ORIGINAL

No. 23-6637

IN THE

SUPREME COURT OF THE UNITED STATES

ARUAN ALEMÁN HERNÁNDEZ – PETITIONER

vs.

STATE OF FLORIDA – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEAL
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Aruan A. Hernández, pro se

QUESTIONS PRESENTED

Section 1331 of Title 28 of the United States Code provides for federal question cases the opportunity to be heard. The characterization of the §1331 cannon presented above not only yield a series of clarity - enhancing jurisdictional standard, but also presents a principle asserts that §1331 jurisdiction is best understood as a function of the viability of the federal right that the petitioner asserts balanced against other indicia of congressional intent that the petitioner particular claim should be heard in the federal courts.

Here, the Court faces cases where State law supplies a cause of action in which a federal right is embedded. The petitioner in such cases is not alleging a congressional cause of action; thus, there are fewer indicia of congressional intent to vest §1331. Indeed, the petitioners in such cases as the one at hand essentially concede that there is not a congressional judgment that they are "appropriate part[ies] to invoke the power of the [federal] court" in the matter at hand. *David v. Passman*, 442 U.S. 228, 239 (1979). Rather, the existence of a federal right constitutes the sole marker of legislative approval to take §1331 jurisdiction. See e.g., *John F. Manning, Textualism as a nondelegation*

3. If the 6th Amendment of the United States Constitution protects the defendants with the right to assistance of counsel, it is fair to not include in the same 6th Amendment those rights to any victim of a crime for purpose of Equal Protection of the law?

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Cases: **Page(s):**

Federal Statutes:

Federal Rules of Appellate Procedure:

Federal Rules of Appellate Procedure:

United States Constitution:

Florida Statutes:

Florida Constitution:

PETITION FOR A WRIT OF CERTIORARI

Aruan Aleman Hernandez respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals (App., infra, 1a - 5a). The District Court's order sua sponte dismissal (App., infra 7a - 11a).

JURISDICTION

The judgment of the court of appeals was entered on August 31, 2023. A timely petition for vacate was denied on November 27, 2023, App., infra 6a. This Court's jurisdiction rest on 28 U.S.C. §1254.

STATUTORY PROVISION INVOLVED

28 U.S.C. §1331 provides that the "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Section 1981 of the Federal Equal Rights under the law Act, 42 U.S.C. §1981, provides in relevant part:

(a) Statement of Equal Rights. All person within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to full and equal benefit of all law and proceedings for the security of persons and property as is enjoyed by white citizen, and shall be subject to like punishment, pain, penalty, taxes, licenses, and exactions of every kind and no other.

(c) Protection against impairment, the right protected by this action are protected against impairment by government discrimination and impairment under the color of State law.

STATEMENT OF THE CASE

I. Factual Background

On August 9, 2019, Mr. Hernandez delivered a criminal complaint to the State Attorney Office of Palm Beach County, Florida against two State's witness.

The criminal complaint although rudimentary prepared by the lack of skill from the designer it was sufficient to show prima facie evidence to support offenses to Florida Statutes. §837.021, §837.02 and §837.011 in which Mr. Hernandez was seriously harmed.

Thirty days later and without answer from the State Attorney Office was another intent from Hernandez consecutively mailing the initial complaint.

After couple of months of silence a third mail-intent was mailed at this time to the Office of the Attorney General, at this time Mr. Hernandez complaining for answers. (Pursuant Florida Constitution Art I §16(b)).

Each time that Mr. Hernandez tried reach a connection with the State Attorney Office by physical mail, copies of each documents was simultaneously furnished to the Fifteenth Circuit Court, West Palm

Beach, Florida and other authorities.

The aforecited criminal complaint in majority was prepared with intrinsic evidence produced in an unrelated proceeding where the perjury acts was offered in violation of the Court's oath.

The frame of those ongoing offenses in violation of Fla. Stats. 837.021; 837.02; 837.011 cover a period of time of twenty month through initial statements elicit by the two women to multiple governmental agency up to the end of trial in the proceeding no relates with this cause.

Mr. Hernandez's criminal complaint was invoked pursuant to Florida Constitution, Art. I Section 16(b).

The existence of prima facie evidence tending to prove the perjury offenses against Mr. Hernandez is a solid and irrefutable basis for probable cause against Ms. Sandy G. Torres and Ms. Milagro G. Torres, those, who committed criminal offenses in violation of Florida Stats. 837.021; 837.02; 837.011.

Conflict of Interest is the primary subject brought by Mr. Hernandez to the Federal District Court on June 28, 2022 as a issue of first impression nature that actually constrain the Florida State

Attorney Office to acting as justice require.

At hand, was, and is today the First Prosecution's conflict of interest claim and probably the First Ineffective Assistance of prosecution claim in America Judicial System.

INTRODUCTION

The standards for determining whether an action is frivolous or fails to state a claim.

Frivolous Actions:

The same frivolousness test applies to both In Forma Pauperis actions and fee - paid actions[1]. As noted by this Court in *Coppedge v. United States*[2], application of the same frivolousness test to both types of actions simply reflects the obligation of the courts.

An action may be dismissed as frivolous if "it lacks an arguable basis in law or in fact."[3] In making a frivolousness determination, judges not only have "The authority to dismiss a claim based on an indisputably meritorious legal theory, but also the unusual power to piece the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are already baseless.[4] Thus, the court is not bound, as it usually is when making a determination solely on the

---

[1] See *Coppedge v. United States*, 369 U.S. 438, 446-47 (1962): See also, *Ellis v. United States*, 356 U.S. 674, 675 (1958).
[2] 369 U.S. 438 (1962).
[3] *Neitzke*, 490 U.S. at 325. In *Neitzke*, this Court distinguished between the standard for dismissing under §1915(d) and the standard for dismissing under Federal Rule of Civil Procedure 12(b)(6).
[4] *Neitzke*, 490 U.S. at 327.

pleadings, to accept the factual allegations as true.[5] Factual allegations which are "clearly baseless" include those which "decrib[e] fantastic or delusional scenarios"[6], those which are "fanciful"[7] and those which "rise to the level of the irrational or the wholly incredible.[8] However, an action may not be dismissed as frivolous simply because the Plaintiff's allegations are unlikely improbable.[9] Moreover, in making a frivolousness determination, the assessment of the plaintiff's factual allegations "must be weighed in favor of the plaintiff" and must not "serve as a fact finding process for the resolution of disputed facts.[10]"

---

[5] See *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).
[6] *Neitzke*, 490 U.S. at 328.
[7] Id at 325
[8] *Denton*, 504 U.S. at 33.
[9] See id.
[10] Id. at 32.

ACTIONS WHICH FAIL TO STATE A CLAIM

In determining whether an action should be dismissed for failure to state a claim, the court must "accept the material facts alleged in the complaint as true, and not dismiss 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief' "[11]. "Moreover, all reasonable inferences must be drawn and viewed in a light most favorable to the plaintiffs[12], and the court should consider only these facts alleged in the complaint[13]. However, while a Rule 12(b)(6) dismissal may not be based on a "judge's disbelief of a complaint's factual allegations"[14], conclusion of law and "unwarranted deductions of facts" pleaded in the complaint need not be accepted as true.[15]

The Screening Process and Timing of Dismissal

---

[11] *Easton v. Sundram*, 947 F. 2d 1011, 1014-15 (2d Cir. 1991); *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Chance v. Armstrong*, 143 F. 3d 698, 701 (2d Cir. 1998).

[12] *Leeds v. Meltz*, 85 F. 3d 51, 53 (2d Cir. 1996); *Mills v. Polar Molecular Corp.*, 12 F. 3d 1170, 1174 (2d Cir. 1993).

[13] *See, e.g., Newman & Schwartz v. Asplundh Tree Expert Co.*, 102 F. 3d 660, 662 (2d Cir. 1996).

[14] *Neitzke*, 490 U.S. at 327.

[15] *First National Bank v. Gelt Founding Corp.*, 27 F. 3d 763, 771 (2d Cir. 1994)(quoting *2A James Wm. Moore et all.*, Moore's Federal Practice §12.08, at 2266-69 (2d ed. 1984).

Frivolous Cases.

At the Appellate level, a frivolous fee-paid appeal may be dismissed by the court of appeals. Sua sponte or on motion, whenever the frivolous nature of the appeal comes to the attention of the court[16].

The case law which permits pre-summons dismissal for lack of subject matter jurisdiction can be characterized as establishing an exception to the general rule that the summons must always issue upon filing of the complaint.

---

[16] See, e.g., *Behrens v. Pelletier*, 516 U.S. 299, 310 (1996); *Abney v. United States*, 431 U.S. 651, 662 n.8 (1977).

FAIL TO STATE A CLAIM UNDER PETITIONER 28 USC §1331 COMPLAINT

In dismissing Petitioner's First Amendment and Fourteenth Amendment claims, the lower court relied in its obligation to look behind the label of Petitioner's pro se status determining improperly that the complaint fell under a different remedial statutory framework. But none of those 1983's claims deals with the arguments laid out under the original Smith Test - complaint brought by Petitioner pursuant to 28 U.S.C. §1331 framework. And in any event, a claim can be substantial despite the adverse circuit precedent, as, for example, when it is inconsistent with intervening Supreme Court precedent.

Against this legal backdrop, Petitioner's First and Fourteenth Amendment claim is non-frivolous and, indeed, should not have been dismissed under the more demanding 28 U.S.C. §1915(e)(2)(B)(ii) standard when the same lower court recognized that the standard for 1915(e)(2)(B)(ii) is identical to R. 12(b)(6).

But it hardly requires stating that, under the 12(b)(6) framework, "failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction." *Hagans*, 415 U.S. at 542 (quoting *Bell v. Hood*, 327 U.S. 678, 682 (1946). Thus, the

sufficiency of a complaint under Rule 12(b)(6) is "a question of law *** [that] must be decided after and not before the court has assumed jurisdiction over the controversy". *Bell*, 327 U.S. at 682. The basis for that conclusion is evident: "[n]othing in Rule 12(b)(6) confines its sweep to claims of law which are obviously insupportable," "indisputable meritless", or "fantastic or delusional". *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). On the contrary, "Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of [any] dispositive issue of law, *** without regard to whether [the claim] is based on an outlandish legal theory or on a close but ultimately unavailing one". Id. at 326-327.

STATUTORY BACKGROUND

This case concerns the Marsy Law Rights enacted in the State of Florida in 2018. Fla. Const. Art. I Section 16(b). As since amended the Marsy law provides to victims of crimes a catalog of substantial rights to invoke. Marsy law in Florida in conjunction with Fla. Statutes 960 creates a cause of action.

At issue here is the presentation of the first claim of prosecutorial conflict of interest presented by a victim of perjury acts. The respondent of this cause chose to proffer the client's perjured allegations creating a conflicting position that legally impeded pursuing those crimes harming continuously the Petitioner of this cause who should have been represented by Respondent. The actual respondent's client is the offender of the Florida Statute of perjury §837.021; §837.02; §837.011.

PROCEDURAL BACKGROUND

1. Petitioner, the victim of perjured assertions - file a complaint pursuant to 28 U.S.C. §1331 in the District Court for the Southern District of Florida, challenging the constitutionality of a Florida prosecutorial conflict of interest claim. As relevant here, Petitioner alleged that the conflict to represent him as a victim of perjury offenses elicited by Respondent's client burdens his First Amendment, Thirteenth Amendment, and Fourteenth Amendment rights. Though a well pleaded complaint and primarily under *Smith v. Kansas, City Title & Trust Co.*, 255 U.S. 180 (1921), Petitioner invoked federal question jurisdiction.

2. The Court nevertheless rejected, Petitioner's First Amendment and Fourteenth Amendment claims because in its unilateral view the claim "...§1331 does not provide a cause of action, and the Court sees little relevance of *Smith*"... App., infra 7a.

Alternatively, the court improperly construed the Petitioner's complaint as a 42 USC §1983's claim who later dismissed sua sponte finding it frivolous because it is "based on an indisputably meritless legal theory." App., infra 9a. On that basis, the district court dismissed

the claim on the merits, refusing it convene in the 1331's platform originally brought.

3. The Court of appeals dismissed under incorrect standard of review. App., infra 1a - 5a., and denied Motion to Vacate. App., infra 6a.

REASON FOR GRANTING THE PETITION

This case presents the question whether a District Court Judge may refuse to accepting jurisdiction in a federal question complaint non-frivolous suit governed by 28 USC §1331 because, in the single judge's singular view, the complaint fails to state a claim under the *Smith's* standard established by this Court in 1921[17]. In conflict with this Court.

That decision should not stand. Aside from ignorance this Court's precedents, it creates a conflict of authority among the lower courts. As a result, *Smith's* Court rationale is being applied differently in jurisdictions throughout the Nation. What is more, proper resolution of the question presented is a matter of great practical importance. Section 1331 governs Constitutional challenges like this one and this case present a suitable vehicle with which to resolve the conflict: Petitioner's claims are not obviously frivolous and should have been decided pursuant the jurisdiction of Section 1331 applying the standard established by the *Smith's* court. Further review is warranted.

---

[17] *Smith v. Kansas, City Title & Trust Co.*, 255 U.S. 180 (1921).

A. The Eleventh Circuit's Decision Conflicts With This Court Precedents.

According to the Eleventh Circuit's decision in my well pleaded complaint pursuant to 28 U.S.C. §1331 "Aruan A. Hernandez, a Florida prisoner, brought a pro se complaint Dave Arongerg in his official capacity as Florida State Attorney. Hernandez's 75-page complaint was '§1331's motion by a victim deprived of the equal protections of the law and due process of the law and a denial to access the court to start a cause of action under his fundamental rights', and include detailed legal explanations related to federal question jurisdiction, Florida perjury law, and Equal protection law." id App. Infra 2a.

"He appeared to raise a Fourteenth Amendment violation, asserting that he was denied equal protection of the law by the State's failure to prosecute two women, one of whom was the victim of his sexual battery convictions, for falsely testifying at his criminal trial." Id App. Infra 2a.

"The District Court determined that the complaint was frivolous, failed to state a claim, and was subject to dismissal under 28 U.S.C. §1915(e)(2)." Id App. Infra 2a.

"Accordingly, this Court now finds that the appeal is frivolous, DENIES leave to proceed, and dismisses the appeal". App. Infra 5a.

The Eleventh Circuit's decision is flatly inconsistent with this Court's precedents in multiple separate respects.

First, whereas the Eleventh Circuit forbids the dismissal of a case by a district court when the case involves an arguable legal theory and a cause of action pursuant the three prong standard routed by this Court in *Smith v. Kansas, City Title & Trust Co.*, 255 U.S. 180 (1921), it has to review under the de novo standard.

In any event, the realities of the frivolousness determination, both before and after the 1996 Amendments, render the difference between "May" and "Shall" meaningless and strongly indicate that the district courts do retain a large degree of discretion in some respects, but little discretion in others.

First, it is clear that, both before and after the 1996 Amendments, the district courts were and required to dismiss any complaint that is irreparably frivolous. In other words, despite the substitution of "Shall" for "May", nothing has changed in those situations where a court has concluded that a complaint is irreparably frivolous: it must dismiss - it

lacks, and has always lacked, discretion to do otherwise. Thus, the language of §1915 may have been changed simply so that the statute was consistent with the actual practice of the district courts.

Second, the considerations that required the district courts to be given wide discretion before the 1996 Amendments still apply, despite the 1996 changes. Specifically, when a complaint is factually suspect, the district court must determine (a) Whether some or all of the allegations are factually frivolous; and (b) whether any or all of the factually frivolous allegations can be "cured" through the filing of an amendment complaint or other means. These fact-based issues require an exercise of discretion since: (1) the District Judge may be faced with factual allegations that do not fall squarely within prior case law or prior experience; (2) the credibility of the allegations may depend on the judge's assessment of the individual litigant involved in that particular action: and (3) the specific tools to be used to "cure" a particular complaint will depend on the unique circumstance of the action. In making these determinations, the district judge must marshal all available information appears in the record or is subject to judicial notice.

Because these determinations are fact-reliant and the district court is uniquely positioned to marshal the facts and make credibility determinations. See *Cooter & Gell*, 496 U.S. at 402. Considerably discretion should be accorded its frivolousness determination concerning factual allegations. See e.g., Fed.R.Civ.P. 52(a). Similar considerations led this Court in *Koon v. United States*, 518 U.S. 81 (1996) and *Pierce v. Underwood*, 487 U.S. 552 (1988).

Now, the situation in this case is different as the Eleventh Circuit accepted the rationale below id. "The district court determined that the complaint was frivolous, 'failed to state a claim'," App. Infra 2a. Thus, the no arguable basis in law frivolousness determination although similar but not identical, to a determination under Rule 12(b)(6) that the complaint fails to state a claim which in effect come into conflict with *Neitzke v. Williams*, 490 U.S. 319, 326, 328 (1989). The Eleventh Circuit conflicts with *Neitzke*'s Court when review my appeal under the abuse of discretion standard since the 1915(e)(2)(B)(ii) as identical to R. 12(b)(6)'s failing to state a claim determination is solely a matter of law with demands de novo, see *Neitzke v. Williams*, 490 U.S. at 326, it is subject to de novo review.

B. The Eleventh Circuit's decision conflicts with the 5th, 6th, 7th, 8th, 9th and 10th Circuits about the proper standard of review.

According the Eleventh Circuit's decision, "this Court reviews a direct court's sua sponte dismissal of a complaint under §1915(e)(2)(B) for an abuse of discretion. *Hughes v. Lott*, 350 F. 3d 1157, 1160 (11th Cir. 2003)". App. Infra 3a.

As previously noted, by adding subsection (e)(2)(B)(ii) to 1915, and including similar language in 1915 A(b) and 1997(e)(c), Congress apparently intended to give district courts the authority to dismiss, at an early juncture on the same grounds as previously only permitted by Rule 12(b)(6).

At bar, the District Judge in its sua sponte dismissal decision wrote: "The standard for dismissal for failure to state a claim under §1915(e)(2)(B)(ii) are identical to those under Fed. R. 12(b)(6). *Mitchell v. Farcass*, 112 F. 3d 1483, 1490 (11th Cir. 1997)". App. Infra 8a., and District Court determined that under 28 U.S.C. §1331 does not provide a cause of action." App. Infra 7a. Although "The court sees little relevance of *Smith*," app. Infra 7a.

The following Circuit Courts of Appeal directly conflicts with the

Eleventh Circuit Court when they hold that a dismissal under §1915(e)(2)(B)(ii), is reviewed de novo: *DeWalt v. Carter*, 224 F. 3d 607, 611-12 (7th Cir. 2000); *Moore v. Sims*, 200 F. 3d 1170, 1171 (8th Cir. 2000); *Tourscher v. McCullought*, 184 F. 3d 236, 240 (3d Cir 1999); *Harper v. Showers*, 174 F. 3d 716, 718 n. 3 (5th Cir. 1999); *Perkins v. Kansas Dept. of Corrections*, 165 F. 3d 803, 806 (10th Cir. 1992); *Barren v. Harrington*, 152 F. 3d 1193, 1194 (9th Cir. 1998), cert. denied, 525 U.S. 1154 (1999); *Black v. Warren*, 134 F. 3d 732, 733 (5th Cir. 1998); *McGore*, 114 F. 3d at 604 ("dismissal of a complaint for failure to state a claim... under either §1915(e)(2) or §1915 A(b), is still subject to our traditional de novo standard"); *Mitchell*, 112 F. 3d at 1490; *Atkinson v. Bohn*, 91 F. 3d 1127, 1128 (8th Cir. 1996).

As a result, the Eleventh Circuit will inevitably find itself issuing merits holdings paradoxically deprive it of jurisdiction to issue merits holdings, in manifest conflict with the aforecited long line of cases from those opposite results in the same matter of law.

The Eleventh Circuit in this case cannot be squared with *DeWalt*, *Moore*, *Tourscher*, *Harper*, *Perkins*, *Barren*, *Black*, *McGore* or even with its own *Mitchell*. There is no doubt that this case would have been

heard under the frame of section 1331 of U.S. Code Title 28 in the Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Circuits. Further review is therefore warranted to ensure that 28 U.S.C. §1331 under 1915(e)(2)(B)(ii) is applied uniformely throughout the Nation.

C. Petitioner's First Amendment and Fourteenth Amendment claims are not obviously frivolous.

Because, my First Amendment and Fourteenth Amendment claims is not frivolous - indeed, it should not have been dismissed even under 12(b)(6) or its equivalent 28 USC §1915(e)(2)(B)(ii). The judge district court's application of *Neitzke* improperly deprived me of consideration of my claims by the jurisdictional statute originally invoked through the *Smith* Court doctrine.

I allege that the actual conflict of interest in the State Attorney Office violates my First Amendment rights and the Fourteenth Amendment rights. Giving the claim little more than the back of its hand, the district court stated conclusorily that "in essence, the complaint"... "is alleging that the State action has deprived him of a right" "secured by the Constitution," 42 USC §1983 is the appropriate cause of action.

None of this Court's precedents compels those conclusions. On the contrary, Section 1331's federal questions jurisdiction will lie over State - law cause of action that necessarily require construction of an embedded federal question. As the *Smith's* case, is this Court classic statement of this position. My case as this line of cases is often referred as the *Smith Test.* This Court held that federal question jurisdiction arose under §1331 because an element of the Plaintiff's State - law claim required adjudication of the constitutionality of a federal act. Id. 25 U.S. at 199-202.

§1331 jurisdiction is not limited to case where Plaintiff alleges a congressionally created cause of action. A plaintiff's case may arise under federal law even though the Plaintiff explicitly relies upon Sate law to supply the cause of action. In such cases as mine, the primary jurisdictional factor remains the status of the plaintiff's asserted right not the origin of the cause of action. If the plaintiff fails to allege a congressionally created cause of action, the court requires that the congressionally created right the plaintiff asserts be substantial.

This Court further limits federal question jurisdiction to those case raising substantial rights as noted in *Steel Co., v. Citizens for a*

Better Env't., 523 U.S. 83, 89 (1998). Determination whether there is federal question jurisdiction is made on the basis of the plaintiff's pleading and not upon the response on the facts as they may develop. *Mirrel Dow Pharmaceutical, Inc., v. Thompson*, 478 U.S. 804 (1986).

The *Smith's* court just requires in this contemporary sense three elements: The plaintiff must 1. Assert a federal right; 2. Be a member of the class of persons entitled to enforce the right (i.e., assert a cause of action); and 3. Possess the other attributes of a claim, which means an assertion of a transaction or occurrence sufficient, if true, to justify a remedy.

A cause of action, by contrast, is a determination of whether the plaintiff falls into class of litigants empowered to enforce a right in court. See *David v. Passman*, 442 U.S. 228, 239 (1979). My right to a cause of action born with Florida Constitution Article I Section 16(b) and in combination with Florida Statutes, Title XLVI, Chapter 960 Victim Assistance.

Indeed, this Court in *Grable & Sons Metal Prods., Inc., v. Darve Eng'g & Mfg.*, 545 U.S. 308, 313 (2005) held that having such substantial and serious assertion of a federal right is necessary to

establish §1331 jurisdiction when a State - law cause of action is asserted.

This is the case, with its myopic focus, is narrowed essentially to the writ to petition of the First Amendment right and to both due - process of the law and the additional equal protection clause of the Fourteenth Amendment of the United States Constitution, as a primary federal ingredients projected under a kaleidoscopic point to open the §1331's doors in presence of a two-component formula (Fla. Const. Art. I §16(b) & Fla. Stats 960) State - law cause of action the remains frozen as a result of a conflict generated at this point by the State Attorney's Office that brings this first - time issue in history as a federal question claim in absence of a State solution and with no precedents at all, in which I'm the victim of perjury offenses in the State of Florida who have been fatally trapped in the legal frame of the Thirteenth Amendment of the United States Constitution by its distorted used, product of respondent's bias adoption and representation protecting and projecting client's perjured assertions as if it was competent, substantial evidence in the converse.

The Constitution "authorizes congress... to determine the scope of

federal court's jurisdiction within Constitutional limit." *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010). The issue of federal subject matter jurisdiction concerns the fundamental constitutional question of the allocation of judicial power between the federal and state government. Under the complete preemption doctrine, even if a plaintiff seeks a remedy available only under state law the complaint will still raise a federal question for any cause of action that comes within the scope of the preempting federal cause of action. *Franchine Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 23-24 (1983). The Eleventh Circuit's decision conflicting with all this reasoning.

It is time to embrace a fresh perspective on clarity in jurisdictional rules, both in theory and practice. Focusing on theoretical design behind the rules, bright lines can undermine the purpose of jurisdiction by denying federal forum for adjudicating substantial question of federal law embedded in State law claims. Despite weighty rhetoric favoring bright-line rules and clarity for clarity's sake, this Court in *Grable* unanimously seemed to agree by rejecting a bright-line rule in favor of a nuanced one when crafting *Grable's* unified test for embedded federal question jurisdiction.

When this first impression issue is read in conjunction with both its statements of underlying jurisdiction principles the broken compass the requirement that a case arise directly under the United States Constitution.

This Court has long lamented "[j]udicial opinions [that] ...obscure the issue by stating that the court is dismissing for lack of jurisdiction" when some threshold fact has not been established, without explicily considering whether the dismissed should be for lack of subject matter jurisdiction or for failure to state a claim." *Arbaugh*, 546 U.S. at 511. The justices have further described "such unrefined dispositions as 'drive-by jurisdictional ruling' that should be accorded' no precedential effect' on the question whether federal court had authority to adjudicate the claim in suit." Id. (quoting *Steel Co.*, 523 U.S. at 91.).

The Eleventh Circuit in its deferential mirror dismissing my appeal without observing that this cause raises important, recurring questions relating to the presumptive scope of the U.S. Constitution even though Art. III, Section 2 standing issues which pertain to questioning the qualification and eligibility of the rights conferred to victims of crime pursuant to Fla. Const. Art I S 16(b). Notwithstanding

all this line of case precedents conflicting with the Eleventh Circuit's reasoning in this case.

Later built on this logic., dissent warned against adding very specific and rigid rationale which were never contemplated by the drafters of Florida Statutes 837.021; 837.02; 837.011 or by all the Courts in adopting those statutes as a crime. *Spera* later aligned itself with this logic by requiring judges to allow states prosecutors to initiate a due process in those cases involves criminal offenses to those statutes, reasoned that it seriously conflicting with the State and the federal jurisprudence witch the underlying premise and common sense would simply presume under normal circumstances.

Eleventh Circuit conflicts position put sign of bias in form of deference over substance and is overly wrong in the context of this type of dismissal, because between intelligent individuals it would seem obvious and would be presumed; it fails clearly into the realm of common sense assumptions. This also why the state conflict - inactions inhibit them to pursue justice according the law, the substantial rights involved and the interest of justice itself. At some point, such overly erratic and conflicting rationale reveal themselves to be excuse for

preemptive denial rather than helpful guideline for the proper administration of justice.

D. Prosecutorial Conflict of Interest as First Impression issue pursuant Smith's Rationale warrant review.

Given the importance of the issue and the novel view of standing adopting by this fresh legal theory this Court should grant certiorari. The Eleventh Circuit fares no better, demonstrating why this Court has called in *Smith* the federal question jurisdiction doctrine hybrid state claims into question altogether. The decision below frustrates a basic presumption only enhanced by this Court in the *Smith's* formula.

And this case presents and excellent vehicle for addressing the first prosecution - conflict of interest claim in History. Also to addressing the importance and life - altering issues raised here. The factual record was irrefutable, leading the district court to repeal it by the transformational spirit contained in its decision omitting all the intrinsic evidence from the two women that tending to prove each five elements necessary to prove the offense against Fl. Stats. 837.021; 837.02; 837.011, which there is no doubt to support prima facie case in any perjury prosecution cause.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Aruan A. Hernández, pro se
DC# C80313
Everglades Correctional Institution
1599 SW 187th Avenue
Miami, Fl. 33194–2801

Date: January 25, 2024