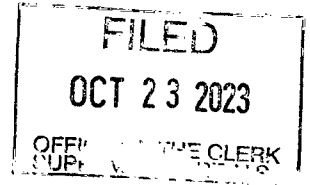


ORIGINAL

23-5900



IN THE
SUPREME COURT OF THE UNITED STATES

Gus Massey Jr — PETITIONER
(Your Name)

vs.

El Paso City Attorney's Office (The City of El Paso, Tx) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TX 8th Court Of Appeals - El Paso, Tx
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gus Massey Jr
(Your Name)

9201 Mcfall Dr
(Address)

El Paso, Tx. 79925
(City, State, Zip Code)

(915) 248-0973
(Phone Number)

QUESTIONS PRESENTED

1. Whether Texas 'Justice Courts' should be submitted to the rules, precedents, and guidelines 'Outside of it's Texas Statutory Guidelines.
2. **A.** Whether "Actual Notice" is satisfied in this matter (Where both sets of Requirements are met). **B.** Whether a Trial Court has Jurisdiction to hear a case when a scenario presents itself as the following: When a Defendant (Such as The City of El Paso, Tx.) strays from it's own guidelines Such as in : El Paso City Charter Section 1.5 Application for Remedy Prerequisite to Suit Against the City. When the City of El Paso, Tx., **First Requires A Claimant to proceed and follow through with AN ALTERNATE Solution such as waiting for an El Paso Police Department Internal Affairs Investigation (To see the Outcome of the Investigation) before the Claimant is allowed to proceed with his "Filing a Claim (Application for Remedy), with the City of El Paso, Tx., to the City Council for Disposition".** In this scenario, would the City's right to immunity then be "waived" or "revoked" due to their action of "running out the clock" (with side distractions such as an: "Internal Affairs Investigation"), on the Appellant (Petitioner)? Also, Furthermore, would that action of the City also in affect, not require the Appellant to make any mention of "Attempting to challenge the Appellee's Immunity" (or mention of the Texas Tort Claims Act, or Article I Section 17 of Texas Constitution) in the Appellant's Original Petition)?
3. Whether the Trial Court in this matter has Jurisdiction to hear claims involving a case that adequately shows to have "Inverse Condemnation" Assertions (that would deny the "Governmental Unit", Sovereign Immunity).
4. Whether the Trial Court in this matter has Jurisdiction to hear a case where Sovereign Immunity may not be applied, due to Satisfied Requirements of the Texas Tort Claims Act (TEX. CIV. PRAC. & REM. CODE Ann. §101.001, et. seq.)
5. Whether the Eighth Court of Appeals Erred in not granting Appellant's "Post-Case" Tunc Pro Nunc Motion to clear up a mere "Clerical Error" (That technically let a Clerical Error remain, in which it continued the error to affect their Final "Judgement" to technically still be in error). Furthermore, should that error now be corrected.
6. Whether the Eighth Court of Appeals Erred in not granting the (Appellant) Petitioner an opportunity to present an "Oral Argument" in this Case after he requested an oral argument through a "Motion of Reconsideration for Oral Argument".
7. Whether the Petitioner's Constitutional Rights were violated under Article I of the 14th Amendment of the US Constitution.

LIST OF PARTIES

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

PARTIES BELOW:

Petitioner: Gus Massey Jr (Pro-Se)

Respondent: El Paso, Tx City Attorney's Office

Attorney: Respondent's Appellate Counsel

KARIA M. NIEMAN (City Attorney)

Carlos Gomez Baca (Assistant City Attorney)

300 N Campbell St

El Paso, Tx, 79901

Mailing Address: P.O. Box 1890, El Paso, Tx, 79950-1890

Respondent's Trial Counsel

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TABLE OF AUTHORITIES CITED

Cases

Reyes v. Jefferson Cnty. 601 S.W.3d 795 (Tex. 2020)

Robert Millard v. El Paso, Tx., 2003.

Sheridan v. USA, 487 U.S. 392 (1988).

TDCJ v. Simons 140 S.W.. 3d 338 (Tex. 2004)

Statutes

**El Paso City Charter 1.5 - Application for Remedy
Prerequisite to suit Against The City.**

**TEX. CIV. PRAC. & REM. CODE ANN.
101.001, et.seq**

Texas Constitution, Article 1, Section 17.

14th Amendment (Article I), of the USA Constitution

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 _____ 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 _____ 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 A 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 Texas Eighth District Court of Appeals, El Paso, Tx. court appears at appendix A to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at appendix _____.

☐ 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 the U.S. Supreme Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was 07 / 28 / 2023.
A copy of that decision appears at appendix D.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at appendix _____.

☐ 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 the U.S. Supreme Court is invoked under 28 U. S. C. §1257(a).

STATEMENT OF THE CASE

The Plaintiff (Petitioner) in this case sued the “City of El Paso Texas”. Although the Clerk of the Court of Original Jurisdiction of this type of case (That Originally heard this Case), (Justice Court #3, El Paso, Tx), errantly transposed the Defendant (Respondent, in this matter as “El Paso, Tx, City Attorney’s Office”, (Just to note), the Petitioner, did in good faith, filed a motion (Nunc Pro Tunc) within the Eighth Court of Appeals (At the Conclusion of their Review) to simply correct this Clerical Error, however, although the Respondent clearly stated within their Appellee Reply Brief that “El Paso Tx, City Attorney’s Office” was “Not Possible and Incorrect”, they still opposed the motion, and the Eighth Court of Appeals (That had Jurisdiction to hear this case and Issue Maintenance Clerical Corrections), neglected their duties as “Officers of the Court”, to simply correct a Clerical Error. Furthermore, the Petitioner, Mr Massey, contends that for this reason, that their judgement is in error, as “El Paso, Tx. City Attorney’s Office” simply would not be a viable named Defendant in this sort of matter.

The Plaintiff (Petitioner), sued the Defendant (Respondent), due to the taking of his property (without adequate compensation) during an encounter with the El Paso Police Department on the date of August 3rd, 2019 (The EPPD also assaulted the Petitioner, during the same incident, so the Petitioner contends that due to this scenario (where the Respondent failed to control it’s agency of the El Paso Police Department), that the Supreme Court matter of *Sheridan v. USA*, 487 U.S. 392 (1988), would waive the Respondent’s Immunity in this matter. The Petitioner also contends that in addition to *Sheridan v. USA*, that simply the way the incident unfolded at the scene, would also meet the requirements of the Texas Tort Claims Act to waive the Respondent of it’s Immunity in this matter. The Petitioner also questions the scope of law applied to Texas ‘Justice Courts’. The Petitioner also

contends that his rights under Article I under the 14th Amendment of the US Constitution was violated.

REASONS FOR GRANTING THE PETITION

The Petitioner sincerely thanks, this Greatest Court of this Great Nation of the United States Of America for it's Consideration in this matter (To Include: Justices

John G. Roberts, Jr., Clarence Thomas, Samuel A. Alito, Jr.,

Sonia Sotomayor, Elena Kagan, Neil M. Gorsuch, Brett M.

Kavanaugh, Amy Coney Barrett, and Ketanji Brown)

This Incident Occurred on August 3rd, 2019, after the horrific Walmart Shooting incident occurred in El Paso, Tx. The Petitioner had just gone out to dinner at a Restaurant near 6130 Montana (El Paso, Tx. 79925), a few hours after the Walmart Incident, and on the way back to the vehicle he was driving, he was stopped and assaulted by EPPD (and ended up losing thousands in missing property). After being denied assistance by 911 immediately after the incident, On the Following Monday, The Petitioner filed an internal affairs complaint with the El Paso Police Department. This is where the Respondent began to stall and delay in excess of the 90 / 180 days that the City Of El Paso, Tx allows for the reporting of claims against the city.

The Petitioner, (Along with the Errors that were made in his Case), wants to bring to the attention of this Great Court, a Problem that really has been lingering for years. This is the 'Dis-Organization' of the lower courts. The Petitioner is referring to what most States in this Nation call 'Justice Courts, Magistrate Courts,

or Small Claims Courts'. Many say that these Courts were Originally intended to be 'The Court of the People', in which any Person in this Nation, can collect damages from another individual or entity that had wronged her or him. However, over the years, it has become a rather complex task to be able to represent oneself in a Justice, or Small Claims Court.

Texas had a set of Rules and Procedures for 'Justice Courts', within it's Civil Code (TEXAS RULES OF CIVIL PROCEDURE - PART V - RULES OF PRACTICE IN JUSTICE COURTS). Those set of rules and guidelines should govern Justice Courts in Texas, however, various precedents from higher court cases in Texas, along with various Local Municipal Codes (that affect cases in higher courts, such as: El Paso City Charter 1.5 - Application for Remedy Prerequisite to suit Against The City, seem to make the actual Rules of Procedure in Texas Justice Courts, very unclear. Due to the 'El Paso City Charter 1.5 - Application for Remedy Prerequisite to suit Against The City not being listed within the Rules of Procedure in the Texas Justice Courts Part V Section, I would ask that this case be remanded back to the Original Trial of Jurisdiction, which in this case is the County Court at Law No 3, in El Paso, Tx.

Furthermore, The Petitioner contends that in his Case, the Petitioner did not get a fair trial in the County Court at Law No 3, in El Paso, Tx, as the Judge in this matter asked the Petitioner, Mr Massey 'Why He did not hire an attorney in this matter'. Furthermore, throughout the Court Hearing, Judge Alvarez was simply

unfair due to his ‘Contention that the Petitioner, Mr Massey Should have had an attorney present’. Also for this reason, the Petitioner asks the Court to Remand the Case back to the Court of Original Jurisdiction, which is the County Court at Law No 3, in El Paso, Tx.

The Petitioner’s Second Issue in this matter is whether Petitioner met requirements

of: TEX. CIV. PRAC. & REM. CODE S 101.101 “Formal”, or in this case “***Actual Notice***”. The Petitioner contends that the Eighth Court of Appeals Erred in their judgement to “***Not Reach This Issue***” with ***TEX. R. APP. P. 47.1 As while the rule concerns the briefness of a Opinion, it still cites that every issue that is raised and that is necessary to a final disposition of the appeal, should be included in the opinion, (The Petitioner contends that the Court erred in their Opinion that “Dryer. Greene, 871 S.W.2d 697, 698 (Tex. 1993) (citing Wood v. Wood, 320 S.W.2d 807, 813 (Tex. 1959) are relevant “Precedents” in this matter”. The Petitioner contends that the previously mentioned Precedents are not relevant in this matter.***

(The Petitioner contends that the Eighth Court of Appeals erred in its stated “Precedents regarding: Dreyer v. Greene, 871 S.W.2d 697, 698 (Tex. 1993) (citing Wood v. Wood, 320 S.W.2d 807, 813 (Tex. 1959)), and that the Eighth Court of Appeals did have jurisdiction in this case. The Petitioner contends that the assertion of the Court that “A Fact Pattern without citation” existed in this matter, is simply not accurate. If the Court wanted to go back to the Justice Court Petition, the Appellant (Petitioner), did state that “ My Civil Rights Violated”. So as The

definition of Civil Rights are: “the rights of citizens to political and social freedom and equality”, the Petitioner contends that the his mention of “Civil Rights” would encase the Eighth Court of Appeals want for a mention of “A Take” in regards to Article I, Section 17, of the Texas Constitution, and the Texas Tort Claims Act, in an indirect manner, and that, that would be sufficient to satisfy that alleged requirement by the Court. Especially as the Court used the language of giving “latitude” by stating “at most”. Alternately, the Appellant (Petitioner), also contends that the above mentioned “precedents” that the Eighth Court of Appeals used in their ruling, simply would not apply in this situation and that the elements of “stare decisis” were not met. At most, in this instance, the opposing party should have adhered to rule 502.7(B).

The Petitioner’s Next Issue is to address TEX. CIV. PRAC. & REM. CODE S 101.101 “*Actual Notice*” in this case. On the 5th Day of August, 2019, The Petitioner filed a Complaint with EPPD “Internal Affairs”, regarding this incident on August, 3rd, 2019, (at 6130 Montana, in which the Petitioner was stopped by The El Paso Police Department, and assaulted, and had collectibles misplaced (taken, and damaged by them). The Petitioner, submitted a complaint regarding this incident to the “Internal Affairs Division” of the El Paso Police Department. Petitioner included within the Formal Internal Affairs Documents a Description of : (1) the damage, injury claimed; (2) the time and place of the

incident; and 3) the incident.” *Furthermore, via (Texas Department of Criminal Justice v. Simons Court of Appeals of Texas, Ninth District, Beaumont Jul 27, 2006 197 S.W.3d 904 (Tex. App. 2006) (That Required Subjective Awareness), the City of El Paso, Tx, had the subjective awareness necessary to constitute actual notice. (As in Reyes vs. Jefferson County, 2020), Similar to this Matter, in Reyes vs. Jefferson County, Reyes’s Attorney, (After Reyes’s Accident with a County Employee (In the County’s Vehicle), was instructed by the County, to direct all claims to the County’s authorized third-party administrator). Reyes’s “Formal Notice” was disputed, so he then used the contact with the County’s Administrator (as his Claimed “Actual Notice”, as the information that was provided by Reyes’s Attorney to the County Administrator also would have satisfied the requirements for “Formal Notice” in the first place. Ultimately, Reyes Prevailed with a reversal and remand.*

Here, the Internal Affairs Standard Formal Complaint had the Same Three Standard “Formal Notice” Requirements Satisfied, and as the City had adequate “Subjective Awareness”, (The El Paso Police Department Internal Affairs Division ALSO USES ANOTHER CITY SUB-Agency called the “Citizens Review Board” (A group of NON-POLICE, El Paso Citizens appointed by the El Paso Police Department “Chief Of Police”). These Citizens Also hear the Matter of Complaints). Therefore, the Respondent (Appellant), had adequate

“Subjective Awareness” as well to satisfy the completion of “Actual Notice” to The “Respondent” in this matter.

Part B-Issue #2, The Petitioner did attempt to give the “Formal Notice” to City Council as required within the City of El Paso, Tx., via the pre-notice requirements pursuant to El Paso Municipal Code section 3.28.010 , however, (Possibly due to the sensitivity of the date that this incident occurred on, no one allowed Mr Massey, the Petitioner to proceed with the “Formal Notice”, as the El Paso Police Department, had not yet completed their investigation, and Mr Massey was told that he could not proceed with the “Formal Notice” until the El Paso Police Department had completed their Internal Affairs investigation, which exceeded six months). Then the Respondent turned around and claimed Mr Massey gave no “Formal Notice” (Effectively creating a “Road Block”), essentially Mr Massey contends that in this situation, the City forfeited (or waived) their right to “Formal Notice”, and furthermore the requirement for this Petitioner’s “Original Petition” to be required to contain any reference to “Removal of Defendant’s Sovereign Immunity” in the Original Petition”. Furthermore, by the Respondent forfeiting it’s “Formal Notice”, the requirement of any mention of the Texas Tort Claims Act or Article I, § 17 of the Texas Constitution also should not be specifically originally required to be mentioned by the Petitioner in any Original Petition, and or Original Court or Original Trial Court.

The Trial Court Judge asked Mr Massey “Why didn’t he hire an Attorney”).

Basically, Mr Massey did not receive a fair trial in this court.

The Petitioner’s Third Issue involves *Article I, § 17 of the Texas Constitution*.

The Appellee (Respondent) claims there was not a “Taking”, because the EPPD officers’ purpose was to search the Appellant, and at most, the “Taking” was not intentional.

As in *Millard v. City of El Paso, Tx (And Referencing Article I, Section 17, of the Texas Constitution)*, Appellant (Petitioner), Mr Massey states that his Property, (The Silver Dollar Keychain that fell to the ground, after the EPPD Officer’s search), was kicked back by the “Searching Officer”, assumably to get it out of his way. It was then run over by a Patrol Unit that was leaving the scene. The Appellant (Petitioner), also states that the Officer that picked the keychain back up, did not seem to be aware that it was dropped by the “Searching Officer”, so the Appellant (Petitioner) contends that at the point of time when the Officer picked getting many of these types of calls, from over-reacting individuals. Sergeant Jasso also referred to Mr Massey as “Not looking like that type of Criminal”. However, Sergeant Jasso still insisted in pursuing this “incident call”. So in the process, Mr Massey was assaulted by one of the responding officers who pushed Mr Massey, and used his foot (with a hard nosed shoe) to attempt to kick/trip, and bring Mr Massey to the ground. The Appellant (Petitioner), contends that the Officer’s hard-nosed shoe was the “Tangible Object” that contributed to Mr Massey’s Assault.

And although, the “Excessive Force” may be considered an “Intentional Tort”, as in *Sheridan v. USA*, 487 U.S. 392 (1988), The Appellant (Petitioner), contends that the Government Unit (City of El Paso), had not properly prepared their Local Law Enforcement Officials for the possible General Public “Over-es Reaction” that may exist after a “Racially Motivated” Mass Shooting Event. In Sheridan, the Service

Member, Naval medical aide Carr, became intoxicated after his shift, and three of his co-workers found him face down on a hospital floor. They attempted to bring him to the emergency room, but he broke away and showed that he had a gun. The three co-workers fled and did nothing more. Carr then left hospital, and on a public street near Bethesda Naval Hospital, Carr had fired several single shots into a car, and injured plaintiffs and damaged their car (Carr's status as a federal employee, as well as his act being intentional as opposed to negligent, was irrelevant since the co-workers' negligence was at issue.). The negligence of other Government employees who allowed a foreseeable assault and battery to occur may furnish a basis for Government liability that is entirely independent of Carr's employment status (as a “Federal Employee”. The fact that Carr's behavior is characterized as an intentional assault rather than a negligent act is also irrelevant, as the underlying negligence of a “Federal Government Agency”, is at issue. Therefore the Supreme Court, ruled for the Plaintiffs and that “Governmental Immunity” would be waived in that matter”. The Matter was remanded back to Federal District Court.

Here, the Appellee (Respondent), failed to control it's agency of the El Paso Police Department, after a racially motivated “Walmart Shooting”, so although the actual actions of the EPPD at the Incident with the Petitioner, Massey were “intentional”, the underlying actions of the Respondent (City of El Paso), were “Negligent” in not “controlling the Eppd”, after a racially motivated event of the “Walmart Shooting” in the City of El Paso. Therefore, here, the Respondent, should have it's Immunity waived.

Furthermore, following the EPPD Officer's use of excessive force, is when Mr Massey was commanded to put his hands on the back of the vehicle that he arrived in. *See 101.021 of the Texas Tort Claims Act clearly states that: A governmental unit in the State of Texas is liable for: Property damage, caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if: A. The property damage, arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and B. The employee would be personally liable to the claimant according to Texas law.*

In this case, the Appellant (Petitioner) is contending that the Act of continuing a search of Mr Massey (After Sergeant Jasso had obviously noticed (even from within his own patrol vehicle, that Mr Massey was not "Wearing Guns" on his person, where the 911 caller had described), is at that point, a "Wrongful Act" by the "Searching Officer". The "Searching Officer" continued the wrongful act by searching and removing items from Mr Massey's pockets, which caused a glove containing "Antique Silver Dollar Keychains, and cash to fall out. Furthermore, by the "Searching Officer" then kicking the glove with the above mentioned items back to where it was then run over by a Patrol Unit leaving the scene, would also constitute a "Wrongful Act". The "Searching Officer" was obviously at the scene within his scope of employment, which would be an EPPD Officer. Once again the wrongful act, would be the continued search of Mr Massey (after it was known that he was not a threat, due to "No Guns on his Belt"), which dropped Mr Massey's property. Finally, the property damage as previously mentioned, was due to the "operation of a motor vehicle". By Texas Law, the "Searching Officer", if a regular

citizen, would be liable for the property damage of the Appellant (Petitioner), as well. Due to all of the above mentioned factors, the Appellee (Respondent), should also have their immunity waived, due to the conditions that were met with ***Section 101.021 of the Texas Tort Claims Act Statute.***

As mentioned previously, after Mr Massey's Property was run over, is then when the ***Section I Article 17 of the Constitution***, would be applicable, as that is when another Officer that was not involved with the Search , picked up, and removed Mr Massey's Property.

The Appellant's (Petitioner's) Fifth Issue of appeal is the denial of it's "Nunc Pro Tunc" Motion by the Eighth Court of Appeals. Here, the Appellant (Petitioner), in good will, simply attempted to correct what was a clerical error within the "Style" of this Case. Upon the Eighth Court of Appeals signing their Judgement in this matter on April 27th, 2023, The Appellant (Petitioner) submitted a "Nunc Pro Tunc" on May 5th, 2023, to correct part of the "Style" of the case description (The Defendant be changed from: "El Paso Tx, City Attorney's Office" to the correct defendant of "The City of El Paso". And while, the counsel for the Defendant, and the Judges on the Eighth Court of Appeals are "Officers of the Court", it's amazing to see that both were against "Correcting" a simple "Clerical Error" in this Case. It simply shows that neither are performing their ethical duties as "Officers of the Court" (Even the Defendant, had previously mentioned that the "El Paso City

Attorney's Office" was not a proper defendant and even it used the "City of El Paso, Tx, in it's past reply-brief "Style". Therefore, the Appellant (Petitioner), contends that the Eighth Court of Appeals incorrectly denied the "Motion of Nunc Pro Tunc".

The Appellant's (Petitioner's) Sixth Issue of appeal deals with the "Denial of Oral Argument" by the Court. There was an Oral Argument that was approved for the "Request by the Appellee" originally that was set, then re-set for April 27th, 2023. The Appellant (Petitioner) answered stating that he would appear. After the Appellant (Petitioner) made arrangements to prepare for and appear at the Oral Argument, the Eighth Court of Appeals cancelled the Oral Argument and on April 13, 2023, the Eighth Court of Appeals denied the Appellant's (Petitioner's) April 12th "Motion to reconsider Oral Argument). The Appellant (Petitioner) contends that the Eighth Court of Appeals erred in denying his Motion to Reconsider Oral Argument. The Appellant also would like to add that the Clerk / Eighth Court of Appeals also violated Rule 39.8 of the Texas Civil Code which states that the Court shall give all parties 21 days notice on decision of Oral Argument. The Court Declined Oral Argument on April 12, 2023, when the Oral Argument itself had been scheduled for April 27th, 2023 (which is 15 days notice, instead of 21 days notice).

The Petitioner's Seventh and final issue in this matter is the fact that the El Paso

Police Department (By Assaulting and being Irresponsible with his property, the EPPD, violated the Petitioner's USA Constitutional Protection of Article 14, Sec 1. Furthermore, any American's Constitutional Protection should take priority over 'The Immunity Status of a Local Governmental Unit', so the Petitioner here contends for this reason as well, that the Immunity of the Respondent in this matter should be waived, and that the case should be remanded to the Trial Court for further consideration.

CONCLUSION

The petition for a writ of certiorari in this Matter should be granted.

Respectfully submitted,

Gus Massey Jr (*Pro-se*)

Signature: . Date: October, 23rd, 2023