

SUPREME COURT OF THE UNITED STATES

Ernest Adimora-Nweke,
Petitioner,

vs.

Texas Department of Public Safety, Harris County, *et al*
Respondent(s).

PETITIONER'S RULE 44 PETITION FOR REHEARING

Petitioner hereby petitions for rehearing on the writ of certiorari filed in the cause number above, & denied on 4/17/2023, per SCOTUS Rule 44 & the following (a) intervening circumstances of a substantial or controlling effect & (b) substantial grounds not previously presented:

MATERIAL FACTS

Petitioner's writ issues involve & resolve:

- compelling universal & fundamental error civil rights issues of precedence;
 - Issue 2(A)(I),¹ 2(A)(II)² & Issue (2)(A)(III)³
- 42 U.S.C. §1983 injunction actions;
 - Issue 2(B),⁴ Issue 2(A)(I) & Issue (2)(A)(II)
- a 28 U.S.C §1651 Petition for [Related] *Writ of Certiorari* ("Related Writ"), recently prepared & submitted for filing on 4/13/2023 to U.S. Supreme

¹ 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. *Writ*, Pgs. 11–19.

² 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. *Writ*, Pgs. 19–28.

³ 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).

⁴ Whether Petitioner merited independent action, class action, & claims severance. *Writ*, Pgs. 28–35.

Court, on a related & denied Fed. 5th Circ. 28 U.S.C §1651 extraordinary writ. *See In re Ernest Adimora-Nweke*, U.S. Supreme Court (“SCOTUS”) Cause # _____, Petition for [Related] Writ of Certiorari (“Related Writ”), Filed ~4/13/2023; *See also, In re Ernest Adimora-Nweke*, Fed. 5th Circ. Cause# 22-20472, judgment-mandate issued on 1/11/2023; *See also*, SCOTUS Cause # 22-6773, Petition for Writ of Certiorari (“Writ”), Filed 11/14/2022, Pg. 1, fn. 1, & Pg. 3 (mentions §1651 “related writ” to be filed).

- independent action in equity and pleading interpretation issue; &
- civil rights damage claims under §1983, §1985, & §1986 sought.

Petitioner had an uncontested *in forma pauperis* application effective in the appealed district court case, since pre-removal of the action by *McGraw et al.*

ARGUMENT

Petitioner’s Issue 2(A)(I) warrant’s rehearing, per the Related Writ issue.

TX DPS’ promulgated⁵ statutory warning form, the DIC-24 form,⁶ is void for non-strict compliance⁷ w/ Tex. Transp. Code. §724.015(a)’s required statutory contents,⁸ since 2011. Petitioner was subject to the void DIC-24 form in a DWI matter,

⁵ *See*, Tex. Transp. Code §724.003 (“RULEMAKING. The department and the State Office of Administrative Hearings shall adopt rules to administer this chapter.”)

⁶ *Writ Appx.* 145, 148, 230, & 465.

⁷ *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 engrave 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 engrave a ‘substantial compliance’ exception seems particularly prudent given how ubiquitous ‘substantial compliance’ is throughout Texas law.”)

⁸ *Writ Appx.* 68 – 69. *See also, Writ Appx.* 153 & 453 (Contains Petitioner’s proposed-compliant statutory warning sheet, prepared & presented in the original action USDC # 4:20-CV-04149, Filed 12/4/2020; proposed before TX congress amended §724.015(a) to include §724.015(a)(8) in Sept 2021); *See also, 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.”).

on 11/14/2018.⁹ The version used against Petitioner in 2018 was void for omitting §724.015(a)(6).¹⁰ Hence Petitioner has standing.¹¹

In 2021, TX Congress Amended §724.015(a) to include §(a)(8).¹² The current DIC-24 form remains void of fair notice for *inter alia*, non-compliant with the 2011 & 2021 amendment to §724.015(a)'s requirements. §724.015(a)(6) remains omitted.¹³

Upon draft of this Rule 44 Motion, Petitioner noticed the TXDPS link to the current 2021 amended DIC-24 form, cited in Petitioner's filed 11/14/2022 *Writ*, was displaced by TxDPS. Hence, material cited & hyperlinked evidence – the current void & also challenged DIC-24 form – was likely not previously presented to this Court upon review. Petitioner has included the TX website download source page for the DIC-24 forms, & a copy of the DIC-24 form as Exhibit 1 to this Petition.¹⁴ The omission of such material “best” evidence doc., is grounds for Rule 44 writ rehearing.

Procedurally, the DIC-24 form is important for due process fair notice that triggers state authority for temporary driver's license revocation, for state authority to institute civil ALR proceedings, & for state authority to issue a warrant for blood draw, e.g., in related DWI criminal actions or proceedings.¹⁵

⁹ See, *Writ* Appx. 148, 230 – 232; Cf. *Writ* Appx. 153 & 453.

¹⁰ *Writ*, Pg. 13.

¹¹ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992).

¹² See, *Writ* Appx. 69, 68 – 69; Cf. *Writ* Appx. 231 – 232.

¹³ *Writ*, Pg. 13; See also, Tex. DPS Peace Officer Statutory Warning Form, DPS Internet Form No. DIC-24, Avail via Tx DPS forms website: <https://www.dps.texas.gov/internetforms/Home/Details/236> & @ <https://www.dps.texas.gov/internetforms/getForm.ashx?id=DIC-24.pdf>; retrieved on 5/1/2023.

¹⁴ *Id.*; See also, Exhibit 1 (Retrieved from TxDPS website on 5/1/2023)

¹⁵ *Writ*, Pg. 13-15

Hence its non-compliance materially prejudices the defense rights & case of blood draw subjects in related (e.g., DWI) criminal proceedings;¹⁶ & subjects are therefore subjected to unreasonable searches & seizures, with evidence of such used against them in criminal proceedings, contrary to 4th Amendment. *Id.*

Such materially prejudices subjected citizens' liberties, e.g., Petitioner; as it also subjects or harms 4th, 5th, 6th, & 14th Amend. U.S. Const.¹⁷ due process right against illegally (i.e., warrantless) obtained evidence, or risk of such evidence used against them in related criminal proceedings;¹⁸ & also prejudices, subjects, &/or harms their right to fair defense & fair trial on any related criminal proceedings.¹⁹

Per Petitioner's Related §1651 Writ,²⁰ such harm occurred against Petitioner. Illegally obtained blood evidence alleged to be Petitioner's blood, & testimonies on said void warrant & illegal obtained evidence, were used against Petitioner at the void criminal conviction trials of related HC Cause #s 2233594 (DWI) & 2233595 (public interference w/ public duties), contrary to Petitioner's pre-trail written objections & suppress motions, contrary to Petitioner's 4th & 14th Amd. U.S. Const. right against unreasonable search & seizures, & contrary to exclusionary rule.²¹

¹⁶ *Writ*, Pg. 14-15

¹⁷ See, U.S. Const. Amd(s) IV, V, VI, & XIV

¹⁸ *Mapp v. Ohio*, 367 U.S. 643 (1961); See also, *Kaufman v. United States*, 394 U.S. 217, 229 (1969) (discussing 4th Amd. U.S. Const. unreasonable search & seizure clause, & policy of exclusionary rule for illegally obtained evidence); See also, e.g., *Riley v. California*, 134 S.Ct. 2473 (2014) (discussing 4th Amd. U.S. Const. unreasonable search & seizure protections, & exceptions to warrantless search)

¹⁹ See e.g., *U.S. v. Dimberio*, 56 MJ 224 (C.A.A.F. 2001) ("...a defendant has a constitutional right to present a defense. Citing *Washington v. Texas*, 388 U.S. 14 (1967)).

²⁰ *In re Ernest Adimora-Nweke*, U.S. Supreme Court ("SCOTUS") Cause # _____, Petition for [Related] Writ of Certiorari ("Related Writ"), Filed ~4/13/2023.

²¹ Related *Writ*, at Pg. 47 – 57.

The void DIC-24 form illegally results in denial of required statutory fair due process notice rights, denial of fair defense rights, & bodily integrity rights, which along with the un-impartial judge, caused the void challenged convictions raised for HC Cause #s 2233594 & 2233595, in Petitioner's recently submitted related §1651 writ of cert.²²

Hence, there are new intervening circumstances of a substantial & controlling effect (i.e., liberty interests effectively irreparably harmed per the void DIC-24 form), & substantial grounds not previously presented ((1) the current void DIC-24 form, & (2) challenged void judgments²³ & orders resulting from cause #s 2233594 & 2233595, which were partly caused by the challenged void TX DPS' DIC-24 & its resulting lack of authority of magistrate to issue search warrant²⁴); as compelling rehearing basis.

The statutory strict compliance *vs* substantial compliance notice issue raised with the DIC-24 form,²⁵ is important nationwide; as it triggers fair notice – a fundamental due process right required for jurisdiction of govt authorities to invade civil liberties; & applicable in both civil & criminal proceedings.²⁶ Hence, TX Supreme

²² *Id* at Pg(s). 54, & 47 – 54.

²³ Related *Writ*, Appx. 71 – 78, 1776 – 1778, 1788 – 1800, 1806 – 1818

²⁴ See, Related *Writ*, at Pg. 47 – 50; Related *Writ*, Appx. 1788 – 1800.

²⁵ *Writ*, Pg. 15.

²⁶ *U.S. Const. Amd. XIV; Baldwin v. Hale*, 68 U.S. 223, 233 (1863) (“Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence.”); *Mullane v. Central Hannover Bank & Trust Co.*, 339 U.S. 306, 314 – 315 (1950) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.... The notice must be of such nature as reasonably to convey the required information... and it must afford a reasonable time for those interested to make their appearance...”)

Courts' sound reasoning need re-affirmed as standard for statutory notice compliance, for Petitioner & TX citizens; & nationwide by SCOTUS, for U.S. citizens.

Such is more compelling reason to grant rehearing & writ on Issue 2(A)(I).

Substantively, the DIC-24 form is important to protect Petitioner & §724.015(a) subjects' substantive due process privacy & bodily integrity liberty rights;²⁷ & important protect against intrusions of such substantive rights via unreasonable searches & seizures by state actors.²⁸

Such const. rights violations are enjoin-able under 42 U.S.C. §1983 against said state actors;²⁹ & caused damages actionable against state actor "persons" for such deliberate indifferent amounting actions, failure to train;³⁰ failure to supervise or supervisory acquiescence or participation in the constitutional rights violations;³¹

²⁷ *Rochin v. California*, 342 U.S. 165, 172 (1952) ("Illegally breaking into the privacy of the petitioner, the struggle to open his mouth & remove what was there, the forcible extraction of his stomach's contents... is bound to offend even hardened sensibilities"); *Schmerber v. California*, 384 U.S. 757, 772 (1966) ("The integrity of an individual's person is a cherished value of our society"); *Winston v. Lee*, 470 U.S. 753, 759 (1985) ("A compelled surgical intrusion into an individual's body for evidence... implicates expectations of privacy and security of such magnitude that the intrusion may be 'unreasonable' even if likely to produce evidence of a crime"); *Griswold v. Connecticut*, 381 U.S. 479, 484 - 485 (1965); *Curzan v. Missouri Dept. of Health*, 497 U.S. 261 (1990)

²⁸ See, *Mapp v. Ohio*, 367 U.S. 643 (1961)

²⁹ *Gerstein v. Pugh*, 420 U.S. 103, 107 (1975); 28 U.S.C. §1343(a)(3) & §1343(a)(4); *Gibson v. Berryhill*, 411 U.S. 564, 573 (1973) ("...actions brought under the Civil Rights Act of 1871, 42 U.S.C. §1983, were within the 'expressly authorized' exception to the ban on federal injunctions. Citing, *Mitchum v. Foster*, 407 U.S. 225 (1972)")

³⁰ *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388–91 (1989)

³¹ *Hyde v. City of Willcox*, 23 F.4th 863, 874 (9th Cir. 2022) ("[S]upervisors 'can be held liable for: 1) their own culpable action or inaction in the training, supervision, or control of subordinates; 2) their acquiescence in the constitutional deprivation of which a complaint is made; or 3) for conduct that showed a reckless or callous indifference to the rights of others.'").

for conspiracies;³² & for deliberate indifferent wrongful customs or practices,³³ under §1983,³⁴ §1985,³⁵ & §1986 – as applicable for Petitioner.

Petitioner pled & raised these issues in the governing wrongly dismissed complaints,³⁶ & in the class action & partial summary judgment motions filed in the original & independent actions with causes 4:20-CV-04149³⁷ & 4:22-CV-00765³⁸ respectively.

Hence, the (1) continued irreparable harm on liberty & privacy rights of citizens' liberty; (2) continued subjection to unreasonable search & seizures (via void searches & seizures w/ blood warrants issued by magistrates that lack Tex Code of Crim. Pro. 18.01(j) authority); & (3) illegal prejudice to subjects' criminal defense; all resulting from the still void DIC-24 form, & use of illegally obtained blood & other evidence against Petitioner & similarly situated §724.015(a) subjects in criminal proceedings; are compelling grounds to grant rehearing & writ on Issue 2(A)(I).

³² *Dennis v. Sparks*, 449 U.S. 24 (1980); *Wallace v. Kato*, 549 U.S. 384, 397 (2007).

³³ *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988).

³⁴ 42 U.S.C. §1983; *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989); *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978); *Villages of Willowbrook v. Olech*, 528 U. S. 562 (2000); *Taylor v. Riojas*, 141 S. Ct. 52 (2020).

³⁵ 42 U.S.C. §1985; *See also, e.g., Kush v. Rutledge*, 103 S. Ct. 1483 (1983); *Griffin v. Breckenridge*, 403 U.S. 88, 97 (1971); *Hoopes v. Nacrelli*, 512 F. Supp. 363, 368 (E.D. Pa. 1981) (if city council's and mayor's requests for information about pending federal investigation, threats of sanctions for refusing to answer, and suggestions plaintiff was not performing his job as police chief were intended to deter plaintiff from testifying at trial, then § 1985(2) violated)

³⁶ *Writ*, Appx. 107-140; 141-255; 313-340; 341-359; 583-585.

³⁷ *Writ*, Appx. 441-467; 470-482.

³⁸ *Writ*, Appx. 256-276; 360-382; 419-440.

Issue 2(A)(III) warrant rehearing; per Related Writ matters & due process grounds.

Issue 2(A)(III) disproves judicial absolute immunity principle; a fallacy from its origin from Edward Coke in 1607, through its wrongful application to 42 U.S.C. §1983; contrary to congressional intent per rules of statutory interpretation, & contrary to §1983's legislative history.³⁹

To disregard (a) the sound research, reasoning, & epiphany presented on this fundamental error within U.S. justice system (i.e., common law absolute immunity), & (b) resulting harm (i.e., irreparable harm to the judicial integrity, & Petitioner's damages claims), is unconstitutional action;⁴⁰ for sanctioning a fundamentally void due process principle, as applicable, nationwide.⁴¹

Hence, the 4/17/2023 denial of writ on Issue 2(A)(III)'s fundamental challenge & defeat of absolute immunity defense; & the void fallacy of absolute immunity as a principle, (i.e., immunization of harmful illegitimate, fraudulent, unconstitutional, &/or criminal acts of judicial officers & prosecutors is irrational & unrelated to any

³⁹ *Writ*, Pgs. 28 – 35.

⁴⁰ *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.”); *See also, 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.”); *See also, Weinberger v. Wiesenfeld*, 420 U.S. 636, n.2 (1975) (“This Court’s approach to 5th Amendment equal protection claims has always been precisely the same as to equal protection claims under the 14th Amendment...”)

⁴¹ *Cf. Marshall v. Jerrico Inc.*, 446 U.S. 238, 242 – 243 (1980) (The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases... At the same time, it preserves both the appearance and reality of fairness, “generating the feeling, so important to a popular government, that justice has been done,” *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring). Indeed, “justice must satisfy the appearance of justice,” *Offutt v. United States*, 348 U.S. 11, 14 (1954))

legitimate nor compelling state interest)⁴²; the harmful effect of illegal state, private, & judicial conspiracy activity on Petitioner,⁴³ resulting in the void orders & judgments raised & sought vacated in the Related *Writ*,⁴⁴ & resulting in the civil rights injunction⁴⁵ & damages sought in USDC # 4:22-CV-00765 or its severed “B case” docket;⁴⁶ are intervening circumstances of a substantial & controlling effect, & substantial grounds not previously presented, to grant rehearing & writ on Issue 2(A)(III).

The injustice effectuated by this Court’s 4/17/2023 writ denial, warrant rehearing.

Petitioner’s uncontroverted *in forma pauperis* application effective pre & post removal in the appealed district court cause # 4:22-CV-00765,⁴⁷ entitled Petitioner to appeal without costs upon filing of the 5/27/2022 or amended 6/6/2022 appeal notice.⁴⁸

Petitioner was not required to file a new FRAP 27 motions with new financial affidavit in fed. dist. court or in fed. 5th circuit court, as stated in the 5th Circ. prejudicial void orders;⁴⁹ nor was Petitioner required to pay an appeal filing fee.⁵⁰

⁴² *Writ*, Pg. 31.

⁴³ See Related *Writ*, Pgs. 13 – 57.

⁴⁴ Related *Writ*, Appx. 8–96; 1776–1822; 1824–1840; 1862–1864; 1885–1877; 1890–1892; 2090.

⁴⁵ *Writ*, Appx. 512 – 530, 257 – 276, 313 – 338, 341 – 359, 360 – 382, 419 – 429, 1156 – 1173; See also e.g., Related *Writ*, Appx. 2251 – 2256.

⁴⁶ *Id*; *Writ* Appx. 1284 – 1364, 431 – 438, 484 – 497; Related *Writ*, Appx. 2258 – 2338.

⁴⁷ *Writ*, Appx. 90 – 91.

⁴⁸ Fed. R. App. Pro. Rule 24(a)(3); *Writ*, Appx. 24.

⁴⁹ *Writ*, Appx. 8 & 11.

⁵⁰ *Writ*, Appx. 9 & 11.

Yet, Petitioner complied with the 5th Circ. clerk's request (i.e., re-file a *in forma pauperis* application in dist. crt. to obtain a ruling for appeal),⁵¹ which resulted in the un-impartial dist. judge's 6/23/2022 order that appeal was not taken in good faith.⁵²

However, after the district court judges' 6/23/2022 order,⁵³ & Petitioner's notice of said order,⁵⁴ Petitioner's right to appeal *in forma pauperis* was only subject to a showing of good faith or non-frivolous appeal,⁵⁵ via due FRAP Rule 24(a)(5) motion.⁵⁶

Hence, the Fed. 5th Circ's judgment-mandate of dismissal for failure to pay fee,⁵⁷ is contrary to rules of procedure,⁵⁸ effectuates unequal administration of proceedings,⁵⁹ & is void⁶⁰ for petition⁶¹ & due process fair hearing rights⁶² denial.

⁵¹ Writ, Appx. 83 & 89.

⁵² Writ, Appx. 15 – 16.

⁵³ *Id.*; See also, Writ, Appx. 25 (6/23/2022 Docket entry)

⁵⁴ Fed. R. App. Pro. Rule 24(a)(4)

⁵⁵ Fed. R. App. Pro. Rule 24(a)(3)(A); Writ, Appx. 15 (citing *Howard v King*, 707 F2d 215, 220 (5th Cir 1983))

⁵⁶ Fed. R. App. Pro. Rule 24(a)(5); See also, Writ, Appx. 77 – 82; See also, Writ, Appx. 8 (“On August 2, 2022, we received your FRAP 24 motion and attachments thereto, and are taking no action.”); See also, *Adimora-Nweke v. McGraw*, Appellant's FRAP Rule 21 Extraordinary Writ; FRAP 21(d) Motion for Additional Word Count; 24(a)(5) Motion & Brief, U.S. 5th Circ. Case No. 22-20269, Filed on 8/2/2022.

⁵⁷ Writ, Appx. 6 – 7.

⁵⁸ Cf. Fed. R. App. Pro. Rules 24(a)(3), 24(a)(4), & 24(a)(5)

⁵⁹ *Supra*, fn. 40.

⁶⁰ *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.”)

⁶¹ *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 and 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...”)

⁶² *Baldwin v. Hale*, 68 U.S. 223, 233 (1863); *Mullane v. Central Hannover Bank & Trust Co.*, 339 U.S. 306, 314 – 315 (1950)

Consequently, the 4/17/2023 writ of cert denial, in light of said issues, effectuates such injustice. Such injustice effectuated via this Court's 4/17/2023 writ denial, is material, non-pre-existing, & additional grounds to grant rehearing.

CONCLUSION

Petitioner's writ makes a *prima facie* case for its reliefs requested.

While Petitioner's *in forma pauperis* applications, & the writ's Issue 1,⁶³ defeats the Fed. 5th Circuit's judgement-mandate dismissal of the appeal for failure to pay fee; Petitioner's argued compelling state interest in protecting citizens unreasonable search & seizures, procedural & substantive due process rights, is evident in TTC Ch. 724; and the DIC-24 form is required to strictly comply. The Tex. Transp. Code promulgated form, as currently existing, is still void. Hence there still exists irreparable harm to Petitioner & citizens of Texas; a compelling circumstance & of a substantial & controlling effect on Petitioner's liberty & TX citizens' rights, to warrant rehearing, & grant of writ on Issues 2(A)(I).

Grant of rehearing, & grant of writ either or all of Issues 1 – 2(B), are warranted; & effectively shows that the matters, including class action injunctions, were duly & sufficiently pled, contrary to trial court's rulings; shows that Petitioner's appeal was not frivolous or in bad faith, contrary to trial court's ruling; resolves *McGraw's* independent action in equity vs "bill of review" pleading construction issue; & rectifies liberty impediments & void jurisdictional principles, nationwide.

⁶³ Whether Petitioner's *in forma pauperis* status from state court applies post removal to Federal Court. *Writ*, Pgs. 5, & 6 –11.

Const. liberties (including 14th Amendment due process right to defense & fair trial rights) are at stake, & harmed; daily. Such is compelling reason to grant rehearing & writ on the issue, & rectify the harm; e.g., as requested.⁶⁴

Considering the issues in the opinion issued on 4/14/2023,⁶⁵ on this case's conference date, & compared to the liberty-depriving issues in Petitioner's writ, rehearing & grant of Petitioner's writ meets U.S. Constitutional discretionary standard, & is in the interest of justice.⁶⁶

Alternatively, Petitioner shall file another likely-futile independent action.

RELIEF REQUESTED

Petitioner asks this Court to extend its discretion scope to consider & grant this SCOTUS Rule 44 Motion; & then grant Petitioner's writ, at least on above issues.

Respectfully Submitted, 5/1/2023 /s/ Ernest Adimora-Nweke

⁶⁴ See e.g., *Gerstein v. Pugh*, 420 U.S. 103 (1975)

⁶⁵ *Axon Enterprise, Inc. v. FTC*, U.S. Supreme Court. Docket Cause # 21-86.

⁶⁶ See e.g., *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990) ("[A]buse of discretion" has been defined as an attitude that is unreasonable, arbitrary or unconscionable. * * * It is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary."); *Accord, Bass*, 172 F.2d at 209 ("...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."); *Bolling v. Sharpe*, 347 U.S. at 499 (1954); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Weinberger v. Wiesenfeld*, 420 U.S. 636, n.2 (1975); *Offutt v. United States*, 348 U.S. 11, 14 (1954).

PROOF & CERTIFICATE OF SERVICE, & RULE 44.2 CERTIFICATE

I HEREBY CERTIFY that a copy of the foregoing has been served upon counsel for all parties to this proceeding as identified below via mail or email & on or ~5/1/2023: Served On:

ATTORNEYS FOR DEF. MCGRAW & TxDPS

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I declare under penalty of perjury under the laws of the United States of America that the foregoing Petition is true & correct, restricted to grounds specified in Rule 44.2, & is presented in good faith & not for delay. 5/1/2023 /s/ Ernest Adimora-Nweke.

**Additional material
from this filing is
available in the
Clerk's Office.**