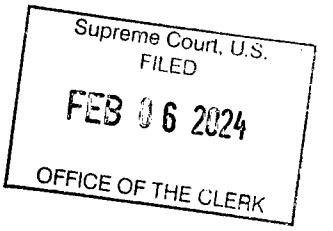
No. 23-6683

IN THE

SUPREME COURT OF THE UNITED STATES



Antoine Poteat,
Petitioner

v.

Gerald Lydon (Individual and Official Capacity), Chad Labour (Individual and Official Capacity), Nicholas Goldsmith (Individual and Official Capacity), Justin Julius (Individual and Official Capacity), Gregory Emery, (Individual and Official Capacity) Brian Kanopka (Individual and Official Capacity), Heather Gallaguer (Individual and Official Capacity), Bethany Zampogna (Individual and Official Capacity), Joseph Stauffer (Individual and Official Capacity), James Martin (Individual and Official Capacity), Jared Hanna (Individual and Official Capacity), Edward Ressler (Individual and Official Capacity).
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

After Respondents' prosecution of Petitioner terminated without a conviction, Petitioner brought a claim against them under 42 U.S.C. §1983 for malicious prosecution, abuse of process and fabrication of evidence. The courts below rejected Petitioner's malicious prosecution claim on the ground that the prosecution terminated in a manner that did not affirmatively indicate his innocence and held the abuse of process and fabrication of evidence as untimely and inadequately plead.

In Thompson v. Clark, 142 S. Ct. 1332 (2022), this Court held that, to satisfy the favorable-termination requirement for a malicious-prosecution claim under § 1983, a plaintiff "need only show that his prosecution ended without a conviction."

In McDonough v. Smith, 588 U.S. ___, (2019) this court held that a section 1983 fabrication evidence do not accrue (and therefore cannot be brought) until a criminal proceeding has ended in the defendant's favor or a resulting conviction has been invalidated within the meaning of Heck v. Humphrey, 512 U.S. 477, 484 (1994).

In Haines v. Kerner, 404 U.S. 519, 520-21 (1972), this Court held A pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to

state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. The question presented is:

1. Whether the Third Circuit's decision should be vacated and remanded for reconsideration in light of *Thompson* and *McDonough*?

2. Whether a Speedy Trial Violation is to be considered a favorable termination for a malicious prosecution claim?

3. Did the Third Circuit and U.S. District Court fail to apply the correct legal Pro Se standards set in Haines v. Kerner, 404 U. S. 519 (1972), with regards to the Plaintiff's Civil Rights claims of malicious prosecution and other civil rights violations in light of this Court's ruling in Thompson, *McDonough* and other relevant established authorities by this court?

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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 judgments below.

OPINIONS BELOW

The Third Circuit's opinion is not reported Pet. App. A-1 – A-8. The District Court's opinions are not reported. Id. at A-9 – A-25, A-28 – A-54. The Third Circuit's order denying rehearing is not reported. Id. at A-26 – A-27.

JURISDICTION

The Third Circuit entered judgment on October 11, 2023. Petitioner filed a timely petition for rehearing, which was denied on November 8, 2023. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment, U.S. Const. amend. IV, provides:

> The right of the people to be secure in their per- sons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon prob- able cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Due Process Clause of the Fifth Amendment, U.S. Const. amend. V, provides:

No person shall be deprived of life, liberty, or property, without due process of law.

The Sixth Amendment, U.S. Const. amend. VI, provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and pub- lic trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, provides:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law.

Section 1983 of Title 42 of the U.S. Code provides: Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction hereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be li- able to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

STATEMENT OF THE CASE

The issue in this case is whether the Court of Appeals erred in affirming the District Court's dismissal of the malicious prosecution claim and other claims that lies. The Court of Appeals overlooked several matters and misapprehended several matters, including the fact Petitioner timely filed his malicious prosecution claim, fabrication of evidence and abuse of process claim, Petitioner stated a claim for lack of probable cause, the individual Respondent's did not have immunity, Petitioner stated a Section 1983 claim against individuals who were personally involved, and Petitioner stated a Section 1983 claim against the agency based on a policy of dilatory prosecution.

The Court of Appeals overlooked the fact that Petitioner timely filed his malicious prosecution claim, fabrication of evidence and abuse of process claim. The statute of limitations for the malicious prosecution claim is two years. Given the July 8, 2019 decision to release Petitioner, and then his prison release on July 9, 2019, a malicious prosecution claim had to have been filed by July 9, 2021, when Petitioner definitely had an awareness of his release and, therefore, an awareness of a basis for a tort claim. Even applying a two-year statute from the date of the decision to release, his claim is still timely. Petitioner filed on July 7, 2021 when he appeared at the Allentown, Pennsylvania Courthouse,

Clerk's Desk, and filed. Other evidence supports this fact, such as the Civil Cover Sheet being dated July 7, 2021.

Also, there are irregularities. The docket states that no fee was paid, yet Petitioner states that he paid in cash on July 7, 2021. There are no other indications of payment on the docket. Other anomalies suggest that filing (docket entry) at the Allentown Clerk's Office may have been delayed, and that new complaints were sent to Philadelphia in bulk the following week (week of July 12th). For example, 21-cv-03115, a civil action number lower than Petitioner, was filed on July 13, 2021, after the alleged filing date.

Further, it is common knowledge that all levels of government broke down during the Covid pandemic. Many Courts stopped functioning. Many states implemented emergency orders tolling and/or suspending statutes of limitations. Accordingly, the District Court did not err or improvidently exercise discretion when finding that Petitioner timely filed a claim for malicious prosecution. But did err for the accrual of other claims and The Amended Complaint was also given a March 8, 2022 filing date however complaint was signed and dated February 28, 2022 and certified mailed on the same day, See (Docket entry) showing U.S. postage stamp. There were also delay in Briefing Schedule. However, the Court of Appeals overlooked this fact.

On February 20, 2013, at 1:33 p.m., Petitioner was pulled over by Respondent Lydon. During the traffic stop, Respondent Lydon alleged that he

smelled an odor of marijuana coming from Petitioner's vehicle. When the backup arrived, Respondent Labour, K-9 handler and Respondent Goldsmith were present. Respondent Lydon then ordered Petitioner to get out of his vehicle. After issuing a warning ticket, Respondent Lydon verbally informed Petitioner that he was free to leave and the traffic stop was complete.

Petitioner began walking back to his vehicle when he was seized again by Respondent Lydon. When asked if he could search the vehicle, Petitioner denied consent. Petitioner then proceeded to assert his rights by informing Respondent's Lydon, Labour and Goldsmith that their actions were illegal. Respondent's Lydon directed Petitioner to step aside for Respondent Labour and K-9 Dano. At 2:10 p.m., Respondent Labour conducted a K-9 search of the vehicle.

At the end of the search, Petitioner asked Respondent Lydon if he could leave. Respondent Lydon informed Petitioner that Respondent Labour had allegedly detected alert behavior from the K-9. Respondent Lydon then told Petitioner that he was free to go back to his car. When Petitioner asked what would happen next, Respondent Lydon stated he would be applying for a search warrant and, if approved, he would be conducting a search of Petitioner's vehicle.

Respondent Lydon then told Petitioner his vehicle would be towed to the PSP Barracks and asked if he was willing to go. Petitioner had no other choice but to comply. While handcuffed in Respondent Goldsmith's patrol car,

Petitioner saw Respondent Labour get fully seated inside Petitioner's vehicle and raise the armrest and grab items out and place them on the passenger seat.

When Respondent Lydon returned to the PSP Barracks, he applied for a search warrant that was deficient in that its description lacked particularity and contained false and misleading sworn statements. Respondent Gallauger approved of the warrant application, which was overbroad. At 4:35 p.m., Respondent Lydon obtained a deficient warrant from Magistrate Howells. At 5:05 Respondent Lydon serviced the warrant, and Respondent's Labour and Julius assisted.

During a systematic search of Petitioner's vehicle, a number of items were allegedly seized and placed in PSP Fogelsville Evidence Room. These items included two clear plastic bags containing suspected cocaine (located in center console under gear shifter panel) and two clear vacuum sealed bags containing suspected marijuana (located in center console under gear shift panel).

On February 26, 2013, Respondent Lydon filed charges against Petitioner and Respondent Zampogna approved of the filed charges. Respondent Lydon entered on the NCIC extradition code SSO "Surrounding States Only" at the discretion of Respondent Zampogna despite knowing Petitioner's physical address.

On May 17, 2014, Petitioner was arrested in Maryland, a surrounding sister state to Pennsylvania, by Maryland State Police. Petitioner was served with extradition papers for Virginia charges. No formal detainer was put on

Petitioner nor were any extradition proceedings brought by Pennsylvania authorities to bring Petitioner to Pennsylvania.

On May 29, 2014, Petitioner was taken to Virginia by way of extradition. On June 11, 2014, Petitioner was being held in Pre-Trial custody in Charlottesville Albemarle Regional Jail about to post bail on unrelated charges. After performing a CLEAN/NCIC check of Petitioner's name, non-extraditable pending criminal charges appeared out of Lehigh County, Pennsylvania. Jail staff contacted PSP who stated they would not extradite. Jail staff then contacted Officer Zambrotta of Albemarle Police Department to help assist. Officer Zambrotta contacted PSP who again stated they would not extradite for a non-surrounding state. Officer Zambrotta then contacted Respondent's Zampogna and Stuffer of Lehigh County District Attorney Office who stated they would extradite from Virginia, a non-surrounding state. Respondent's of Lehigh County District Attorney Office faxed a copy of the criminal complaint to Officer Zambrotta directing him to use as a detainer to seize Petitioner.

Petitioner was not returned until July 16, 2014, by way of extradition from Virginia, a Non Surrounding State, without a warrant. On August 5, 2015, Respondent Lydon again applied for a search warrant that was overbroad by application. Respondent Stuffer approved of the overbroad search warrant that lacked specificity stating, "All user data".

On September 21, 2015, after a non-jury trial, the Trial Court convicted Petitioner on all counts and bail was revoked at Respondent's Stauffer's request.

On October 20, 2015, Petitioner was sentenced to 5-10 years' incarceration. Petitioner filed a direct appeal to the Pennsylvania Superior Court, which was denied on May 23, 2017. Petitioner then filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court, which was denied on October 12, 2017. Petitioner also filed a timely writ of certiorari to the United States Supreme Court, ProSe, which was denied on March 19, 2018. On September 21, 2018, Petitioner filed a Post Conviction Relief Petition.

On July 8, 2019, Petitioner Judgement of sentence was vacated and the Judge ordered that the charges be dismissed. On July 9, 2019, Petitioner was released from SCI - Mahanoy.

On July 7, 2021, Petitioner filed the Complaint, asserting five counts against Respondents. In Count I, Petitioner asserts a claim under the Fourth Amendment for unreasonable search and seizure. In Count II, Petitioner asserts a claim for malicious prosecution. In Count III, Petitioner claims intentional infliction of emotional distress. In Count IV, Petitioner asserts nine claims under the Fourteenth Amendment, including due process, false imprisonment, abuse of process, equal protection of laws, wrongful conviction, negligent training, negligence, rights to liberty, and right to property. In Count V, Petitioner asserts that the Respondent's engaged in a conspiracy to interfere with his civil rights.

On September 20, 2021 and September 24, 2021, Respondent's moved to dismiss the Complaint. Petitioner responded to the motions on November 8, 2021.

The Court dismissed the Petitioner's Fourth Amendment Claim in Count I and False imprisonment Claim in Count IV as time barred, but has allowed the remaining claims to be amended and re-filed with the Court, thereby giving rise to the Amended Complaint. The remaining claims in the instant matter that were dismissed without prejudice include Malicious Prosecution, Intentional Infliction of Emotional Distress, and Conspiracy To Interfere With Civil Rights.

i. Malicious Prosecution

In order to state a claim for malicious prosecution, among other elements, a Plaintiff must show that the underlying proceedings terminated in his favor. Malcomb, 535 F. App'x at 186 (3d Cir. 2013) (quoting Kossler, 564 F.3d at 186). The Third Circuit has held that "a prior criminal case must have been disposed of in a way that indicates the innocence of the accused in order to satisfy the favorable termination element." See Kossler, 564 F.3d at 186 (citing Donahue v. Gavin, 280 F.3d 371, 383 (3d Cir. 2002)). Significantly, "the eventual dismissal of [a] federal prosecution due to a violation of the Speedy Trial Act does not constitute a favorable termination in that the dismissal here does not reflect the merits of the underlying criminal charges, only a violation of statutory procedural requirements." See Noble v. City of Erie, 1:18-cv-06, 2021 WL 3609987, at *5 (W.D. Pa. July 15, 2021) (citing Cordova v. City of Albuquerque, 816 F.3d 645, 652 (10th Cir. 2016)).

Here, Petitioner proceedings terminated via an order from the PCRA court vacating his Sentence. In that order, the presiding judge indicated that the basis for

vacating the sentence was the government's violation of Rule 600 of the Pennsylvania Rules of Criminal Procedure. See ECF No. 24-2.

However, A claim for wrongful use of civil proceedings, also commonly referred to as "malicious prosecution," arises "when a party institutes a lawsuit with a malicious motive and lacking probable cause." Shaffer v. Stewart, 473 A.2d 1017, 1019 (Pa. Super. Ct. 1984).

Notwithstanding this termination of proceedings pursuant to Rule 600 of the Pennsylvania Rules of Criminal Procedure, a reasonable jury can determine via a preponderance of the evidence that the Prosecution of the Petitioner despite clear knowledge that the time for a speedy trial said can constitute a prosecution with a malicious motive and lacking probable cause if the facts as a whole when reviewed by a jury with regards to the following:

(1) Whether or not there was a valid basis for the stop

(2) Whether or not there was probable cause for a K-9 search -

(3) Whether or not there was probable cause to search the Petitioner vehicle after he was told that he was free to leave

(4) The continued prosecution of the Petitioner while knowing that time allotted under Rule 600 had expired

While the charges were eventually terminated pursuant to Rule 600 - Speedy Trial, this does not preclude the Petitioner's claim that there was a lack of probable cause for the claims in the instant matter which only needs to be determined by a jury via a preponderance of the evidence.

A reasonable jury can infer based on the facts and circumstances in the instant matter that there lacked probable cause for the prosecution in the instant matter resulting in the imposition of civil liability. Based on the foregoing, the Petitioner's pleading the instant malicious prosecution claim for compensatory and punitive damages to be determined in a trial by jury was wrongfully dismissed.

iii. Intentional Infliction of Emotional Distress

In order to state a claim for IIED, a plaintiff must allege (1) extreme conduct, (2) that is intentional or reckless, and (3) that causes severe emotional distress. See Kornegey, 299 F. Supp. 3d at 683 (citing, inter alia, Arnold, 151 F. Supp. 3d at 579). In the instant matter, the Determination of whether

1. The Respondent's harassing the Petitioner without a valid basis for a stop (potentially based on racial profiling) is extreme / intentional / reckless enough to cause severe emotional distress
2. The Respondent's bringing in a K-9 unit without valid basis (potentially based on racial profiling) is extreme and intentional and reckless enough to cause severe emotional distress
3. The Respondent's insisting on a search after telling the Petitioner he was free to leave (potentially based on racial profiling) is extreme and intentional and reckless enough to cause severe emotional distress

4. The aggressive prosecution of the Petitioner despite clear knowledge that Rule 600 had expired constitutes extreme and intentional and reckless conduct sufficient enough to cause extreme emotional distress.

A reasonable jury can determine via a preponderance of the evidence that more likely than not this conduct was the direct and proximate causation of severe emotional distress to the Petitioner as a result of this wanton disregard to the health and safety and emotional wellbeing of the Petitioner. Based on the foregoing, the Petitioner pleading of instant intentional infliction of emotional distress claim for compensatory and punitive damages to be determined in a trial by jury was wrongfully dismissed.

iii. Conspiracy To Interfere With Civil Rights

To make out a conspiracy to violate one's civil rights under § 1983, a plaintiff must show "(1) the existence of a conspiracy involving state action; and (2) a deprivation of civil rights in furtherance of the conspiracy by a party to the conspiracy." See Rosembert v. Borough of East Lansdowne, 14 F. Supp. 3d 631, 647 (E.D. Pa. 2014) (quoting Gale v. Storti, 608 F. Supp. 2d 629, 635 (E.D. Pa. 2009)). "A plaintiff must allege that there was an agreement or meeting of the minds to violate his constitutional rights." Id.

In the instant matter, a jury can determine via a preponderance of the evidence as follows:

1. The Respondent's conspired to deprive the Petitioner out of their civil rights by swindling them into being searched despite a lack of probable cause
2. The Respondent's conspired to prosecute the Petitioner knowing that Rule 600 protections had expired assuming that the Petitioner would unlikely be able to do anything about it (and succeed on subsequent proceedings vacating the sentence due to Rule 600 violations)
3. The Respondent's conspired to racial profile and prejudice the Petitioner out of their civil rights by searching them despite informing him that he was allowed to leave

A reasonable jury can determine via a preponderance of the evidence that more likely than not there was mutual agreement between the parties in the instant matter to deprive the Petitioner out of their civil rights and therefore the Petitioner brings forth the instant conspiracy claim. Based on the foregoing, the Petitioner pleading of the instant conspiracy claim for compensatory and punitive damages to be determined in a trial by jury was wrongfully dismissed.

Petitioner pled a malicious prosecution claim in Count I, thereafter Referenced and Incorporated Paragraphs 1-29, and all Counts thereafter was pled, then Referenced and Incorporated Count I and the facts above numbering in paragraphs 1-36.

REASONS FOR GRANTING THE WRIT .

This case revolves around whether a defendant who has had criminal charges dismissed due to a violation of their right to a speedy-trial can use that dismissal as a favorable termination for a subsequent claim of malicious prosecution. Favorable termination is an essential element of a malicious prosecution claim, as it establishes that the underlying criminal proceedings were resolved in favor of the accused.

The question of whether a speedy-trial violation is cognizable under a claim of malicious prosecution has indeed resulted in a circuit split. See Laskar v. Hurd, 972 F.3d 1278, 1293 (11th Cir. 2020) (acknowledged 7-1 circuit conflict).

The First, Third, Fourth, Sixth, Ninth, and Tenth Circuits held that "the mere fact that a prosecutor had chosen to abandon a case is insufficient to show favorable termination." Jordan v. Town of Waldoboro, 943 F.3d 532 (1st Cir. 2019); Lanning v. City of Glen Falls, 908 F.3d 19, 26 (2d Cir. 2018); Kossler v. Crisanti, 564 F.3d 181, 187 (3d Cir. 2009); Salley v. Myers, 971 F.3d 308 (4th Cir. 2022); Jones v. Clark Cnty., 956 F.3d 748 (6th Cir. 2020); Awabdy v. City of Adelanto, 368 F.3d 1062 (9th Cir. 2004); Cordova v. City of Albuquerque, 816 F.3d 645 (10th Cir. 2016).

They argue dismissal for speedy-trial reasons does not establish the defendant's innocence, which is now abrogated by *Thompson*,

The Second Circuit had a conflict amongst its own See Murphy v. Lynn, 118 F.3d 938 (2d Cir. 1997) holding that "failure to prosecute [or] failure to comply with speedy-trial requirements should be considered . . . a termination favorable to the accused" But See Lanning v. City of Glen Falls, 908 F.3d 19, 26 (2d Cir. 2018) holding a dismissal in the interest of justice leaves the question of guilt or innocence unanswered,... it cannot provide the favorable termination required as the basis for [that] claim.", abrogated by *Thompson*.

The Eleventh Circuit has expressly departed from thoses circuits. See Laskar v. Hurd, 972 F.3d 1278 (11th Cir. 2020) (prosecutor's unilateral dismissal of charges against a plaintiff constitutes a favorable termination). They have recognized that a speedy-trial violation can constitute an element of a malicious prosecution claim, as it represents an abuse of the legal process and causes harm to the defendant.

Therefore, the circuit courts have not reached a unanimous consensus on whether a speedy-trial violation is cognizable under a claim of malicious prosecution. This split illustrates the different perspectives and interpretational approaches taken by various circuits.

This is the Perfect vehicle for the Supreme Court to provide a uniform interpretation and guidance on this matter.

As a result of this circuit split, the interpretation of whether a speedy-trial violation constitutes a favorable termination for a malicious prosecution claim may

vary depending on the jurisdiction. It needs resolution by the Supreme Court of the United States to provide a consistent interpretation and guidance on this issue.

Several State Supreme Courts have also ruled that a speedy-trial violation is a favorable termination for a malicious prosecution claim under common law. See, e.g., Lackner v. LaCroix, 25 Cal.3d 747, 750-51, 602 P.2d 393, 395 (1979) ("dismissal for failure to prosecute . . . does reflect on the merits of the actionl The reflection arises from the natural assumption that one does not simply abandon a meritorious action once instituted."; (Miller v. Watkins, 200 Mont. 455, 463-64, 653 P.2d 126, 130 (1982) (speedy-trial dismissal is favorable to accused). Indeed, several states, in ruling that dismissals for failure to comply with speedy-trial requirements were terminations favorable to the accused for purposes of a later claim for malicious prosecution, have relied in part on the reasoning of the leading New York cases. See, e.g., Rich v. Baldwin, 133 Ill.App.3d 712, 715-17, 479 N.E.2d 361, 363-64 (1985) (dismissal for failure to meet speedy-trial requirements is favorable to accused) (discussing Lenehan v. Familo, 79 A.D.2d at 76, 436 N.Y.S.2d at 475, and Loeb v. Teitelbaum, 77 A.D.2d at 101, 432 N.Y.S.2d at 494); Gumm v. Heider, 220 Or. 5, 23-24, 348 P.2d 455, 464 (1960) (citing Halberstadt, 194 N.Y. at 10, 86 N.E. at 803); see also Wynne v. Rosen, 391 Mass. 797, 799-800, 464 N.E.2d 1348, 1350-51 (1984) (prosecutor's nolle prosequi, or formal abandonment of the prosecution) (citing Loeb v. Teitelbaum, 77 A.D.2d at 99-100, 432 N.Y.S.2d at 492-93).

There is no reason to infer that the the United States Supreme Court should adopt a different view.

When there is a pro se litigant, the standards of review require leniency be extended to pro se litigant, and the rules should be applied less technically and harshly. See Erickson v Pardus, 551 U. S. 89 (2007). The departure from the liberal propelling standards articulated by the Federal Rule of Civil Procedure 8(a)(2) was particularly assumed in this case, as the petitioner proceeded through the lawsuit without legal representation. A document filed pro se is "to be liberally construed." Estelle v. Gamble, 429 U.S. 97, 106 (1976). "... allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See Dioguardi v. Durning, 139 F.2d 774 (CA2 1944)." Haines v. Kerner, 404 U.S. 519, 520-21 (1972). Therefore, solutions to pleadings imperfectly presented must be held to lower skeptic measures than that of formal pleadings submitted by attorneys, id. The Court referenced the Twombly decision in the case.

Additionally, the amended complaint affirmed a malicious prosecution claim , fabrication of evidence by way of an overbroad warrant and abuse of process. Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938) "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper

pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment."

A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of the complaint. Although the court is generally limited in its review to the face of the complaint, it "may also consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n. 2 (3d Cir.1994); see also In re Burlington Coat Factory Sec. Litig., 4 F.3d 1410, 1426 (3d Cir. 1997).

The moving party bears the burden of showing that no claim has been stated. Johnsrud v. Carter, 620 F.2d 29, 33 (3d Cir.1980). Thus, the moving party must show that the plaintiff has failed to "set forth sufficient information to outline elements of his claim or to permit inferences to be drawn that those elements exist." Kost, 1 F.3d at 183. The court, in turn, must "examine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." Hill v. Borough of Kutztown, 455 F.3d 225, 233 (3d Cir.2006) (quoting Delaware Nation v. Pennsylvania, 446 F.3d 410, 415 (3d Cir.2006)). In so doing, the court "need not credit a complaint's `bald assertions' or `legal conclusions[.]' Morse v. Lower Merlon Sch. Dist., 132 F.3d 902, 906, 908 (3d Cir.1997). Rather, a court must only determine "whether the claimant is entitled to offer evidence to support the claims." Pennsylvania Psychiatric Soc. v. Green Spring Health Servs., Inc., 280 F.3d 278, 283 (3d Cir. 2002) (citing In re Burlington Coat Factory Sec. Litig.,114 F.3d at 1420).

Also, for dismissal motions, the standard of review is to construe pleadings in a light most favorable to the responding party. "We accept all factual allegations in the complaint as true and construe those facts in the light most favorable to the plaintiff. Id. (quoting Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009))." Leisten v. CBS Broadcasting Inc, No. 22-2551, page 4 (3d Cir. October 19, 2023). The District Court and the Court of Appeals did not follow those standards.

A court must adhere to standards of review to correctly apply the law. A rote statement of a standard of review in an opinion does not count. A court cannot give lip service to a standard, but then not apply it when deciding the case.

To make matters worse, the Court of Appeals construed the amended complaint in a light most favorable to the movant, concluding, for example, that the affirmative defense of immunity was raised by inference even though Respondents had not even pleaded, yet. A prosecutor is not entitled to absolute immunity when he "performs the investigative functions normally performed by a detective or police officer." Petitioner asserted that Respondent's after Petitioner right to a fair and speedy trial was already violated, conspired without a warrant to unlawfully seize and extradited petitioner from Virginia a non-surrounding state, which was not approved a function that is investigative in nature, a role for PSP and executive Authority of the State (Governor), not DA Office, when the PSP declined to extradite, all from the fabrication of evidence for a prosecution. Qualified immunity shields public officials "from undue interference with their duties and from potentially disabling threats of liability." Harlow v. Fitzgerald, 457 U.S. 800, 806,

102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). But qualified immunity is unwarranted when a plaintiff can overcome a two-part burden: plaintiff (1) "must ... establish that the defendant violated a constitutional right" and (2) "must then show that the constitutional right was clearly established," such that "it would be clear to a reasonable officer that his conduct was unlawful in the situation." The Respondent's in this case violated some of the most clearly established and important rights, a right to, a fair and speedy-trial and to be free from unreasonable seizure pursuant to legal process. The individual Respondent's (prosecutors) had no immunity. Under McKibben v. Schmotzer, 700 A.2d 484, 489 (1997), these Respondent's do not qualify for "high official" status. High officials are the Mayor, the District Attorney, the Township Supervisor, the Deputy Commissioner, the County Attorney, the City Comptroller, etc. See Kalina v. Fletcher, 522 U.S. ¶ 8, 129-31,418 S.Ct. 502, 139 L.Ed.2d 471 (1997) (prosecutor not entitled to absolute prosecutorial immunity "when she was acting as a complaining witness rather than a lawyer when she executed the certification [of probable cause] `[u]nder penalty of perjury' "); Malley v. Briggs, 475 U.S. 335, 338, 340, 343, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986) (state trooper who submitted criminal complaints and arrest warrants to the state trial judge attempted to assert absolute immunity from plaintiff's civil rights complaint, but the Court held that "the judicial process will on the whole benefit from a rule of qualified rather than absolute immunity" in such a context); Kulwicki v. Dawson, 969 F.2d 1454, 1467-68 (3d Cir.1992) (defendant police officer who allegedly participated in, inter alia,

"initiating the prosecution," is, "as a police officer, . . . only entitled to qualified immunity"); see also Pierson v. Ray, 386 U.S. 547, 555, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967) ("The common law has never granted police officers an absolute and unqualified immunity, and the officers in this case do not claim they are entitled to one.").

As for probable cause, that is and was a disputed fact; it was never conceded by Petitioner, the entire premise of the case is Petitioner experienced these constitutional violations without probable cause or legal justification. See Rodriguez v. United States, 575 U.S. 348 (2015). The arresting officer's grounds for suspicion, "odor of marijuana", after the traffic stop was completed, is inherently incredible and the stuff of folklore, such as the "broken left taillight" motif which has justified thousands of traffic stops. Regarding the K-9 who was allegedly "alerted", the dog took many laps around the car, was never qualified, and the conclusion of "alerted" was never explained in detail. Further, Petitioner stated that one officer went into the car and placed something on a seat. Finally, there was a delay in executing the search warrant, and a several-day delay in filing charges.

On this fact pattern, there is a plausible claim of lack of probable cause and/or planted evidence. Determination of that issue should have gone to the jury. In fact, the District Court listed lack of probable cause as one of the fact issues Petitioner must show the jury; App. A-18, plaintiff must also show that the underlying proceeding terminated in a manner that indicates his or her innocence (quoting Kossler, 564 F.3d at 186). Despite the opportunity to amend, Poteat has

failed to allege this critical element., (46 days after Thompson was decided thus, abrogated the decisions that Judge Leeson relied on). Further, the Court's interpretation of the record ("he appears to concede that the criminal prosecution was begun with probable cause, See App. A-39, which is fatal to a malicious prosecution claim against Lydon") is insufficient to resolve the fact issue; "he appears to concede" is not Petitioner factual or judicial admission. Also one way a "Petitioner can rebut a prima facie finding of probable cause is by showing that the criminal prosecution was induced by fraud, corruption, perjury, fabricated evidence, or other wrongful conduct undertaken in bad faith."

("[T]he presumption of prosecutorial independence does not bar a subsequent § 1983 claim against state or local officials who improperly exerted pressure on the prosecutor, knowingly provided misinformation to him, concealed exculpatory evidence, or otherwise engaged in wrongful or bad faith conduct that was actively instrumental in causing the initiation of legal proceedings.").

The Court of Appeals relied on App. D., the District Court's Opinion Denying in Part and Granting in Part the Motion to Reconsider, which in turn cited Petitioner response to Respondent's dismissal motion. However, the scope of review for the dismissal motion is the complaint, not the argument; a court must look to the pleadings to see if the complaint on its face plausibly states a claim. In fact, under appellate rules, memoranda of law are excluded from the appendix. Accordingly, the District Court was speculating about an issue which was a fact

issue for the jury. It clearly was not Petitioner unequivocal admission that probable cause existed.

Plus, when the Court addressed "he has presented no factual allegations suggesting that the evidence was fabricated", it was focusing on proof, not pleadings, which is the focus of a 12 b 6 motion. The Court's analysis veered out- of-bounds for a dismissal motion. Fed.R.Civ.P. 12(d) states: "If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion."

As for what the pleading actually stated, the complaint sets forth detailed facts as to probable cause and a wrongful search and seizure at paragraphs 19 "Petitioner proceeded to assert his rights by telling Respondent's Lydon, Labour and Goldsmith that there, actions is illegal." and 92 "Respondent's Lydon, Labour, and Goldsmith while acting under color of law of Petitioner and vehicle without probable cause and without a warrant." Petitioner continued to state the claim in plausible, credible detail at paragraphs 93-100 of the complaint with facts that addressed a lack of probable cause. Therefore, probable cause was in fact contested.

Given Fed. R. Civ. P. 8 which only requires "a short and plain statement of the claim", it is clear that Petitioner stated a claim.

"The Third Circuit has consistently held that when an individual has filed a complaint under section 1983 which is dismissal for lack of specificity, he should be

given a reasonable opportunity to cure the defect, if he can, by amendment of the complaint...." Darr v. Wolfe, 767 F.2d 79, 81 (3d Cir. 1985). Although both Hill and Rose already have amended their original complaints once, we do not believe that they are thereby automatically precluded from seeking to amend their complaints a second time in accordance with our analysis here, in light of the liberal amendment policy underlying Fed.R.Civ.P. 15(a) 26) See Frazier v. Southeastern Pennsylvania Transp. Auth., 785 F.2d 65, 70 n. 6 (3d Cir. 1986) (where the plaintiffs had twice amended the complaint on their own initiative, and where district court thereafter directed them to amend complaint once again to allege more facts or face dismissal,,the district court did not err in dismissing a third amended comnlaint)

The court of appeals should have allowed Petitioner to amend his complaint to cure the inartful drafting and inadequate pleading, and should have considered the Petitioner claim for malicious prosecution, fabrication of evidence and abuse of process.

Pennsylvania have long recognized a distinction between the torts of malicious prosecution and abuse of process. An abuse of process generally involves a situation where a party has employed legal process for a purpose not intended by the law. See Mayer v. Walter, 64 Pa. 283 (1870). Accordingly, when process is used to effect an extortionate demand, or to cause the surrender of a legal right, or is used in any other way not so intended by the proper use of that process, a cause of action for abuse of process can be maintained. Moreover, as distinguished from the elements comprising a suit in malicious prosecution, the elements of abuse of

process do not involve an assessment of probable cause nor do they require favorable termination of the litigation in the aggrieved party's favor.

An action for abuse of process arises when legal process, whether civil or criminal, is used against another to accomplish a purpose for which it is not designed.

The elements of this action are defined in the case of Publix Drug Company v. Breyer Ice Cream Company, 347 Pa. 346, 348, 32 A.2d 413, 415 (1943), where the Supreme Court of Pennsylvania held:

The gist of an action for abuse of process is the improper use of process after it has been issued, that is, a perversion of it as contrasted with actions for malicious use of process or malicious prosecution which are concerned with the wrongful initiation of process.

The whole purpose of the action of abuse of process is "to provide a remedy for those cases in which legal procedure has been set in motion in proper form, with probable cause and even with ultimate success, but nevertheless has been perverted to accomplish an ulterior purpose for which it was not designed."

Abuse of process deals with perversion of the legitimate process of the court for an improper purpose. To establish a claim for abuse of process it must be shown that the defendant 1) used a legal process against the plaintiff, 2) primarily to accomplish a purpose for which the process was not designed, and 3) harm has been caused to the plaintiff. Cruz v. Princeton Ins. Co., 925 A.2d 853 (Pa. Super. 2007); Werner v. PlaterZybeck, 799 A.2d 776 (Pa. Super. 2002); Shiner v. Moriarty, 706

A.2d 1228 (Pa. Super. 1998), app den'd, 729 A.2d 1130 (Pa. 1998); Rosen v. American Bank of Rolla, 627 A. 2d 190 (Pa. Super. 1993).

"[A] section 1983 claim for malicious abuse of process lies where `prosecution is initiated legitimately and thereafter is used for a purpose other than that intended by the law It is well-recognized that claims for abuse of process and malicious prosecution can overlap: "if a criminal prosecution `is wrongfully initiated and thereafter perverted, both torts lie.'" In the criminal context, malicious abuse of process is "by definition a denial of procedural due process." see also Heck v. Humphrey, 512 U.S. 477, 486 n.5 (1994) ("The gravamen of [abuse-of-process] is not the wrongfulness of the prosecution, but some extortionate perversion of lawfully initiated process to illegitimate ends."); Hartman, 547 U.S. at 258.

Abuse of process emerged from an observation that sometimes defendants, while acting with lawful authority, were nonetheless inflicting injury on plaintiffs by perverting the use of judicial process. Grainger v. Hill, 132 Eng. Rep. 769, 773 (1838) (Park, J.). Under this tort, defendants were liable for exploiting the legal tools at their disposal for ulterior purposes—for example, to extort property, to vex plaintiffs with harsh treatment, and to remove plaintiffs as obstacles. See, e.g. id. at 221 (Tindal, C.J.), 222 (Park, J.), 223 (Vaughan, J.), 224 (Bosanquet, J.) (plaintiff didn't need to overcome probable cause where defendants used an arrest to pressure plaintiff into giving them property to which they had no right); Smith v. Weeks, 18 N.W. 778, 783-784 (Wis. 1884) (plaintiff wouldn't need to overcome probable cause where defendant, faced with a number of options for a train engineer's arrest, chose

the time most oppressive to the engineer, subjecting him to a night of frigid temperatures and unsanitary conditions in jail); Jackson v. American Tel. & Tel. Co., 51 S.E. 1015, 1016, 1018 (N.C. 1905) (plaintiff didn't need to overcome probable cause where a telephone-company crew chief caused a land-owner's arrest to remove him as an obstacle to setting up telephone poles on the land). Though the forms of abuse varied, the principle was well-settled by 1871 when Congress enacted Section 1983: An abuse-of-process claim did not require plaintiffs to plead and prove the absence of probable cause. Instead, plaintiffs generally had to show oppression ct." Mayer v. Walter, 64 Pa. 283, 285-286 (1870) (differentiating between abuse of process and malicious prosecution and observing that in cases of abuse of process, "it is entirely immaterial whether the proceeding itself was baseless or otherwise. We know that the law is good, but only if a man use it lawfully."); see also Sommer v. Wilt, 4 Serg. & Rawle 19, 23 (Pa. 1818) ("The injury consists in the oppression and the malice.").

An Abuse of Process is defined in 3 Restatement of Torts, § 682, p. 464: "One who uses a legal process, whether criminal or civil, against another to accomplish a purpose for which it is not designed is liable to the other for the pecuniary loss caused thereby.

"Comment: "a. The gravamen of the misconduct for which the liability stated in this Section is imposed is not the wrongful procurement of legal process or the wrongful initiation of criminal or civil proceedings; it is the misuse of process, no matter how properly obtained, for any purpose other than that which it was designed to

accomplish. Therefore, it is immaterial that the process was properly issued, that it was obtained in the course of proceedings which were brought with probable cause and for a proper purpose or even that the proceedings terminated in favor of the person instituting or initiating them. The subsequent misuse of the process, though properly obtained, constitutes the misconduct for which the liability is imposed under the rule stated in this Section."

The Fourth Amendment protects against unreasonable "seizures." It is established that an unreasonable seizure by a state actor in violation of the Fourth Amendment may be pursued in a suit brought under § 1983. See, e.g., Brower v. County of Inyo, 489 U.S. 593, 596, 109 S.Ct. 1378, 1381, 103 L.Ed.2d 628 (1989). Further, since the gist of a claim for malicious prosecution is abuse of the judicial process, a plaintiff pursuing such a claim under § 1983 must show that the seizure resulted from the initiation or pendency of judicial proceedings.

Judicial proceedings may begin in any of a number of ways, e.g., by the filing of an indictment, information, or other formal charge, or by an arraignment or a preliminary hearing. See generally Kirby v. Illinois, 406 U.S. 682, 689-90, 92 S.Ct. 1877, 1882-83, 32 L.Ed.2d 411 (1972)

In Pennsylvania, "in order to sustain a cause of action for malicious prosecution relating to a criminal prosecution, the plaintiff must prove that the defendant: (1) instituted proceedings against the plaintiff, (2) without probable cause, (3) with malice, and (4) that the proceedings were terminated in favor of the plaintiff." Corrigan v. Central Tax Bureau of Pa., 828 A.2d 502, 505

(2003); accord Haefner v. Burkey, 534 Pa. 62, 626 A.2d 519 (1993); Bradley v. General Acc. Ins. Co., 778 A.2d 707 (2001);. Gallucci v. Phillips & Jacobs, Inc., 418 Pa.Super. 306, 614 A.2d 284 (1992); see also Johnson,477 F.3d at 78, 86 (acknowledging plaintiffs state-law claim for malicious prosecution and directing the trial court to vacate its order remanding the claim to state court). The defense of official immunity is not available to a local agency employee when it is "judicially determined that the act of the employee caused the injury and that such act constituted a crime, actual fraud, actual malice or willful misconduct." Id. § 8550; see Kuzel v. Krause, 658 A.2d 856, 859 (1995); see also Vonstein v. Society for the Prevention of Cruelty to Animals, 24 Pa. D. & C.4th 474, 1993 WL 811732 (1993) (rejecting defendants' arguments that they were entitled to official immunity from plaintiff's malicious prosecution claim because "[a]n action for malicious prosecution necessarily involves the element of malice.").

The United States Supreme Court using common law has also held that a malicious prosecution claim requires a showing of (1) the initiation or continuation of a criminal proceeding by the defendant; (2) termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for the criminal proceeding; and (4) actual malice. See, e.g., Albright v. Oliver, 510 U.S. 266, 271 (1994).

The Petitioner in this case has alleged the criminal proceedings and extradition without a warrant were initiated and continued without probable cause and that evidence was fabricated in order to make out a warrant for probable cause.

The United States Supreme Court has also held that a favorable termination of a criminal proceeding is a necessary element of a malicious prosecution claim. See, e.g., Heck v. Humphrey, 512 U.S. 477 (1994). Petitioner has also alleged the criminal proceedings against him terminated in his favor, and thus, he has satisfied the second element of a malicious prosecution claim. Also See Thompson v. Clark, 596 U.S .___ (2022).

Petitioner has also alleged the criminal proceedings and extradition without a warrant were initiated and continued without a probable cause and that evidence was fabricated in order to make out a warrant for probable cause. Therefore, Petitioner has satisfied the third element of a malicious prosecution claim.

Petitioner has also alleged Respondents conspired and acted with actual malice in initiating and continuing the extradition without a warrant when Petitioner clearly established right to a fair speedy trial was already violated and criminal proceedings against him without probable cause and fabricating evidence in order to make out a warrant for probable cause. Therefore, Petitioner has satisfied the fourth element of a malicious prosecution claim.

Throughout this entire ordeal, Petitioner was subjected to numerous violations of his rights. From the initial traffic stop to the search of his vehicle, Petitioner was treated unfairly and without due process. The search warrant was overbroad and lacked specificity, and the extradition proceedings were conducted without a warrant after Petitioner speedy trial rights had already been violated. Petitioner was wrongfully convicted and sentenced to 5-10 years' incarceration, only

to be released after filing a Pro Se State Post Conviction Relief Petition. The events that transpired were a clear violation of Petitioner rights and a miscarriage of justice.

In conclusion, Petitioner has alleged all of the necessary elements of a malicious prosecution claim. Therefore, all claims against Respondent's lies. Count I pled a malicious prosecution claim and all counts thereafter was pled referenced and incorporated, Count I and the facts numbering in paragraphs 1-36.

A court must look to substance when evaluating whether a claim is stated; mere appearances and titles may be insufficient to make that determination. "Therefore, if the Court "can reasonably read [the] pleadings to state a valid claim on which [plaintiff] could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or [plaintiff's] unfamiliarity with pleading requirements." Wilberger v. Ziegler, No. 08-54, 2009 WL 734728, at *3 (W.D. Pa. March 19, 2009) (citing Boag v. MacDougall, 454 U.S. 364 (1982) " Stull v. Leedsworld, C.A. No. 2:17-CV-00378, 6 (W.D. Pa. Jan. 26, 2018). "Moreover, as Higgins filed his complaint pro se, we must liberally construe his pleadings, and we will "apply the applicable law, irrespective of whether a pro se litigant has mentioned it by name." Holley v. Dep't of Veteran Affairs, 165 F.3d 244, 247-48 (3d Cir. 1999)." Higgins v. Beyer, 293 F.3d 683, 688 (3d Cir. 2002).

While Petitioner had no separate count for a 1983 claim based on the Sixth Amendment, the sum total of his allegations support such a claim. Further, given his pro se status, the Court should have liberally construed the amended complaint.

The 1983/speedy justice claim parallels the abuse of process, fabrication of evidence and malicious prosecution claim which was well-pleaded. See McDonough v. Smith, 588 U.S. ___, 2019 "Where an action, brought under §1983, asserted separate claims for "malicious prosecution" and "fabrication of evidence," both based on same allegations (like Petitioner, as discussed above); Coello v. Dileo, 43 F.4th 346 (3rd Cir. 2022) (a Sixth Amendment-related § 1983 claims sound in malicious prosecution). The prosecutors were state actors, the Constitutional right was speedy justice under the Sixth Amendment, and the standard for evaluating liability would be the state tort of malicious prosecution. Further, it had been established as a matter of law and res judicata that the prosecution was unconstitutionally slow.
As for immunity, an exception is allowed for personal involvement of the defendant. "An individual government defendant in a civil rights action must have personal involvement in the alleged wrongdoing; liability cannot be predicated solely on the operation of respondeat superior. Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence." Evancho v. Fisher, 423 F.3d 347, 353 (3d Cir. 2005). Given the fact thatm information about personal involvement is within defendants' control, the motion should have been denied and the case should have gone to the discovery phase.

"Even post- Twombly, it has been noted that a Petitioner is not required to establish the elements of a prima facie case but instead, need only put forth allegations that "raise a reasonable expectation that discovery will reveal evidence of the necessary element." See Graff v. Subbiah Cardiology Associates, Ltd. No. 08-207, 2008 WL 2312671 (W.D.Pa. June 4, 2008) citing Phillips, 515 F.3d at 234. Under the Federal Rules of Civil Procedure, an evidentiary standard is not a proper measure of whether a complaint fails to state a claim. Powell, 189 at 394." Fowler v. UPMC Shadyside, 578 F.3d 203, 213 (3d Cir. 2009).

The Court overlooked the claim against the agency. Even without naming the District Attorney's Office in the amended complaint, it is named implicitly as the Court stated: "...the constitutional claims against the DA defendants in their official capacities are treated as suits against the entity," App. A-15.

On the pleadings, Petitioner has stated a theory that Lehigh County is dilatory. This is and has been a wide and persistent practice that it is a de facto policy. The policy was so severe the DA's Office had to get a special computer for this problem. "

Less than 1 percent of about 13,000 defendants who have gone through the system in the last 10 years fit in that category, according to District Attorney William Platt, who attributes the record to a sophisticated computer system that keeps track of how much time is left on the clock for trial deadlines. ... "We've never," he says, knocking on his desk top in a superstitious gesture, "had a major

case dismissed. I just don't recall any serious crime involving injury to a person or violence being dismissed under Rule 1100 (now Rule 600)."

". Interview, The Morning Call, July 13, 1987. Clearly, if the prosecutor's office was well-managed, the DA would not be knocking on wood; he knew that speedy trial compliance was a problem waiting to happen.

Accordingly, there is an appearance and reality that the DA's office is missing important deadlines and events. This clearly suggest there has been a problem with the agency missing speedy trial deadlines. Given Respondent's significant control of the facts to develop this theory, dismissal should have been denied, and discovery ordered.

The nature of Petitioner claims allege continuous and ongoing acts that were engaged in as a matter of policy and practice by Respondents in violation of federal law thereby establishing a cause of action under the Ex-Parte Young doctrine; and again the Courts below committed legal error in refusing to acknowledge this aspect of Petitioner claims. VOPA , 563 U.S. at 255, 131 S.Ct. 1632;

Also, this Court just granted review of a malicious prosecution claim from the Sixth Circuit Jascha Chiaverini, et al., v. City of Napoleon, Ohio, et al. Summary vacatur and remand are appropriate here, two cases in the last two terms was granted certiorari with summary disposition. See Smith v. Chicago, IL, et al. 21-700 and Al-Maqablh v. Heinz, et al. 20-1399, which might provide shelter to the petitioner as this Court vacated the judgment and remanded in light of Thompson v. Clark, 596 U.S. ___ 2022.

There are various reasons why the Supreme Court may grant a writ which includes (1) when the case has to do with the population as a whole.

In this case, the Writ for Certiorari is not just about the decisions that pertain to this case and the manner in which they were processed by the court in a way that constitutes numerous violations of the due process of law.

Furthermore, the manner in which Respondent's carried out these violations of due process is continuous and systematic - the Pennsylvania Court System and law enforcement Respondent's have been using legal incorrectness hidden under a vast amount of excessive wording and defective reasoning inconsistent with actual written law - knowing that the average citizen is not likely to have the means to withstand and go through with the appeal process.

There is no greater violation that can be complained of on appeal - that an entire State Court system in the United States - the Commonwealth of Pennsylvania Court system - continuously and systematically depriving the citizens of their rights to equal and open access to the courts - by unequally and incorrectly applying written law to cases in a way that disadvantages the average person and makes it so that they are unable to use the legal system effectively.

The matters complained of in this appeal show just how far from the rule of law that the Pennsylvania Court System has diverged from the standard rule of law, making this as straightforward of a certiorari case as possible. The likelihood for success on the merits for the Petitioner is high pertaining to their specific matters and even higher pertaining to their Due Process claims. The substantial

public importance of the citizenry being able to access the Court System without bias or undue complexity is a matter of substantial public importance and there is no reason that the Pennsylvania Court System should be so rigid in the year 2020 when information is more freely available than ever before.

The decisions issued by the lower courts in the instant matter are riddled with errors of law that require the supervisory intervention of this Court.

The Due Process clause provides two types of protection (1) substantive due process (relating to outcomes) and (2) procedural due process (relating to procedure).The substantive component of the clause protects those rights that are "fundamental," rights that are "implicit in the concept of ordered liberty." Palko v. Connecticut, 302 U.S. 319 (1937). Procedural due process is a guarantee of fair procedures whereby the state may not deprive a person of life, liberty or property without providing "appropriate procedural safeguards." Daniels v. Williams, 474 U.S. 327 (1986). The fundamental requirement of [procedural] due process is the opportunity to be heard and provided the proper application of process whereas the substantive requirement of due process refers to the overall substantive outcome of the matter. See: Parratt v. Taylor, 451 U.S. 527 (1981). See also Hill v. Thorne, 635 A. 2d 186 – Pa. (Superior Court 1993) A pro se complaint should not be dismissed simply because it is not artfully drafted... Plaintiff has a constitutional right to be heard in our courts. Article I, § 11 of the Pennsylvania Constitution provides: All courts shall be open; and every man for an injury done him in his lands, goods,

person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

The Fourteenth Amendment is clear; "No State shall... deprive any person of life, liberty, or property, without the due process of law". U.S. Const. Amendment XIV. The fundamental requirement of [procedural] due process is the opportunity to be heard and provided the proper application of process. See: Parratt v. Taylor, 451 U.S. 527 (1981). This fundamental requirement has been infringed upon in the instant matter.Important to note that procedural due process is fundamental and that these rights are "implicit in the concept of ordered liberty." Palko v. Connecticut, 302 U.S. 319 (1937). If basic procedural due process requirements were disregarded, as the lower court appears to suggest should take place in the instant matter, then individuals like Petitioner can have their fundamental due process rights infringed upon without any justification thereby circumventing this fundamental element implicit in the concept of ordered liberty.

"An abuse of discretion exists when the trial court has rendered a judgment that is manifestly unreasonable, arbitrary, or capricious, has failed to apply the law, or was motivated by partiality, prejudice, bias, or ill will." Id. at 1124. Harman ex rel. Harman v. Borah, 562 Pa. 455, 756 A.2d 1116, 1123 (2000). Here, it is clear based on the arbitrary nature of the Court's decision to preclude evidence favoring the Respondent's despite acknowledgement of its existence constitutes a clear abuse of discretion that is manifestly unreasonable considering the facts and circumstances pertaining to the instant matter.

The U.S. District Court for the Eastern District of Pennsylvania as a whole has diverged substantially from the rule of law in a manner that is unacceptable and so it is respectfully requested that this Honorable Court GRANT this Petition for Writ of Certiorari to remedy these injustices.

CONCLUSION

This Court should Grant Certiorari

Respectfully Submitted

Date: 2-2-24