

SEP 06 2023

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No. 23-6315

In the Supreme Court of the United States

In RE. Miguel Antonio Garcia
petitioner

✓

James Anderson et. al.
Respondant

Emergency Petition for Writ of Mandamus
Pursuant to 28 U.S.C. § 1651(a)

Miguel Antonio Garcia
United States Penitentiary Victorville.
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n
ORIGINAL

QUESTION(S) PRESENTED

Is the Constitution of the United States
Supreme law of the land?

Does the 7th Amendment of the U.S.
Constitution, supersede, the Heck Rule, in
Heck v. Humphrey, 512 U.S. 477 (1994)?

And is the Interpretation of the Heck
rule Unconstitutionally Vague?

Does fabricating Evidence, "Require accountability
for misconduct." Eo 14074?

list of Parties ...

[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 judgement is the subject of this petition is as follows:

Clark Smith, Spencer Grove, Randy Yoder.

Related Cases

Miguel Antonio Garcia v. James Anderson et. al.

U.S.C.A. No. 22-1326

U.S.D.C. no. 22-CV-01209-LTB-GPG

(D. Colo.)

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Appendix [A]

United States Court of Appeals For the Tenth Cir.

Miguel Antonio Garcia v. James Anderson et. Al.,

Case no. 22-1326, July 3rd, 2023 Order Attached

Appendix [B] United States Dist. Court, for Colorado

Case no. 22-CV-01209-LTB-GPG, Doc. no. 19, 20; Date 9/15/2022

Appendix [C] United States Dist. Court for Colorado

Case no. 22-CV-01209-LTB-KLM, Doc. 35; 6/2/2023

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In The
Supreme Court of the United States

Petition For Writ of Mandamus
Pursuant to 28 U.S.C. § 1651 (a)

Petitioner respectfully Prays, For a writ of
Mandamus to Compel, lower Courts to follow the
guidance in the Opinion, and Judgement in the
Supreme Courts Judgement in *Heck v. Humphrey* (1994)

Opinions Below.

[x] For Cases in Federal Courts

The Opinion of the U.S. Court of Appeals, For
the Tenth Cir. Appears at Appendix A.

[x] Reported at Appellate Case No. 22-1326, July 3, 2023
Garcia v. Anderson, et. al. Order Attached.

The Opinions of the U.S. Dist. Court, For Colorado

[x] Reported at District Court for Colorado; *Garcia v. Anderson*
22-CV-01209-LTB-GPG; Doc. no. 19, 20; 9/15/2022
22-CV-01209-LTB-KLM; Doc. 35; 6/2/2023

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Other.

• Proclamation, March 31st, 2023
 Joseph R. Biden Jr.

Executive Order 14074 May 25, 2022
 Joseph R. Biden Jr. ✓

Jurisdiction

Construction and Application of 28 U.S.C.A.
§ 1251; Implementing Original Jurisdiction
of Supreme Court. Article III

Constitutional Relevant Provisions

U.S. Constitution Article 2; cl. 1.

U.S. Constitution Article 3

U.S. Constitution Amendment 5

U.S. Constitution Amendment 7

U.S. Constitution Amendment 14

In The Supreme Court of the United States

Miguel Antonio Garcia
Petitioner

v

James Anderson et. al.
Respondent

Emergency Petition For Writ of Mandamus
Pursuant to 28 U.S.C.S. § 1651 (a)

Petitioner Miguel Antonio Garcia, respectfully Prays, that Justice Ketanji Onyika Brown Jackson Compel, the United States Court of Appeals For the Tenth Circuit, to recall or Modify Mandate, to Compel United States Senior Judge Lewis T Babcock For the District of Colorado that he erroneously dismissed the Case based on the Heck Rule. As Petitioner was not subject to Heck prior - invalidation Heck is Inaplicable. Extra Ordinary Circumstances are present in this Case. Calderon v. Thompson (1998)

Statement of Facts...

1. June 10th, 2022, plaintiff filed Complaint, [ECF. NO. 7], asserting one claim "Fabricated Evidence" Requesting Monetary damages and injunctive relief.
2. August 16th, 2022, Magistrate Judge recommended Action to be dismissed with out prejudice pursuant to "the rule in Heck v. Humphrey, 512 U.S. 477 (1994). See Id @ Doc. 10, pg. 4
3. August 25, 2022, plaintiff filed motion to Correct Summary Judgement in order (ECF. no. 8) and reconsider under Fed. R. Civ. P. 59(e). See (ECF. no. 11) Aug. 25, 2022 .. See Id @ Doc. 17
4. August 26th, 2022, plaintiff filed motion to transfer Venue (ECF. No. 12). See Id. @ Doc. 17
5. September 2, 2022, Plaintiff filed, "Omnibus Motion / Transfer venue, Disqualify Magistrate Judge pursuant to 28 U.S.C. § 144 and § 455" See Id @ ECF. no. 16.

6. September 9th, 2022 the Court Denied above stated motions - See Id @ Doc. 17.
7. At times relevant Senior Judge Lewis T Babcock agreed with the Magistrate Judge, Dismissing Complaint [ECF. no. 7] See Id @ Doc. 19.
8. At times relevant Plaintiff, timely filed an appeal. On October 17, 2022, plaintiff filed a motion to Voluntary Dismiss case under Rule 41(c) See Id @ doc. 010110754895
For the reason "during institutional lock down, The unskilled litigant described in FirstTier Mortg. 498 U.S. at. 276. Was unable to utilize legal CPU in order to research and assemble brief before deadline." See Id @ motion to recall.
9. February 17th, 2023, Plaintiff Filed a new Complaint, implementing Executive Order 14074 where the Court mis-constructed as an amended Complaint See Id @ doc. 27

10. March 24, 2023 Judge Lewis T. Babcock
"Denied As Moot" because the case was dismissed
and judgement was entered on September 15 2022"
See Id @ doc. 37.
11. May 30, 2023, plaintiff Filed an Emergency
Ex-Parte Rule 60(b)(6) Motion For Relief
from Order. See Id @ Doc. 33.
12. June 2, 2023 Judge Lewis T Babcock Denied
"Motion for relief from Order" See Id @ Doc. 35.
Further stating "further filings in this closed
action will be stricken."
13. June 18th, 2023 Plaintiff filed an "Emergency
Ex-parte Motion to recall or Modify Mandate
pursuant to Rule 41.2 for Reentry of Judgement."
14. July 3rd, 2023 the Courts Denied Motion
to recall or modify mandate.
15. 28 U.S.C. §1651(c), Plaintiffs writ will be in
aid of the Courts appellate jurisdiction, exceptional
circumstances protecting plaintiffs Constitutional rights
Warrant the exercise of Courts discretionary power. As shown
above "relief cannot be obtained from any other court."

REASONS FOR GRANTING THE PETITION

"Extra Ordinary Circumstances"

*Proclamation By
President Joseph R. Biden Jr.*

March 31, 2023

"The Love for Justice that is in us not only the best part of our being, but it is also the most true to our nature."

*Executive Order 14074
Joseph R. Biden Jr.
May 25th, 2022*

"By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby Order as follow."

"Our Criminal justice system must respect the dignity and rights of all persons and adhere to our fundamental obligation to ensure fair and impartial Justice for all."

Argument

"The United States Constitution," shall be Supreme law of the land. Article VI. The Constitution vests all of "the executive power" in the President and Charges him alone with the responsibility to take care that the laws be faithfully executed. " U.S. Constitution Article 2; cl. 1

With a stroke of the Pen, President Joseph R. Biden Jr.'s implementation of Executive Order 14074, On May 25th, 2022, "to ensure fair and impartial Justice for all." That the Appellate Courts overlooked in Petitioners "motion to recall or modify the Mandate" as an extra Ordinary Circumstance. "See Calderon v. Thompson, 523 U.S. 538, 549-50 (1998). Petitioners Writ of Mandamus will be in aid of the Courts appellate jurisdiction "to correct the errors of fact" and law United States v. Morgan 346 U.S. 502, 507. 74 S. Ct. 247 98 L. Ed. 248 (1959) To Compel, the District Court Judge Lewis T. Babcock, to follow the Law, Opinion, in Judgement in Heck, 512 U.S. 477 (1994) as described below. By the Constitution of the United States, the President is invested with certain important political powers. "Marbury v. Madison, 5 U.S. (1 Cranch) 137, 165-66 (1803) As President Mr. Biden implementation of Executive Order 14074

In Complaint Doc. 1, Plaintiff Argues only 1 claim. "Fabricated evidence."

"Named defendants Conspired in Fabricating Evidence [gov. exh. 11], the Super 8 Swipe "key Card" "Altering the numeric number 223 that was imprinted on the actual metal key with key chain." Items shown in [gov. exh. 12] See Id@ Doc. 1 "This was so egregious as to shock the conscience." See e.g. *County of Sacramento v. Lewis*, 523 U.S. 833, 849, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998).

As well as Defendants Anderson and Smith, Conspired in fabricating Evidence, [gov. exh. 27 and 28] with "false, fictitious percent of purity levels identified in gov. exh. 30" See Id@ doc. 1... Violating Plaintiff's rights of Due process of the 5th and 14th Amendment. "Certain wrongs affect more than a single right and accordingly, can implicate more than a single right and accordingly, can implicate more than a single right and accordingly, can implicate more than one of the Constitution's Commands" See *Soldal v. Cook County*, 506 U.S. 56, 70, 113 S. Ct. 538, 121 L. Ed. 2d 450 (1992) (quoting *Mc. Donough v. Smith*, 139 S. Ct. 2149 (2019))

The District Court erroneously dismissed the case based on the Heck Rule. As Appellant was not subject to Heck prior-invalidation requirement. Specifically Appellant simply challenges that defendants...

"Conspired in Fabricating Evidence."
See I'd @ doc. 1...

Appellants Complaint does not imply that "the prisoners confinement was invalid" or that the duration of his confinement should have been shorter. "nor implies" the relief he seeks is a determination that he is "entitled" to immediate release or a speedier release from imprisonment. "Heck, 512 U.S. at 486-487, 114 S.Ct. 2364, 129 L.Ed.2d 383 - Thus Plaintiff's claim was not subject to Heck's prior Invalidation requirement - Heck is Inapplicable...

"Prosecuting civil rights violations under applicable law." is applicable, per executive Order 14074...

The Presidents authority as Commander in chief," also includes, in protecting American persons and interest abroad. See, e.g. Training of British Flying Students in the United States, 40 op. Att'y Gen 58, 61-62 (1941)

To "prosecute cases involving the deprivation of rights under color of law pursuant to 18 U.S.C. § 242. the Denver Police officers "Conspiracy to deprive rights" pursuant to 18 U.S.C. § 241... where they violated Plaintiffs "Due Process" and "Equal protection of the law" of the 14th Amendment. For being Hispanic not white. "We must acknowledge that those fatal encounters have disparately impacted Black and Brown people and other people of Color." EO 14074. "The Supreme Courts refusal to tolerate legislation that intrudes on the Presidents exclusive Constitutional Powers and duties where the Constitutions text commits a power to the President exclusively, Courts "refuse to tolerate any intrusion" Pub. Citizen v. Dep't of Justice, 491 U.S. 440, 485 (1989) (Kennedy J. Concurring, joined by Rehnquist, CJ and O'Connor J.)....

Executive Order 14074 is an Extra Ordinary

tool to correct a "legal factual error" that transpired in above stated orders. by the Kings Bench" (U.S. v. Plumer, 27 F. Cas. 561, 573 (no. 16,056) CC. Mass. 1859) That the "King" Ordered in Executive Order 14074, that Plaintiff Argued in petition to "recall or modify Mandate" adequate relief cannot be obtained in any other form or from any other court. "See rule 20(1) ... "during which the error allegedly transpired (Kennedy J. Joined by Stevens, Souter, Ginsberg and Berger JJ). Plaintiff "Seeks to vindicate a "right not to be deprived of liberty as a result of the fabrication of evidence by a government officer." Ibid (quoting Zahrey v. Coffey, 221 F.3d. 342, 349 (CA 2, 2000) See also e.g. Napue v. Illinois, 360 U.S. 264, 269, 79 S. Ct. 1173, 3 L. Ed. 2d. 1217 (1959), Therefore, "Building trust between law enforcement agencies and the communities they are sworn to protect also requires accountability for misconduct." EO 14074... Mr. Biden "is made the sole repository of executive powers of the United States." Nixon v. Adm'r of Gen. Servs. 433, U.S. 425, 550-51 (1977) (Rehnquist J). "To take action, including through the implementation of this order, to build and sustain fairness and accountability

through out the Criminal Justice System. "Eo 14074 where named defendants violated Federal Statutes 18 U.S.C. § 241, § 242, § 1623 § 1503 ... "Requires accountability for Misconduct."

"The term 'Serious Misconduct' means, 'bias', discrimination, Obstruction of Justice, False reports, false Statement under oath."

Executive Order 14074 Sec. 21(c).

Personal bias or Prejudice, 28 U.S.C. § 144 and § 455.

"To Correct a legal factual error, of the original proceedings during which the error transpired." (Kennedy J., Joined by Stevens, Souter, Ginsberg, and Breyer. J.J.) As highlighted here in, in Judgements From the United States Court of Appeals for the Tenth Cir., As well as the United States District Court, for the District of Colorado.. Require refusal where the "probability of actual bias on the part of the Judge or decision maker is too high to be Constitutionally tolerable." *Rippo v. Baker*, 580 U.S. --, --, 137 S. Ct. 905, 197 L. Ed. 2d. 167 at 168 (2017) (per. Curiam) quoting *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d. 712 (1975)

The United States District Court showed prejudice
"In legal proceedings" See *Id*@ Doc's 19, 20, 35 -
The Constitution requires refusal where "the
probability of actual bias on the part of the Judge
or decision maker is too high to be Constitutionally
tolerable." (*Withrow*, 421 U.S., 868, 881, 129 S. Ct.
2252, 173 L. Ed. 2d. 1208 (2009))

As Senior Judge Lewis T. Babcock, US at the
Same Court House located in Denver Colorado, As Judge
Raymond P. Moore, as he described in his recent
Order in Case Name. U.S.A v. Garcia; Case no. 13-cr-00363-rm
Doc. 234 - "as many times as these bases for relief
are denied" See *Id*@ Doc. 234 - There is an impermissible
risk of Actual bias, when a Judge has a personal
relationship with another Judge that plaintiff
filed a past civil suit against. "Due process
guarantees, an absence of actual bias" On the
Part of a Judge - "In re. Marchison, 349 U.S. 133,
136, 75, S. Ct. 623. 99 L. Ed. 942 (1955). "where
judge has a Conflict of Interest, "as well as
"an unconstitutional potential for bias," *William*
v. Pennsylvania, 579 U.S. --, 136 S. Ct. 1899, 195 L. Ed.
2d. 132 at 134 (2016)

As well as the Judgement before Matheson and Bacharach, For the Tenth Circuit Court of Appeals located in Denver Colorado. Where these Courts are 100% Aware of the Misconduct, By the "Denver Police", as well as the Misconduct, By the Court, and AUSA at the United States District Court, located in "Denver" Colorado. "To minimize the prejudicial impact of local sentiment" Your Honor has Jurisdiction, to review decisions, "Granting, "Ultimate Relief" and or Complete Relief", that cannot be obtained from any other Court. Thus above shown Judgements and or Orders "Warrant Request which reveal such a high degree of favoritism or antagonism as to make a fair judgement impossible." *Litecky*, 510 at 550, 555. As further shown, in enclosed letter From the Clerk of the Court, August 8th, 2013 where plaintiff, filed petitions for full panel Re-hearing. "Allowing a decision maker to review and evaluate his own prior decisions raises problems." *Withrow*, 421 U.S. at 58, n. 25, perhaps because the risk that a judge might "be so psychologically wedded to his or her previous position," that he or she will "Consciously or unconsciously avoid the appearance of having erred or changed position." *Williams*, 579 U.S. at —, 136 S.Ct. 1399, 195, L. Ed. 2d. 132 at 142 (quoting *Withrow*, 421 U.S. at 51)

Closing Statement...

"I do solemnly swear, that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

As "It is time we acknowledge the legacy of systemic racism in our criminal justice system and work together to eliminate the racial disparities that endure to this day, Doing No Harm to all Americans." EO 14074 As Mr. Biden has acknowledged therefore implementing "law" in his Executive Order. "The entire 'executive Power' belongs to the President alone." *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2197 (2020)

The Constitution of the United States of America, is Supreme law of the Land. No other Federal or State law, statute, or case may impose upon its provisions. The Seventh Amendment clearly states "In Suits at Common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." Thus superseding the Heck Rule, that infringe upon the Constitutional Rights of all Americans that get put in prison, due to misconduct from law enforcement... Protecting

them, as well as enabling them to continue in their malicious, unconstitutional behavior... thus "By the Constitution of the United States, the President is invested with certain important political powers."

"where he gave the 'kings', 'bench', an Extra-Ordinary tool to correct the legal factual errors." described herein. "to determine the underlying Cause of Action." (cf Marbury v. Madison, 1 Cranch 137, 2 L. Ed. 60 (1803)).

This Court could, and should grant writ of Mandamus ordering the lower courts, to follow the opinions the Supreme Court has already issued in the judgement in Heck... As Mandamus relief is an "extraordinary remedy" appropriate for the "exceptional circumstances" now before this Court, where a lower court's failure to follow this Court's clear dictates has left petitioner with "no other adequate means" to enforce his "clear and indisputable" rights. Cheney v. United States Dist. Court for D.C., 542 U.S. 367, 380-381, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004)

Therefore "this Order shall be implemented consistent with applicable law." EO Sec. 23(b)

"To ensure the American Dream is within reach
of all who live in our nation, because it is the
right thing to do for Humanity." Proclamation -
Joseph R. Biden Jr. March 31st, 2023

Therefore I Miguel Antonio Garcia prays in
Jesus Name, that the Court Grants the Relief
Requested Herein.

Enter an Injunction, Granting Petitioners Complaint,
and or Compel, lower Courts to ...

And any Further Relief as the Courts deem Just
and Proper. ...

Respectfully Submitted on August 29th, 2023
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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Miguel Antonio Garcia

Date: August, 29th, 2023