a judge (or prosecutor) in an inferior or superior court; or in a court of general, limited, or specific jurisdiction.[195] Hence, a *void* principle.

To justify & bolster the *void* principle, courts have introduced the deceptive dichotomy of "excess of jurisdiction" vs. "absence of jurisdiction" – with the latter alleged as an act without subject-matter jurisdiction; & have leveraged Coke's "scandal preclusion" red-herring or false-dilemma fallacy theory in support[196].

This Court & all subsequent adopting courts have unreasonably appealed to Coke's void authority & fallacies on absolute immunity; & have further expanded its scope & reach to prosecutors, magistrates, & more govt. agents; & consequently,

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[193] *Bass v. Hoagland*, 172 F.2d 205, 209 (5th Circ. 1949) ("We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction & void, & attackable collaterally by *habeas corpus* if for crime, or by resistance to its enforcement if a civil judgment for money, because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, & its courts are included in this prohibition."); *Accord, Bradley v. Fisher,* 80 U.S. 335, 343-344 (1871) ("Without then having summoned Mr. Bradley, & having given to him an opportunity to be heard, the court had no jurisdiction of Mr. Bradley's person or of any case relating to *him*... the judgment is void *ab initio*... **& may be disregarded in any collateral proceeding**." *Citing Mitchell v. Foster*, 12 Adolphus Ellis, 472; *United States v. Arredondo*, 6 Peters, 709; *Walden v. Craig's Heirs*, 14 Id. 154.).

[194] *Cf. Pierson v. Ray*, 386 U.S. at 554 ("This immunity applies even when the judge is accused of acting maliciously & corruptly, & it 'is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence & without fear of consequences.' (*Scott* v. *Stansfield,* L. R. 3 Ex. 220, 223 (1868), quoted in *Bradley* v. *Fisher, supra,* 349, note, at 350.").

[195] *Cf., Yates v. Lansing*, 5 Johns. R. 282 (N.Y. 1810)*;* ***Appx. 555-559***; ("Where courts of special & limited jurisdiction exceed their powers, the whole proceeding is *coram non judice,* & all concerned in such void proceedings are held to be liable in trespass (Case of the *Marshalsea,* 10 *Co.* 68...) In *Miller* v. *Seeve,* (2 *Black. Rep.* 1141.) Lord Ch. J. *De Grey* said, that the judges of the king's superior courts of general jurisdiction were not liable to answer personally for their errors in judgment. The protection as to them was absolute & universal; with respect to the inferior courts, it was only while they act within their jurisdiction."); *Bradley*, 80 U.S. at 352 – 356.

[196] *Accord, Pulliam*, at 466 U.S. at 530 (*Citing Floyd*, 12 Co. Rep. 23, 77 Eng. Rep., at 1307.); *Bradley,* 80 U.S. 348 (Citing *Floyd,* 12 Coke, 25, ("... reported by Coke in 1608 where it was laid down that the judges of the realm could not be drawn in question for any supposed corruption impeaching, the verity of their records, except before the king himself, & it was observed that if they were required to answer otherwise, it would 'tend to the scandal & subversion of all justice, & those who are the most sincere, would not be free from continual calumniations.').

deprived citizens of their fundamental rights, & perpetuated damages & irreparable harm.

Such is the main source of this SCOTUS & other courts' continuous error in interpreting absolute immunity of judges & prosecutors, & §1983 provisions.[197]

Judicial & prosecutorial absolute immunity is inapplicable to §1983 claims.

§1983 on its face grants Petitioner a cause of action for damages against all persons acting under color of state law to subject or deprive Petitioner of U.S. Constitutional & federal rights.[198]

Per §1983 legislative history, Congress discussed & precluded absolute immunity for judges, & arguably prosecutors per Congress' disclosed specific remedy intent for §1983.[199] Hence, this Court must now rectify this long-standing fundamental error, & abolish judicial & prosecutorial absolute immunity, including in 42 U.S.C. §1983 claims,[200] unless specifically conferred upon by statute.

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[197] *See, e.g., Pulliam v. Allen,* 466 U.S. at 529; *Supra,* fn(s). 194 & 196.
[198] *42 U.S.C. §1983.*
[199] *See,* The Congressional Globe, 42d Cong., 1st Session. (1871) (Rep. Platt, Rep. Rainey, Rep. Beatty, Rep. Garfield, Sen. Thurman, Rep. Lewis, & Rep. Arthur's congressional remarks – judicial immunity unavailable for state court judges under Civil Rights Act of 1871; congress also intended Civil Rights Act as a specific remedy to harassment litigation & unjust prosecution injustices in southern courts.).
[200] *See,* ***Bostock v. Clayton County, Georgia,* 140 S. Ct. 1731, 1737 (2020)** ("When the express terms of a statute give us one answer & extratextual considerations suggest another, it's no contest. Only the written word is the law, & all persons are entitled to its benefit."); *See also,* ***Bostock***, 140 S. Ct. at 1749 – 1750 (*Citing* ***Milner v. Department of Navy,*** 562 U.S. 562, 574 (2011) ("Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it.")).

Jud. & prosec. absolute immunity is Unconstitutional & Un-American

U.S. 1776 Declaration of Independence preamble[201], U.S. Const. V & XIV[202], 42 U.S.C. §1983[203], & §1983 legislative history, got it right. Even this Court's limitations on judicial absolute immunity in *Randall v. Brigham*[204] came close.

Yet, this court since *Bradley* v. *Fisher*, has allowed such unconstitutional & irrational principle[205] to serve as leverage for scandalous, malicious, fraudulent, & corrupt, judges or prosecutors, to exert grievous, & invidious due process violations or injustices against Petitioner & similar citizens, against their rights, against their property, & via the justice system.[206]

Jurisdiction is a simple comprehensive legal issue, with many ways for a judge to lose it; e.g., via bias or prejudice against party, no party to suit, litigant relative, fraud, malice, corruption, or criminal activity behind bench, etc. Exceeding

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[201] *Supra*, Pg. vii, *U.S. Declaration of Independence Preamble*, 7/4/1776 ("We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty & the pursuit of Happiness.").

[202] Appx. 73-74.

[203] Appx. 74-75.

[204] *Randall v. Brigham*, 74 U.S. 523, 535-536 (1869) ("Judges of limited & inferior authority are protected only when they act within their jurisdiction... no such limitation exists with respect to judges of superior or general authority. They are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, **unless perhaps where the acts in excess of jurisdiction are done maliciously or corruptly**...").

[205] *Cf.*, *Bass v. Hoagland*, 172 F.2d at 209; *Bowser v. Collins*, Y.B. Mich. 22 Edw. 4 (1483); *Bolling v. Sharpe*, 347 U.S. at 499 (1954); *U.S. Const. Amd. XIV*; *42 U.S.C. §1983*; The Congressional Globe, 42d Cong., 1st Session. (1871) (1871 Civil Rights Act provisions congressional debates).

[206] *Supra*, fn. 1; *See also, Pulliam v. Allen*, 466 U.S. 522, fn. 15 (J. Powell Dissent.) (1984); *See also, e.g., In Re John V.N. Yates*, **Appx. 553-554.** (Petitioner epiphany: Lansing was statutorily liable for $1,200.); *Bradley v. Fisher*, at **Appx. 566.** (Petitioner epiphany: Without the absolute immunity fallacy principle, if/since *Bradley* pled a claim against Judge *Fisher*, *Bradley* should not have been precluded from continuing his suit against Judge Fisher, or anyone, on the merits or to trial.)

jurisdiction amounts to act without jurisdiction, per Constitution due process limitations[207]; & legally actionable when harmful[208].

There is no absolute immunity from harmful unauthorized acts. Judges are entitled to the same petition & due process rights & protections as any other citizen or government-defendant, if wrongfully sued; including govt. counsel defense for govt. employees, & defense fees & costs under §1988 for all defendants.[209]

Judicial or prosecutorial absolute immunity, unless conferred by statute[210], is contrary to democracy or republic principles. Such absolute immunity must be abolished at federal common law; & is the most compelling reason for this writ.

Upon remand, Petitioner would have §1983 equal protection & due process conspiracy claims against all govt. persons that include against co-conspirator judges & prosecutors, per *Villages of Willowbrook v. Olech*[211] at the least[212]; with *inter alia*, (1) no qualified immunity for any individual that actively participate in the harmful 14th Amd. U.S. Constitutional rights conspiracies & violations against Petitioner, & (2) no qualified immunity for any local govt. entity who's "custom or practice[213]" subject or cause harmful deprivation of Petitioner/class member's Fed. Const. rights.

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[207] *Cary v. Curtis*, 44 U.S. 236, 245 (1845); *Sheldon et al v. Sill*, 49 U.S. 441 (1850) (Congress statutorily controls court's authority to act, & may grant, withhold, or limit said courts' authority); *U.S. Const.* Art III, §1 & §2.
[208] *U.S. Const.*, Amd. §V & §XIV; *42 U.S.C. §1983 et seq.*
[209] *42 U.S.C. §1988; Supra*, f(n) 110 (Citing *Adams v. Carlson*, 488 F.2d. at 632 – 634 (7th Circ. 1973)).
[210] *See, e.g., Tex. Govt. Code* §33.006
[211] *Villages of Willowbrook v. Olech*, 528 U. S. 562 (2000)
[212] *See, Supra*, fn.1; *See also*, Appx. 546; 107-140; 313-338; 523; 531-538
[213] *See, City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988)

Issue 2(B): Whether Petitioner merited independent action, class action, & claims severance.

Independent Action-In-Equity

Pro se Petitioner factually pled unreasonable search & seizure, equal protection, substantive due process, & procedural due process rights violation §1983 claims; as in **Issues 2(A)(I) & 2(A)(II)** above.[214] Petitioner also pled & raised the issues & claims in the 1st & 2nd actions' governing complaints[215][216] & their respective class action motions.[217][218] Petitioner always pled §1983 claims; with due class actions.

In the independent action, *pro se* Petitioner sufficiently showed fraud or absence of fault that prevented Petitioner from benefiting from obtaining the benefit of the pled claims.[219] E.g., Petitioner also factually pled & submitted SJ evidence of deceptive due process wrongs that caused the failure of Petitioner to litigate his claims in the 1st action: E.g., magistrate's deceptive requirement of Petitioner to withdraw his §1915 application or incur a FRCP Rule 12(b)(6) dismissal, with knowledge of Petitioner's financial constraints to serve additional parties; the subsequent dismissal of the 1st action under 12(b)(6)) with notice of Petitioner's cost bearing inability; & then post-judgment disposition knowing HC's notice-service.[220]

The repetitively & evidently pled substantive & procedural due process rights violations of citizens per the void DIC-24 form, & denial of rebuttal opportunities in HC liberty deprivation PC proceedings, show that grave miscarriage of justice

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[214] *Supra*, Pg(s). 11-28.
[215] *See, e.g.*, Appx. 484-492; 339-340; 583-585; 1080-1173.
[216] Appx. 107-140; 313-359; 339-340.
[217] Appx. 441-467; 471-482.
[218] Appx. 256-276; 339-358; 360-381; 531-537.
[219] Appx. 107-120; 315-317.
[220] *Id;* Appx. 117-120; 119; 353-365.

occurred & still occurs in HC & Texas; show that the original action's dismissal was manifestly unconscionable, & also effectuates such injustice in HC & Texas; & show that the prior dismissals are void of due process, which 'in equity & good conscience' should not be enforced. Petitioner pled no adequate remedy.[221]

Hence Petitioner warranted an independent action; & the denials, reversed.

Class Action

Petitioner pled detail facts to meet the FRCP Rule 23 class action factors or element, in both the governing complaints[222], & in class action-partial SJ motions.[223] Petitioner also attached class action SJ evidence to the governing pleadings & SJ motions[224]; or duly filed such before dismissal or removal[225].

Class action certification require a well pleaded complaint; must be certified "as soon as possible;" & is not based on the merits of the underlying action.[226]

Since the class action motions & sufficient supporting evidence were on file pre-dismissal in both cases, the class action requests should have been granted. The denial or preclusion of said motions, a due process violation, must be rectified.

Severance of Claims

Petitioner's complaint in both actions contained invasion of privacy, false arrest, false detention, excessive force, & due process constitutional violation §1983 claims for damages[227] against some parties (e.g., HC, HPD, HCDA, & various

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[221] Appx. 120; 122; 317; 320; 321; 362; 365; 366.
[222] *See e.g.,* Appx. 1134-1173.
[223] *Supra.* fn(s). 23, 24, 71, 102, 143, 214, 215, 220.
[224] Appx. **141-171**; 256-275; **313-351**; 360-381; 419-421; 441-467; 470-482; 512-526.
[225] Appx. 419-425; 531-537.
[226] *See Eisen v. Carlisle & Jacquelin,* 417 U.S. 156 (1974); *See also, FRCP Rule 23.*
[227] *See e.g.*, Appx. 431-432 (with "12/30/2022 Notes"); ***See also, Supra,* fn. 9 & Appx. 1284-1364.**

individuals). It also contained the §1983 claims for injunction against TxDPS & HC, with TxDPS being a different party on a mutually exclusive issue.

Petitioners' requested severance of claims[228] was clearly warranted; to preclude the confusion of issues, claims, & parties that eventually resulted per the Federal District Court's dismissal order in USDC # 4:22-CV-00765.[229] Also, *inter alia*, Petitioner's false arrest & detention §1983 damage claims cannot be resolved via §1983 injunction. Hence, denial or preclusion of severance motions need reversed.

Such allows for optimal case management of issues, claims, & parties; & further assures that due petition & due process rights of all litigants are sustained.

XI. Conclusion & Relief Requested

For these compelling reasons above, Petitioner asks this SCOTUS to grant this writ, & after review, (1) abolish absolute immunity under federal common law, (2) hold Respondents, putative local govt. actors, & their co-conspirators, are not entitled to qualified immunity on the §1983 injunction & 42 U.S.C. damages claims; (3) vacate all orders & judgments entered by the lower courts in 5th Circ. case # 22-20472, in USDC # 4:20-CV-04149 & 4:22-CV-00765[230]; (4) enter the relief for Petitioner as requested,[231] w/ extended settlement date; & (5) remand for proceedings.

Petitioner also seeks a "Related Writ" on the filed §1651 petition[232]; & post review, vacate all challenged liberty deprivation orders & judgments. Such allows resolution of Petitioner's putative 42 U.S.C. damage claims upon remand.

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[228] Appx. 420-432; 512-515.
[229] Appx. 17; *FRCP R. 21.*
[230] Appx. 1–67.
[231] Appx. 512–525.
[232] Appx. 546; *See also, Supra,* fn. 1 (Due "Related *Writ" of Cert.* on 5th Circ. Cause 22-20472).

Respectfully Submitted,

2/8/2023 /s/ Ernest Adimora-Nweke

XII. Proof of Service

I, Ernest Adimora-Nweke, do swear or declare that on this date ~2/8/2023, (or before 4/1/2023, as required by SCOTUS Rules 29 (& per SCOTUS Clerk's 11/23/2022 & 1/18/2023 Rule 14.5 letter), I have served the enclosed (a) MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*, (b) PETITION FOR A WRIT OF CERTIORARI, (c) MOTION FOR LEAVE TO PROCEED W/ EXTENDED WORD & PG COUNT & APPENDIX, & (d) The APPENDIX (Appx, 1-589, 1049-1173, & 1284-1364; or ~714 pages total), on each party to the above proceeding or that party's counsel, & on every other person required to be served, by depositing an envelope containing the above documents in the US mail properly addressed to each of them & with 1st class postage prepaid, or by delivery to a 3rd party commercial carrier for delivery within 3 calendar days; & via emails below:

ATTORNEYS FOR RESPONDENTS MCGRAW & TxDPS

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I declare under penalty of perjury that the foregoing is true & correct.
2/8/2023. Ernest Adimora-Nweke.

XIII. Appendix

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