No. 23-304

In the

Supreme Court of the United States

Thomas Neilsen,

Petitioner,

v.

John Kellner, George Brauchler, Brian Sugioka, Douglas Bechtal,

Respondents.

On Petition for Writ of Certiorari to the Colorado Supreme Court and the Colorado Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In this case, Prosecutors for the 18th Judicial District in Colorado, acting as advocates for the State of Colorado convicted an innocent man by withholding both exculpatory and properly requested discovery pre-plea. The prosecutors decided to lie about withholding discovery in pre- and post-conviction proceedings. Petitioner/Neilsen filed a 42 USC 1983 action in state court requesting the state District Court issue a declaration that prosecutors were required to follow "black letter law", established in 1935, 1963 and 1976, by this United States Supreme Court in *"Mooney" "Brady" and "Agurs"*.

Petitioner specifically requested that the District Court issue a declaration that prosecutors in the 18th Judicial District of Colorado are required to follow "black letter law" established 87 years ago in "*Mooney v. Holohan*". The "*Mooney*" decision has been reaffirmed multiple times since its origin and, in every case, has required the prosecutor to correct perjured testimony. See also *"Agurs"*. There has never been a case that allowed a prosecutor to lie to the court or withhold exculpatory and requested discovery without consequence.

In the present case, District Court Judge Gary Kramer granted the prosecution's motion to dismiss by stating that Colorado rule Crim. 35 (c) is the

exclusive remedy to address the issues presented, Kramer further stated that he was not allowed to review another state court's ruling on discovery issues and that *"Heck v. Humphrey"* made this claim not cognizable under section 1983.

The Colorado Court of Appeals affirmed Judge Kramer's ruling stating in addition Petitioner was not entitled to "habeas" relief because he did not file for timely "habeas" relief while he was incarcerated.

This analysis flouts this Court's controlling precedent that has consistently required that a prosecutor must not present perjured testimony and must correct it when it occurs and that a prosecutor must provide both exculpatory and requested discovery to a defendant. This analysis also flouts this Court's controlling precedent that "the state has the responsibility to set the record straight". See *"Banks v. Dretke"*.

Prosecutors for the 18th Judicial District in Colorado and the Courts in the State of Colorado have instead chosen to give the proverbial finger to rulings of the United States Supreme Court Justices by openly defying Supreme Court precedent by incorrectly applying *"Heck"* and procedural issues to Petitioner's cases. Prosecutors, attorneys for the prosecutors, and the Courts in Colorado have decided that *"Mooney"*, *"Brady"*, *"Agurs"*, *"Banks"* and a host of other precedent does not apply in Colorado.

Prosecutors in Colorado can simply do as they please with no repercussions. They believe common law established by the United States Supreme Court Justices does not apply to Prosecutors in Colorado. State Courts in Colorado continue to sanction this type of behavior by applying issue preclusion and *"Heck"* to their rulings. This Court has never said that *"Heck"* or any of the procedural issues considered by the Courts in Colorado give the prosecution a justification to not comply with established "black letter law".

The question presented is simple:

(1) Does *"Heck"* or any other procedural issue bar a section 1983 petition asking for declaratory and injunctive relief when a prosecutor defiantly fails to follow "black letter law" established by this Supreme Court of the United States and the section 1983 relief requested was purposely designed to force the District Court to apply this Court's precedent?

PARTIES TO THE PROCEEDING

Petitioner is Thomas Neilsen proceeding pro-se. Petitioner was the plaintiff in State District Court, Appellant in the court of appeals and petitioner in writ of certiorari to the Colorado Supreme Court.

Respondents are John Kellner, elected district attorney in his official capacity, George Brauchler as past elected district attorney in his official capacity, Brian Sugioka, deputy district attorney, in his personal and official capacity, Douglas Bechtal, deputy district attorney, in his personal and official capacity, Respondents were defendants in the State District Court, appellees in the court of appeals and respondents to the Colorado Supreme Court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, petitioners state as follows: this statement is not applicable to any of the parties.

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INTRODUCTION

This case poses questions that go to the very heart of the integrity and impartiality of our criminal justice system. The issues presented merit this Court's review. The relief the Petitioner requested in his section 1983 petition in state court would have required the state district court to determine if the prosecution must comply with United States Supreme Court precedent, irrespective of any previous Court action.

Obviously, had the state court not granted the respondents motion to dismiss, the state court in Petitioner's section 1983 complaint would have been required to declare that the prosecution must comply with United States Supreme Court precedent. The Petitioner then requested in his section 1983 complaint, that after the state court determined that the prosecution must comply with Supreme Court precedent, the Court issue an injunction to force the prosecution to comply with the "black letter law" established by this United States Supreme Court.

The District Court dodged that responsibility by granting the respondents motion to dismiss. Petitioner/Neilsen has now made Judge Kramer with the District Court, Colorado Appellate Court Judges Schutz, Dunn, and Grove and the respondents fully aware, with his detailed pleadings in his section 1983 action, of the requested and

exculpatory discovery that was withheld, and the perjured testimony that was presented to the district court. Obviously, they should be jumping through hoops to correct the perjured testimony and provide the concealed discovery, but sadly nothing will happen without this Court's intervention.

Petitioner in his section 1983 complaint, detailed the perjured testimony and the requested and exculpatory discovery that was withheld prior to and after Petitioners plea. In *"Banks Dretke"* this United States Supreme Court placed the burden on "the state to set the record straight" as a predicate to further court action not as a result of past or present court action. Does the *"Banks Dretke"* decision have any meaning, or can the prosecution and state courts simply ignore the precedent set forth by this United States Supreme Court and not take any corrective action?

"The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights — to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative, or judicial." *Ex parte Virginia*, 100 U.S., at 346 The fourteenth Amendment to the United States Constitution requires the state to comply with federal law and protect these constitutional rights. Sadly, Prosecutors and the Courts in Colorado do not care about federal rights established by this Honorable Court.

Neilsen is sympathetic to the Court and understands that no Judge wants to be viewed as the Judge who let a "child molester" go free or have the district attorney locked up for lying to the Court. Neilsen is not and was never a "child molester". The district attorney and the alleged victim unquestionably did lie to the Court in an official proceeding.

This case was fabricated by DW and TW. MW was a victim of DW and TW's emotional blackmail and physical threats when she delivered the sexual assault message to the authorities. The "truth" was fully revealed to the District Court and the Colorado Court of Appeals in the Petitioner's section 1983 complaint and opening brief. The Court should not be afraid of pursuing the truth. Seeking the truth is the Court's primary responsibility in resolving any conflict.

Neilsen demonstrated in his state § 1983 complaint that the prosecution intentionally withheld discovery that he properly requested pre-plea and then subsequently lied about it. Withholding exculpatory and requested discovery is a due process violation secured by the Fifth and Fourteenth Amendments to the United States Constitution, common law in *"Brady"* and many subsequent state and federal court holdings. The first claim, a due process violation, was squarely within the parameters of a § 1983 claim for redress.

Neilsen demonstrated in his complaint the prosecution was required to correct their own

perjured testimony. The failure to correct perjured testimony by the prosecution is a due process violation. Starting with *"Mooney"* and *"Agurs"*, common law has on multiple occasions determined that the district attorney has the responsibility (1) not to present perjured testimony and (2) correct it when it occurs. The prosecution is simply not allowed to lie to the Court to secure or maintain a conviction. It was demonstrated in the complaint that the prosecution did, not just once but on multiple occasions, lie to the Court.

All Courts have the obligation to maintain the integrity of their Court and require the district attorneys to correct their own perjured testimony irrespective of any court action. It is that simple. The second claim is squarely within the parameters of a § 1983 claim for redress. Due process is violated when a prosecutor lies to the Court or allows perjured testimony to go uncorrected.

Petitioner also raised a third actual innocence claim in his complaint, based on the February 19, 2021, deposition of the primary victim MW. That deposition was newly discovered. It happened 11 years after the Petitioner was charged with sexually assaulting the victim. In that deposition MW testified that she was "truthful" in an interview with Captain Jack when she stated that her "first sexual experience was with a girl" "when she was 13 or 14" and that "she lost her virginity to a boy from school when she was sixteen". Her "first" sexual experience happened after Neilsen was no longer a part of her life.

Each of MW's interviews with Sungate revealed an incrementally worse accusation. In the third Sungate that the prosecution intentionally withheld and then lied about it, MW stated that the Petitioner drugged and raped her when she was 11 years old. The interview with Captain Jack destroyed the criminal case against Neilsen and the deposition on February 19, 2021, confirmed that MW lied in all her Sungate interviews and that Neilsen was "actually innocent" of the crimes alleged.

Neilsen/Appellant raised the issue of the February 19, 2021, deposition, and the information that it provided 8 times in his complaint. In his order Judge Kramer completely and intentionally disregarded Neilsen/Appellant's claim of actual innocence. The actual innocence claim was based on "newly discovered evidence" found on pages 21-26 of the complaint. Instead Judge Kramer either intentionally or mistakenly stated that Neilsen/Appellant's newly discovered claim of a *"Brady"* violation occurs on pages 10 & 11 of the complaint. That was an absolutely false representation and Judge Kramer should know that he is not allowed to make false statements in an order.

The Colorado Court of Appeals stated that the Petitioner tried to "marry" this newly discovered evidence to a *"Brady violation"*. That is absolutely false. This newly discovered evidence, "the interview and the 2021 deposition that confirmed the truthfulness of the interview", demonstrated that the alleged victim lied in all three of her Sungate

interviews that were the basis of the criminal charges filed against the Petitioner.

Petitioner fully understands the difference between a "Brady violation" and newly discovered evidence. It is time for state courts to be taught the difference. A *"Brady violation"* occurs when the "prosecution" withholds evidence from the Petitioner in his criminal case. Petitioner never alleged that the prosecution withheld "the interview with "Captain Jack" or the February 19, 2021, deposition of MW", they did not have it.

In granting the prosecution's motion to dismiss the Courts in Colorado made a conscious decision to avoid the stated purpose of Petitioner's section 1983 argument. Petitioner, in his section 1983 complaint made the Court and prosecutor fully aware of his rights secured by the Constitution of the United States that were violated. Petitioner also made the prosecutor and the state Courts fully aware of the remedies this United States Supreme Court has mandated to be done when these rights are violated. Petitioner explicitly detailed the four separate stories advanced by the prosecution concerning the withheld third Sungate DVD of MW. Petitioner detailed the exculpatory and requested discovery that was withheld prior to his plea. Petitioner detailed his actual innocence.

Prosecutors for the eighteenth Judicial District in Colorado could care less about what this United States Supreme Court has previously decided. They know that they can conceal both exculpatory and

requested discovery and lie to the Court about it with no consequence. The Courts in Colorado are "in league" with the prosecution in denying Petitioner his basic Constitutional rights. Obviously, a Prosecutor who has such little respect for decisions made by United States Supreme Court Justices' is not going to correct his own perjured testimony.

This case raises questions both old and new that go to the heart of the guarantee of fair prosecutions and impartial justice. The Colorado District Court and the Colorado Court of Appeals incorrectly answered questions that are in conflict with this Court's precedent and undermine fair and impartial justice. A grant of this Writ of Certiorari is imperative as it would put both the prosecution and the Courts in Colorado on notice that they must follow what this Supreme Court has mandated and restore public confidence in fair criminal justice.

DECISIONS BELOW

The Colorado Supreme Court Case order denying Writ of Certiorari was filed by the Court on June 12, 2023. Supreme Court Case Number 2023C44.

The Colorado Court of Appeals order affirming the District Court order was filed by the Court on December 15, 2022. The Colorado Court of Appeals case number was 21CA1643.

The District Court order granting the respondents motion to dismiss was filed by the Court on July 20, 2021. The District Court case number was 2021CV02.

JURISDICTION

On June 12, 2023, the Colorado Supreme Court issued an order denying Petitioner's Writ of Certiorari, thus leaving in place the Colorado Court of Appeals decision rejecting Petitioner's claims that *"Heck v. Humphrey"* was not applicable in a section 1983 petition when the defendant is not in custody and that the requirements to provide exculpatory and requested discovery, along with the requirement to correct perjured testimony, exists irrespective of any Court action by the Petitioner. This Court has Jurisdiction to hear this matter under 28 U.S.C. 1254 (1) and 28 U.S.C. 1257(a).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions involved in this matter are 42 U.S.C. 1983 and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

Factual Background:

The material facts are not in dispute, in all of Petitioners pleadings with the Court the respondents have not once contested the fact that they presented perjured testimony or concealed the discovery from the Petitioner. The physical evidence and transcripts of state witnesses' testimony prove the concealment of discovery and the perjured testimony by prosecutor Sugioka and state witness Kianpour, and the subordination of the above perjured testimony by prosecutor Bechtal.

This case was initially fabricated by DW and TW to cover-up their personal failures as parents, and to divert attention from their criminal cases and dependency and neglect case with the Department of Human Services. MW was a victim of DW and TW's emotional blackmail and physical threats when she delivered the sexual assault message to the authorities. The "truth" concerning Petitioner's innocence has long been known by the prosecution/respondents who have work diligently to conceal the truth from the Petitioner and from the Court. After newly discovered evidence was obtained by the Petitioner in 2021 the "truth of innocence" was finally revealed to the District Court and to the Colorado Court of Appeals in the Petitioner's section 1983 complaint and opening brief. Complaint ¶¶ 59-97. Opening brief page 32.

Petitioner reveled the "truth" of his innocence in the actual innocence part of his section 1983

complaint. The newly discovered evidence was based on the February 19, 2021, deposition of the primary victim MW and an interview with a person known as Captain Jack. That deposition and interview was newly discovered. It happened 11 years after the Petitioner was charged with sexually assaulting the alleged victim. In that deposition MW testified that she was "truthful" in an interview with Captain Jack when she stated that her "first sexual experience was with a girl" "when she was 13 or 14" and that "she lost her virginity to a boy from school when she was sixteen". Her "first" sexual experience happened **after** Petitioner/Neilsen was no longer a part of her life. Complaint ¶¶ 59-109. Opening brief page 32.

Each of MW's interviews with Sungate revealed an incrementally worse accusation. In the third Sungate, MW stated that the Petitioner drugged and raped her when she was 11 years old. The interview with Captain Jack destroyed the criminal case against Neilsen and the deposition on February 19, 2021, confirmed that MW lied in her Sungate interviews and that Neilsen was "actually innocent" of the crimes alleged. Complaint ¶¶ 59-109.

Neilsen/Appellant raised the issue of the February 19, 2021, deposition, and the information that it provided 8 times in his complaint along with excerpts from the interview and deposition and exhibits. In his order Judge Kramer completely and intentionally disregarded Neilsen/Appellant's claim of actual innocence. The Colorado Court of Appeals tried to play down the deposition and the

information it contained, and the prosecution does not even acknowledge its existence despite being a party to the section 1983 complaint.

Petitioner in his section 1983 complaint detailed the exculpatory and requested discovery that has been concealed, detailed the request that was made pre-plea, and detailed the relevance to his case. Complaint ¶ 174. Opening brief pages 23 thru 29.

Petitioner in his section 1983 complaint detailed the perjured testimony concerning the concealment of discovery that was presented to the district court and the failure of the district attorney to correct the perjured testimony. Complaint ¶¶ 24-58. Opening brief pages 29-32.

In *"Imbler v. Pachman"* this Court praised Richard Pachman for doing the right thing when he found out he had presented perjured testimony to the Court that led to the conviction of Imbler. This Court further stated in *"Imbler"* that the prosecution was bound by the ethics of their office and rule 3.8 when they were made aware that they convicted an innocent person to take immediate corrective action.

The Respondents in this case, with full knowledge that their alleged victim lied to them, have done nothing. In their eyes it is better to leave an innocent man convicted than do the right thing and admit they made a mistake.

With full knowledge that the District Court had convicted an innocent man of a crime he did not commit, District Court Judge Gary Kramer granted

the prosecution's motion to dismiss by stating that Colorado rule Crim. 35 (c) is the exclusive remedy to address the issues presented and Petitioner had exhausted that remedy, Kramer further stated that he was not allowed to review another state court's ruling on discovery issues and that *"Heck v. Humphrey"* made this claim not cognizable under section 1983. Judge Kramer's ruling was fundamentally wrong and unfair. Order July 20, 2021.

With full knowledge that the District Court had convicted an innocent man of a crime he did not commit, the Colorado Court of Appeals affirmed Judge Kramer's ruling stating in addition Petitioner was not entitled to "habeas" relief because he did not file for timely "habeas" relief while he was incarcerated. Petitioner was incarcerated from 2014 to 2017. CCA Order December 15, 2022.

Petitioner did not discover the proof necessary to prove his innocence until 2021, how could he file for habeas relief when the proof of his innocence was still not provable? Petitioner has still not been provided evidence that the "state" has corrected the perjured testimony or the discovery that the state has withheld. The Colorado Appellate Court ruling flouts this Court's decision that "when police or prosecutors conceal significant exculpatory or impeaching material in the State's possession, it is ordinarily incumbent on the State to set the record

straight." *Banks v. Dretke*, 540 U.S. 668, 675–76, 124 S.Ct. 1256, 157 L.Ed.2d 1166 (2004)

The District Court and the Colorado Court of Appeals has failed to answer the key question presented in Petitioner's section 1983 complaint and the Colorado Supreme Court denied Petitioners writ of Certiorari on June 12, 2023. Irrespective of any Court action must the prosecutor comply with "Brady" and provide the exculpatory and requested discovery that was requested pre-plea, and must the prosecutor correct any perjured testimony that was presented to the Court? Instead, both Courts focus on procedural roadblocks in all of Petitioner's many petitions and do not address the one key question. [1]

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[1] Beginning with its seminal decisions in *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), and *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), this Supreme Court has established the principle that criminal convictions obtained by presentation of known false evidence or by suppression of exculpatory or impeaching evidence violates the due process guarantees of the Fourteenth Amendment. "[Deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice." Giglio v. United States, 405 U.S. 150, 153, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) (internal quotations omitted). "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." Napue, 360 U.S. at 269, 79 S.Ct. 1173. The government's obligation to disclose exculpatory evidence does not turn on an accused's request. Strickler v.

REASONS FOR GRANTING THIS PETITION

Does *"Heck"* or any other procedural issue bar a section 1983 petition asking for declaratory and injunctive relief when a prosecutor defiantly fails to follow "black letter law" established by the Supreme Court of the United States?

Review of this mater on Certiorari is necessary to settle the conflict concerning the application of 42 U.S.C. 1983 and the *"Heck ruling"*. This is an unsettled area of law that needs to be finally, once, and forever, resolved. This case has all of the elements for this Honorable Supreme Court to make a final determination and clarification on the *"Heck ruling"* and how it should be applied in similar cases. The elements in this case are:

1. A Petitioner who is no longer in custody and cannot invoke habeas review.
2. A prosecutor who withheld both requested and exculpatory discovery pre-plea and when it is discovered that it existed pre-plea continues to defy United States Supreme Court precedent and continues to conceal the discovery from the Petitioner.

Greene, 527 U.S. 263, 280, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999). We emphasize that the duty to disclose such information continues throughout the judicial process. Smith v. Roberts, 115 F.3d 818, 820 (10th Cir. 1997)

3. A prosecutor who suborned another prosecutor's perjury and continues to defy the mandate of this United States Supreme Court and refuses to correct the perjured testimony.
4. A prosecutor who openly defies "black letter law" established by this United States Supreme Court and fails to provide discovery or correct perjured testimony.
5. A Colorado Court that shields this prosecutor with procedural rulings rather than apply "black letter law" established by this United States Supreme Court

Petitioner is aware that this is an unsettled area of law and Certiorari review by the United States Supreme Court is necessary to settle this unsettled area of law. This Court is tasked with determining whether Colorado District Court Judge Kramer and Colorado Appellate Court Judges Schutz, Dunn, and Grove who ruled that *"Heck"* barred this proceeding were correct or whether United States Supreme Court Justices, Souter, Stevens, O'Conner, Ginsberg, and Breyer, along with Justices from the Tenth Circuit are correct. One or the other is wrong as their opinions are diametrically opposite.

Does *"Heck"* apply to a Petitioner who is no longer in custody and cannot invoke habeas review.

The Petitioner argued in his section 1983 complaint the following and reaffirms that argument in this writ.

178) The defendants will likely argue that this complaint is barred by the findings of the United States Supreme Court in "Heck". They are simply wrong. Two United States Supreme Court Justices, writing concurring opinions in "Spencer", addressed the availability of §1983 in light of the Heck rule. 523 U.S. at 18-22, 118 S.Ct. 978 (Souter and Ginsburg, J.J., concurring). These opinions demonstrate that five justices are of the view that the rule does not apply to a § 1983 plaintiff who is no longer in custody and therefore unable, as a matter of law, to bring a habeas petition and challenge his conviction or sentence. Id. Neilsen is in a similar situation, he is no longer in custody and a habeas petition is not an available option to him.

179) "Thus, in the eyes of a majority of the [Supreme Court] justices, where federal habeas corpus is not available to address constitutional wrongs, § 1983 must be. This view was first expressed by Justice Souter in his Heck concurrence wherein he opined that Heck should be read as creating a favorable-termination requirement only for

> *those persons who are "in custody" and as such, have federal habeas corpus available to them. 523 U.S. at 20, 118 S.Ct. 978....Despite being the lone dissenter in Spencer, Justice Stevens did note that "[g]iven the Court's holding that [Spencer] does not have a remedy under the habeas statute, it is perfectly clear, as Justice Souter explains, that he may bring an action under §1983." 118 S.Ct. 978. (Stevens, J., dissenting).*

If this Court determines that United States Supreme Court Justices, Souter, Stevens, O'Conner, Ginsberg, and Breyer are correct in their analysis of the "*Heck ruling*", the Petitioner will have an avenue to force the prosecutor to do what he has refused to do for the past ten years and provide withheld discovery and correct perjured testimony. If this Court determines that state court judges are right, and *"Heck"* blocks the Petitioner from asserting his basic rights established by this United States Supreme Court, then all prosecutors will be given a pass to lie to the court and conceal discovery with no consequence. There will be no mechanism to force the prosecution to comply, other than their own consciousness, which is obviously lacking in this case.

There must be a way for an individual, like the Petitioner, to address constitutional violations when habeas is not an option and a petition under section

1983 seems, by the plain wording of the statute, as the correct option.

Does *"Heck"* or procedural bars provide a prosecutor who withheld both requested and exculpatory discovery prior to a defendant's plea the ability to continue to conceal the discovery when it is later discovered in post-conviction proceeding that the evidence did exist?

The United States Supreme Court has made it abundantly clear that *"when police or prosecutors conceal significant exculpatory or impeaching material in the State's possession, it is ordinarily incumbent on the State to set the record straight.* Pp. 689-706." *Banks v. Dretke,* 540 U.S. 668, 670 (2004). The failure, of the State, to discover to Petitioner/Neilsen "all" of the material Petitioner/Neilsen requested pre-plea and material mandated under *"Brady"*, subsequent case law and Colorado Crim. 16 (a)i, that the State first misrepresented did not exist and then chose to continue to conceal, made Petitioner's section 1983 action necessary.

Neilsen requested the following evidence from district attorney Brian Sugioka via email on June 7, 2011, at 11:36 AM five months prior to his plea.

> *We need ongoing therapy and DSS reports, tape records, if possible, in going through the*

limited therapy notes we got you can see that Lindsay does not believe the kid's story. Also, as part of the D&N case Dawn and Todd had to sign a release giving DHS permission to have these records.

We need the written investigator and DSS reports from the February false report on Melissa. Also, the investigator [Nail?] tape recorded these interviews, we need copies of these tapes.

We need the tapes from the February report on Dawn and Todd and the kids, the investigator [Nail?] taped their statements.

We need the tapes from the July 18 belt whipping, when DHS went to their house they were told about the welts and took pictures, you would hope they taped the interviews. It would be standard protocol to ask if any sexual assault happened when they went in on the 18th and back on the 19th and Dawn and Todd at that time were alleging abuse.

We need the tapes of when Michelle interviewed Jennifer when Tom was in jail. Jennifer adamantly denies telling her certain things written in the report and claims that Michelle slanted part of the interview.

We need notes and tape from the 2-hour interview with Jodie, Cathy, and Kathryn. On August 5, 2010.

Michelle interviewed Mellissa after Sungate interview, we need tapes and written reports on that as well.

We need tapes of the 10-20-2010 they refer to sexual abuse by Marinda and her looking at porn on computer allegedly. Where was she looking at porn? Likely Dawn and Todd's.

DSS meeting with the Neilsen's and DSS meeting with Brett they took notes at both, but we got nothing showing they met in DSS Discovery.

Detective Nail reopened the case on 11-1-2010 there should be reports from an interview why she did this.

Dawn was told to make a statement in writing on 11-19-2010 we need complete report and tapes.

Caroline's emails to show that she encouraged Neilsen's to forward the texts and emails from Marinda (as Marinda was getting beaten by Todd) to her so she would know what abuse was happening. She gave the Neilsen's her cell phone number so they could forward texts to her.

It was later determined in post-conviction proceedings that the following records did exist and were conceal pre-plea by the district attorney.

a) *The alleged month-long hospital stay of MW. This hospital stay was testified to by alleged victim MW during direct examination in Civil Case 12 CV 148. These records were material to Neilsen's criminal case. Neilsen could have used these records to impeach the alleged victim or demonstrate that she was an unreliable witness. The records could have been used to demonstrate that other people may have encouraged the alleged victim to lie. The records could have been used to demonstrate that the alleged victim had not started cutting again or had ever intentionally cut herself and that she made up that allegation to exacerbate her damages. When answering this complaint, Sugioka, Bechtal, Brauchler and now Kellner, are in a quandary and they may forget that the 14th Amendment to the United States Constitution requires them, in addition to providing Neilsen with "due process", to provide "any person within [their] jurisdiction the equal protection of the laws", and that would include providing Neilsen with protection from those who conspire to put him at harm by misrepresenting facts to authorities and the court or who conscientiously conspire to frame*

Neilsen. The Defendants have several options available to them, they cannot claim that they are not aware of the testimony of MW; they had representatives present when she testified. In addition, Neilsen has previously requested that these District attorneys investigate and charge the alleged victim with perjury if it is proven that she lied to the court. Neilsen has previously provided Defendants Brauchler, Sugioka and Bechtal with evidence and court transcripts to support his claim. Defendants Brauchler, Sugioka and Bechtal have the option to admit a discovery violation and provide Neilsen with the requested material, after which Neilsen will use that admission of the violation and the material these Defendants discover to him, to withdraw his plea. In the alternative Defendants Brauchler, Sugioka, Bechtal, and now Kellner could admit they have a victim who provided false testimony to the court and provide the results of their investigation demonstrating that the alleged victim perjured herself when she testified in court. Defendant Mattive was the lead investigator for ECSO and has selectively provided the District Attorney with the 7-day hospital stay at "Highlands" that happened before the alleged month-long hospital stay at "Centennial" and it is Neilsen's best information and belief that Defendant Sheridan provided the therapy notes from

Lindsay Alexander that happened after the alleged month-long hospital stay. Both Defendants Mattive and Sheridan had an affirmative obligation to provide evidence of the month-long hospital stay if it indeed did exist. The Plaintiff will use this information to withdraw his plea by demonstrating that the alleged victim maliciously and intentionally provided false testimony meant to mislead the court and that many of her other past allegations are also unreliable. Neilsen specifically requests MW's alleged month-long hospital records, to include psychological records of and any notes, reports, psychological tests or evaluations, correspondence, therapy notes, nurse's notes, medication records and progress notes in any form, whether typed, handwritten, or electronic,

b) *"All" therapy records generated by MW's primary therapist Lindsay Alexander. Specifically, Neilsen requests records demonstrating that as MW's primary therapist she felt there was a need for a 2nd or 3rd Sungate interview, how she conveyed that need to authorities and any records concerning any follow-up sessions following the Sungate interviews where aspects of what was reported may have been discussed. These records could show that MW's therapist did not request the 2nd or 3rd Sungate interview and that DW*

intentionally mislead authorities by falsely reporting the need for the 2nd and 3rd interview to divert attention from their Department of Human Services investigations reports of child abuse concerning MW. The reports could demonstrate that DW was instrumental in forcing MW to make false allegations against Neilsen. The Defendants have provided Neilsen with records from therapy sessions between August 18, 2010, and October 20, 2010. The alleged victim testified that she was in therapy with Lindsay Alexander for "a year", which would amount to ten months of therapy records that the Defendants have failed to provide Neilsen in discovery, It is Neilsen's best information and belief that Defendant Mattive, in an attempt to add credibility to her arrest affidavit concerning Neilsen, fabricated evidence that "therapists" requested the need for the 2nd and 3rd Sungate interviews. It is Neilsen's best information and belief that Mattive and Sheridan fabricated evidence to bolster the need for the 2nd and 3rd Sungate interviews in an effort to "frame" Neilsen of a crime he did not commit. The "Agurs" Court requires the prosecution to correct a false affidavit that was presented to the Court if they are unable to secure the requested information.

c) *All records from the two additional therapists who treated MW prior to Neilsen's plea. MW*

testified that she was seen by 2 additional therapists. DW and TW provided the Department of Human Services with full releases for all treatment records concerning themselves or their children. Records in the custody of the state should have been automatically discovered to Neilsen subject to "in camera" review. Neilsen made an enumerated request to Sugioka pre-plea to produce the above requested records, and Sugioka represented the records did not exist. Sheridan selectively withheld evidence concerning disclosures made to these therapists from Neilsen even though she had secured from DW and TW a release for these records.

d) *All records concerning the identification of all therapist(s) who reported the need for MW's Sungate two and Sungate three interviews and require full disclosure of all related notes and information. The arrest affidavit for Neilsen's arrest, sworn to by Mattive of the Elbert County Sherriff's office, states that MW's therapists (plural) reported the need for the 2nd Sungate interview. Neilsen must have the names of the therapists to determine if the therapists did indeed request a 2nd or 3rd interview and under what circumstances disclosures were made to the therapist that demonstrated the need. Without the name of the therapists Neilsen is unable to determine if*

any other additional discovery should have been made available to him. Neilsen could have used these records to demonstrate that TW and DW were instrumental in fabricating the charges against Neilsen. The Sixth Amendment to the United States Constitution gives Neilsen the absolute right to confront witnesses who made allegations against him. That right would extend to "therapists who reported" the existence of a possible crime. It is Neilsen's best information and belief that Mattive and Sheridan fabricated evidence to bolster the need for the 2nd and 3rd Sungate interviews in an effort to "frame" Neilsen of a crime he did not commit. The "Agurs" Court requires the prosecution to correct a false affidavit that was presented to the Court if they are unable to secure the requested information.

e) *All records in any way related to the child abuse case filed by the prosecution against TW after the Neilsen reported to authorities on July 18th, 2010, that TW physically beat MW with a belt and that DW failed to protect her from the beating. Neilsen's request encompasses the results of any deferred sentence or plea agreement offered to TW. Neilsen could have used these records to demonstrate that the W children were afraid of TW and DW and that fear may have influenced MW's decision to make false*

accusations about Neilsen to authorities. It is Neilsen's best information and belief that both criminal and dependency and neglect cases were filed against DW and TW. As members of the Elbert County child protection team both Sheridan and Mattive knowingly concealed evidence from the district attorney that would have been automatically discoverable to Neilsen if it were in the custody or control of the District Attorney. Defendant Sugioka was the prosecutor for both the D & N case and the criminal case against DW and TW and knew these records were requested by Neilsen prior to his plea.

f) All Elbert County Department of Human Services records concerning DW or TW and any or all of their children from November 2010 until the present. The records could have been used by Neilsen to determine; (1) what other potential discovery was missing, (2) the results of any diagnosis or treatment records of the alleged victims, (3) any other patterns of abuse by TW and DW where it could be shown that the children lived in fear of physical abuse if they did not say what the parents told them to say, (4) the timing concerning knowledge of the need for Sungate # 3, (5) who was part of the conspiracy in regards to fabricating Sungate # 2 & 3, and (6) the knowledge of who knew what and when to impeach the credibility of the witnesses.

Defendant Sugioka represented that these records did not exist on October 26, 2011, even though he had the affirmative duty to discover these records to Neilsen after a request was made. Sheridan, who helped bring the charges against Neilsen intentionally concealed these records from the district attorney with the intent of "framing" Neilsen of a crime he did not commit.

g) *All records and discovery related to the Dependency and Neglect case filed against DW and TW in 2010. This request includes the results of any deferred sentence or plea agreements. Neilsen could have used these records to demonstrate the pattern of abuse endured by the children and to establish a motive to falsely report to authorities. Defendant Sugioka represented that these records did not exist on October 26, 2011, even though he had the affirmative duty to discover these records to Neilsen after a request was made. Sheridan, who helped bring the charges against Neilsen intentionally concealed these records from the district attorney with the intent of "framing" Neilsen of a crime he did not commit.*

h) *All records and discovery related to the investigation done by Nathan Albrecht and Mark Wilson in February 2010, to include police reports and records of said investigation in the possession of Elbert County Department*

of Human Services and Elbert County Sheriff's office. Prosecution witness Michelle Mattive testified that she was aware of the investigation by Nathan Albrecht and Mark Wilson and prosecution witness Carolyn Sheridan testified that she was present during the interviews. In addition, Carolyn Sheridan testified that police reports are preserved by the ECDHS "forever". Neilsen could have used these reports to impeach the alleged victims' testimony. The Plaintiff should have discovered copies of the police reports and recordings from both Mattive of the ECSO and Sheridan representing ECDSS.

i) *Any and all Elbert County Sheriff's Office dispatch tapes, 911 calls, records, activity numbers, offense reports etc. in any form or characteristic, whether typed, handwritten or electronic in the custody, control or possession of either the district attorney's office or the office of the Elbert County Sheriff associated with the alleged victims MW or MN, and DW or TW to include the following addresses 34121 Overland Loop, Elizabeth Colorado 80107 or 510 Signal Ridge Circle, Elizabeth Colorado 80107 and the following phone numbers. 303-840-0032. 303-726-3362, or 720-312-0859. The records custodian for the ECSO, Kelly Davis, has made Neilsen aware that between 01/01/2010 and 12/31/2011, during the pendency of Neilsen's pre-sentence*

case, there were at a minimum 54 calls for service and or related incidents to the location provided or the individuals referred to in Neilsen's open record request. Neilsen could have used these reports to impeach or discredit the alleged victims or DW and TW and/or to demonstrate how abusive and manipulative DW and TW were to their children and to authorities. As lead investigator, Mattive had an obligation to provide the district attorney with all police contact concerning any complaining witness. Mattive withheld the reports from the district attorney knowing they were discoverable to Neilsen if in the possession or control of the district attorney with the intent of "framing" Neilsen of a crime he did not commit.

j) Ms. Davis also made the Neilsen aware that the District Attorney's office was in possession of "911 calls that had already been provided for "discovery". Neilsen never received any copies of any 911 calls in his discovery concerning case number 10CR62 even though, according to the records custodian for the ECSO, they were provided to the district attorney for discovery. Defendant Sugioka was clearly responsible for failing to provide 911 calls that were provided to his office in discovery.

k) The District Attorney cannot argue that the records do not exist when the records

custodian is demanding $4,800.00 to copy and redact records under a request made pursuant to the Colorado Open Records Act. The records requested by Neilsen should have automatically been discovered to him prior to his plea.

l) All records maintained by Elbert County Sheriff's detective Michelle Mattive in any way related to Neilsen or any of the prosecution's witnesses. Michelle Mattive concealed these notes because it is Neilsen's best information and belief that Mattive was in possession of information that tended to cast doubt on the reliability of Neilsen's arrest and subsequent conviction.

m) All records of the results of the Polygraph testing performed on DW and TW. It is Neilsen's best information and belief that this testing was completed in October of 2010. The pre-test and post-test interviews could have been used to impeach the credibility of TW and DW. Mattive concealed these records because it is Neilsen's best information and belief that this evidence tended to cast doubt on the reliability of Neilsen's arrest and subsequent conviction.

n) All notes, books, papers, cards, photographs, tape recordings, emails between DW and Christine Fitzsimmons, or any other documentary materials regardless of their form or characteristic in the possession of

Christine Fitzsimmons, the victims advocate for the Elbert County District Attorney's Office. It is Neilsen's belief that she had an investigative role in this matter and may have used her position as victim's advocate and DW's friend to influence the district attorney in his decisions about who to prosecute and which of the multiple stories to believe. When members of the district attorney's office perform an investigative role, information within their possession or control is discoverable to Neilsen. Defendant Sugioka was responsible for securing these records for Neilsen.

o) *The identities of the "other men" referred to by Melissa Neilsen, (Melissa) in her Sungate interview and (2) any follow-up investigation done by authorities concerning the alleged rapes perpetrated on MN when she was a child in Texas and/or recantations by Melissa. Neilsen could have used this information to demonstrate that this allegation by Melissa was at a minimum the fifth false allegation by Melissa. Defendants Sheridan and Mattive were responsible and present for Melissa's Sungate interview. During the interview Melissa revealed that she had by been "raped" previously by other "men" (plural) after recanting allegations of rape "she" had previously made against her biological father and grandfather. Defendants Sheridan and*

> *Mattive were so focused on "framing" Neilsen with an inappropriate touching case that they failed to investigate the allegations of, not one but two significantly more serious crimes. It should be noted that as of the time Melissa left the Neilsen home she was still a virgin as confirmed by Dr. Lee, a gynecologist in Parker Colorado.*

If *"Brady", "Agurs", "Banks"* etc. is still good law, then the "state has the obligation to immediately provide the discovery that was withheld pre-plea to the Petitioner/Neilsen. Providing exculpatory and requested discovery is and was a mandatory obligation, it is "black letter law" as determined by this Honorable Court. It has never been negotiable; the state has the requirement "to set the record straight" and immediately provide Petitioner/Neilsen with both the exculpatory and requested discovery that was withheld.

The "state" has been put on notice in Petitioner's section 1983 complaint the concealed discovery exists, and that the Petitioner wants it. *"Mooney", "Brady", "Agurs",* and *"Banks"* were all about requested and exculpatory discovery and in every case this Court has required that the prosecution comply with the law and provide the discovery.

It is obvious that the "state" [Colorado] whether it be the prosecutor or the court, is not going to take

responsibility and require the prosecution to provide the discovery that this United States Supreme Court has required over and over again. The question before this Court is, can the Petitioner bring a section 1983 petition before the state court, requiring the state court to determine Petitioner/Neilsen's rights to this discovery under the Constitution and common law established by United States Supreme Court precedent or can the state court simply block Petitioner's complaint with a motion to dismiss? It would seem fundamentally unfair for the "state" to be able to circumvent the requirements of this United States Supreme Court with procedural issues when *"Mooney", "Brady", "Agurs",* and *"Banks"* do not give the "state" any way out for failing to provide discovery

Does *"Heck"* or procedural bars provide protection to a prosecutor who suborned another prosecutor's perjury in a section 1983 petition?

It is fundamental that prosecutors may not present or allow perjured testimony. See *United States v. Bagley,* 473 U.S. 667, 679 n. 8, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985) (discussing cases including *Napue v. Illinois,* 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), and *Mooney v. Holohan,* 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed.

791 (1935)); "*Napue* [also] establishes that the Fourteenth Amendment is violated 'when the State, although not soliciting false evidence, allows it to go uncorrected." *Moore v. Illinois*, 408 U.S. 786, 809 (1972) It is also fundamental that the State "has an obligation to correct that perjured testimony." *United States v. Agurs*, 427 U.S. 97, 102 (1976)

In his complaint on pages 9-19, Petitioner explicitly detailed the four different "stories" the prosecution told the District Court concerning the discovery of the 3rd Sungate interview of MW.

Synopsis of the four stories told to the district court:

1. On November 8, 2013, under oath prosecutor Sugioka testified that the discovery log demonstrated that the third Sungate DVD of MW was discovered to Petitioner/Neilsen on November 7, 2011. Prosecutor Bechtal suborned this testimony, Petitioner/Neilsen then requested his plea attorney's checks for the discovery he reportedly received on November 7, 2011. The checks demonstrated the prosecution lied on November 8, 2013.
2. On June 12, 2014, and June 25, 2014, after being caught in the first lie, the prosecution told the district court a second story. This lie was that the district attorney gave a "courtesy copy" of the subject DVD to plea counsel on October 21, 2011, and that a formal copy was mailed to plea counsel on December 6, 2011, after Petitioner/Neilsen's plea. This story

would be consistent with when the checks were issued and received. However, this story line was also not true. After a series of open records requests the district attorney discovered Petitioner/Neilsen a copy of the discovery log. The discovery log demonstrated that not only had the prosecutor lied on November 8, 2013, he also lied on June 12 and 25 of 2014. The discovery log has no information as to when anything is discovered to a defendant and in this case, demonstrated that the prosecutor did not "receive" the subject DVD until November 7, 2011. The discovery log demonstrated that both stories were false. You simply cannot informally give something you have not yet received.

3. After receiving the discovery log Petitioner/Neilsen petitioned the Court for a new hearing based on the previous perjured testimony of the prosecution. Senior Deputy District Attorney Christopher Gallo "stated" in his answer brief dated 11/14/2016, that Sugioka testified that the log indicated that the District Attorney's office received "copies" (meaning at least two) of the [the third Sungate] DVDs from Mattive on 11/7/2011 and that Sugioka testified that the same were made formally available to the defense on 11/16/2011. While this story is factually correct as to what actually happened there is no testimony from Sugioka on either November 7, 2013, or June 12 or 25 of 2014 to support Gallo's claim. It simply does not exist

in the transcripts from those hearings. For a third time the prosecution lied to the court.

4. The prosecution also has a fourth version of the story, the testimony of detective Mattive, which is supported by physical facts that contradicts all of their stories.

Only one version of the story, the testimony of lead detective Michelle Mattive, is supported by physical evidence. The other three are obviously perjured and are impossible to be true. Colorado District Court Judge Holmes found all four versions true. That is simply not possible. Section 1983 was enacted to prevent District Court Judges from being "in league" with the prosecution.

The physical facts that supports the testimony of Michelle Mattive are.

a. Two copies of the subject DVD were given to Michelle Mattive after the interview of MW by Sungate. *(testimony of Mattive)*
b. Michelle Mattive was in custody of the subject DVDs until she gave both copies to Pricilla Pearson. *(testimony of Mattive)*
c. Kianpour sent an email to Sugioka on November 7, 2011, requesting the subject DVD. *(he apparently did not have it or why would he send the email?)*
d. On November 7, 2011, Pearson made a notation in the discovery log that she received the subject DVDs. *(as evidenced by the discovery log)*
e. Michelle Mattive did not give a copy of the DVD to Sugioka. *(testimony of Mattive)*

f. Mattive's investigation report states that the district attorney asked her to locate when the DVD was delivered to the district attorney's office. *(if they knew, why would they ask her to locate the date)*

g. The subject DVD was mailed to Kianpour on December 6, 2011, as evidenced by the receipt initialed by Pearson, and stipulated by the District Attorney.

h. Kianpour delivered his "entire file" to this Court under seal with a list of the contents after his file was subpoenaed by the district attorney.

i. Elbert County's discovery receipt for when Neilsen was discovered a copy of Kianpour's file that was delivered to this Court under seal. This receipt demonstrates what was in Kianpour's "entire file" as evidenced by the discovery receipt. The file contained only one copy of the subject DVD. There was no courtesy copy, only the DVD mailed on December 6, 2011.

Detective Mattive **or** District Attorney Sugioka must be lying and one or the other committed perjury. It is that simple. You simply cannot have four conflicting stories concerning the same event. In either case DA Bechtal suborned the perjury of one of them. The United States Supreme Court in *"Banks v. Dretke"* placed the burden "on the State to set the record straight".

State District Court Judge Kramer and Colorado Appellate Court Judges blocked Petitioner's section 1983 complaint by applying the *"Heck ruling"* and procedural bars to Petitioner's section 1983 complaint. If their analysis is correct then this Supreme Court's rulings in *"Mooney"*, *"Agurs"* *"Banks* "and a host of other case law has no consequence. By the state Court's analysis, *"Heck"* and procedural bars prevent the Petitioner from requesting a declaration under section 1983 for a determination whether the district attorney can snub this United States Supreme Court's rulings. The simple question is can a district attorney lie to the court with no consequence or must the district attorney correct the perjured testimony he presented?

Petitioner argues that Supreme Court precedent to correct perjured testimony applies irrespective of any Court action. Obviously, a prosecutor who has such little respect for common law established by this United States Supreme Court that he is willing to present perjured testimony in state court is not, on his own, going to correct his own perjured testimony. A corrupted prosecutor is not going to file a motion with the court and say, *"gee we lied about when the Sungate interview was discovered and what the discovery log revealed, the testimony by detective Mattive was the only true story that we presented to the court, the other three stories we presented to the Court are obviously false"*.

If the prosecutor did that, he would be admitting that he was criminally liable under 18 U.S.C. 242

which provides that *"whoever, under color of any law...subjects any person in any State... to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States...shall be fined under this title or imprisoned not more than one year, or both".*

The ultimate question before this Court is, can the Petitioner bring a section 1983 petition before the state court asking the state court to determine Petitioner/Neilsen's rights under the Constitution and common law established by United States Supreme Court precedent? Then, when it is determined that Petitioner's rights have been violated, must the state court issue an injunction requiring the prosecutor to do what this United states Supreme Court has commanded? It is obvious a prosecutor is not going to, take responsibility and "correct his perjured testimony". United States Supreme Court precedent is rendered meaningless if there is no way to enforce it.

Does "*Heck*" or any procedural issue provide protection to a prosecutor who openly defies "black letter law" established by this United States Supreme Court?

In the years since "*Mooney*", the United States Supreme Court has consistently reaffirmed this understanding of the requirements of due process. Supreme Court case law makes clear that, procedural regularity notwithstanding, the Due

Process Clause is violated by the knowing use of perjured testimony or the deliberate suppression of evidence favorable to [Petitioner]. It is, in other words, well established that adherence to procedural forms will not save a conviction that rests in substance on false evidence or deliberate deception. *Albright v. Oliver,* 510 U.S. 266, 298-300 (1994) The Court reaffirmed this principle in broader terms in *Pyle v. Kansas,* 317 U.S. 213 (1942), where it held that allegations that the prosecutor had deliberately suppressed evidence favorable to the accused and had knowingly used perjured testimony were sufficient to charge a due process violation.

In 1935 the United States Supreme Court in *"Mooney"* ruled that while the *"petitioner's papers [Mooney] are inexpertly drawn...they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. Mooney v. Holohan, 294 U.S. 103."*

On point to *"Mooney"*, Petitioner in his section 1983 complaint, *"set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him".*

This case has always been about a "prosecutor who had deliberately suppressed evidence favorable to Petitioner/Neilsen and knowingly used perjured testimony to maintain a convition of one who is innocent".

The District Attorney must first fulfill his obligations as a groundwork event to this action as required by the United States Supreme Court in *"Banks"*, *"Agurs"*, and *"Mooney"*. The law requires it. This Court should ensure in this 42 U.S.C. § 1983 Writ for Certiorari that Neilsen is provided with the Constitutional protections that he is entitled to!

CONCLUSION

The case against Petitioner/Neilsen could have been resolved years ago had the alleged victim and state authorities simply told the truth. The prosecutor could have simply told the Court, "yes we screwed up, we didn't give the exculpatory and requested discovery, here it is, we will let you withdraw your plea". Instead, the prosecution decided to lie, conceal and to cover-up for their mistake. Now that this has turned into a big mess, the question is, do the mandates of the United States Supreme Court in *"Mooney"*, *"Agurs"* and a host of other cases simply have no meaning or can Petitioner/Neilsen file a section 1983 action to compel the prosecution to do what the United States Supreme Court has mandated?

The petition for Writ of Certiorari should be granted. Respectfully Submitted this 1st day of September 2023.

/s/ 

Thomas Neilsen,

Representing himself pro-se