Docket No. 23-379

The Supreme Court of the United States

John Barth,
Petitioner
v.
United States, Department Of Justice,
Federal Bureau Of Investigation,
Homeland Security Investigations, et al,
Respondents and Defendants

On Petition for Writ of Certiorari
to the D.C. Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review

1. Do federal agencies have discretion to collude in racketeering crime?

2. Do federal agencies have "sovereign immunity" in racketeering crime?

3. Shall this Court exercise fortitude to implement Checks and Balances and enforce a code of conduct in government, or must it acquiesce in politically motivated abuses of office in the Executive and Judicial Branches?

4. Does RICO provide for civil cases against agency racketeering?

5. Shall this Court make writ of mandamus to empanel a grand jury to investigate the defendant agency factions and the original defendants?

6. Shall this Court correct false statements about the Complaint and proceedings by the lower court and DOJ, intended to obstruct review?

PARTIES

1. Plaintiff John Barth is a retired engineer and philanthropist engaged in ongoing public interest projects, who was forced to defend his charity school against municipal and judicial violations of law and civil rights for many years, and thereby learned the related law, legal research, and legal procedure. Although appearing pro se, the Petitioner is well able to argue the issues.

The Plaintiff does not prefer any political party, but is in this case prosecuting theft of $120 million in conservation funds by Florida politicians and a state judge who turned out to be of one party. That case has been blocked by investigative agency factions and judges of that party for years, abusing office to deny due process, in violation of law and the code of judicial ethics.

2. Defendants Department Of Justice, Federal Bureau Of Investigation, and Homeland Security Investigations are agencies of the Executive branch, political factions of which unlawfully refused to investigate this proven theft by Florida politicians of $120 million in conservation funds, even while investigating alleged mishandling of one thousandth of that amount by an opposing party politician, then refused to Answer the Complaint despite demanding six further months solely to do so, and at last merely made wildly unconstitutional claims of absolute discretion and immunity for collusion in racketeering, to dismiss the perfectly valid case.

3. The defendants listed as "et al" are the original defendants in the political racketeering case against Florida politicians and their operatives, who stole $120 million in conservation funds while in control of state and county funding processes. Federal investigation of these defendants is necessary to obtain financial data and other evidence to ensure that all defendants are properly identified and charged. These defendants were temporarily dropped from the lower court case because that court refused to seal the case as required by the same investigative agencies.

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Date	Court	Item
7/7/23	Court of Appeals, D.C. No. 22-5338	(denial of appeal)
12/15/22	D.C. District Court No. 1:22-cv-00955-JEB	(dismissal on false pretences)

Other Authorities

> Here let those reign, whom pensions can incite,
> To vote a patriot black, a courtier white,
> Explain their country's dear-bought rights away,
> And plead for pirates in the face of day.

-Samuel Johnson, London, 1738

The United States has been... a government of laws, and... will cease to deserve this... if the laws furnish no remedy for the violation of a vested legal right.
- John Marshall, Marbury v. Madison, 1803

The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.
- Louis Brandeis, Olmstead v. U.S., 1928

The rights of every man are diminished when the rights of one man are threatened.
- John F. Kennedy, report on civil rights, 1963

Jurisdiction

Jurisdiction of the United States Supreme Court is conferred by Article III §§ 1,2 of its Constitution; 28 USC §2106 confers jurisdiction to modify or reverse any judgment or order of court brought for review.

This petition is brought under the Civil Rights Act (42 USC §§1983 to 1986), for violation by defendants of Plaintiff rights guaranteed by the United States Constitution, including his right against deprivation of liberty and property (Amendments V and XIV), to due process of law (Amendment XIV §1), and to equal protection of law (Amendment XIV §1); and the Racketeering Influenced Corrupt Organizations Act (RICO 18 USC §§ 1952-1968) for collusion in the racketeering enterprise of the original defendants.

The federal courts have jurisdiction under 28 USC §1331 of claims herein of violations of rights guaranteed by the Constitution; and under 28 USC §1343(1-3) of claims herein of deprivation of civil rights in violation of 42 USC §§ 1983-1986; and under 28 USC §1332 of all claims herein, as Plaintiff is a resident of Maine, whereas the defendants have principal offices in other states.

The D.C. Circuit Court of Appeals uncritically affirmed the incorrect decision of the D.C. District on July 7, 2023. This petition is timely brought within 90 days thereof, per Supreme Court Rule 13.1.

Provisions of the United States Constitution

Amendment V:

> "No person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Amendment XIV Section 1:

> "... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case with Pertinent Facts

1. The defendant FBI investigated (Democratic) Mayor Gillum of Tallahassee, Florida for six years (2015 - 2021) for allegedly misallocating $125,000 of donations, but refused for three of those years to investigate the subject *proven theft* by (Republican) Florida officials of *one thousand times* that amount. This period included a governor election season in which the investigated party lost to the party not investigated. This proved that the defendant agencies knew that the present case met their standard of evidence and available resources, and that a political faction controlled their investigation decisions at all levels.

2. The Plaintiff notified all local, state, headquarters, and OIG offices of each defendant agency thirty times over three years, under administrations of both major political parties, with copies of the Complaint, six Appendices of Fact, and seven Memoranda of Law and voluminous raw evidence on CD. The refusal of each office of each defendant agency to even reply to these notices proved their broadly organized collusion to protect political racketeering.

3. The defendant agencies admitted compiling a falsified criminal dossier against the Plaintiff, who has never committed a crime, and likely used this to control judges so as to injure the Plaintiff and deny due process against racketeering crime.

4. The defendants requested six months of additional time to prepare an Answer to the Complaint, generously granted by the Plaintiff solely for that purpose, but made no effort to compile an Answer, and instead filed a motion to dismiss based solely upon perjuries of fact and law, designed to destroy the rights of all citizens by asserting claims of discretion and immunity for acts of political racketeering crime.

5. The district court judge, who had shown gross prejudice in favor of the defendants while on the FISA court, granting them hundreds of warrants on zero evidence, granted them absolute immunity for collusion in racketeering crime, without cognizable argument. The D.C. Circuit rubberstamped that decision without argument, requiring checks and balances to be exercised by this Court.

REASONS FOR CERTIORARI FOR QUESTION 1 (EXCESSIVE DISCRETION)

1. Do federal agencies have discretion to collude in racketeering crime?

This question is of critical importance in the protection of the people of the United States from abuse of public office by factions within federal agencies.

The proven conduct of the defendant agencies clearly violates the standards of the APA, the DOJ standard of investigation, the ABA Standard of Prosecution, the CFR Title 5 Standards Of Ethical Conduct For The Executive Branch, and the FBI's own statements prioritizing investigation of public corruption. While public officials usually believe that they are patriotic, their advocacy of discretion and immunity to violate the Constitution for partisan gains renounces their public duty.

The fact that these agencies dare to claim discretion to collude with political racketeers, and refused even to file an Answer to the Complaint after six months of extensions, establishes that they acted knowingly in violation of duty and the laws cited, in collusion with political racketeers. There is no discretion for racketeering.

Standard Of Judgment

The Administrative Procedure Act APA, 5 USC § 701(a) was enacted to ensure that agency actions may be reviewed by courts *unless discretion is provided by law*, exempting the military and some agencies, but not the defendant agencies:

> (a) This chapter applies, according to the provisions thereof, except to the extent that—
> (1) statutes preclude judicial review; or
> (2) agency action is committed to agency discretion by law.

The right of review is defined by 5 USC § 702:

> A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered

against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance.

Even were administrative discretion in decisions of investigation and prosecution generally accorded to DOJ, this is abdicated where the agency violates the essential principles established by DOJ regulations (Principles of Federal Prosecution). DOJ standard 9-27.200 establishes the standard for prosecution:

> 9-27.200 - Initiating and Declining Prosecution...
> If the attorney for the government concludes that there is probable cause to believe that a person has committed a federal offense within his/her jurisdiction, he/she should consider whether to:
> Request or conduct further investigation;
> Commence or recommend prosecution;
> Decline prosecution and refer the matter [to] another jurisdiction;
> Decline prosecution and ...recommend ...non-criminal disposition; or
> Decline prosecution without taking other action.
> 9-27.220 - Grounds for Commencing or Declining Prosecution
> The attorney ...should commence ...federal prosecution if he/she believes that the person's conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient ... unless (1) the prosecution would serve no substantial federal interest; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative ...
> ...despite his/her negative assessment of the likelihood of a guilty verdict ... the prosecutor may properly ... allow the criminal process to operate ...

DOJ standard 9-27.260 of *impermissible* considerations in declining charges establishes the standard applicable to this case:

> 9-27.260 - Initiating and Declining Charges—Impermissible Considerations
> In determining whether to commence ... prosecution ... the government may not be influenced by...
> The possible effect of the decision on the attorney's own professional or personal circumstances.
> In addition, federal prosecutors and agents may never make a decision regarding an investigation or prosecution, or select the timing ... for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party. See § 9-85.500.

The DOJ standard was willfully violated by all levels of the DOJ in this case.

The ABA Standard of Prosecution also prohibits political bias in decisions of investigation:

> 3-1.6 (a) ... A prosecutor should not use other improper considerations, such as partisan or political ... considerations, in ... prosecutorial discretion...
> 3-1.6 (b) A prosecutor's office should be proactive in efforts to detect, investigate, and eliminate improper biases...
> 3-1.7 (f) The prosecutor should not permit ... professional judgment ... to be affected by ... political, financial, professional, ... interests...
> 3-1.8 (a) ... A prosecutor whose workload prevents competent representation should ... should notify supervisors ...
> 3-1.9 (a) The prosecutor ... should be organized and supported with adequate staff and facilities to enable it to ... resolve criminal charges ...
> 3-1.12 (a) The prosecutor's office should ... require internal reporting of reasonably suspected misconduct to supervisory staff ...
> (b) When a prosecutor reasonably believes that ... misconduct ... has occurred, the prosecutor should ... refer the matter to higher authority ...
> (c) If... the chief prosecutor permits... an ... omission that is clearly a violation of law, the prosecutor should take ... action, including revealing information ...to ... appropriate judicial... or other government officials ...
> 3-2.3 The prosecutor should be provided with funds ... to employ professional investigators and ... forensic and other experts.
> 3-2.5 (a) Fair ... procedures should be established ... to ... remove, and supersede, a chief prosecutor ... upon ... deviation from professional norms.

All of these provisions of the ABA Standard of Prosecution were clearly violated.

Federal employees are also prohibited from political bias by CFR Title 5 Standards Of Ethical Conduct For Employees Of The Executive Branch. 5 CFR § 2635.101 (Basic obligation of public service) prohibits bias affecting political parties:

> (8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

5 CFR § 2635.106 provides for disciplinary and corrective action for violations:

> (a) ... violation of this part ... may be cause for appropriate corrective or disciplinary action to be taken under ... regulations or agency procedures... in addition to any action or penalty prescribed by law.
> (b) It is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases... corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures at part 2638 of this chapter.

The standard of CFR Title 5 was clearly and willfully violated by these agencies.

Application of the Standard

These standards clearly prohibit the proven conduct of the defendant agencies, and the decisions of the lower courts.

The Administrative Procedure Act APA, permits judicial review of agency actions *unless* "statutes preclude judicial review" or "action is committed to agency discretion by law." The APA standard prohibits the presumption of agency discretion, and was clearly violated by the lower courts. The right of review is also provided by 5 USC § 702: any "person suffering legal wrong because of agency action... is entitled to judicial review thereof" and "The United States may be named as a defendant in any such action." The 5 USC § 702 standard was violated by the lower courts in refusing to review the actions of federal agencies.

DOJ standard 9-27.260 of impermissible considerations in declining to prosecute was clearly violated by its investigation of one politician for mishandling donations while refusing to investigate *proven* racketeering by opposing politicians of *one thousand times* that amount. The defendant agencies were obligated under DOJ standard 9-27.200 to investigate this matter when first shown that there was "probable cause to believe that a person has committed a federal offense," and were obligated under DOJ standard 9-27.220 to prosecute unless this would not serve a "substantial federal interest," when they might have provided financial evidence to the Plaintiff. Their refusal clearly violated DOJ standard 9-27.260 "for the purpose of giving an advantage or disadvantage" to a political party, with intent to affect elections. They refused to serve "substantial federal interest" as mandated.

The ABA Standard of Prosecution also prohibits political bias in decisions of investigation, including "partisan or political... considerations," "political, financial, professional... interests," and requires "reporting of reasonably suspected misconduct," that "omission that is clearly a violation of law be reported to "appropriate judicial... or other government officials," that "the prosecutor should be provided with funds" necessary, and that a chief prosecutor be removed for "deviation from professional norms." All of these provisions of the ABA Standard were clearly violated by the defendant agencies.

The fact that these agencies dare to claim discretion for collusion with political racketeers, further establishes that they knowingly violated mandated duty and laws cited in Count 9, voiding any provision or presumption of discretion.

Errors Of The Lower Court Decisions

The agency decisions were plainly corrupt and beyond any discretion provision, and the lower courts found no such provisions, and merely invented a presumption of discretion.

The lower court concealed the DOJ abdication of duty, violated its own rules in refusing to require DOJ to answer the complaint, and claimed that agencies have discretion to commit massive crimes and to subvert the Constitution, in willful collusion with political racketeering, and sought only to conceal its wrongful intent by citing only immaterial and erroneous decisions to rationalize ignoring the Constitution and laws of the United States, to obstruct prosecution of political racketeering.

The district judge had been removed from the FISA court for granting hundreds of FBI warrants without evidence, proving prejudice in favor of these agencies, but did not recuse. The district decision asserts absurdly (p. 4-5) that all federal enforcement agencies have "absolute discretion" to "not investigate allegations," and that the incontrovertible evidence and argument provides "no basis" to order investigation. Of course there is no basis in federal law to permit agency collusion in racketeering crime: the lower courts have no argument here.

The lower courts concealed the agency abdication of duty and trampled our Constitutional rights *in collusion with political racketeering*, and sought to hide that violation of law and Constitution with a fabric of immaterial precedents.

<u>False Argument In The Decisions</u>

The cases cited by the lower court on decisions to investigate had unrelated causes immaterial to this case, a fabric of immaterial and anomalous decisions or errant precedents. Such arguments are not cognizable.

The lower court decision states incorrectly (p. 4) that "a private citizen lacks a judicially cognizable interest in the [criminal] prosecution or nonprosecution of another." But in fact a citizen claiming racketeering damages has an interest in prosecution, and where federal investigation is required, has an interest therein. This is a civil racketeering case in which the plaintiff clearly has a direct interest.

The lower court decision claims that "a civil plaintiff... may not ask a court to compel the Government to prosecute a criminal case" ignoring the court's power to compel prosecution, and the fact that this is a civil racketeering case. The plaintiff requests investigation, not necessarily DOJ prosecution.

The decision cites *Shoshone Bannock Tribes v. Reno*[1][1], where treaty analysis discouraged DOJ prosecution to gain off-reservation river flows for the Tribes' reservation, absent any "specific treaty" provisions: no claim of legal rights, federal interests, or DOJ duties was involved. The present case does involve federal interests and public duty admitted by the FBI concurrent investigation, and seeks investigation, not necessarily DOJ representation. The cited case is immaterial.

The decision cites *Bordenkircher v. Hayes*[2][2] in support of discretion in prosecution, but that case argues only that a prosecutor plea negotiation threat did not violate the due process clause of Amendment XIV. The case is immaterial.

Heckler v. Chaney[3][3] (1985) *admits* that the APA only precludes judicial review of federal agency action when precluded by statute. But the Food, Drug, and Cosmetic Act (FDCA) had given that discretion to the defendant HHS. The case does not argue any broader discretion.

The case *Kidwell v. FBI*[4][4] was dismissed for *procedural* violations. The FBI and DOJ were named solely for declining to investigate a defective guitar, and were never served.

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[1] *Shoshone Bannock Tribes v. Reno*, 56 F.3d 1476
[2] *Bordenkircher v. Hayes*, 434 US 357
[3] *Heckler v. Chaney*, 470 U.S. 821 (1985)
[4] *Kidwell v. FBI*, 813 F. Supp. 2d 21 (DDC 2011)

The cited *Auleta v. DOJ*[5][5] held that a DOJ decision not to investigate was discretionary, by ignoring the APA provisions and erroneously citing *Heckler*.

In *Gage v. U.S. Att'y Gen.*[6][6] the court refused to compel the AG to request that the court impanel a Special Grand Jury because the plaintiffs *never stated a duty* of the FBI to investigate.

This fabric of anomalous and immaterial decisions is immaterial, not an argument to ignore massive proven corruption in one political party while investigating minimal alleged corruption in another.

The decisions found no law granting absolute discretion of action to the defendant agencies, because that would violate public duty and the Checks and Balances essential to the Constitution. Even statutory discretion is limited to statutory duty, and void where that duty is violated. The facts prove agency violation of duty, and indicate criminal intent, which vacates any discretion.

Violations of Equal Protection of Law

The acts of the defendants have violated the right of all citizens to equal protection of law, by investigating politicians of one political party, while refusing to investigate proven political racketeering crime of one thousand times that magnitude, by politicians of an opposing political party. These systematic violations of the constitutional right to equal protection will be fully briefed upon certiorari.

Violations of Due Process of Law

The numerous violations of the right of the plaintiff to due process of law include deliberate false statements of fact and law as a pretext for dismissal, and will be fully briefed upon certiorari. These violations sought to obstruct prosecution of political racketeering crime by politicians of one political party, even while investigating those of another party for comparatively insignificant amounts.

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[5] *Auleta v. DOJ*, 80 F. Supp. 3d 198, 202 (DDC 2015)
[6] *Gage v. U.S. Att'y Gen.*, No. 22-0283 (DDC 2022)

Conclusion

The DOJ claim of absolute discretion of federal agencies to engage very broadly in racketeering crime to benefit a political party is an attack upon the Constitution and Laws of the United States, very deliberate subversion of the essential Checks and Balances required to maintain a democracy, and the right of all citizens to the honest performance of public duties by public officials.

REASONS FOR CERTIORARI FOR QUESTION 2 (SOVEREIGN IMMUNITY)

2. Do federal agencies have "sovereign immunity" in racketeering crime?

The D.C. Circuit was asked whether, in a case of abuse of office by federal employees causing civil damages, that court would presume or substitute the United States as defendant, or whether it would try to hide government wrongdoing behind a personal immunity it had *itself* granted to its employees? The D.C. Circuit chose to ignore all applicable laws and the Constitution, claiming that no one is responsible for organized crime in public office!

The lower court false claim of immunity very deliberately sought to deny due process in prosecuting racketeering by a political party. These decisions are themselves organized abuses of public office in subversion of constitutional rights, and in pursuit of personal gain via political party, which must be reversed to protect the People and Constitution and Laws of the United States.

Standard of Judgment of Immunity

Immunity of government employees is warranted for subtle errors of judgment, such as (for DOJ, FBI, and HSI) uncertainties of evidence. It is not warranted for agencies engaged in extensive, deliberate abuses of office with intent to prejudice elections and deny constitutional rights. Those are government crimes.

Absolute immunity is not necessary to proper government operation. Federal courts would not wrongfully convict federal agencies: withholding immunity does not endanger government. But absolute immunity attracts wrongdoers, protects

wrongdoing, and must be denied if the judicial branch is to retain capacity to implement Checks and Balances, to protect good government.

Inevitably defenses of government agencies over-generalize protections, to reduce contention or to invent impunity for crime, both of which motives are improper. Clearly the lower court judges were annoyed to hear of damages caused by these agencies, and tried to reclaim the privileges of royalty regardless of federal law. But the federal government exists to serve the people, and evasion of that duty to avoid correcting wrongs, sacrifices the rights of the People for the convenience of the worst federal employees.

The problem here is Tribalism, the oldest and worst scourge of humanity. All groups congratulate themselves as the source of good: even federal agencies have social and economic dependencies that cause members to seek gain from group loyalty, and avoid risk of tribal rejection. Tribalism organizes within government as political factions.

The Plaintiff is not a member of a political party, but in prosecuting the theft of $120 million in conservation funds by Florida politicians and a state judge, found them to be of the same political party (Republican). This case was blocked for years in several district courts, by Republican judges who grabbed the case in violation of the code of judicial ethics, to deny venue and sealing. When all but the agency defendants were dropped, the immunity doctrine was asserted by lower court judges to obstruct prosecution of their faction. This is the motive of the immunity claim, which must be reversed to protect the People, Constitution, and Law of the United States.

Immunity Of Federal Government For Rights Violations Is Unconstitutional

The Constitution Assumes Government Liability For Denial Of Rights

Liability of the United States for injurious acts is mandated by its supreme law, the Constitution. The judicial power of courts under Article III "shall extend ... to Controversies to which the United States shall be a party" as well as to other matters. That clear recognition that injurious acts of government are subject to

judicial review, rejects any concept of sovereign immunity, and is a clear statement of jurisdiction in all such cases.

The Fifth and Fourteenth Amendments prohibit violation of fundamental rights of any person without limitation of the party in violation, and without reference to any immunity. These rights are "self-executing" without any legislation or judgment, and compensation is due upon finding of damages. Attempts to resurrect sovereign immunity to deny rights are *prima facie* unconstitutional.

Neither federal law nor its courts can create immunities denied by the Constitution, except by *assuming liability* of government for acts of its employees within official capacity, as the cause of any wrongs done by those it holds immune, so as to grant them personal immunity. This does not magically create immunity of the United States for violation thereby of rights guaranteed by its Constitution.

The Constitution Denies Sovereign Immunity As The Demand Of Tyrants

The Amendments V and XIV of the United States Constitution enshrine the protections upheld since the 1215 Magna Carta (Articles 39, 40, and 52). Both documents fully accept government liability for denial of rights (original in Latin):

> 39. No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way except by the lawful judgment of his equals or by the law of the land.
> 40. We will not sell, or deny, or delay right or justice to anyone.
> 52. If anyone has been disseized or dispossessed by us, without lawful judgment of his peers, of lands, castles, liberties, or of his right, we will restore them to him immediately.

Sovereign immunity was of course never stated in the Constitution, because it was recognized as the abhorrent ancient claim of tyrants to be above the law, a scheme to protect tyranny from democratic institutions, based upon the inability of royalist judges to enforce human rights with damage awards. Those rights are explicitly guaranteed by the US Constitution, which precludes any such immunity.

The Fifth and Fourteenth Amendments guarantee that citizens shall not be subject by government to uncompensated takings, nor deprivations of life, liberty, or property without due process of law. These provisions require judicial remedies for government violations of Constitutional rights, and permit suit and enforcement

by habeas corpus and mandamus orders against government officials. Sovereign immunity was never justifiable under the Constitution, nor even argued. As our first Chief Justice (1775–1782) John Marshall wrote:

> The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

The Constitution Precludes Any Concept Of Sovereign Immunity

The remedial imperative of the Constitution precludes sovereign immunity from any suit alleging violation of constitutional right.[85][7] The "petition" clause of the First Amendment rejects immunity in favor of judicial resolution of claims against government.[86][8] The *Bivens* decision establishes that enforcement of the Constitution is not dependent on government assent, and that the Constitution is enforceable by individuals without executive assent[87][9].

These declarations of absolute and unquestionable rights of citizens are self-executing: orders already issued by the highest authority of law, incontestable in federal court, and no agreement of executive agencies or judiciary is necessary.

Denial Of Immunity Is An Essential Strength Of Democracy

Sovereign immunity, in a nation founded upon principles of individual rights, has no legitimate function, and serves only to convenience "us" in government over "them" injured citizens, in violation of public duty. It is rationalized by the false pretense of "defending" government while in fact subverting its Constitution.

Judicial remedies against executive misconduct are an essential mechanism of government checks and balances, as well as accountability. Suits against government improve rather than imperil the rule of law. The notion of "sovereign immunity" for denial of Constitutional rights has no foundation in US law.

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[7] Akhil Amar, *Of Sovereignty and Federalism,* 96 Yale Law Journal 1425, (1987)

[8] James E. Pfander, *Marbury, Original Jurisdiction and the Supreme Court's Supervisory Powers,* 101 Colum. L. Rev. 1515, 1586 (2001).

[9] Susan Bandes, *Bivens: The Self-Executing Constitution,* 68 S. Cal. L. Rev. 289 (1995)

The Assertion Of Sovereign Immunity Is Extreme Subversion

Any statement of government officials of immunity for denial of these rights is *a priori* false, and an act of extreme subversion. Regardless of political party or philosophy, official collusion in crime must be prosecuted. A claim of government immunity for violation of these rights, by a federal agency or judge, is an act of subversion, conspiracy to overthrow the government, a declaration of war, and an act of treason. It is the death knell of democracy. Such an argument by a federal judge is a willful violation of the fundamental Article III requirement of judges:

> The Judges, both of the supreme and inferior courts, shall hold their offices during good Behaviour...

Therefore judges asserting sovereign immunity in collusion with violations of constitutional rights are engaged in subversion and may not hold judicial office.

Any argument for such immunity of government is therefore inherently false and requires no refutation. This petition will nonetheless refute in detail the arguments asserted for immunity.

Early Federal Case Law Properly Rejected Immunity

Early federal case law does not recognize any federal immunity. In 1803 *Marbury v. Madison*[10][10] approved mandamus as the remedy against a Cabinet-level federal official to compel performance of a clear duty. That decision, that the "essence of civil liberty" is that the law provide a remedy for the violations of rights, precludes immunity. In 1838 *Kendall v. United States*[11][11] upheld mandamus of a federal official who "commits any illegal act, under colour of his office, by which an individual sustains an injury," and awarded credits leading to payment of the claim.

By the mid nineteenth century, partisanry corroded the Constitutional rights of the people. Where the Marshall Court saw the necessity of public remedy, the southern-controlled Taney Court that failed to avert the Civil War (in its declaration that slaves have no rights, versus requiring compensation for their

[10] *Marbury v. Madison*, 5 U.S. 137 (1803)
[11] *Kendall v. United States ex Rel. Stoke*, 37 U.S. 524 (1838)

liberation), invented a default government immunity in subservience to other federal branches, with the excuse of legislative control of damage awards.

Late Slavery-Era Immunity Due To Budgeting Issues Was Renounced

The increasing polarization 1820-1860 between northern and southern states over the status of slaves as private property, and fears that slaves would be freed without compensation or recourse for slaveowners, or that vast damage compensation would be demanded, in excess of any mutually agreeable federal budget provisions, led to a brief revival of sovereign immunity, due to the early uncertainty of judges that they could enforce damage payments.

Immunity was not mentioned by the Supreme Court until 1846 in *United States v. McLemore*[12][12], which merely claims without argument that the United States was subject to suit only by its consent in legislation. But of course under the Constitution, the default is enforcement of rights against government, not abandonment of rights. Even that egregious and unsupportable 1846 decision did not bar suits against government officers, nor all forms of relief of injury by government. Mandamus was limited by statutes providing executive discretion, [19][13] but properly continued for breach of a clear ministerial duty.[20][14][21][15]

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[12] *United States v. McLemore*, 45 U.S. (4 How.) 286, 288
[13] *Work v. United States ex rei Rives*, 267 U.S. 175, 177-84 (1925)
[14] *Decatur v. Paulding*, 39 U.S. (14 Pet.) 497,516-17 (1840)
[15] *Miguel v. McCarl*, 291 U.S. 442 (1934) (mandamus for refusal of veteran benefits);

The slavery-era excuse for reviving the ghost of immunity was that the appropriations power required statutes authorizing payment of specific damage awards.[16] But no other government entity refuses its essential duty on the grounds that expense details are not known in advance. In fact it was "a doctrine of avoidance designed in part to protect the status of the courts"[84][17] by "protecting themselves from potentially dangerous confrontations" with the legislative branch and "thereby protecting at least the appearance of judicial independence."

The false judicial doctrines of immunity "misinterpreted the ... Constitution's text, warped its unifying structure, and betrayed the intellectual history of the American Revolution that gave it birth."[18] Even the ancient immunity of tyrants was misstated in judicial claims of federal immunity: British law provided monetary remedies as of right against the Crown.[19]

The failure of legislative remedies in takings claims led to establishment of the federal Court of Claims in 1855 to deal with claims against federal government, with *executive review* of COC decisions, encouraging judges to limit or avoid claims by any available means.

After the Civil War, in *United States v. Lee*[14][20] (1882) the COC resoundingly rejected the sovereign immunity defense in action by Robert E. Lee's son against army officers holding his land (now Arlington Cemetery) for the United States, stating that the sovereign immunity doctrine "has never been discussed or the reasons for it given," and that the ancient basis of immunity was not applicable.

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[16] *Reeside v. Walker*, 52 U.S. (11 How.) 272, 291 (1850)
[17] *Suing the Federal Government: Sovereignty, Immunity, and Judicial Independence*, Vicki C. Jackson, 35 Geo. Wash. Int'l L. Rev. 521-609 (2003)
https://scholarship.law.georgetown.edu/facpub/107
[18] Ibid
[19] *Sovereign Immunity and Suits Against Government Officers,* David P. Currie, 1984 Sup. Ct. Rev. 149, 150-54 (1984)
[20] *United States v. Lee*, 106 U.S. 196 (1882)

The *Glidden* Court "was prepared to uphold Article III courts in entering money judgments against the United States given either a permanent indefinite appropriation or a history of payment," which "makes it much less likely that Congress will decide not to pay" and "reinforces the confidence of Article III courts."[21]

> Sovereign immunity... has been deployed... to fashion remedies that are... most likely to be complied with... while it may enhance courts' abilities to avoid confrontations it limits their abilities to enforce other aspects of the law. In this way the sovereign immunity doctrine... can be viewed either as a source of legitimacy for the courts or as a form of unprincipled weakness.

The United States relinquished its slavery-era sovereign immunity under the 1887 Tucker Act, which reformed the 1855 Court of Claims as the Court of Federal Claims. Federal liability under the one-sentence Tucker Act includes federal tort claims in three categories, excluding tort only in the fourth category, which adds claims for "liquidated or unliquidated damages in cases not sounding in tort."

> The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

Federal Agencies Do Not Have Immunity For Civil Rights Act Violations

The Civil Rights Act 42 USC §§1983 to 1986 (1866, 1871, 1875, 1957, 1960, 1964, 1987) explicitly extinquishes sovereign immunity for government entities both state and federal, and for individuals, for violations of constitutional rights:

> § 1983 "Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress..."
> § 1985 "If two or more persons in any State or Territory conspire...for the purpose of depriving, either directly or indirectly, any person or class of

[21] *Ibid*, p. 605

> persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; ... if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages..."
> § 1986 "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 USCS § 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do so, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented;"

No cognizable argument exists that a government entity whose officials are broadly aware at all levels of such violations, and refuse prevention despite having power, is magically immune from liability as a person for such actions. Our federal agencies can claim no immunity for organized civil rights violations, and these claims of immunity prove their intent to subvert the Constitution.

The decision (p.6) and defendant motion cite an erroneous incidental note in the immaterial *Boling*[15][22] decision, that the U.S. has not "waived its sovereign immunity" under the Civil Rights Act. In fact the act (42 USC § 1983 "Every person...") specifically extinquishes sovereign immunity both state and federal. There is no constitutional basis for federal immunity for civil rights violations.

The *Boling* case barred the claims of that case by statute of limitations and res judicata, not sovereign immunity. In a claim of conspiracy to violate civil rights, it failed to presume absence of immunity barring specific provisions to the contrary, and merely presumed immunity. Presumption is not an argument.

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[22] *Boling v. U.S. Parole Comm'n*, 290 F. Supp. 3d 37 (DDC 2017), memorandum opinion only

Civil Rights Act claims against state actors who violate the CRA were generalized to federal actors by *Bivens*[9][23] and are regularly prosecuted. Bivens claims are not filed against agencies where FTCA already provides a remedy, but are prosecuted as needed against federal employees.

The decision (p. 6) cites its own memorandum opinion *Smith v. Obama*, relying upon *United States v. Mitchell*[16][24], another anomalous case of native American rights on allotted lands. The COC had *specifically denied* the DOJ argument that the U.S. had not waived immunity, and held that the Indian General Allotment Act of 1877 created a U.S. fiduciary duty to manage the timber resources properly. The Supreme Court merely held that the Act did not establish such a fiduciary duty. *U.S. v. Mitchell* does not argue sovereign immunity, and *Smith v. Obama*[17][25] falsely states the long-superceded doctrine that "the federal government is subject to suit only upon consent." These are clear attempts to subvert the United States Constitution, and are not arguments for immunity.

Congress created the Administrative Procedure Act APA, 5 U.S.C.S. § 701(a) to ensure that all agency actions may be reviewed by courts unless discretion is provided by law, exempting the military and certain agencies, but not the defendant agencies (see above).

Federal Agencies Do Not Have Immunity For Racketeering Crime

The Racketeer Influenced Corrupt Organizations Act or RICO (18 USC §§ 1952–1968) extinquishes sovereign immunity for all persons including government actors both state and federal, for patterns of racketeering crime. 18 U.S. Code § 1962 provides that a defendant may have participated in the enterprise by means of racketeering, or colluded to cause, advance, or protect racketeering.

> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign

[23] *Bivens v. Six Unknown ... Agents of Federal Bur. of Narcotics*, 403 U.S. 388 (Supr. Ct 1971)
[24] *United States v. Mitchell*, 445 U.S. 535 (1980)
[25] *Smith v. Obama,* 217 F. Supp. 3d 283 (D.D.C. 2016)

> commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity ...
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

Federal employees and others often violate RICO with a pattern of violations of 18 USC § 1031 in connection with government contracting, often by bribery, false billing, false quality certification, and substitution of inferior parts. Typical RICO violations by government employees include procurement mishandling, billing for products or services not provided, etc.

The issue of agency immunity has not been addressed by this Supreme Court. Several circuit court decisions claiming federal immunity for RICO claims show mere tribalist prejudice in favor of government employees, trampling the rights of citizens without foundation in law. The Ninth Circuit admitted the absurd prejudice that "government entities are not capable of forming [the] malicious intent" of racketeering (Pedrina v. Chun, 97 F.3d 1296, 1300 (9th Cir. 1996). The Sixth Circuit dismissed a civil RICO case against federal government (Berger v. Pierce, 933 F.2d 393, 397 1991) hoping that immunity would apply magically despite its admission that RICO "does not mention, much less waive, sovereign immunity." The Fifth Circuit (McNeily v. United States, 6 F.3d 343, 350 1993) and Federal Circuit (Pieczenik v. Domantis, 120 F. App'x 317, 320 2005) have made similar wishful decisions. These decisions are not based upon cognizable legal argument, and this Court should clarify that government has no immunity for racketeering.

The circuit courts addressing this RICO issue have held that a culpable "person" includes any entity able to hold a legal or beneficial interest in property, which intended to commit predicate acts with knowledge that those acts were illegal. The defendant agencies all meet that definition.

Where numerous officials of an agency engage in coordinated racketeering activity with full compliance of all local, state, headquarters, and OIG offices, the agency itself is not merely exploited as a racketeering enterprise, but is clearly a racketering actor, with no possible excuse of lack of knowledge, discretion, or

immunity, and any judicial grant of immunity is itself collusion in racketeering crime, with intent to subvert the Constitution and laws of the United States.

Federal Agencies Do Not Have Immunity Under the Tort Claims Act (FTCA)

The Federal Tort Claims Act (FTCA) 28 USC § 1346 directs some tort claims against federal agencies and employees to district courts:

> (b)(1) Subject to the provisions of chapter 171 of this title, the district courts... shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages... for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act ... occurred.

Therefore this case was brought in district court. The FTCA applies to wrongful acts or omissions of Government employees wherein "a private person, would be liable to the claimant" under local law, such as state tort law. 28 USC Ch. 171 provides that:

> With respect to any claim under this chapter, the United States shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the United States is entitled.

Florida state law provides remedies for collusion in the theft of state and county funds, regardless of actor, and does not provide immunity for theft or racketeering by government actors, so the FTCA provides no immunity of the United States. Florida state law provides remedies for collusion in the theft of state and county funds, regardless of actor, and does not provide immunity for theft or racketeering, The FTCA provides liability and no immunity of the United States in this case. The agency defendants refused to Answer the Complaint despite being allowed an additional six months solely to do so, and thereby failed to claim or generalize any personal immunity under state law, and should not be allowed to make such claims.

Attempts to resurrect sovereign immunity by citing FTCA 28 USC § 1346 and Ch. 171 to deny those rights are *prima facie* unconstitutional as applied. The

belief that personal immunities magically create impunity of an agency for racketeering crime organized systematically at all levels across multiple agencies, has resulted in these abuses of office, and is a delusion that must be extinguished. This case offers the Court the opportunity to restrict the immunity doctrine to necessary and proper uses, before Congress restricts or abolishes it.

Among the immaterial decisions cited by the lower courts, *Boling* admits that Congress waived immunity of federal agencies under the FTCA, but found that FTCA was not applicable in *Boling* due to lack of any claim of underlying wrong.

The lower court claims of agency immunity under FTCA are systematic abuses of office, seeking to attack the plaintiff for prosecuting political racketeering, acts of racketeering in themselves.

Federal Agencies Do Not Have Immunity Under The False Claims Act

The decision (p.6) and defendant motion (p. 6) claim that the False Claims Act FCA 31 USC § 3729 "does not provide a cause of action against the Government" although admitting that it "provides a cause of action against those that defraud the Government." The original Florida defendants are also charged with violation of the FCA (Count 6) for causing misappropriation of federal funds restricted to conservation purposes, commingled with state and county funds.

The criteria of reasonable immunity do not apply in such cases. Any government agency and its employees acting in broad collusion with a racketeering enterprise in violation of the FCA is also in violation thereof, a cause of action by those injured. The defendant agencies are charged with FCA violation for abuse of public office to defraud and deny honest services to the people of Florida and the United States, in collusion with the Florida defendants, to conceal sources of unlawful political contributions and quid pro quo bribes, and to cause misappropriation of public funds.

While immunity of government employees is warranted for subtle errors of judgment, such as (for DOJ, FBI, and HSI) uncertainties of evidence, it is not

warranted for broad and deliberate abuses of office at all levels of such agencies, with intent to prejudice elections and to deny constitutional rights.

Application Of The Standard

In this case, the defendant agencies denied due process and colluded in property taking by the Florida defendants, by refusing to investigate rackleteering by a political party despite over thirty notices and packages of evidence sent by the Plaintiff to their local, state, headquarters, and OIG offices over three years, and despite their simultaneous investigation of an opposing state political candidate for *one thousandth* of the funds involved in this case. The defendant agencies broadly coordinated their racketeering at all levels and across all of the defendant agencies, fully intending to betray the people of the United States for personal gain via their political party, and fully intending to subvert the Constitution and Laws of the United States to permit theft of $120 million from millions of its citizens.

The defendant agencies further denied due process and colluded in property taking and racketeering by the Florida defendants, by dredging up the unconstitutional scam of government immunity for extreme and deliberate violations of its own highest law, the Constitution. The lower court judges clearly erred at best in rubberstamping those extremely subversive claims.

<u>The Defendants Are Liable For These Violations Of Constitutional Rights</u>

Liability of the defendant agencies is mandated by Amendments V and XIV, which prohibit violation of these rights *without limitation of actors* and *without provision of any immunity*. These rights are "self-executing" without judicial decision of law, and compensation is due upon finding of damages.

Each defendant agency denied due process and colluded in property taking by the Florida defendants, by refusing to investigate, and admitted that their criteria and resources of investigation were met, by their simultaneous investigation of an opposing state political candidate for *one thousandth* of the funds involved in this case. The defendant agencies broadly coordinated that racketeering at all levels and across all defendant agencies, fully intending to betray the people of the United

States for personal gain via their political party, and fully intending to subvert the Constitution and Laws of the United States to steal from millions of its citizens.

The defendants and lower courts further violated those rights by dredging up the absurd excuse of overeign immunity, the abhorrent claim of tyrants to be above the law, nowhere referenced in the Constitution nor even argued in its preparation. They have sought to deny the suits against government and judicial remedies that serve as an essential regulatory mechanism, and which improve rather than imperil the rule of law, an essential mechanism of government checks and balances, as well as accountability. They have served only a self-interested faction of "us" in government over "them" injured citizens, pretending to "defend" government while subverting its Constitution and laws to allow partisan tyranny for personal gain.

The claim of "sovereign immunity" of these agencies for denial of rights guaranteed by the Constitution is a perjury with no cognizable foundation in US law. A judge who states that the United States is immune to prosecution for organized violations of the rights of its citizens under their Constitution, renounces and subverts the Constitution. The lower court decision must be overturned.

The Defendant Agencies Are Liable For These Civil Rights Act Violations

The Civil Rights Act 42 USC §§1983 to 1986 further extinquished sovereign immunity for government entities and persons, for violation of constitutional rights:

> § 1983 "Every person who under color of any statute... causes to be subjected, any citizen of the United States ... to the deprivation of any rights... secured by the Constitution and laws, shall be liable to the party injured..."
> § 1986 "Every person who, having knowledge that any of the wrongs conspired ... are about to be committed, and having power to ... aid in preventing the commission of the same, neglects or refuses to do so... shall be liable to the party injured... for all damages caused by such wrongful act, which such person ... could have prevented;"

No cognizable argument exists that a government entity whose officials and employees are broadly aware at all levels of such violations and broadly organized to refuse prevention despite having power, is magically immune from liability as a person for such actions.

All officials and employees of the defendant agencies at all levels, who were engaged in investigation and prosecution of public corruption, were broadly aware of these violations and broadly organized across these agencies at all levels to obstruct prevention and prosecution despite having full power to investigate and prosecute the political racketeering. The defendant agencies have no immunity for these organized Civil Rights Act violations, and their claims of immunity prove their intent to subvert the Constitution.

The Defendant Agencies Are Liable For These Racketeering Crimes

The Racketeer Influenced Corrupt Organizations Act or RICO (18 USC §§ 1952–1968) extinquishes immunity for all persons including government entities, for racketeering crime, and collusion to cause, advance, or protect racketeering.

> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity ...
> (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

All employees of each of the defendant agencies at all levels, engaged in investigation and prosecution of public corruption clearly violated subsection (d) in colluding with the Florida defendants to violate subsection (c) by obstructing prosecution of theft of state and county conservation funds, which affects interstate commerce because the associated bond interest is paid by real estate tax upon out-of-state owners. All concerned employees engaged in coordinated racketeering activity and secured full compliance of the local, state, headquarters, and OIG offices of each agency, to obstruct prevention and prosecution of political racketeering despite having full power to investigate and prosecute these crimes.

The defendant agencies have no immunity for these acts of racketeering, with intent to subvert the Constitution and laws of the United States for personal gain via political party, and their claims of immunity prove their unlawful intent.

The issue of agency immunity has not been addressed by this Supreme Court. The several circuit court decisions cited showed mere tribalist prejudice in favor of

government employees, trampling the rights of citizens without foundation in law. These wishful decisions are not based upon cognizable legal argument, and this Court should clarify that government has no immunity for racketeering.

The Defendant Agencies Are Liable Under The Tort Claims Act (FTCA)

The Federal Tort Claims Act (FTCA) 28 USC § 1346 directs to district courts, claims against the federal government due to wrongful acts or omissions of Government employees wherein "a private person, would be liable to the claimant" under local law. 28 USC Ch. 171 provides that the federal government may use any defenses available to the employee(s) responsible.

In this case, the defendant agencies denied due process and colluded in racketeering by the Florida defendants, by refusing to investigate, and broadly coordinated their racketeering at all levels and across all of the defendant agencies, fully intending to betray the people of the United States for personal gain via their political party, and to subvert the Constitution and Laws of the United States to permit a political party to steal from millions of citizens. These are extreme torts.

In this case employees of the defendant agencies are responsible for collusion for acts wherein "a private person, would be liable to the claimant" under state tort law. Florida state law provides remedies for collusion in the theft of state and county funds, regardless of actor, and does not provide immunity for theft or racketeering, In fact Florida has the highest rate of conviction of public officials in the United States, about 70 public officials annually for over twenty years. The FTCA provides no immunity of the United States in this case.

The wishful belief that necessary employee immunity includes agency impunity for crime and tort both attracts and facilitates these abuses of office, and is a delusion that must be extinguished. This case offers the Court the opportunity to restrict the immunity doctrine to minor necessary and proper uses, if any there be, before Congress further restricts or abolishes it.

The Defendant Agencies Are Liable Under The False Claims Act

The False Claims Act FCA 31 USC § 3729 provides a cause of action against those who defraud the Government. The original Florida defendants violated the FCA (Count 6) by causing misappropriation of federal funds for conservation purposes, commingled with state funds by application and grant processes.

Employees of the defendant agencies at all levels defrauded the United States and the people of Florida by organizing and acting in broad collusion with a racketeering enterprise. Each defendant agency violated the FCA by defrauding the Government, by refusal to perform its mandated duties, and by concealment of the racketeering crime of the Florida defendants, even while they prosecuted a political candidate of the opposing party for *one-thousandth* of the amount involved in this case.

The defendant agencies further defrauded the United States by refusing to investigate unlawful political contributions and quid pro quo bribes, and thereby causing misappropriation of public funds.

The defendant agencies have further defrauded the United States by compiling a fake dossier against the Plaintiff and distributed this to judges to obstruct his prosecution of political racketeering crime, and to obstruct his defense of his charity school and real property against criminal acts of their political party.

The Defendant Claim Of Immunity Is Groundless

The defendant agencies refused to investigate or even respond to over thirty notices with full evidence of the racketeering crimes of Florida politicians of the same political party, sent to each of their local, state, headquarters, and OIG offices over a period of three years during federal administrations of both major parties, even while they investigated an opposing party politician for six years for alleged mishandling of *one thousandth* of the funds involved here. Their standards of investigation were met; they had the resources; and instead they broadly coordinated all of their offices in subversion of the mandates of their agencies, with clear and undeniable intent and effect of protecting political racketeering crime.

Those are clear and undeniable crimes. They also admitted crime by compiling a false dossier hoping to discredit the Plaintiff, and by refusing to Answer the Complaint despite being given six months of additional time strictly to do that.

Few of the cases cited in the decision even turn on immunity, and none provide any legitimate exercise of immunity, let alone a material exercise thereof. They are cited solely as a scam to subvert the Constitution for personal gain.

The DOJ claim of sovereign immunity of federal agencies engaged very broadly in racketeering crime to benefit a political party is an attack upon the Constitution and Laws of the United States, very deliberate subversion of the essential Checks and Balances required to maintain a democracy, and the right of all citizens to the honest performance of public duties by all public officials.

Due to the adverse effects of sovereign immunity on court capacities to provide individual justice, it is past time for caselaw to restore the original more restrictive understandings of the minimal scope of immunity for subversive acts. Re-interpretation of federal immunity doctrines should close rather than widen remedial gaps in the law.

The very fact that the defendant agencies seek immunity for collusion with the Florida political racketeers clearly establishes that they willfully acted in violation of public duty and the laws cited in Count 9, voiding even any statutory immunity. There is no such immunity, just as there is no such discretionary action.

REASONS FOR CERTIORARI FOR QUESTION 3 (CHECKS AND BALANCES)

3. Shall this Court exercise fortitude to implement Checks and Balances to enforce a code of conduct in government, or must it acquiesce in politically motivated abuses of office in the Executive and Judicial Branches?

The defendant agencies have obstructed justice and renounced the mandated duty of their agencies, by refusing to investigate either the Florida defendants, or

their own rogue faction in collusion to obstruct investigation. Their mandated duty has been obstructed at high levels by political rogues, and perhaps others fearful for employment security or lost in the tribalism of secretive agencies. These actions repudiate any presumptive or statutory discretion or immunity.

The defendants further engaged in racketeering crime by prolonging the period to Answer the Complaint on false excuses, beyond the recent election season to avoid adverse publicity and reduce the risk that a Grand Jury or congressional committee would be formed to investigate them. At last they refused to answer.

The defendants further engaged in racketeering crime by compiling a false dossier hoping to discredit the Plaintiff with the judiciary, and during the lower court actions harassed the Plaintiff with hundreds of spam emails daily, sabotaged his computer, spread rumors, and followed him around in hope of intimidation.

The conduct of the defendant agencies has established that, far from any intention to serve the public interest, political factions therein have become criminal enterprises run by both parties[26] for party gains, deliberately subverting the Constitution and Laws of the United States. They are demanding discretion and immunity nowhere permitted in federal government, for the most extreme abuses of office and racketeering crimes against the United States and its citizens.

Checks and Balances versus Separation Of Powers

The defendant agencies have asserted a doctrine intended to subvert the fundamental structure of democracy in the United States, that the concept of Separation of Powers can be used as a weapon to nullify the Checks and Balances mechanism for stabilization of democratic government.

The concept of separation of powers was introduced to justify division of the federal government into the Legislative, Executive, and Judicial branches, to prevent tyranny by prohibiting any individual or faction from exercising all government powers. This does not affect the mechanism of checks and balances.

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[26] For opposing party misconduct, see *Licensed To Lie, Exposimg Corruption In The DOJ*, Sidney Powell, 2014

The concept of checks and balances was introduced to stabilize federal government against errors and power grabs by any person or faction in government, by empowering redundant elements to detect and correct such errors. This works best when equivalent redundant elements are grouped to permit voting and correction of defective elements, as in the "triple modular redundancy" (TMR) operation of reliable modern control systems such as autopilots, allowing the majority of the group to outvote a defective element, and mark it for replacement.

The Constitution only prescribes checks and balances between the major branches, having unequal functions and powers, without providing them equal powers or strong means to outvote a defective element in another branch. The TMR method requires redundant elements with the *same powers*: the landing gear of an aircraft cannot be relied upon to handle a defect in its wings, just as the judicial branch cannot assume full executive branch powers in an emergency. But the judicial branch can make writs of mandamus to order correction of executive agencies, relying upon other elements in the executive to correct the defects found.

The highest duty of the Supreme Court is to implement checks and balances between the branches of federal government, not merely between the courts of appeals. The defendant claims that the principle of separation of powers nullifies checks and balances, to provide the executive branch discretion and immunity to engage in massive racketeering crime, is utterly false, and is the clearest evidence that the executive branch must be ordered by writs of mandamus to correct and eliminate this rogue faction within the defendant agencies.

These obstructions and defiance by executive agencies, to permit massive theft of funds by a political party, and to overturn the highest law of the nation by broad subversion of the rights of citizens under the Constitution, are acts of racketeering that severely threaten the rule of law in the United States, and require firm action by the Judicial Branch to implement Checks and Balances.

The Judicial Branch should also see and correct the "higher values error" of the lower court judges, whose lack of observance of judicial ethics standards has

allowed them to place the beliefs and interests of their political party or faction above their sacred duty to defend the rights of the People under their Constitution.

REASONS FOR CERTIORARI FOR QUESTION 4 (CIVIL RICO)

4. Does RICO provide for civil cases against agency racketeering?

The Racketeering Influenced Corrupt Organizations Act (RICO 18 USC §§ 1952-1968) has long been used by civil plaintiffs to prosecute racketeering crime.

All citizens injured by a pattern of racketeering crime have standing to bring such action, and both lower courts clearly knew this. Despite this, both lower courts denied Plaintiff standing to bring a civil RICO case, and made clear perjuries of law to protect political racketeering crime.

The district court decision claimed (p. 4) that the Plaintiff "lacks standing to compel government to prosecute" crimes, although of course the Plaintiff seeks that the Court order such prosecution. The Plaintiff clearly has standing to bring this case for that purpose, and to proceed for damages regardless of DOJ prosecution.

Both lower courts also made the false claim that government agencies are not accountable under RICO. But in fact RICO contains no such exemption, and the circuit courts define a culpable "person" to include any entity able to hold an interest in property, and intended to commit predicate acts knowing that those were illegal. Clearly the DOJ, FBI, and HSI intended to obstruct prosecution and deny civil rights, and knew that this was illegal. The defendant agencies meet all criteria of RICO for racketeering actors. The statement of the lower courts that RICO must identify classes of offenders to be invoked, when in fact it relies upon functional descriptions of all offenders, clearly has no cognizable basis in law regardless of any other such claim. Such claims are acts of subversion, not legal argument.

REASONS FOR CERTIORARI FOR QUESTION 5 (WRIT OF MANDAMUS)

5. Shall this Court recuse the lower court judge, assign a judge of a distinct political party with no history of promiscuous permissions to

federal agencies, and make writ of mandamus to empanel a grand jury to investigate the defendant agency factions and the original defendants?

As a result of the abuses of office by these agencies, the Plaintiff made Motion in the lower court that:

> 1. The defendant agencies shall within 30 days file their Answer to the Complaint, without any intervening motions, which shall fully address the facts and claims regarding those agencies, and account for their refusal to investigate those defendants to be joined after investigation.
> 2. The DOJ shall assign a dedicated full-time staff of at least six well-qualified investigators, who shall be managed by a person appointed by this Court to make a non-partisan investigation, of the refusal of the defendant agencies to investigate, and of the racketeering defendants to be joined. This group should file a detailed weekly investigation report with this Court.
> 3. Any substantial default in compliance by a defendant agency or its agents and employees with this Order should be interpreted as an abrogation of public duty, and an admission by that agency of collusion with the racketeering crime, and acceptance of liability to the injured parties.
> 4. In the event of such abrogation, this Court should empanel a Grand Jury to make independent investigation of the conduct of these agencies, and of the racketeering defendants to be joined.

The lower court denied the entire motion, but was unable to make any argument, an act of abrogation of public duty and collusion with political racketeering.

This Court should therefore make writ of mandamus, that the lower courts shall (1) allow a final extension of time for a proper Answer, without any intervening motions, which must account for all staff and actions involved, in each agency office that ignored Plaintiff notifications; and (2) empanel a Grand Jury and order the defendant agencies to investigate the subversive faction within these agencies, and to investigate and prosecute the original Florida defendants.

REASONS FOR CERTIORARI FOR QUESTION 6 (FALSE STATEMENTS)

6. Shall this Court correct false statements about the Complaint and proceedings by the lower court and DOJ, intended to obstruct review?

False Statements Of Fact In The Lower Court Decision

The lower court decision corruptly admonished the Plaintiff to "work with the FBI" that refused for three years even to reply to his thirty notices and packages of evidence, and refused even to answer the Complaint in the six months given. It foolishly disparages the Plaintiff as "pro se," knowing that he knows the related law as well as the judge, and easily sees through such a fabric of false precedents.

The decision is a perjury in calling the complaint a "litigation campaign" against "myriad entities" wherein "all four cases have been dismissed" to imply a fault it could not find, knowing full well that it documents racketeering by Republican politicians and that four Republican judges corruptly denied due process to protect political racketeering crime. These false statements are perjuries by the DOJ and lower court, with intent to subvert the Constitution for personal gain, by denying due process in collusion with proven political racketeering crime. The false statements will be detailed upon acceptance of this petition.

Conclusion on Certiorari

Factions of the defendant federal agencies have abused public office in collusion with the original racketeering defendants, to obstruct prosecution and defraud the people of Florida and the United States, by refusing to investigate theft of government funds by politicians of one party despite thirty notices to all of their offices over three years, even while investigating mishandling of one-thousandth of those funds by an opposing politician. These defendants thereby violated constitutional rights of the Plaintiff, as well as numerous laws including RICO, CRA, FCA, Honest Services, 18 USC § 242, 371, and FOIA.

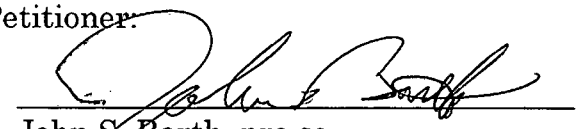
These defendants refused to answer the Complaint even when given six extra months to do so, and merely filed a meritless motion to dismiss based upon prima facie anti-constitutional perjuries of absolute discretion and immunity of agencies to subvert the Constitution and protect political racketeering crime, echoed by the district judge and DC Circuit, renouncing public duty and sounding the death knell of democracy. Protecting constitutional rights is the highest duty of government.

The resulting conflict of the lower court decisions with the long-established standards of judgment of these claims, requires review by this Court, to preserve the Constitution and laws of the United States from a poisonous precedent. Without intervention, these rationales for abuse of public office jeopardize the rights of millions of Americans, and would waste resources in redundant litigation, necessitating later intervention by this Court.

OATH

I hereby certify that all statements in the foregoing document are true and correct to the best of my knowledge and belief, and that service has been made in accordance with Rule 29 of the Rules of the Supreme Court, upon all parties hereto, as shown by the Proof of Service filed herewith.

For Petitioner:



John S. Barth, pro se,
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Dated this 8th day of September, 2023

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Compliance with type volume limits

This Petition is in compliance with the type volume limit of Rule 13 of this Court in containing 8,849 words excluding cover, questions, parties, authorities, orders, counsel list, appendices, and block quotations.