

23-5760

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ORIGINAL

No. 23-

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SUPREME COURT OF THE UNITED STATES

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MATTIE T. LOMAX,

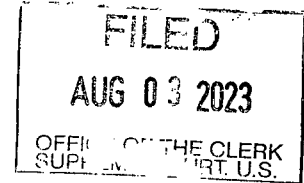
PETITIONER,

v.

UNITED STATES,

RESPONDENT.

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ON PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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## II. QUESTIONS PRESENTED

Plaintiff Mattie Lomax brought this action under 42 U.S.C. §§ 1983 and 1985, alleging that the Defendants violated her constitutional rights during a misdemeanor criminal investigation and trial. Whether the State violated the Due Process clause where with out a jury trial incorrect legal definition of "knowingly," in such a way that relieved the state of its requirement to prove every element of the offense beyond a reasonable doubt, thus violating petitioner's Fifth, Seventh and Fourteenth Amendment rights to the United States Constitution in question?

### III. LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[x] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Officer Kevin Williams / 27426  
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2. Officer Cesar Villafana/ 27428  
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Miami, FL 33128
3. Sergeant Christopher Avina/ 00221  
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4. Officer Garret J. Wing/ Pin 7740  
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#### IV. RELATED CASES

City of Miami police dept case # 2023-1504

Luis G. Montaldo, Case # 2023-1456

Capital Rental Agency, Inc Case # 2023-1458

Bay-view Loan Servicing, LLC Case # 2023-1902

Wal-Mart Stores East, Case # 2023-1734

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**IX. IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States Court of Appeals appears at Appendix-W to the Petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States District Court appears at Appendix-R to the Petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix-P to the Petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the Third District Court of Appeal for the State of Florida  
Appears at Appendix-N to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## X. JURISDICTION

For cases from federal courts:

The date on which the United States Court of Federal Claims decided my case  
Was on: July 26, 2022.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Federal Claims on the following date: June 09, 2023, and a copy of the order denying rehearing appears at Appendix-V.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a) for the principal statutory bases for the Court's certiorari jurisdiction are 28 U.S.C. §§ 1254 and 1257. Section 1254 gives the Court certiorari jurisdiction to review cases from the federal courts of appeals, while 1257 provides for certiorari review of final decisions of state courts of last resort.

## **XII. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Due Process Clause of the Fourteenth Amendment and the U.S. First Amend 1,2,8,12,15,25,29 provides in relevant part, shall not any State deprive any person of life, liberty, or property, without due process of law under 42 U.S.C. § 1983 provides in relevant to 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.

## STATEMENT OF THE CASE

On April 7th 2007 Miami Police Department Officer Kevin Williams and Officer Vellafina arrived and when their sergeant arrived, the two officers, Cuban Officer knocked on Ms. Lomax resident door at 125 Northwest 15th Street, lower level, Miami Florida regarding next door neighbor, Ms Smith a 37 years old call the police stated that she had poured water on her side of porch. Ms. Lomax open her door as officer Vellafina turn to Officer Williams stating, yes there is water on her door. Officer Kevin Williams smoking a cigar, lending on Ms. Smith red pick up truck, stating to Ms. Lomax, step out, once Ms. Lomax step open of her security door, Officer Williams run up the stairs restraining Ms. Lomax as he made her sit in the water on her side on the porch. Ms. Lomax repeated and repeated, call your sergeant in which both of the officers ignored her and kept on harassing her with out evidence. Officer Williams, continuously to make a scene before the people in the community as Ms. Lomax was restrained and sitting in water on her side of the porch while he went to his car to check her record.

Julio the maintenance man that was on the premises coming down from upstairs, Officer William stated, do she live here? Is she paying her rent?

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said, yes. After sergeant Avila arrived, Officer Williams and Officer Valentina left the location and Ms Lomax, Landlord in a foreclosed property and Officer Avila and Ms. Lomax was standing by the side gate talking, Mr. Smith, 87-year-old woman walked by us as the three of us were talking and she was dry and very dry.

After 7 days later Ms. Lomax picked up the police report that the officers had written and it stated on the arrest affidavit that Ms. Lomax through hot water on the next door neighbor, 87 year old neighbor in which their statement of retaliation for reporting Miami police officers to the FBI in which they knew it was Ms. Lomax and form a conspiracy against her to convict her of throwing hot water on her next door neighbor with out evidence. There were no ambulance call to the location or know investigation to the allegations of the arrest affidavit.

After Ms. Lomax had gone to the FBI, Their Sergeant, Hernandez was sentencing for smuggling drugs in the community of Over-Town. (See Exhibit-E). So they were retaliating against Ms. Lomax out of malice and retaliation in which the Judge over the case found Ms. Lomax guilty from the beach trial and denied a jury trial stated that we have decided that we are not going to have a jury regarding to a misdemeanor conviction for falsely reporting an incident was not contrary to clearly established

in the Northern District of New York, alleging four causes of action: (1) false arrest, under § malicious prosecution 1983; and (4) a supplemental state claim for 1983; (3) conspiracy to violate her civil rights, under § under § malicious prosecution 1983 to state a federal claim concluding that Albright forecloses the use of § malicious prosecution, the district court relied on the First Circuit's conclusion in *Perez-Ruiz v. Crespo-Guillen*, 257 F.3d 40 (1st Cir. 1994), that Albright would appear virtually to foreclose reliance on substantive due process as the basis for a viable malicious prosecution claim under section 1983.

To highlight the point: despite criminal prosecutions inevitably having an effect on judicial behavior, and despite the fact that judicial immunity from criminal and civil suit was well established since the days of *Floyd v. Barker*, the Supreme Court has held that judges lack immunity from prosecution for violating constitutional rights under 18 U.S.C. § 242 because Congress acted to proscribe criminal conduct by judges in the Civil Rights Act of 1866. This conclusion makes sense: after all, absolute judicial immunity was not universal in 1866, so the framers of what became 18 U.S.C. § 242 would not have needed to insert.

## REASONS FOR GRANTING THE PETITION

Review of this important case should be granted.

The basic principles that the Petitioner is arguing in this writ are those sanctioned and embodied in our U.S. Constitution and Bill Of Rights are the Fundamental requirement of due process is the opportunity to be heard at the meaningful time and in a meaningful manner. A plaintiff who alleges that his or her procedural due-process rights have been violated must satisfy a two-step showing. First, the plaintiff must allege the deprivation of a constitutionally protected liberty or property interest. Second, he or she must allege that the procedures used to deprive him or she of that interest did not satisfy the minimum standards of the Due Process Clause. See *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011) and *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). This case involves the threshold question of what a higher-education student must show to establish the deprivation of a constitutionally protected liberty or property interest. When the State delegates certain types of duties in certain inappropriate ways. This resulting "no-man's land" has no apparent boundaries. We are provided almost no guidance regarding what the Due Process Clause requires, how that requirement is to be deduced, or why fundamental fairness imposes upon the States the obligation to provide additional safeguards of nearly any conceivable value. We are left only with the implication that where doubt exists, liability of constitutional dimension will be found. Without so much as suggesting that our prior cases have *warned against such a result, the Court has gone some measure to make of*



the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States. Parratt, 451 U.S. at 451 U. S. 544 (quoting) Paul v. Davis, 424 U. S. 693, 424 U. S. 701 (1976). Therefore, that a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government, as an entity, is responsible under § 1983. Since this case unquestionably involves official policy as the moving force of the constitutional violation found by the Supreme Court of the United States in additional regarding vexatious litigant statute attacks the pro se litigants due process in civil and criminal case's, as well as his or her access to the courts, and freedom of speech within any injunction on a U.S. citizens meant to restrict their rights to access to the courts is also a restriction on that citizens first amendment rights to petition.

The required regulations that restrict expressive activity, Ward v. Rock against Racism, 491 U.S. 781, 781,794 (1989). But the State's difficulties with its restriction go beyond close calls on bordering or fanciful cases. And that is a serious matter when the whole point of the exercise is to prohibit the filing of petitions, to sue, and give evidence. This is and excellent. Example of how imperfect and callous our judicial system is in preventing U.S. citizens from seeking justice and compensation in the judicial courts.

This Petition for writ of certiorari should be granted to resolve the important of the First Amendment issues presented by the case.

### CONCLUSION

Respectfully submitted,

Matthew L. Zorn

Date: October 4, 23