

NO. 22-6571

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

JAN 23 2024

OFFICE OF THE CLERK

Mark A. Panowicz — PETITIONER  
(Your Name)

vs.

Sharon L. Hancock, et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Fourth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mark A. Panowicz

(Your Name)

10195 Griffith Lane  
(Address)

White Plains, NY 10601  
(City, State, Zip Code)

240 346 6327  
(Phone Number)

## QUESTIONS PRESENTED

1. Is the State continuing failure to follow, (even after specifically passing a state law expressly agreeing to adhere to applicable federal law, etc.. and highlighting privacy concerns of individuals), federal statutes, regulations, policies and practices impacting state court originated federal criminal justice records relied upon by the federal government, state governments, the public, etc. for background checks, including firearm transfers - an appropriate public impacting issue to both justify a timely Federal Rule of Civil Procedure 60(b)(6) motion and a timely petition for certiorari, in-order to address and correct the continuing State failure before further harm is inflicted?
2. Does fraud on the court, in a 42 U.S.C. § 1983 (17 Stat. 13, 1871) supervisory liability case, also apply to the constructive knowledge context of the supervisor, especially when 17 Stat. 13 clearly directs no state immunities or defenses are allowed, (effectively requiring strict liability against state court agents, after due process notice is met- as applicable)?
3. Is the Fifth Amendment double jeopardy protection against multiple punishments a Constitutional jurisdictional issue mandating every court specifically analyze the claim; and if multiple punishments for one offense are evident (and not ignored), a failure to end the continuing Constitutional violation results in a void, for want of Constitutional jurisdiction, judgment, redressable in any court, at any time?

## LIST OF PARTIES

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

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:

Lisa A. Yates, Clerk of the Circuit Court for Charles County, MD (in an official capacity)

## RELATED CASES

*Panowicz v. Hancock*, no. 16-8257, United States Supreme Court, petition for certiorari denied May 1, 2017

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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 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 United States district court appears at Appendix B + C 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 \_\_\_\_\_ 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 \_\_\_\_\_ 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.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 23, 2023.

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. A \_\_\_\_\_.  
.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1), and  
*Constitutional due process violation.*

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.  
.

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. A \_\_\_\_\_.  
.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Const. Amend V. (relevant provision): "No person shall be subject for the same offence to be twice put in jeopardy of life or limb."

34 U.S.C. § 40316 art. I (13)(A-B): "Interstate Ident. Information System"

"The term "Interstate Identification System" or "IIS system" -

(A) means the cooperative Federal-State system for the exchange of criminal history records; and

(B) includes the National Identification Folder, the National Fingerprint File, and to the extent of their participation in such system, the criminal history record repositories of the States and the FBI."

34 U.S.C. § 40316 art. II (5): "require the FBI and each Party State to adhere to IIS System standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records."

34 U.S.C. § 40316 art. XI (c) (relevant provision): "In appropriate district court of the United States, which shall have original jurisdiction of all cases or controversies arising under this Compact."

42 U.S.C. § 1983 (relevant provision here): "[I]n subjects, or causes to be subjected, [C-I] to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall [insure] text - (see below) [be liable to the party injured [I]]"

17 Stat. 13 (1871) (relevant provision adding missing text from 42 U.S.C. § 1983): "[C-I]ny such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, [C-I]"

MO Code, Criminal Procedure § 60-240(s): "require the FBI and each party state to adhere to IIS System standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records."

## STATEMENT OF THE CASE

The issues in this case arises out of *pro se* petitioner's 2005 Circuit Court for Charles County, MD case, and respondent's fault and liability for recording, reporting and publishing, (including on the Internet, FBI criminal justice records, and via State commitment documents), a false felony third-degree sex offense conviction, (at that time, unknown to *pro se* petitioner- until around August, 2008- but State agents knew of the false felony conviction for over two years and did not correct the record and did not inform Petitioner but State agents did draw attention to the 2005 false record by calling Petitioner's employer, after Petitioner was sentenced for a non-related 2008 misdemeanor case, resulting in continued, irretrievable societal stigma from the false "conviction" and causing Petitioner to lose managerial employment and lose a chosen career in telecommunications management at that time (2008), along with the continuing violation of Petitioner's Fifth Amendment right against double jeopardy - multiple punishment because - simply correcting the state court record to the court approved Alford plea bargain misdemeanor instead of analyzing the harm/punishment already caused by the recording- and failure to timely correct Petitioner's 2005 record, results in two punishments for one offense- i.e., one unauthorized felony "conviction"/punishment and then one Alford plea agreement misdemeanor conviction/punishment) instead of the State court accepted, single Alford plea of a misdemeanor second-degree assault conviction. The court accepted Alford plea agreement misdemeanor was properly filed with the county court and is not an ambiguous plea agreement and

involved only one offense and one conviction. As a result of these harms, Petitioner timely filed a 42 U.S.C. § 1983 claim in federal court for damages and an injunction to remove the on-going double jeopardy multiple punishment conviction, working through the federal courts - including filing a March 9, 2017 petition for certiorari (docket 16-8257), with these original federal proceedings decided on summary judgment and affirmed by the Fourth Circuit. However, after Petitioner's 2017 petition for certiorari was denied, Petitioner - through no fault of his own, uncovered 2003 independent audit evidence documenting the State widespread disposition accuracy errors impacting the statewide circuit courts' inability to accurately transfer the circuit court paper record to the circuit court electronic record- with the 2003 audit identified, disposition error rate of 12% of statewide records (~ over 10,000 records). Additionally, after discovering the previously non-disclosed 2003 audit, Petitioner was able to discover undisputed evidence of applicable timely knowledge of the 2003 audit by the Maryland Office of Attorney General ("OAG") , the Maryland Administrative of the Courts ("AOC"), as well as the Chief Judge of the Maryland Supreme Court (then- Maryland Court of Appeals)- who directed the AOC to address and correct the disposition accuracy errors. As Petitioner searched further into Maryland clerk of the court law, policies and practices, Petitioner also discovered that Maryland passed a law, MD Code, Criminal Procedure § 10-240(5), effective in October, 2005, agreeing to adhere to federal law, regulations, policies and practices affecting people's privacy rights as related to federal (i.e., Dept. of Justice/FBI) criminal justice records. These federal

criminal justice records are a part of the FBI III (III is the Interstate Identification Index) and are relied upon by the federal government, state governments, the public, and others- for completing appropriate background checks- to include for firearm transfers; this state/federal law was not shared with Petitioner in the original 2010-2017 proceedings either.

In the instant case, the courts below made at least three, legal errors, referred to in the "Questions Presented" section, i.e., a failure to properly apply Fed. R. Civ. Proc. 60(b)(6) law; a failure to follow 42 U.S.C. § 1983 supervisory liability law- especially in-relation to constructive knowledge and fraud on the court and in relation to 17 Stat. 13 (1871); and, a failure to adhere to Constitutional jurisdiction limits - even when properly presented with undisputed evidence of harm from the false felony "conviction."

## **I. BACKGROUND**

On November 1, 2022, Petitioner filed four Fed. R. Civ. Proc. motions with the district court, (i.e., FRCP 60(d)(3); FRCP 60(b)(4); FRCP 60(b)(5); and FRCP 60(b)(6). After district court prodding, respondents replied to Petitioner's motions and Petitioner filed a timely reply. On April 4, 2023, the district court denied all four of Petitioner's motions (Appendix C). On May 31, 2023, the district court denied Petitioner's motion to alter/amend the judgment (Appendix B). Petitioner timely filed an appeal to the Fourth Circuit, and the Fourth Circuit summarily denied Petitioner's appeal by agreeing with the reasoning of the district court (Appendix A).

For clarity, Petitioner has brought related claims to this Court before (see Supreme Court docket 16-8257), which contains all of the previous, related decisions of the district court (2015) and the prior decisions of the Fourth Circuit.

## II. LEGAL ERRORS EXPLAINED

### A. Error in applying Fed. R. Civ. Proc. 60(b)(6)

The district court held Petitioner was not timely in submitting the Fed. R. Civ. Proc. 60(b) motions (FRCP 60(d)(3) is addressed below, as is FRCP 60(b)(4)- void judgments). Relevant here is that the district court (and the Fourth Circuit affirmed- Appendix A), held that Fed. R. Civ. Proc. 60(b)(6) was not timely submitted (Appendix C and Appendix B), however, the district court gave no weight to Petitioner's unrebutted argument that Petitioner could not submit the Fed. R. Civ. Proc. 60(b)(5) and 60(b)(6) motions until Respondents provided all of the undisputed evidence (i.e., a 2020 independent audit of the Maryland Criminal Justice Information System- similar to the 2003 audit) to support the claim of the ongoing failure of the State to adhere to federal law - specifically, failure to follow the National Crime Prevention and Privacy Act/Compact - 34 U.S.C. § 40316 Art. II(5)- as the State passed a law in 2005, MD Code, Criminal Procedure § 10-240(5), specifically mirroring 34 U.S.C. § 40316 Art. II(5). Petitioner argued that Respondents were at fault in delaying Petitioner's FRCP 60(b) motions, due to the State refusing to provide Petitioner a copy of the 2020 audit for over three years. Under *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 394 (1993), "a party must show "extraordinary circumstances" suggesting that the party

is faultless in the delay.” Petitioner submitted unrebutted evidence of due diligence in timely requesting the 2020 audit, e.g., asking for Maryland Public Information Act (“PIA”) Ombudsman help, and going to the source of the audit (i.e., the University of Maryland who directed Petitioner back to the recipient of the audit—the Maryland Department of Public Safety and Corrections (“DPSCS”) because the Maryland CJIS operations fall under the control of the DPSCS). At no time did the district court address Petitioner’s unchallenged evidence, but simply held the FRCP 60(b) motions were untimely. Compounding this legal error, the other “extraordinary circumstances” required for a Fed. R. Civ. Proc. 60(b)(6) motion may include “the risk of injustice to the parties... and the risk of undermining the public’s confidence in the judicial process. [citation omitted].” *Buck v. Davis*, 137 S. Ct. 759, 778 (2017). Petitioner argued the continuing double jeopardy violation is a “risk of injustice” to Petitioner, due in-large part to the continuing double jeopardy multiple punishments violation of two convictions for one offense, and argued a failure to address undisputed evidence of the State’s failure to follow agreed to federal law (especially protecting people’s privacy rights, let alone people and organizations who rely upon federal criminal justice records for completing proper background checks), clearly fall within *Buck*’s “extraordinary circumstances.” Not properly addressing the Fed. R. Civ. Proc. 60(b)(6) timeliness issue is the legal error for review here and combined with evidence fitting into *Buck*’s “extraordinary circumstances”- the totality of the legal error supports the reason for the instant petition.

## **B. Error in applying “fraud on the court” under 17 Stat. 13 (1871)**

The district court held Petitioner’s Fed. R. Civ. Proc. 60(d)(3) motion was “too tenuous” (Appendix C, reconsideration denied and- Appendix B), and affirmed by the Fourth Circuit (Appendix A). The Fed. R. Civ. Proc. 60(d)(3) motion was supported with unrebutted evidence of prior applicable knowledge (i.e., the 2003 independent audit of the Maryland CJIS - specifically comparing circuit court paper records with the circuit court electronic record as found at the Maryland CJIS repository) of a statewide concern over the accuracy of transferring circuit court paper record’s final disposition to the circuit court electronic record. Additionally, the FBI National Crime Information Center (“NCIC”) relies upon states and their criminal justice information systems (“CJIS”), for information in the FBI Interstate Identification Index (“III”)- and, the III is an integral system of the National Crime Prevention and Privacy Compact - 34 U.S.C. § 40316 Art. I(13)(A-B), which Maryland agreed to adhere to (MD Code, specifically, MD Code, Criminal Procedure § 10-240(5): “require the FBI and each party state to adhere to III System standards concerning record dissemination and use, response times, System security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.” The FBI promulgated operating manuals, presented to the district court, to strictly administer the III system, to include requiring verification and cross-checking of all data before it is entered into the electronic criminal justice information system- for Maryland circuit courts (at that time of 2005 up until relatively recently), the clerk of court enters paper

records into the court electronic data system- Uniform Court System ("UCS") - which then feeds into the Maryland CJIS repository at DPSCS, which is the state repository the FBI NCIC/III relies upon; the UCS is also the source of court records found on the Maryland judiciary case search web site. Because Petitioner's prior proceedings (2010 thru early 2017: see Supreme Court docket 16-8257) were decided by the district court as not meeting the high-bar of prior supervisory knowledge of a widespread issue of not accurately transferring circuit court paper records to the circuit court electronic record, the district court had held Petitioner failed to meet the supervisory liability standard found in *Shaw v. Stroud*, 13 F.3d 791 (4th Cir. 1994)- however, under *Shaw*, 13 F.3d, at 799, supervisory constructive knowledge is also a viable element for supervisory liability, and because Respondents (and their attorneys- including the OAG) kept the 2003 audit knowledge of the disposition accuracy concern (knowledge by the OAG/AOC/ CJ of the Maryland Supreme Court, and perhaps 'tenuously'- personal knowledge by Ms. Hancock) from the court (and Petitioner) as well as kept the Maryland statutory agreement to adhere to FBI III system standards, etc. (MD Code, Criminal Procedure § 10-240(5)) from the court (and Petitioner)- it is indisputably evident that responsible Maryland court administrators and participating Maryland OAG attorneys timely knew of the 2003 audit identified paper court record to electronic court record transfer disposition accuracy concern affecting ~ 12% of statewide records (approx. 16,000 circuit records statewide)- thereby reflecting indisputable evidence that personal supervisory knowledge - in the instant case- would also include constructive

knowledge (put another way, all of the responsible state court administrators and attorneys knew- with the Chief Judge of the Maryland Supreme Court directing the AOC to address and correct the cause of the problem- therefore, how can one clerk of the court be allowed to claim no personal knowledge of such a widespread problem impacting so many circuit court records- notwithstanding personal knowledge of one false record; to allow this exception is contrary to constructive knowledge of both the 2003 audit findings and the National Crime Prevention and Privacy Compact duties- of which, in a 42 U.S.C. § 1983 claim, the actual original statute passed in 1871, removes any state law immunities which a state agent might try to rely upon- see: U.S. Statutes at Large, Volume 17, (1871-1873), 42nd Congress- available at: <https://www.loc.gov/item/llsl-v17/> - Library of Congress web link; 17 Stat. 13 (1871) actually contains language, underlined here, that the current 42 U.S.C. § 1983 has omitted- "... secured by the Constitution of the United States shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable...." - additionally, "[t]hough the appearance of a provision in the current edition of the United States Code is 'prima facie' evidence that the provision has the force of law, it is the Statutes at Large that provides legal evidence of laws." *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 448 (1993). Because the actual law, under 17 Stat. 13 (1871) (when read at the natural meaning of the words and within the context of a remedial statute), does call for a form of strict liability - especially for claims against state court agents- see: *Mitchum v. Foster*, 407 U.S. 225, 240-242 (1972)(where it is

clear the driving purpose behind 17 Stat. 13 was to correct state court agents abuse of federal rights), and requires federal courts to hold state court agents accountable to federal law and people's federal rights, with an absolute intolerance of any fraud on the court, including any "tenuous" perception as fraud is fraud- tenuous or not, and this fraud issue should have never been an issue as strict liability under 17 Stat. 13 (1871) does not allow any state defenses for harm caused in violation of protected rights.

**C. Error in applying Constitutional jurisdiction limits applicable to Fifth Amendment rights**

Constitutional law regarding Fifth Amendment rights against multiple punishments caused by collateral consequences of societal stigma are clear and beyond debate, since at least 1996. Both *Ball v. U.S.*, 470 U.S. 856 (1985) and *Rutledge v. U.S.*, 517 U.S. 292 (1996)(affirming *Ball*) clearly stated collateral consequences of societal stigma punishment flowing from any unauthorized multiple 'conviction' (must be the equivalent of a conviction- for example a plea agreement is an equivalent of a conviction as would, arguably, recording a false conviction on the court official record and then placing that official court record on the Internet with subsequent harm) for one offense violates Fifth Amendment protections, and may not be ignored, (as any jurisdiction issue may not be ignored- although personal jurisdiction may be waived, subject matter jurisdiction may not- and may be brought up at any time). Explicitly, a punishment beyond the Constitutional jurisdiction of the court to impose is void, "a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of

whether the conviction or sentence became final before the rule was announced.” *Montgomery v. Louisiana*, 136 S. Ct. 718, 731 (2016). Here, Petitioner was punished by the 2005 false felony conviction in the circuit court record, and when the 2008 state circuit court simply corrected the record, the 2008 state circuit ignored Petitioner’s notice of societal stigma harm from the false 2005 court record, (Petitioner did not have time to appeal this 2008 holding as the case was closed ~ three months later- not enough time to appeal or file a habeas case, notwithstanding the fact the 2008 circuit court hearing to correct the record was held without the presence of Petitioner but Petitioner did write a letter to the court noting societal stigma harm but, again, that letter was ignored). In the instant case, the district court freely admits they did not fully credit the harm to Petitioner when deciding this case (Appendix C, pg. 7, n. 2)- again, the collateral stigma harm flowing from the 2005 false felony ‘conviction’ was ignored, contrary to unanimous, clear direction from both *Ball* and *Rutledge*, as well as *Montgomery*.

#### REASONS FOR GRANTING THE PETITION

The three identified errors in the instant case over-lap and could stand on their own, at least for harm to Petitioner, and a failure of the lower courts to follow established U.S. Supreme Court law. However, the over-arching reason to grant the petition is the national impact of not granting the petition. While Petitioner brought up 17 Stat. 13 (1871) under the second question of “Questions Presented,” that does not reflect any secondary importance, at a national level, of the Court addressing and correcting a scrivener’s error affecting the transfer of the statutes at large to

the United States Code, (i.e., 17 Stat. 13 (1871) transferred to present day 42 U.S.C. § 1983); in-fact- the error from 17 Stat. 13 - a remedial statute affecting all citizen's rights under that law- impacts the "error" affecting Petitioner because of the 2005 false felony 'conviction' harm being ignored (i.e., not legally addressing state agent's duties and liabilities; failing to correct an on-going error of Constitutional and federal statutory magnitude- thereby allowing the "error" to continue). Strict liability under 17 Stat. 13 (1871) is the clear meaning of the words in the remedial statute, and falls within the accepted jurisprudence of the era when 17 Stat. 13 (1871) was passed, and shortly thereafter, (see also: *Mitchell v. Harmony*, 54 U.S. 115, 137 (1852)(an order to do an illegal act provides no justification to person who executes the order); *U.S. v. Lee*, 106 U.S. 196, 220 (1882)(all officers of government are in-place because of law and are bound to follow it); and, *Bates v. Clark*, 95 U.S. 204, 209 (1877)(lacking proper process from a competent court, "nor any order from any source having authority," removes any defense and allows strict liability).

The first question presented is a "case of first" impression for the Court, and has national importance because of the widespread reliance on federal criminal justice records available from the FBI (and originating in state courts, et. al.) for a wide-ranging reliance in background checks- not the least of which are firearm transfers (see also: *Sanders v. U.S.*, 937 F.3d 316 (4th Cir. 2019)- finding the federal government liable for improperly administering *Brady* required background check that allowed an individual to illegally procure a gun and then massacre innocent church goers- part of the improper administration of the background check was due

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to state agents not accurately inputting data into the electronic criminal justice information system). The Court can set precedent for impacted government agencies as well as identify remedies for people adversely impacted (see also: 34 U.S.C. § 40316 Art. XI(c), establishing federal jurisdiction only, for all cases and controversies pursuant to the statute/Compact).

The third question presented is a Constitutional jurisdiction question, (impacting Constitutionally void judgments), requiring lower courts to examine the question on their own; granting the Petition on this question will clearly reiterate and reaffirm this requirement and impacts people nationwide as American courts must follow U.S. Supreme Court direction on apposite cases. Additionally, granting the petition will allow the Court to end any improper derogation of federal statutory law (such as: *Pierson v. Ray*, 386 U.S 547, 554 (1967) ("The legislative record gives no clear indication that Congress meant to abolish whole-sale all common law immunities.")- clearly, this statement is wholly incorrect, as found in a proper, legally accurate reading of 17 Stat. 13 (1871), and while the instant case is not a qualified immunity case, it is nonetheless a 42 U.S.C. § 1983 case requiring a legally proper application of 17 Stat. 13 (1871) as impacting Fifth Amendment rights against double jeopardy multiple punishments), and restore the integrity of American courts, for persuasive argument, see also, *In re Tip-A-Hans Ent., Inc.*, 27 B.R. 780, 785 (Bankr. W.D. Va.):

when constitutional or statutory provision forbid a judge from acting officially, [their] action is regarded as transgressing the public policy of the state. Such prohibitions are plainly intended not for the general parties to a suit merely, but for the general interests of justice, by preserving the purity

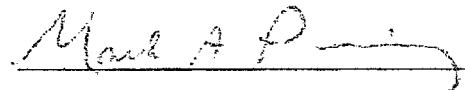
and impartiality of the courts, and the respect and confidence of the people for their decisions. *Carr v. Duhme*, 167 Ind. 76, 78 N.E. 322.[sic]. The Constitution and laws of the people mandate that judges be so.[note omitted].

Only this Court can correct any misreading of 17 Stat. 13 (1871) as applied to 42 U.S.C. § 1983) claims. For further supportive argument of Petitioner, see: *Lange v. Benedict*, 99 U.S. 68 (1879)(the Court held there was no federal question to decide in favor of *Lange* because the state court held the judge had exercised only "excess of jurisdiction" when imposing multiple punishments in violation of the Fifth Amendment as the *Lange* judge did not yet have the Fifth Amendment double jeopardy multiple punishment law as held by the Court in *ex parte Lange*, 85 U.S. 163 (1873)- state court decision is here: *Lange v. Benedict*, 73 N.Y. 12, 32 (N.Y. 1878), "Let it be conceded, at this point, that the law is now declared, that the act of the defendant[, the judge,] was without authority and void, yet it was not so plain then to have been beyond the realm of judicial discussion, [.....]"; also, *Lange* could not rely on 17 Stat.13 (1871) because his criminal case was by federal indictment in federal courts.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,



submitted on January 22, 2024