Case No. 22-7269 ORIGINAL

In the Supreme Court of the United States of America

MELCHOR KARL T. LIMPIN

Pro se petitioner,

v.

ROBERT B.C. MCSEVENEY, *et al.,* and
MERRICK B. GARLAND *et. al.,*

Respondent(s).

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit
Case No. 22-56059 and Case No. 22-55879

PETITION FOR A WRIT OF CERTIORARI

Melchor Karl T. LIMPIN
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QUESTIONS PRESENTED

(1) Whether the statute 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested...") is constitutionally impermissible under the Fourth and Fifth Amendment equal protection clause because the executive branch of government does not have probable cause to make an arrest, neither may issue an arrest warrant without probable cause, where a lawful permanent resident's deportation proceeding is purely a civil action and it is not a crime for a removal alien to remain in the United States, See *Arizona v. United States*, 132 S.Ct. 2492, 2496 (2012) ("As a general rule, it is not a crime for a removable alien to remain in the United States.")?

(2) Whether the statute and regulation, see 8 U.S.C. § 1226(a) and 8 C.F.R. § 287.5(e)(2) that authorizes and delegates a federal cop or Immigration and Customs Enforcement ("ICE") federal officer Porter (with badge #: K3187), to solely issue an ICE arrest warrant, who is also the same person involved in investigating and determining the government's probable cause to arrest (i.e., deportable charges)— is constitutionally impermissible under the Fourth Amendment Warrant Clause because the warrant was not issued by a "neutral person" detached from police investigation and prosecution, where an independent judgment is required under the Fourth Amendment for purposes of clearly established law of warrants, See *Shadwick v. City of Tampa,* 407 U.S. 345, 350 (1972) ("The warrant traditionally has represented an independent assurance that a search and arrest will not proceed without probable cause . . . . Thus, an issuing magistrate must . . . be neutral and detached.")?

(3) Whether the statute and regulation, 8 U.S.C. § 1226(a) and 8 C.F.R. § 287.5(e)(2) — is constitutionally impermissible under the Fifth Amendment because such statute and regulation authorizes and delegates a federal cop or ICE

officer Porter (with badge #: K3187), to solely issue the ICE arrest warrant without an independent judgment and neither a neutral person detached from police investigations and prosecution and thus, petitioner was invidiously discriminated with his liberty taken away, and deprived of Fifth Amendment rights that guarantees "equal protection of the laws" provided by the Fourth Amendment Warrant Clause under: (1) *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 US 388 (1971) and (2) *Davis v. Passman,* 442 US 228, 234 (1979) ("In numerous decisions, this Court "has held that the Due Process Clause of the Fifth Amendment forbids the Federal Government to deny equal protection of the laws")?

PARTIES TO THE PROCEEDINGS

Petitioner:

Melchor Karl T. Limpin was the plaintiff in the trial courts and appellant in the court of appeals and is the petitioner in this Court.

Respondents:

The following parties were defendants in both their official and individual capacities in the district court with Case No. 16-cv-02351-AJB-BLM and appellees in the court of appeals with 9th Circuit Case No. 20-55866 then 9th Circuit Case No. 22-56059, and are respondents in this Court:

(1) Robert B.C. Mcseveney (immigration judge); (2) Jeh Johnson (former DHS Secretary); (3) Kamala Harris (former Attorney General); (4) Guy G. Grande (DHS attorney); (5) Kerri A. Calcador (DHS attorney); (6) ICE agent Porter, with badge #: K-3187; (7) ICE agent Cobian, with badge #. R-2784; (8) ICE agent Larwa.

The following parties were defendants in their individual capacities in the district court with Case No. 22-cv-1150-CAB-BGS and appellees in the court of appeals with 9th Circuit Case No. 22-55879, and are respondents in this Court:

(1) Merrick Garland (Attorney General); (2) Loretta Lynch (Former Attorney General); (3) ICE officer Porter (with badge #: K-3187); (4) ICE officer Cobian (with badge #. R-2784); (5) ICE officer Larwa; (6) Robert B.C. McSeveney (immigration judge); (7) Kerri A. Calcador (DHS attorney); (8) Guy G. Grande (DHS attorney), and the following CoreCivic INC. corporate executives, (9) Damon T. Hininger (CEO); (10) Cole Carter; (11) David ChurchHill; (12) David M. Grafinkle; (13) Anthony L. Grande; (14) Lucibeth Mayberry, (15) Patrick Swindle, and (16) Harley Lappin.

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APPENDIX 14

On October 30, 2020, the Ninth Circuit issued a Memorandum that affirmed the USDC dismissal based on: (1) The court lack subject matter jurisdiction under 8 U.S.C. § 1252(g) and (2) Rejected without merit Limpin's contention that the arrest warrant was defective because it was not signed by an immigration judge, see 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested..."), See *Melchor Karl T. Limpin v. United States of America*, (9th Circuit Case No. 19-55369).

APPENDIX 15

On July 18, 2022, the District Court denied (1) Motion for court's leave to amend with questions of law challenging 8 U.S.C. § 1226(a), and (2) Motion for excusable neglect under Fed.R.Civ.Proc. 60(b)(6). See *Melchor Karl T. Limpin v United States of America*, District Court Case No. 17-cv-01729-JLS-WVG.

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On October 20, 2022, the Ninth Circuit denied the timely notice to appeal and ordered a dismissal based on a conclusion that the appeal was frivolous and denied motion to proceed in forma pauperis, *Melchor Karl T. Limpin v United States* (9th Circuit Case No. 22-55738), despite the law of the case doctrine that appeal is not frivolous [see Appendix 13].

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I. PETITION FOR A WRIT OF CERTIORARI

I, Melchor Karl T. LIMPIN ("Petitioner") petitions the Supreme Court for a writ of certiorari to address the three questions presented to this Court and review the judgments made by the District Court for the Southern District of California and the U.S. Court of Appeals for the Ninth Circuit [see Appendix 1 -8] that are directly related and closely identical, having the same legal issues raised [see Appendix 9-16], pursuant to Supreme Court Rule 12.4 and Rule 14.1(b)(iii).

II. OPINIONS BELOW

Pursuant to Supreme Court Rule 14.1(b)(iii), the following decisions were directly related and made by the U.S. District Court for the Southern District of California ("USDC") and Court of Appeals for the Ninth Circuit ("USCA"):

APPENDIX 1

On September 16, 2016, petitioner filed the initial complaint. On December 10, 2018, the USDC granted petitioner's motion to amend but denied the motion to proceed in forma pauperis because petitioner previously paid the initial filing fee of $400 in 2016, where two years later in 2018, petitioner requested to proceed in forma pauperis because of poverty and to avail the services of the U.S. Marshall's office to serve the paperwork, attached as Appendix 1, *Melchor Karl T. Limpin v. McSeveney et al.,* (USDC Case No. 16-CV-2351-AJB-BLM).

APPENDIX 2

On August 12, 2020, the USDC granted: (1) federal defendant's motion to dismiss in their official capacity and (2) federal defendants' motion to dismiss in their individual capacity because petitioner was 48-days late to serve the paperwork under Fed.R.Civ.Proc. 4(m), *Limpin v. McSeveney et al.,* (USDC Case No. 16-CV-2351-AJB-BLM) attached as Appendix 2.

APPENDIX 3

October 20, 2021, the USCA for the Ninth Circuit affirmed the district court's decision based on: (1) failure to establish statutory waiver of sovereign immunity, (2) failure to effect proper service of the summons and complaint pursuant to Fed.R.Civ.Proc. 4(m) and (3) Rejected as meritless Limpin's contention that he should be granted leave to amend, where petitioner at the time was attempting to add claims under the Administrative Procedure Act ("APA"), 5 U.S.C. § 702 et seq. for federal defendants sued in their official capacity, *Limpin v McSeveney et al.,* 9th Circuit Case No. 20-55866 attached as Appendix 3.

APPENDIX 4

Petitioner filed a motion for reconsideration concerning the decision in Appendix 3 and argued to grant: (1) Leave to amend the prior complaint to add questions of law (i.e., questions presented to this Court), not claims under the APA that was previously denied leave to amend by the Ninth Circuit [see Appendix 3], and (2) Substitute service be allowed, that was effected to the U.S. Attorney's office because the full names of ICE officers involved in the arrest was unknown to petitioner as "good cause" for the 48-days delay serving the paperwork under Fed.R.Civ.Proc. 4(m), where petitioner cited at Docket Entry No. 29, see *Bivens v. Six Unknown Fed. Narcotics Agents,* 403 US 388, at Fn. 2 (1971) ("The agents were not named in petitioner's complaint, and the District Court ordered that the complaint be served upon "those federal agents who it is indicated by the records of the United States Attorney participated in the November 25, 1965, arrest of the [petitioner]." App. 3. Five agents were ultimately served.").

On February 28, 2022, the USCA denied petitioner's motion for reconsideration, see *Melchor Karl T. Limpin v. McSeveney, et al.,* (9th Circuit, Case No. 20-55866) and attached as Appendix 4.

APPENDIX 5

On February 08, 2022, petitioner filed with the USDC the following documents: (1) Motion to amend to add questions of law, (2) Second Amended Complaint, and (3) Motion for reconsideration based on petitioner's poverty and the prior motion to proceed in forma pauperis [see Appendix 1] was denied in error as basis for petitioner's good cause for the 48-days delay serving the paperwork under Fed.R.Civ.Proc. 4(m).

On October 17, 2022, the USDC "stricken" from the record the documents previously filed by petitioner that was served to opposing party and denied the motion for relief attached as Appendix 5 but advised that petitioner may seek to file a new and separate case (*Id.* at pp. 2 footnote 1). [*Melchor Karl T. Limpin v. McSeveney et al.,* USDC Case No. 16-CV-2351-AJB-BLM)].

APPENDIX 6

On December 21, 2022, Petitioner appealed the decision in Appendix 5 but was required as a prerequisite to appeal, to provide a statement that the appeal should go forward because petitioner could not afford the filing fee. In Docket Entry No. 7, at pp. 16, 9th Circuit, Case No. 22-56059, Petitioner stated that there was a parallel case involving the same and substantial facts about questions of law and the USCA previously determined that the appeal is not frivolous and thereby, granted in forma pauperis, see *Melchor Karl T. Limpin v. United States* (9th Circuit, Case No. 19-55369) attached as Appendix 13.

However, on January 27, 2023, the USCA denied the motion to proceed in forma pauperis based on that the appeal was frivolous, not applying the law of the case doctrine, see *Melchor Karl T. Limpin v. McSeveney, et al.,* (9th Circuit, Case No. 22-56059) attached as Appendix 6.

APPENDIX 7

On August 04, 2022, petitioner filed a new *Bivens* action that trails from the previous complaint and raised questions of law (i.e., questions presented to this Supreme Court) with another judge in the USDC because of experiencing a hard time, not freely given leave to amend pursuant to Fed.R.Civ.Proc. 15 [see Appendix 1-6]. Petitioner in his complaint argued that res judicata does not prevent the complaint because the previous decision by the USDC was a dismissal without prejudice [see Appendix 2] and that the doctrine of equitable tolling should apply.

On August 08, 2022, the USDC *sua sponte* dismissed the complaint, see *Melchor Karl T. Limpin v Garland et al.,* USDC Case No. 22-cv-01150 CAB-BGS, attached as Appendix 7, where petitioner requested to proceed in forma pauperis because of his poverty and requires meaningful access to the federal courts, see *Neitzke v. Williams*, 490 US 319, 324 (1989) ("The federal *in forma pauperis statute,* enacted in 1892 and presently codified as 28 U. S. C. § 1915, is designed to ensure that indigent litigants have meaningful access to the federal courts.").

APPENDIX 8

On January 25, 2023, the USCA denied the timely notice of appeal and dismissed the case as frivolous, *Melchor Karl T. Limpin v Garland, et al.,* 9th Circuit Case No. 22-55879, attached as Appendix 8.

APPENDIX 9

On June 9, 2016, petitioner filed a petition for a writ of habeas corpus challenging the lawfulness of his arrest. On August 04, 2017, the USDC denied the petition for writ of habeas corpus. See *Melchor Karl T. Limpin v Figueroa* USDC Case No. 16-cv-01438-AJB-BLM, attached as Appendix 9.

APPENDIX 10

On September 19, 2018, the USCA issued a Memorandum that the petition for a writ of habeas corpus is moot because the petitioner was released from custody on September 12, 2016. See *Melchor Karl T. Limpin v Figueroa* 9th Circuit Case No. 17-56378 attached as Appendix 10.

APPENDIX 11

On July 19, 2018, the USDC granted defendant's motion to dismiss with leave to amend, see *Melchor Karl T. Limpin v United States of America* District Court Case No. 17-cv-01729-JLS-WVG attached as Appendix 11.

APPENDIX 12

On March 25, 2019, the USDC granted defendant's motion to dismiss and dismissed with prejudice, see *Melchor Karl T. Limpin v. United States of America,* USDC for the Southern District of California, Case No. 17-cv-01729-JLS-WVG attached as Appendix 12.

APPENDIX 13

On November 20, 2019, the USCA issued an order that petitioner's appeal demonstrates non-frivolous issues and granted petitioner to proceed in forma pauperis. See *Melchor Karl T. Limpin v. United States of America*, (9th Circuit Case No. 19-55369), attached as Appendix 13.

APPENDIX 14

On October 30, 2020, the USCA issued a Memorandum that affirmed the USDC dismissal based on: (1) The court lack subject matter jurisdiction under 8 U.S.C. § 1252(g) and (2) Rejected without merit Limpin's contention that the arrest warrant was defective because it was not signed by an immigration judge, see 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien

may be arrested..."), See *Melchor Karl T. Limpin v. United States of America*, (9th Circuit Case No. 19-55369), attached as Appendix 14.

APPENDIX 15

On July 18, 2022, the USDC denied (1) Plaintiff's motion for court's leave to amend with questions of law challenging 8 U.S.C. § 1226(a), and (2) Plaintiff's motion for excusable neglect under Fed.R.Civ.Proc. 60(b)(6). See *Melchor Karl T. Limpin v United States of America*, USDC for the Southern District of California Case No. 17-cv-01729-JLS-WVG, attached as Appendix 15.

APPENDIX 16

On October 20, 2022, the USCA denied the timely notice to appeal and ordered a dismissal based on a conclusion that the appeal was frivolous and denied motion to proceed in forma pauperis, attached as Appendix 16, *Melchor Karl T. Limpin v United States* (9th Circuit Case No. 22-55738), despite the law of the case doctrine that appeal is not frivolous [see Appendix 13].

III. JURISDICTION

Pursuant to Supreme Court Rule 12.4, petitioner seeks to enjoin the parties from two directly and closely related decisions from the USDC for the Southern District of California and USCA for the Ninth Circuit, where petitioner seeks an injunction for the questions of law—or questions presented to the Supreme Court and damages action under *Bivens v. Six Unknown Fed. Narcotics Agents,* 403 US 388 (1971) for violations of the Fourth Amendment Warrant Clause and Fifth Amendment Equal Protection Clause.

The USCA for the Ninth Circuit entered judgment on January 25, 2023, *Melchor Karl T. Limpin v Robert B.C. Mcseveney, et al.* (9th Circuit, Case No. 22-56059) [Appendix 6] and on January 27, 2023, *Melchor Karl T. Limpin v. Merrick B. Garland, et al.,* (9th Circuit, Case No. 22-55879) [Appendix 8].

This petition for a writ of certiorari is therefore, timely filed within 90-days pursuant to Supreme Court Rule 13.1 and the Supreme Court has jurisdiction, 28 U.S.C. § 1254(1).

IV. STATEMENT OF THE CASE

On July 29, 2015, petitioner was arrested by the Immigration and Customs Enforcement ("ICE") federal officers named Cobian and Larwa, with an ICE arrest warrant solely issued by ICE federal officer named Porter (with badge #: K-3187), pursuant to 8 U.S.C. § 1226(a) and see 8 C.F.R. § 287.5(e)(2).

Petitioner at the outset was constitutionally challenging the lawfulness of his arrest and specifically challenges the statute and regulation, see 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested..."); see 8 C.F.R. § 287.5(e)(2) that implicates the Fourth Amendment Warrant Clause and Fifth Amendment equal protection clause—because such statute and regulation authorizes and delegates a federal cop or ICE law enforcement officer named Porter (with badge #: K3187), to solely sign and issue an ICE arrest warrant, where such person is also the same person actively involved in the investigation and determination of the government's probable cause to arrest (i.e., deportation charges).

Thus, petitioner constitutionally challenges the statute and regulation, see 8 U.S.C. § 1226(a); 8 C.F.R. § 287.5(e)(2) because ICE officer Porter adhering to such laws is not a neutral person, detached from police investigation and prosecution, and on July 29, 2015 issued the ICE arrest warrant without an independent judgment, required under the Fourth Amendment for purposes of clearly established law of warrants under *Shadwick v. City of Tampa,* 407 U.S. 345, 350 (1972) ("The warrant traditionally has represented an independent

assurance that a search and arrest will not proceed without probable cause . . . . Thus, an issuing magistrate must . . . be neutral and detached.").

Up to this filing date of this petition, the questions presented to this Court has not been addressed, nor been determined in fact by the lower courts because of the Ninth Circuit decision that the Court lacks subject matter jurisdiction precluded by 8 U.S.C. § 1252(g) [see Appendix 14]. However, petitioner never challenged any discretionary decision or action by the Attorney General to commence proceedings, adjudicate cases or execute removal orders under 8 U.S.C. § 1252(g) because petitioner's deportation proceedings was dismissed by the government. Rather, petitioner Limpin is asking the Court to address the questions of law or questions presented to the Supreme Court, where the lower courts were not freely allowing petitioner to amend his prior complaint under Fed.R.Civ.Proc. 15.

(a) History of actions or decisions made in lower courts.

On June 9, 2016, petitioner filed a petition for a writ of habeas corpus, constitutionally challenging the lawfulness of his arrest that was denied on August 4, 2017 [see Appendix 9]. On September 19, 2018, the USCA for the Ninth Circuit dismissed the habeas petition because it was moot based on petitioner was released on bond on September 12, 2016 [see Appendix 10].

However, petitioner asks the Supreme Court to find that the previous habeas petition [see Appendix 10] should "not be rendered as moot" because after spending 412 days in custody then released on bond on September 12, 2016—petitioner subsequently filed with the district court as "collateral consequences" or "secondary injuries" from the habeas petition, the following federal cases:

(1) An action seeking injunctive relief and money damages action for Fourth Amendment and Fifth Amendment Equal Protection violations under *Bivens v. Six*

Unknown Fed. Narcotics Agents, 403 US 388 (1971) and *Davis v. Passman*, 442 US 228, 234 (1979) [*See* Appendix 1-6], and

(2) An action seeking injunctive relief and money damages action for a tort of false imprisonment and negligence under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b), where the government's sovereign immunity is waived under 28 U.S.C. § 2680(h) because the lawfulness of the arrest challenged was committed by ICE federal officers [*see* Appendix 11-16].

In support that the habeas petition is not moot because of collateral consequences or secondary injuries [see Appendix 10] to provide the Court with jurisdiction against the jurisdiction stripping language in 8 U.S.C. § 1252(g) [see Appendix 12 and 14], see *Spencer v. Kemna*, 523 US 1, 7 (Supreme Court, 1998) ("Once the convict's sentence has expired, however, some concrete and continuing injury other than the now-ended incarceration or parole—some "collateral consequence" of the conviction—must exist if the suit is to be maintained. See, e. g., *Carafas,* supra, at 237— 238."). See also *Abdala v. INS*, 488 F.3d 1061, 1063-1064 (9th Circuit 2007) ("For a habeas petition to continue to present a live controversy after the petitioner's release or deportation, however, there must be some remaining "collateral consequence" that may be redressed by success on the petition."). See also *Carafas v. LaVallee*, 391 US 234, 237-238 (Supreme Court, 1968) ("Because of these "disabilities or burdens [which] may flow from" petitioner's conviction, he has "a substantial stake in the judgment of conviction which survives the satisfaction of the sentence imposed on him." *Fiswick v. United States*, 329 U. S. 211, 222 (1946). On account of these "collateral consequences," the case is not moot. [Citations omitted].").

Hence, contrary to the District Court and Ninth Circuit's decision in [see Appendix 12 and 14] and based on petitioner's extant habeas jurisdiction,

petitioner asks the Supreme Court to find that federal courts do have jurisdiction under 28 U.S.C. § 2241 to address the questions of law presented to this Court. See e.g., *Demore v. Kim*, 538 US 510, 516-517 (2003) ("The amicus argues that respondent is contesting a "decision by the Attorney General" to detain him under § 1226(c), and that, accordingly, no court may set aside that action. Brief for Washington Legal Foundation et al. as *Amici Curiae* 7-8. But respondent does not challenge a "discretionary judgment" by the Attorney General or a "decision" that the Attorney General has made regarding his detention or release. Rather, respondent challenges the statutory framework that permits his detention without bail.... Having determined that the federal courts have jurisdiction to review a constitutional challenge to § 1226(c), we proceed to review respondent's claim.").

V. REASONS FOR GRANTING THE WRIT

The Supreme Court should intervene and GRANT the petition for a writ of certiorari based on the following reasons:

(1) Pursuant to Supreme Court Rule 10(c) ("a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court"), where petitioner Limpin asks the Supreme Court's intervention to resolve the enumerated questions presented to this Court by first settling the matter that the federal courts do have jurisdiction under 28 U.S.C. § 2241 contrary to the Ninth Circuit's decision [see Appendix 14].

Petitioner Limpin asks the Supreme Court to find the previous habeas petition should not be rendered as moot [see Appendix 10] to provide a basis for jurisdiction because after spending 412 days in custody then released on bond on September 12, 2016—petitioner subsequently filed with the district court as "collateral consequences" or "secondary injuries" from the extant habeas petition, the following federal cases:

[1] An action seeking injunctive relief and money damages action for Fourth Amendment and Fifth Amendment equal protection violations under *Bivens v. Six Unknown Fed. Narcotics Agents,* 403 US 388 (1971) and *Davis v. Passman*, 442 US 228, 234 (1979) [See Appendix 1-6], and

[2] An action seeking injunctive relief and money damages action for a tort of false imprisonment and negligence under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b), where the government's sovereign immunity is waived under 28 U.S.C. § 2680(h) because the arrest was committed by ICE federal officers adhering to 8 U.S.C. § 1226(a), See *Melchor Karl T. Limpin v. United States* [see Appendix 11-16].

See *Spencer v. Kemna*, 523 US 1, 7 (Supreme Court, 1998) ("Once the convict's sentence has expired, however, some concrete and continuing injury other than the now-ended incarceration or parole—some "collateral consequence" of the conviction—must exist if the suit is to be maintained. See, e. g., *Carafas,* supra, at 237— 238.").

(2) Pursuant to Supreme Court Rule 10(c), the questions presented to this Court were previously found as non-frivolous by the Ninth Circuit [see Appendix 13] but inconclusively dismissed for lack of subject matter jurisdiction by another panel of judges because of 8 U.S.C. § 1252(g) [see Appendix 14], where the district court's dismissal order affirmatively relied on the Supreme Court case in *Abel v. United States*, 362 US 217 (1960) [*see* Appendix 11, at pp. 9].

See *Melchor Karl T. Limpin v. United States,* USDC Case No. 17-CV-1729-JLS (WVG) (July 9, 2018) ("This administrative warrant has been sanctioned by Congress and the courts. In *Abel v. United States*, the Supreme Court interpreted the INA in effect at the time and explained it gave "authority to the Attorney General or his delegate to arrest aliens pending deportation proceedings under an

administrative warrant, not a judicial warrant within the scope of the Fourth Amendment." 362 U.S. 217, 232 (1960) ...Thus, it is clear that the Supreme Court and the Ninth Circuit have approved the use of an administrative arrest warrant under the INA for the arrest of a deportable alien.").

Pursuant to Supreme Court Rule 10(c), there is a compelling reason for the Supreme Court to intervene because the case in *Abel v. United States* 362 US 217 (1960) relied upon by the lower courts is "six decades" ago and currently no longer the regulatory requirement concerning ICE administrative arrest warrants. Today, there are fifty-two immigration officer categories expressly authorized to issue ICE arrest warrants and also the same immigration officer involved in the investigation and determination of deportable charges, see 8 C.F.R. § 287.5(e)(2), such as in this case, ICE officer Porter (with badge #: K3187), a federal cop solely issued the ICE arrest warrant without an independent judgment, neither a neutral person detached from police and prosecution and therefore, implicates the Fourth Amendment Warrant Clause under *Shadwick v. City of Tampa,* 407 U.S. 345, 350 (1972) ("The warrant traditionally has represented an independent assurance that a search and arrest will not proceed without probable cause . . . . Thus, an issuing magistrate must . . . be neutral and detached."); *Coolidge v. New Hampshire*, 403 U.S. 443, 449 (1971) ("[T]he whole point of the basic rule . . . is that prosecutors and policemen simply cannot be asked to maintain the requisite neutrality with regard to their own investigations.").

Hence, petitioner Limpin brings forth the questions presented to the Supreme Court and the writ of certiorari should be granted.

See also e.g., *Kidd v. Mayorkas,* Dist. Court, Central District of California (Case No. 2:20-cv-03512-ODW-JPRx) (April 26, 2021) ("However, in *Abel,* the case upon which Defendants primarily rely, the Supreme Court expressly *declined*

to consider whether the administrative warrant there satisfied the requirements for "warrants" under the Fourth Amendment. See *Abel*, 362 U.S. at 230. And at the time of *Abel,* immigration laws required that "application for a warrant [had to] be made to an independent responsible officer, the District Director of the I.N.S." *Id.* at 236-37 (emphasis added). This is no longer the regulatory requirement. There are now fifty-two immigration officer categories expressly authorized to issue arrest warrants for immigration violations, as well as "other duly authorized officers or employees of [DHS] or the United States who are delegated the authority." 8 C.F.R. § 287.5(e)(2). Several cases since *Abel* emphasize the importance of independent judgment in issuing warrants. See, e.g., *Shadwick v. City of Tampa,* 407 U.S. 345, 350 (1972) ("The warrant traditionally has represented an independent assurance that a search and arrest will not proceed without probable cause . . . . Thus, an issuing magistrate must . . . be neutral and detached."); *Coolidge v. New Hampshire*, 403 U.S. 443, 449 (1971) ("[T]he whole point of the basic rule . . . is that prosecutors and policemen simply cannot be asked to maintain the requisite neutrality with regard to their own investigations."). Because the administrative warrants at issue here lack the independent assurance guaranteed by the Fourth Amendment, they do not immunize the alleged conduct.").

(3) Pursuant to Supreme Court Rule 10(a), the Supreme Court should intervene because of a conflict of court decisions, where the Ninth Circuit issued a Memorandum [see Appendix 14] that stated, ("The district court properly dismissed Limpin's action for lack of subject matter jurisdiction because claims stemming form the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction. See 8 U.S.C. § 1252(g)..."). This is contrary to See *Prado v. Perez,* 451 F.Supp.3d 306, 312 (Dist.

Court, SD New York 2020) ("Accordingly, courts in this district have found that there is no deprivation of jurisdiction to hear claims arising from unlawful arrest or detention, because those claims are too distinct to be said to "arise from" the commencement of removal proceedings. See, e.g., *You, Xiu Qing v. Nielsen*, 321 F.Supp.3d 451, 457 (S.D.N.Y. 2018) (holding that unlawful arrest and detention claims fell "outside the ambit of § 1252(g)" because "[t]he question before the Court is not why the Secretary chose to execute the removal order ... [it] is whether the way Respondents acted accords with the Constitution and the laws of this country"); *Michalski v. Decker*, 279 F.Supp.3d 487, 495 (S.D.N.Y. 2018) (rejecting the argument that unlawful arrest and detention claims are part and parcel of the commencement of removal proceedings because "the decision or action to detain an individual ... is independent from the decision or action to commence a removal proceeding").").

(4) Pursuant to Supreme Court Rule 10, there is a compelling reason for the Supreme Court to intervene because first, it is a matter of imperative public importance concerning hundreds of thousands of lawful permanent residents ("LPR"), whose fundamental rights and liberties are at stake, where petitioner Limpin initiated a class action suit but denied appointment of pro bono counsel to represent the class. See *Melchor Karl T. Limpin v United States of America* USDC (Case No. 17-cv-1729-JLS-WVG).

Second, the national debt is currently 31.45 trillion dollars, where the government's legal interest to conduct removal proceedings is not hindered without making an initial arrest of an LPR under 8 U.S.C. § 1226(a) because petitioner, after release on bond, was able to continue to attend the removal proceedings outside the confines of a private prison for another two years, without interrupting the government's legal interest to conduct deportation proceedings.

Thus, a national debt that substantially accrued for the past five decades from the U.S. treasury— as government waste of money funneled to corporations who owns private prisons, as implemented and attributed by the statute and regulations, 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested..."), see 8 C.F.R. § 287.5(e)(2), where petitioner entitled to constitutional protection at the time of arrest, challenges the lawfulness of his arrest because it is not a crime for a removable alien to remain in the United States, See *Arizona v. United States*, 132 S.Ct. 2492, 2496 (Supreme Court, 2012) ("As a general rule, it is not a crime for a removable alien to remain in the United States.").

a. Lawful permanent resident's fundamental rights and liberties are at stake.

Petitioner a LPR at the time of arrest, is entitled to constitutional protection from unwarranted government intrusion. See *Landon v. Plasencia*, 459 US 21, 32 (Supreme Court, 1982) ("Once an alien gains admission to our country and begins to develop the ties that go with permanent residence, his constitutional status changes accordingly.").

Petitioner seeks injunctive relief and challenges the lawfulness of his arrest caused by the statute 8 U.S.C. § 1226(a) and 8 C.F.R. § 287.5(e)(2) as a "facial or as applied"— challenge under the Fourth Amendment Warrant Clause and Fifth Amendment that guarantees equal protection provided by the Fourth Amendment because such federal law authorizes and delegates that a federal cop or ICE law enforcement officer named Porter (with badge #: K3187), who is mainly involved in investigating and determining deportable charges to make an arrest, is also the same person that solely issues the ICE arrest warrant pursuant to 8 U.S.C. § 1226(a); 8 C.F.R. § 287.5(e)(2) and thus, petitioner brings forth the enumerated questions of law or questions presented to the Supreme Court.

See *United States v. Salerno*, 481 US 739, 745 (1987) ("A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid."). See also *Fed. Election Com'n v. Wisc. Right to Life,* 127 S.Ct. 2652, 2655 (2007) ("The section can be constitutionally applied only if it is narrowly tailored to further a compelling interest. [Citation omitted].").

Therefore, petitioner seeks injunctive relief for the questions presented to this Court and seeks money damages under *Bivens* for violations (1) Fourth Amendment Warrant Clause and (2) Fifth Amendment for invidious discrimination that guarantees equal protection provided by the Fourth Amendment, where it is clearly established law of warrants required by the Fourth Amendment that an independent judgment or the issuance of an arrest warrant be made by a neutral person detached from police investigations and prosecution. See *Shadwick v. Tampa,* 407 US 345, 350 (1972) ("This Court long has insisted that inferences of probable cause be drawn by "a neutral and detached magistrate instead of being judged by the officer engaged in the often-competitive enterprise of ferreting out crime." *Johnson v. United States, supra,* at 14; *Giordenello v. United States, supra,* at 486. In *Coolidge v. New Hampshire, supra*, the Court last Term voided a search warrant issued by the state attorney general "who was actively in charge of the investigation and later was to be chief prosecutor at the trial." *Id.,* at 450.").

For *Bivens* purposes, petitioner also claimed that at the time of the arrest, he was invidiously discriminated for his liberty was taken away, simultaneously deprived of Fifth Amendment fundamental rights that guarantees equal protection provided by the Fourth Amendment under *Davis v. Passman,* 442 US 228, 234 (1979) ("In numerous decisions, this Court "has held that the Due Process Clause

of the Fifth Amendment forbids the Federal Government to deny equal protection of the laws").

Inter alia, petitioner also sought injunctive relief and damages action for a tort of false imprisonment and negligence under the FTCA [see Appendix 11 and 12] that was dismissed by the district court that construed the complaint as a constitutional tort, despite the Supreme Court noted that the same conduct might give rise to both FTCA and *Bivens* actions in *Carlson v. Green,* 446 U.S. 14, 19-20, 23, 100 S.Ct. 1468, 1471-72, 1474, 64 L.Ed.2d 15 (1980).

b. National debt.

The national debt of the United States is currently at $31.45 Trillion retrieved online at, https://fiscaldata.treasury.gov/americas-finance-guide/national-debt/#:~:text=What%20is%20the%20national%20debt,accumulated%20over%20the%20nation's%20history that significantly increased from $10 Trillion in 2008, where the corporation named CoreCivic Inc., with a stock ticker (CXW) and owns the private prison that housed petitioner in custody for 412 days, amassed billions and billions of dollars in the past several decades.

The federal government has no need to separate LPR's from their families in the United States and lock them up for years to merely attend immigration court proceedings inside private prisons, while the federal government wasting every year, all those public funds from the U.S. Treasury funneled to corporations who owns private prisons for profits, where petitioner claimed "conflict of interest" because politicians and government employees can profit in investing with stock shares at the expense of numerous LPR's held indefinitely inside private prisons to increase the price of a stock share [see Appendix 11, at pp. 11].

The federal government's legal interest to deport is not hindered without making an initial arrest under 8 U.S.C. § 1226(a) because petitioner after

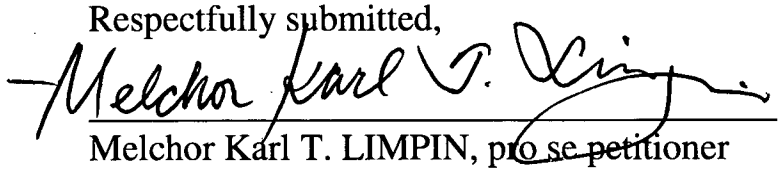
excruciatingly spent 412 days in custody then released on bond on September 12, 2016, continued to attend deportation proceedings outside the confines of a private prison for two more years.

Thus, immigration court proceedings, which is purely a civil action, see *INS v. Lopez-Mendoza,* 468 US 1032, 1038 (Supreme Court, 1984) ("A deportation proceeding is a purely civil action to determine eligibility to remain in this country..."), and as such, can undoubtedly be managed without making an initial arrest under 8 U.S.C. § 1226(a) and therefore, save the United States's coffers in hundreds of billions of dollars, having other alternatives such as, a tracking ankle bracelet compared to feeding, clothing and providing medical care inside private prisons, where petitioner presented questions to the Supreme Court challenging the lawfulness of the arrest because it is not a crime for a removable alien to remain in the United States, See *Arizona v. United States*, 132 S.Ct. 2492, 2496 (2012) ("As a general rule, it is not a crime for a removable alien to remain in the United States.").

VI. CONCLUSION AND PRAYER FOR RELIEF

In sum, the Supreme Court should GRANT a writ of certiorari and grant such other relief as justice requires, where petitioner was requesting for a pro bono counsel in the lower courts because petitioner is an indigent litigant and requires meaningful access to the federal courts, See *Neitzke v. Williams*, 490 US 319, 324 (1989) ("The federal *in forma pauperis statute,* enacted in 1892 and presently codified as 28 U. S. C. § 1915, is designed to ensure that indigent litigants have meaningful access to the federal courts.").

Respectfully submitted,



Melchor Karl T. LIMPIN, pro se petitioner

Date:

April 7, 2023