No. 23-6694 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL T. BRAXTON

Petitioner,

v.

WARDEN OF ANDERSON
COUNTY DETENTION CENTER

Respondent.

On Petition for Writ of Certiorari from the **UNITED STATES COURT OF APPEALS in the FOURTH CIRCUIT.**

PETITION FOR WRIT OF CERTIORARI

MICHAEL T. BRAXTON
4546 BROAD RIVER RD
COLUMBIA, SC 29210

QUESTIONS PRESENTED FOR REVIEW

1. Did the State of South Carolina deny the Petitioner a Substantial Constitutional right to a "Constitutionally Adequate" **[PROBABLE CAUSE]** determination ?

2. Does **REPETITIVE** "State Court Abuse" make the Exceptions under the **Younger Abstention doctrine** applicable to the Petitioner ?

3. Is the Petitioner positioned under a **"State Corrective Process"** that's Inapplicable to him ?

4. Was the Petitioner's Due Process **MOOTED Before** and **After** a trial being conducted in the absence of a "Constitutionally Adequate" **[PROBABLE CAUSE]** determination.

5. Did the State Court's of South Carolina lack jurisdiction over Subject Matter of the petition, due to the violation of the **MANDATORY** Statutory requisite time period **AFTER** the **[PROBABLE CAUSE]** determination.

6. Is the State of South Carolina violating the Petitioner's Civil Rights by detaining him in violation of the Laws and Treaties of the United States. **(2253) (c)(2)**

LIST OF PARTIES

[X] **ALL** parties in the caption of this case on cover page.

[ ] ALL parties do not appear in the caption of this case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

RELATED CASES

MICHAEL T. BRAXTON v. BOYD et al., C/A 8:18 -cv-00959-HMH, U.S. DISTRICT COURT OF SOUTH CAROLINA, Dismissed **(MAY 7, 2018)**

MICHAEL T. BRAXTON v. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, SOUTH CAROLINA COURT OF APPEALS, Case No. 2017-001964, Affirmed IN PART and Reversed IN PART, **(JULY 1,2020)**

MICHAEL T. BRAXTON v. WARDEN OF KERSHAW CORRECTIONAL INSTITUTION, U.S. DISTRICT COURT OF SOUTH CAROLINA, C/A 8:20-3168-HMH-JDA, Dismissed **(FEBRUARY 11, 2021)**

MICHAEL T. BRAXTON v. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, Supreme Court of South Carolina, Case No. 2021-001432 Dismissed on **(FEBRUARY 3, 2022)**

MICHAEL T. BRAXTON v. WARDEN OF KERSHAW CORRECTIONAL INSTITUTION, UNITED STATES COURT OF APPEALS for the FOURTH

RELATED CASES CONT.

CIRCUIT, No.21-6264, Dismissed **(October 21,2021)**; Rehearing Denied **(January 19,2022)**

MICHAEL T. BRAXTON v. JOETTE D. SCARBOROUGH,et al., U.S. DISTRICT COURT OF SOUTH CAROLINA, **C/A 8:22-cv-0116-HMH**; Dismissed **(May 17, 2022).**

MICHAEL T. BRAXTON v. JOETTE D. SCARBOROUGH,et al., UNITED STATES COURT OF APPEALS for the FOURTH CIRCUIT, **No. 22-6638**, Dismissed **(February 22,2023),** Rehearing Denied **(July 20, 2023)**

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(APPENDIX-B)

Michael T, Braxton v. Warden of Anderson County Detention Center, U.S District Court of South Carolina, Anderson/Greenwood division, **Case No. 8:22-02806-HMH-JDA,** REPORT and RECOMMENDATION of U.S. Magistrate Judge Jacquelyn D. Austin, before Senior U.S. District Judge Henry M. Herlong Jr., decided **October 13, 2022.**

(APPENDIX-C)

Michael T. Braxton v. Warden of Anderson County Detention Center, United States Court of Appeals for the Fourth Circuit; No. **22-7232**, Rehearing en banc denied on **December 1, 2023.**

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Michael T. Braxton v. Joette D. Scarborough,et al; U.S. District Court of South Carolina, Anderson/Greenwood division, **Case No. 8:22-cv-01106-HMH**, **REPORT** and **RECOMMENDATION** of U.S. Magistrate Judge Jacquelyn D. Austin, decided Before U.S.District Judge Henry M. Herlong Jr. on **May 17, 2022.**

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Michael T. Braxton v. Joette D. Scarborough,et al; United States Court of Appeals for the Fourth Circuit, **No 22-6638**, Rehearing en banc decided on **July 20,2023.**

(APPENDIX-G)

Michael T. Braxton v. Warden of Kershaw Correctional Institution., United States Court of Appeals for the Fourth Circuit, **No. 21-6264**, Before Senior Circuit Judge TRAXLER, and Circuit Judge(s) QUATTLEBAUM,RUSHING, decided **October 21,2021**.

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Michael T. Braxton v. Warden of Kershaw Correctional Institution., U.S. District Court of South Carolina, Anderson/Greenwood division, **Case No. 8:20-cv-03168-HMH**, REPORT and RECOMMENDATION of U.S. Magistrate Judge Jacquelyn D. Austin, decided Before Judge Henry M. Herlong Jr. on **February 11,2021**

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Michael T. Braxton v. Boyd ,et al; U.S. District Court of South Carolina, Anderson/Greenwood division, **Case No. 8:18-cv-00959-HMH-JDA**, REPORT and RECOMMEDATION of Magistrate Judge Jacquelyn D. Austin, decided before Henry M. Herlong Jr. on **May 7, 2018.**

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Supreme Court of Tennessee, Board of Professional Responsibility Order and Explanation for the Suspension of the Petitioner's Tennessee trial counsel William C. Roberts Jr., dated **May 28,2023.**

(APPENDIX-P)

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Michael T. Braxton v. South Carolina Department of Corrections, South Carolina Administrative Law Court Order on Remand, Docket No. 20-ALJ-04-0305-A-AP,dated August 26, 2020.

(APPENDIX-U)

South Carolina Department of Corrections Administrative Grievance KRCI-1010-17,Final Orders from the Anderson County Court of Common Pleas, dated November 23, 2021 and the Supreme Court of South Carolina, dated February 3,2022.

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Correspondence to Petitioner from the South Carolina Department of Corrections, in response to S.C. Administrative Law Court Order, dated September 28, 2020.

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South Carolina Department of Corrections, OFFENDER MANAGEMENT SYSTEM, Mental Assessment of the Petitioner, dated May 26,2020.

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South Carolina Department of Corrections, MENTAL HEALTH HISTORY REPORT of Petitioner Michael Braxton, and relevant evaluation observation.

(APPENDIX-Y)

South Carolina Department of Corrections **FABRCATED** Offense History of the Petitioner Michael Braxton.

(APPENDIX-Z)

South Carolina Department of Corrections "Referral Data" asserting **"NEWS ARTICLES"** as its confirmation source to establish **[PROBABLE CAUSE].**

(APPENDIX-AA)

The (1st) **FIRST** Continuance **FILED** and **GRANTED** in the Petitioner's cause; this request was submitted by the South Carolina Department of Mental Health Services on **January 14, 2020.**

(APPENDIX-BB)

Relevant Insert from Petitioner's Evaluation Report located on **page # 26 and 6.**

(APPENDIX-CC)

Relevant portion of **In re Chapman, page # 5 and 6.**

(APPENDIX-DD)

Correspondence from the Petitioner's Pre-trial Counsel Don A. Thompson, dated **March 24, 2022**;Affidavit submitted by the Petitioner to the Anderson County Court of Common Pleas, and the Independent Evaluation conducted on the Petitioner by Dr. David R. Price, dated **January 24, 2022**.

(APPENDIX-EE)

The Unregarded Pre and Post trial motions and response Orders, **ALL** submitted by the Petitioner Michael Braxton.

(APPENDIX-FF)

The Petitioner's Unregarded **SUMMARY JUDGEMENT MOTION** and **(4) FOUR SUCCESSIVE MOTIONS TO DISMISS; RULE 41(b) S.C.R.C.P.**

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(2nd) **SECOND** Continuance, FILED by the Petitioner's Initial Court-appointed counsel Don A. Thompson, then **GRANTED** by the Anderson County Court of Common Pleas, dated **October 8, 2021.**

(APPENDIX-II)

Correspondence to Petitioner from Attorney Don A. Thompson verifying his knowledge of **MANDATORY** Statute.

(APPENDIX-JJ)

(3rd) **THIRD** Continuance **FILED** and **GRANTED** in the Petitioner's cause, request submitted by the State of South Carolina.

(APPENDIX-KK)

Order **RELIEVING** Attorney Don A. Thompson as Petitioner's counsel, and appointing Attorney Michael S. Gambrell as "SUBSTITUTE" counsel; (4th) **FOURTH** Continuance Filed by Attorney Michael S. Gambrell, dated **August 29, 2022.** Relevant correspondence also included.

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United States Court of Appeals Order, dated **July 24, 2023.**

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Formal Complaints, Responses and Correspondence lodged by Petitioner against Don A. Thompson and Michael S. Gambrell.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[XX] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[XX] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[XX] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix S to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[XX] is unpublished.

The opinion of the Supreme Court of South Carolina court appears at Appendix S to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[XX] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was July 24, 2023.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: December 1, 2023, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was July 1, 2020. A copy of that decision appears at Appendix S.

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

IV FOURTH AMENDMENT OF THE UNITED STATES

Prohibits unreasonable search and seizure and requires a showing of **[PROBABLE CAUSE]** for the issuance of ANY search warrant or arrest warrant.

V FIFTH AMENDMENT OF THE UNITED STATES

Requires indictment by a Grand Jury **BEFORE ANY** person can be put on trial for a serious Federal crime; bans **DOUBLE JEOPARDY** and Compulsory self-incrimination; prohibits the Federal government from depriving any person **Life, Liberty, or Property without Due Process of Law.**

VI SIXTH AMENDMENT OF THE UNITED STATES

Guarantees criminal defendants the right to a speedy and public trial by jury; also guarantees them the right to be informed of charges, and the right of confrontation of adverse witnesses.

VIII EIGHTH AMENDMENT OF THE UNITED STATES

Prohibits criminal courts from imposing **CRUEL** and **INHUMANE** Punishment.

XIV FOURTHTEENTH AMENDMENT OF THE UNITED STATES

Prohibits the states from depriving ANY person of **Life, Liberty, or Property without Due Process of Law**; and guarantees ALL persons **EQUAL PROTECTION OF THE LAWS.**

STATEMENT OF THE CASE

On **April 6, 1983** the Petitioner Michael T. Braxton and (2) Two co- defendants were accused of sexually assaulting a woman at a Days Inn hotel in Anderson, South Carolina.

On **June 1, 1983** the Petitioner was indicted by the Grand Jury of Anderson County under an **ILLEGALLY** obtained **TRUE-BILLED** indictment, since it was obtained "**OUTSIDE**" the **MANDATORY** Statutory term of court.(Appendix- L)

On **October 24, 1983** the Petitioner pled guilty to Criminal Sexual Conduct in the 1st degree, which was well before he could be informed of the subsequent **[COLLATERAL CONSEQUENCE]** of a potential **LIFETIME** of Civil Commitment, enacted under the **Sexually Violent Predator Act, Act No. 321 7, June 5, 1998.**

Only the **"DIRECT CONSEQUNCE"** was applicable at the time of the Petitioner's plea. **In Ginbra**, the Supreme Court defined **" DIRECT CONSEQUENCES"** to include "ONLY" those consequences of the sentence which the court can impose. **Id at 961.**

The risk of Commitment under the act affects procedures provided by the act to evaluate then bring to trial a person alleged to be a (SVP), are **"DIRECT CONSEQUENCES"** to a plea to a **"QUALIFYING OFFENSE"**, of which a person pleading to such offense **[MUST]** be informed!

On **November 17, 1983** the Petitioner was sentenced to (30) THIRTY YEARS in Prison, or upon the **SURGICAL** completion of **CASTRATION** (5) FIVE YEARS probation.

The condition of **CASTRATION** was also **UNBEKNOWN** to the Petitioner until **AFTER** the plea was rendered.

The **SUPREME COURT** of South Carolina stuck down the Castration portion of the sentence deeming it **UNCONSTITUTIONAL**, however the court **REFUSED** to allow the Petitioner to Withdraw his guilty plea! **(see Brown, Braxton and Vaughn (1985))**

After serving (10) TEN YEARS and (4) FOUR Months within the South Carolina Department of Corrections, on **March 31,1994** the Petitioner was Paroled via Interstate Corrections Compact to the state of Tennessee.

The Petitioner remained on successful Parole supervision from **March 31, 1994** through **April 16, 1996,** at which time he was detained for an Unrelated offense at the Davidson County Detention Center in Nashville Tennessee. A Parole Violation Warrant was served against the Petitioner on **May 29, 1996. (Appendix-** M **)**

The Petitioner was accused in Tennessee of sexually assaulting a woman at a Nashville hotel that stated **UNDER OATH** that she "**REMOVED HER OWN CLOTHES", "COULD HAVE LEFT ANYTIME SHE GOT READY"**, or the Petitioner would have taken her **ANYWHERE** she wanted to go; additionally she stated that the Petitioner **PENETRATED** her with his Penis, then she **RECANTED** at trial that she **PREVENTED** the Penile Penetration, however the Petitioner Somehow **forcibly performed ORAL sex** on her. Her testimony was the **ONLY** confirmation of **ANY** sex occurring. Case No. 97-B-1350 (Appendix- N)

Thereafter, while the Petitioner was detained Pre-trial for **(2) TWO YEARS**, the State of Tennessee successfully suppressed the Petitioner's entire defense of **CONSENT**, with the aid of **INEPT, INEFFECTIVE** and subsequently **DISBARRED** counsel. **(Appendix-** O **)**

The Petitioner was confined in Nashville Tennessee under a Parole Violation Warrant from **May 29, 1996** through **June 1, 1998**, **WITHOUT** receiving a **PROBABLE CAUSE** or **REVOCATION** hearing.

On **June 1,1998** the Petitioner was transferred to the Tennessee Department of Corrections, after being Ordered on **May 1,1998** to serve a **(23) TWENTY-THREE YEAR** Sentence, with **NO** Parole eligibility.

On **June 8, 1998** a **2nd (SECOND)** Parole violation warrant was served against the Petitioner. **(Appendix-** P **)**

While incarcerated within the Tennessee Department of Corrections, the Petitioner's **"COLORABLE CLAIM'S"** were initially recognized by the **U.S. District Court of Middle Tennessee**; they were then ultimately **DISMISSED** on **March 11,2009**, due to a **"Procedural Default"** committed by the Prose Petitioner. **(see Michael T. Braxton v. James Fortner, WARDEN, Case No. 3:08-0497) (Appendix-** Q **)**

On **November 2,2015** the Petitioner **EXPIRED** his Tennessee sentence **WITHOUT** receiving a **PROBABLE CAUSE** or **REVOCATION** hearing.

On **November 8,2015** the Petitioner was **ILLEGALLY** extradited back to the State of South Carolina, and confined at the Anderson County Detention Center in Anderson South Carolina.

On **November 18,2015 (20) TWENTY YEARS LATER**, an Administrative hearing was conducted to address the Parole Violation warrant.

On **January 20,2016** the Petitioner appeared before the Full Parole board of the South Carolina Probation, Parole and Pardon services, thereafter, he was remanded back into the custody of the South Carolina Department of Corrections, under a NEW sentence employed **WITHOUT** Due Process.

The **ILLEGAL TOLLING** mechanism incorporated by the State of South Carolina was in stanch disregard of the **Title 18 [FUGITIVE TOLLING ACT] 3583 (i),** as well as the holding provided by **U.S. v. Thompson, U.S.C.A.4th Cir 924 F. 3d 122 (May 10, 2019)** as it stated: Defendant was no longer a Fugitive, and Tolling no longer applied as of the date he was located and arrested.

The material **FACT(s)** within the record are **UNEQUIVOCALLY** Clear on the issue of the Petitioner **NEVER** absconding from custody from **April 16,1996** to date.

The State of South Carolina implemented an **UNLAWFUL** Tolling mechanism in violation of its **OWN MANDATED** Statutory provisions enacted under **S.C. Code Ann. 17-11-10 [INTERSTATE AGREEMENT ON DETAINERS]** and **S.C. Code Ann. 24-13-210 (e) [CREDITS GIVEN TO CONVICTS FOR GOOD BEHAVIOR].**

S.C. Code Ann. 17-11-10 [INTERSTATE AGREEMENT ON DETAINERS] provides: "During continuance of temporary or while prisoner is otherwise being made available for trial as requested by this agreement, time being served on the sentence **[SHALL CONTINUE TO RUN]** but GOODTIME SHALL be Earned by the Prisoner only if and to the extent, the law and the practice of the jurisdiction which imposed the sentence may allow".

In conjunction with the **[I.A.D.] (INTERSTATE AGREEMENT ON DETAINERS** ACT) jurisdictions,proceedings,persons,involved Parole and Probation, **C.J.S. EXTRADITION and DETAINERS 101** provides: **"[I.A.D.]** act generally does **NOT** apply to persons who have been placed on Parole in the **SENDING** state, however, it **DOES** apply to a prisoner who is Paroled from the **SENDING** state, while awaiting trial in the **RECEIVING** state".

S.C. Code Ann. 24-13-210 (e) [CREDIT GIVEN TO CONVICTS FOR GOOD BEHAVIOR] provides: " Any person who has served the term of imprisonment for which he has been sentenced less deductions allowed therefrom for good conduct is considered upon release to have served the entire term for which he was sentenced unless the person is required to complete a community supervision program. **Section 24-13-210, South Carolina Code of Laws (1976)** requires that Good conduct computations be made on an Ongoing **MONTH** to **MONTH** basis.

The State of South Carolina applied an **UNLAWFUL TOLLING** mechanism in contrast to its **OWN SUPREME COURT'S** Precedent rendered under **State v. Ellis, Crooks v. Sanders and Sanders v. McDougal.**

State v. Ellis, 397 S.C. 576 No. 27127 Provides: Term **"PAROLE"** means conditional release from imprisonment and does **NOT** suspend the running of a prisoner's sentence.

In **Sanders v. McDougal, (S.C. 1964) 299 S.C. 160,134 S.E. 2d 836; the Supreme Court** Provides: " A Prisoner upon release on **PAROLE** continues to serve his sentence **OUTSIDE** prison walls".

The Honorable court goes on to provide in **Crooks v. Sanders, 123 S.C. 28,115 S.E. 760 28 ALR 940**, " Convict released from the bounds of prison on **PAROLE**, which did **NOT** suspend the running of his sentence, is entitled to credit on account of good behavior".

The State of South Carolina has also discarded its **OWN** agency's policies aligned with its **OWN** Statutory provisions and precedent.

The South Carolina Department of Corrections policies **O.P.-21.09 (INMATE RECORDS PLAN) [TOLLING OF A PRISONER'S EWC/ EEC'S] 13.4.3 and 13.4.5**, along with **O.P.-21.11 (LOSS OF STATUTORY GOOD TIME) Section 2.2** are transparent and concise on this issue.

South Carolina Department of Corrections agency policy **O.P.-21.09 (INMATE RECORDS PLAN) [TOLLLING OF A PRISONER'S EWC/EEC'S] 13.4.3** provides: " At the earliest possible time after trial and sentencing are completed in the **RECEVING** state, the inmate **MUST** be returned to custody of officials in the **SENDING** state and notified of disposition of the charges.

South Carolina Department of Corrections agency policy **O.P.-21.09 (INMATE RECORDS PLAN) [TOLLING OF A PRISONER'S EWC/EEC'S] 13.4.5** requires the following since the Petitioner was sentenced **PRIOR** to **January 1, 1996**.

" An Inmate time of imprisonment **WILL** continue to run while inmate is subject to the temporary custody of the **RECEIVING** state". The Inmate **WILL** continue to earn GOOD TIME, but not earned educational credits or work credits."

The South Carolina Department of Corrections policy **O.P.-21.11 (LOSS OF SATUTORY GOOD TIME), Section 2.2** provides: " An Inmate whose crime occurred **PRIOR** to **January 1,1996**, who is eligible to earn good time who does not fall in the categories listed below in **section 2.3** and the crime is a Parolable Offense, **WILL RECEIVE (20) DAYS GOOD TIME** credit for each month served UNLESS:

SERVING A LIFE SENTENCE

ON DEATH ROW

SENTENCED UNDER YOA

HABITUAL OFFENDERS
SENTENCED UNDER FAMILY COURT CONTEMT

THOSE SENTENCED UNDER ARMED ENFORCEMENT ACT

The Petitioner does NOT fall under ANY of the Fore mentioned categories.

At the Kirkland Reception and Evaluation Center in Columbia South Carolina, the Petitioner obtained the projected date upon which the State of South Carolina deemed that his obligation to his 1983 conviction would be complete. **June 22, 2022** was the date listed.

Knowing this "Projected" date was **erroneous**, immediately upon his arrival at his "Permanent Institution" the Petitioner diligently pursued ALL avenues of the Institutional Grievance procedure, as well as the Administrative, State and Federal Appellate process; in order to rectify the discrepancy of his Incorrect sentence calculation.**[RECORD] Emergency 2241 Application, Report and Recommendation of U.S. District Court of South Carolina, Case No. 8:22-cv-02806-HMH, pg's 5-8 (Appendix- B) also see Michael T. Braxton v. Boyd, et al; United Sates District Court of South Carolina, Case No. 00959-HMH-JDA (Appendix- J), Michael T. Braxton v. Warden of Kershaw Correctional Institution, U.S. Court of Appeals 4th Circuit Case No. 21-6264 (Appendix- G), and Michael T. Braxton v. Joette D. Scarborough,et al; U.S. Court of Appeals 4th Circuit, Case No. 22-6638 (Appendix-D)**

On July 1, 2020 the South Carolina Court of Appeals **REVERSED IN PART** and **AFFIRMED IN PART** the decision of the **South Carolina Administrative Law Court** rendered on August 24, 2017. The court **AFFIRMED** the decision of the South Carolina Department of Corrections, concluding that the Petitioner sentence was calculated correctly. **(Appendix- R)**

The South Carolina Court of Appeals stated in its Order that the Petitioner "**SHALL be credited with his time on Parole**", however the court declined to credit the Petitioner with the time he was detained in Tennessee **AFTER** the Parole violation warrant was issued. This determination is in **CONTRAST** to **MANDATORY** Congressionally Sanctioned Statute, South Carolina Statutory Provisions, South Carolina Supreme Court Precedent and South Carolina Department of Corrections Policies. **(Appendix- S)**

The Petitioner's **WRIT OF CERTIORARI** to the **Supreme Court of South Carolina** was **FORCLOSED** due to his access to the Kershaw Institutional Law Library being impeded upon **(Appendix-** S **)**, and the South Carolina Department of Corrections **REFUSED** to comply with the ORDER'(s) of the **South Carolina Court of Appeals and the Administrative Law Court of South Carolina**; the Administrative Law court's **FINAL** Order specifically stated the Petitioner **" SHALL BE CREDITED WITH (2) TWO YEARS and (16) SIXTEEN DAYS of delinquent time, to be applied to his South Carolina sentence. (Appendix-** T **)**

Prior to the Order from the South Carolina Court of Appeals being pronounced, the Petitioner's obligation to his one and **ONLY** South Carolina sentence **EXPIRED** on **(2) TWO PRIOR** occasions; due to the MISAPPLICATION of his Earned Good time and Work Credits.

His subsequent complaint concerning this matter was **NEVER** appropriately addressed, due to it being IMPROPERLY considered a **DUPLICATE** complaint to the one which sought the restoration of his delinquent Parole time. **[RECORD] (Appendix-** U **)**

The Petitioner's efforts to rectify this occurrence is well documented, and the South Carolina Department of Corrections **INDIFFERANCE** in this matter is WELL DOCUMENTED as well. **[RECORD] Emergency 2241 Application, Report & Recommendation of U.S. District Court of South Carolina, pg's 5-8.**

The letter forwarded to the Petitioner from the South Carolina Department of Corrections echoes the sentiments of this **ARROGENT** agency, as it informs the Petitioner **DIRECTLY** that it has **NO regard for ANY directive set by the court(s), and it "considers the matter CLOSED" ! (Appendix-** V **)**

To date the South Carolina Department of Corrections remains in **CONTEMPT** of these **TWO** LAWFUL State Court Order(s).

The (SVP) Process was initiated against the Petitioner by the South Carolina Multi-disciplinary team on **May 21, 2020.** The Preliminary **[PROBABLE CAUSE]** determination was forwarded to the Prosecutor's Review Committee on **May 26,2020,** and they submitted their determination on **June 22, 2020**.

The Petitioner has proffered **INDISPUTABLE** evidence to corroborate his claim that NETHIER of these regulatory bodies bothered to investigate the distinct possibility of the Petitioner being **[OUTSIDE]** the scope of the (SVP) act.

The **[COLLATERAL CONSEQUENCE]** of a possible **LIFETIME** of Civil Commitment **NOT** being present at the time of the plea, nor at the EXPIRATION of

the Petitioner's sentence, which was **PRIOR** to the inception of the act, has **NEVER** been considered.

Exposure to screening under the act and the accompanying infringement of Liberty, is itself sufficiently automatic and **PUNITIVE** to constitute a **DIRECT** consequence of a plea which a defendant should be informed.

ANY defendant who plead to a **[" QUALIFYING OFFENSE"] WITHOUT** being told or having foreseen that the plea could possibly subject him to a LIFETIME of Civil Commitment, would consider the plea **INVOLUNTARY**; and the plea couldn't possibly be considered **KNOWING** and **INTELLIGENT. State v. Brewer, 767 So. 2nd 1249 (Fla 5th DCA 2000)**

Our **[SUPREME COURT]** has held that in order for a plea to be **KNOWING** and **INTELLIGENT** the defendant **[MUST]** understand the reasonable consequences of the plea, including the penalty imposed. **Ashley, 614 So. 2d at 488.**

The (SVP) act is a **["COLLATERAL CONSEQUENCE"]** of a plea. **Pearman v. State, 764 So. 2d 739 (Fla 4th DCA 2000).**

Plea **REVERSED** and **REMANDED** due to trial court and counsel's FAILURE to advise individual of possibility of Civil Commitment upon plea constituted **INEFFECTIVE** assistance of counsel and rendered the plea **INVOLUNTARY ! Waltrous v. State, 793 So. 2d 6 (Fla App. 2 Dist. 2001)**

The loss of freedom is sufficiently PUNITIVE in nature that a defendant **MUST** be **WARNED** of it **PRIOR** TO entering a plea!

The South Carolina Department of Corrections and the State's preliminary **[PROBABLE CAUSE]** determination also cast aside its **OWN** agency's MENTAL Assessment of the Petitioner.

The South Carolina Department of Corrections **[OFFENDER MANAGEMENT SYSTEM], Disciplinary System, (DISPLAY INMATE HISTORY) clearly states: " SERIOUS MENTAL ILLNESS: N". Dated May 26, 2020. (Appendix- W)**

Additionally, these entities declined to recognize the opinions of its **OWN** Mental Health Professionals within their **"Mental Health History Report"** of the Petitioner during his periodic treatment by these professionals from 2017 – 2020. (Appendix- X)

The Petitioner' treatment was prompted by him suffering from anxiety and depression from being confined to an EXPIRED sentence, while having to endure dire family issues.

The South Carolina Department of Corrections and the State of South Carolina then incorporated a **FABRICATED** Offense History for the Petitioner within its **["REFERRAL DATA"]** listed under **"CONVICTION HISTORY"** which states **Current Conviction(s)** as: **CRIMINAL SEXUAL CONDUCT WITH A MINOR 1st DEGREE. (Appendix- Y) NOWHERE** within the valid conviction history of the Petitioner was a **MINOR** present, other than **HIMSELF** in **1983.**

The South Carolina Department of Corrections and the State of South Carolina rested their preliminary finding of **[PROBABLE CAUSE]** on **PROPAGANDA** Sensationalized within **"NEWS ARTICLES"**, to establish the probability of the occurrence of the offense. **(Appendix- Z)**

NO accuser statements or testimony was presented in support of the accusations alleged, even though the accuser was **NEVER** unconscious; and **NO** Medical confirmation was submitted to establish cause.

On **August 24,2020** the Petitioner was served with the Petition pursuant to the (SVP) act.

In **October of 2020** the Petitioner was contacted by his initial Court appointed counsel Don A. Thompson of Greenville/Simpsonville South Carolina. This Counsel was INEFFECTIVE from the outset, as he erroneously convinced the Petitioner to waive his Right to a **[PROBABLE CAUSE]** hearing in the interest of expediency, while leaving **UNCHALLANGED** the **NUMEROUS** defense(s) available in **CONTEST** of **[PROBABLE CAUSE].**

On **November 4, 2020** a **[PROBABLE CAUSE]** hearing was conducted in the absence of the Petitioner; thereafter, the court ordered that a Mental Evaluation be conducted on the Petitioner.

The provision under **MANDATORY** Statute states that this "Evaluation" should have been conducted **(60) SIXTY DAYS** subsequent to the **[PROBABLE CAUSE]** hearing; however **(71) SEVENTY-ONE DAYS LATER** the **1st (FIRST) CONTINUANCE** was **FILED** and **GRANTED** in this matter. **S.C.Code Ann. 44-48-80 (Appendix- AA)**

On **February 26, 2021** the Petitioner was transferred from the South Carolina Department of Corrections to the Anderson County Detention Center, and on **March 1, 2021** his obligation under his **NEW** South Carolina sentence was fulfilled.

On **March 16,2021** a Mental evaluation was performed on the Petitioner by Dr. Marie E. Gehle of the South Carolina Department of Mental Health Services.

This doctor rendered a diagnosis of **[PARAPHILIA NOS NONCONSENT]** and **[ANTISOCIAL PERSONALITY DISORDER]** based **SOLELY** on Offense(s)

Which allegedly occurred **(40) FORTY YEARS** and **(27) TWENTY-SEVEN YEARS PRIOR** to her examination of the Petitioner; with **NO CURRENT or RE-CURRENT** qualifications.

Dr. Gehle's diagnosis was relied upon even though she stated on **pg. # 26** of her report in relevant portion: "the victim's account in the provided records were **NOT** specifically detailed making it difficult to determine if he was specifically aroused by their distress, injuries, pain or humiliation". **(Appendix-** BB **)**

The doctor was able to provide a **SPECIFIC** diagnosis based on **NON-SPECIFIC** data, this data had an origin dated as far back as **"KINDERGARDEN"**, at which time **"it was noted that the Petitioner associated with the wrong group"??** (Appendix - BB)

The diagnosis itself was ushered in on a foundation of **(PSEUDOSCIENCE)**, as it was defined to be **["INCOMPETENT" and "PSYCHIATRICALLY UNJUSTIFIED"]** by the Psychiatric community; which cast doubt, then ultimately **REJECTED** proposals to include it in the **American Psychiatric Association's Diagnostic, a statistical Manual of Mental Disorders. 5th Edition, or DSM-V. See Page v. King, 932 F. 3d 898* (2019)**

Even the **Static-99R** test Dr. Gehle performed on the Petitioner has been **DISCREDITED** in Professional Circles. See **In re Chapman, 419 S.C. 112*, 796 S.E. 2d 843**; (2017) Supreme Court of South Carolina.**

An Independent evaluation was conducted on the Petitioner by the court qualified expert **Dr. David R. Price, on January 12,2022.** This **SAME** expert **REFUTED** Dr. Gehle's Static- 99R test results derived from her examination of **(Mr. Chapman)**, who ironically had almost the

SAME diagnosis as the Petitioner, under **MUCH MORE** intense circumstances. **(Appendix -** CC **)**

The Petitioner's initial appointed counsel Don A. Thompson **REFUSED** to submit the Independent Evaluation results to the court.

The Petitioner was adamant that the Independent Evaluation results be admitted, so he drafted an **Affidavit** and **Motion** seeking its admission Pre-trial to the trial court.

This submission was **NEVER** recognized by the court!! **(Appendix-** DD **)**

ERRONEOUS, OUTDATED, FABRICATED "**Referral Data**" and a **PSEUDOSCIENTIFICALLY** supported diagnosis had the Petitioner **ILLEGALLY** confined **(678) SIX HINDRED SEVENTY EIGHT DAYS** Pre-trial, and has had him confined to **UNSPECIFIED** Civil Commitment 387 DAYS Post-trial on a Constitutionally Inadequate **[PROBABLE CAUSE]** determination, which states under South Carolina Statute **" Probable Cause to believe someone to be an (SVP) does NOT demand a showing that such a belief be correct or more likely true than false."?** **S.C. Code Ann: 44-48-10 - 44-48-170 (Supp 2006)**

The Petitioner asserts that he was placed under a **ROUGE** "State Corrective Process", detained pre-trial, then **UNLAWFULLY** Civilly Committed **WITHOUT** EVER receiving a Constitutionally Adequate **[PROBABLE CAUSE]** determination.

The Constitutional requirement of a **LAWFUL " State Corrective Process"** was supplanted with a **BAD-FAITH** agenda that denied the Petitioner of **ANY** possibility of Due process or Remedy at Law.

The record in this matter resonates the **INACTION** of the **Trial Court, The South Carolina Court of Appeals and the Supreme Court of South Carolina** from **June 1, 2021** to date, by the Direct "INDIFFERANCE" they have shown to the **(9) NINE Pre-trial motions, (1) Trial motion and (12) TWELVE Post-trial motions** properly filed by the Petitioner.

ALL of these motions seek redress from the **NUMEROUS** violations of **MANDATORY State** and **Federal** Statutory provisions by the State of South Carolina. **(RECORD) EMERGENCY 2241 Application, (Appendix-** EE **)**

The Petitioner's **SUMMARY JUDGEMENT Motion and (4) FOUR SUCCESSIVE MOTIONS TO DISMISS** submitted to the trial court Pre-trial, were filed in compliance with the **South Carolina Rules of Civil Procedure. (S.C.R.C.P.)** Rule 41(b) **(Appendix-** FF **)**

The record also reflects that this Stagnation of the Petitioner's Due Process extends to the State of South Carolina's **HIGHEST** Court, and to date, his **WRIT OF HABEAS CORPUS FOR IMMEDIATE RELEASE**, filed on **May 12, 2022** has yet to be heard. **Michael Braxton v. State of South Carolina, Case No. 2022-000-651**

The lack of recognition of the Petitioner's **NUMEROUS** Pre-trial Motions that presented **OTHER EXTRAORDINARY** circumstances that exist, present **NOT** a **THREAT**, but a **MANIFESTATION** of **IMMEDIATE** and **IRREPARABLE INJURY!! Kugler v. Helfant,421 U.S. 117,124,95 S.Ct 1524 44 L.Ed 2d,15 (1975)**

In addition to the Petitioner's **REPRESSED** properly submitted Pre-trial and Post-trial motions, **(4) FOUR UNLAWFUL Continuance(s) were FILED and GRANTED OUTSIDE of the MANDATED Statutory time period.**

At the **[PROBABLE CAUSE]** hearing on **November 4,2020** the court ORDERED that an evaluation be conducted on the Petitioner.

Under **S.C. Code Ann. 44-48-80 and 44-48-90** the evaluation **MUST** be conducted within **(60) SIXTY DAYS** of the **[PROBABLE CAUSE]** Order. **(Appendix-** GG **)**

On **January 14,2021** **(71) SEVENTY-ONE DAYS LATER,** the South Carolina Department of Mental Health Services **(S.C.D.M.H.S.)** filed its Continuance in the **Anderson County Court of Common Pleas**, and it was **GRANTED. (Appendix-** AA **)**

The **(S.C.D.M.H.S.)** conducted its evaluation on the Petitioner on **March 16, 2021**, which was **(132) ONE-HUNDRED THIRTY-TWO DAYS AFTER** the **[PROBABLE CAUSE]** hearing.

A 2nd **(SECOND)** Continuance was **FILED** and **GRANTED** on **October 8, 2021** by the Petitioner's Initial FORMER counsel Don A. Thompson of Greenville/Simpsonville S.C.

This Continuance was Filed **(207) TWO-HUNDRED SEVEN DAYS AFTER** the court appointed "expert" submitted her evaluation results to the court; which is a Violation of **S.C.Code Ann. 44-48-80 and 44-48-90. (Appendix-** HH **)**

The Statutory Guidelines are **CLEAR** and **CONCISE**, and to be interpreted as being **MANDATORY** due to the Statutory language of **[MUST]** and **[SHALL]** that declares **SUBSTANCE** !

NON-COMPLIANCE affects Substantial Rights and inflicts **SUBSTANTIAL PREJUDICE!!**

Additionally, due to the legislative intent for the **(60) SIXTY** and **(90) NINETY DAY** requisite time period to be **MANDATORY** under **S.C. Code Ann: 44-48-80 and 44-48-90,** a violation Will **INVALIDATE** the process.

The Petitioner's initial Court appointed counsel Filed a Continuance on the Petitioner's behalf **WITHOUT** the Petitioner's knowledge, upon reason **UNCLAIRIFIED** by the continuance or the trial court. **(Appendix-** HH **)**

The Continuance was also Filed by this counsel and **GRANTED** by the trial court, with **BOTH** being **FULLY** aware of the **MANDATORY** statutory provisions in regard to the requisite time constraints. **(Appendix-** II **)**

Like a criminal defendant's Right to a Speedy Trial, due process required that the Petitioner be entitled to an expeditious trial because his liberty was infringed.

Those who are **INVOLUNTARY** Committed retain a **Liberty Interest** in the requirements and procedures under South Carolina statute and United States Supreme Court statutory provisions as well.

A **3rd (THIRD)** Continuance was **FILED** and **GRANTED** in the Anderson County Court of Common Pleas on **January 20, 2022**, which was **(311) THREE HUNDRED ELEVEN DAYS AFTER** the Court appointed expert submitted her evaluation results to the court. **(Appendix-** JJ **)**

This Continuance was Filed by the State of South Carolina allegedly due to Covid-19 concerns.

On **April 25, 2022, (407) FOUR HUNDRED SEVEN DAYS AFTER** the Court appointed expert submitted her evaluation results to the court, the Petitioner's trial was **DELAYED** further, due to a trial docketed prior to his proceeding going forward.

On this date before the **Honorable R. Keith Kelly**, the Petitioner's initial Court appointed counsel took this opportunity to **REMOVE** himself from the Petitioner's case, thereafter, **Michael S. Gambrell** was appointed as **" SUBSTITUTE"** counsel.

On **August 29, 2022 (533) Days AFTER** the court appointed expert submitted her evaluation results to the court, this "SUBSTITUTE" counsel Filed a **4th (FOURTH)** Continuance on the Petitioner's behalf, and this submission was also WITHOUT the Petitioner's Knowledge! **(Appendix-** KK **)**

This Continuance was also **FILED** and **GRANTED WITHOUT** the Petitioner having **ANY** prior contact with this "SUBSTITUTE" counsel subsequent to his appointment.

The Petitioner's first contact with this counsel occurred on **December 9, 2022**, a **(126) HUNDRED TWENTY-SIX DAYS AFTER** the continuance was FILED and GRANTED, and **(212) TWO HUNDRED TWELVE DAYS AFTER** he was appointed by the court on **May 9. 2022. (Appendix-** KK **)**

S.C. Code Ann: 44-48-80 (d) provides: " The court may grant **[ONE]** extension upon request of expert and showing of good cause. Any further extensions **[only]** may be granted for **EXTRAORDINARY** circumstances."

Clearly, the Fact that the legislative felt it was necessary to include a provision for a continuance, and limit occasions on which a continuance should be [granted], indicates that the legislative contemplated and intended that commitment proceedings would occur in a prompt and timely manner.

The State of South Carolina did not commit an Error of Law, it remained consistently **INDIFFERENT** to not only its **OWN** Statutory provisions, but to Congressionally Sanctioned and United States Supreme Court endorsed directives.

The **U.S. Supreme Court** consistently upheld **INVOLUNTARY** Civil Commitment statutes [ONLY WHEN] the confinement takes place pursuant to proper procedures and evidentiary standards. **Id. At 357,117 S.Ct at 2079-80,138 L.Ed 2d at 512, see also Allen v. Illinois, 478 U.S. 364,369,106 S.Ct 2988, 2992,92 L.Ed 2d 296,304 (1986)**

(declaring that Civil Commitment statutes for (SVP) are Civil in nature, even though they are similar to criminal proceedings because they are accompanied by strict procedural safeguards).

Selective Justices had noted that "where so significant a restriction of an individual's basic freedoms is at issue; a state **CANNOT** cut corners". **Id at 396,117 S.Ct at 2098,138 L.Ed 2d at 536**

The **"BRIGHT- LINE"** Rule enacted by the South Carolina legislative has been ignored by the State of South Carolina, the Rule was provided to avoid due process problems.

The **[INORDINATE DELAY]** was a Calculated effort subtlety employed by the court, State Officials responsible for the prosecution of the Petitioner, and the court appointed counsel positioned to be **INEFFECTIVE** under the guise of a Lawful "State Corrective Process".

The perpetuation of the **[INORDINATE DELAY]** was established on a **BAD FAITH** foundation, thereby relieving the State court(s) and court appointed counsel of their Constitutional obligation to present, address and consider the **NUMEROUS** pre-trial and post-trial motions **STILL** pending to date.

The **ILLEGAL** and **UNLAWFUL** action has been defined as a violation within **State v. Lagerguist, 254 S.C. 501 Supreme Court of South Carolina,** as it provides: " Delay which deprives an accused of effective exercise of the right to appeal, may amount to deprivation of Due Process and Equal Protection of the laws". **Const., art 1 3; U.S.C.A. C.A., Const Amend 14, Patterson v. Leeke, 556 F.2d 1168,1172 (4th Cir 1977)** also provides: "Delay or Inaction in state court proceedings can render state remedies **INEFFECTIVE"**. (Suggesting a delay could make exhaustion of state remedies unnecessary). Also see **Rhvark v. Shaw, 628 F.2d, Barker v. Wingo, 407 U.S. 514,92 S.Ct 2182 33L. Ed 2d 101, U.S. v. Hood, 556 F.3d 226 U.S. Court of Appeals, Fourth Circuit.**

BAD FAITH conduct of the State courts of South Carolina, State Officials responsible for the prosecution of the Petitioner, and court appointed counsel can be considered evident, when viewing their **CONTINUOUS, VIGOROUS** action through **INACTION** of prosecuting the Petitioner **WITHOUT** a reasonable expectation of obtaining a Valid conviction. **Kugler v. Helfant, 421 U.S. 117*,95 S.Ct 1574**; 44 L.Ed 2d 15***; 1975.**

The **(U.S.C.A. 9th Cir)** has consistently recognized that Unusual delay in State Court(s) may justify a decision to protect prisoner's right to a Fair and Prompt resolution of his Constitutional claims despite Jurisprudent concerns.

The "Jurisprudent Concern" of the Petitioner currently being **DENIED** his **Constitutional Right** to appeal **AFTER** trial, is Further confirmation of the **BAD FAITH** agenda being practiced by the State of South Carolina.

2241 (c)(3) (Providing for Habeas Corpus relief of a prisoner " In custody in violation of the Constitution or Laws or Treaties of the United States").

Under **Younger**, **EXCEPTONAL** Circumstances include when the pending State Court proceeding is motivated by a desire to harass or conducted in Bad Faith, or where the Plaintiff will be **IRREPARABLY** Harmed without Immediate relief.

FreeEats com, Inc. v. Indiana, 502 F. 3d 590.596-97 (7th Cir 2007)

The Exception for Speedy trial and Double Jeopardy claims is necessary because without Immediate Federal Intervention, the challenge would be **MOOT. Sweeney v. Bartow, 612 F.3d 571,573 (7th Cir 2010)**

The Petitioner's complaint is that a form of legal process resulted in pre-trial detention **UNSUPPORTED** by **[PROBABLE CAUSE]**, which resulted in an infringement on his **4th (FOURTH) Constitutional Right**! **Manuel v. City of Joliet, 137 S.Ct 911,197 L.Ed 2d 312 (2017)**

Prior to trial, the Petitioner challenged a procedure that is distinct from the underlying prosecution, and challenge would **NOT** have interfered with the prosecution; full vindication of the Petitioner's pre-trial rights required intervention **BEFORE** trial. **See Gerstein v. Pugh, 420 U.S. 107, 95 S.Ct 854,43 L.Ed 2d 54 (1975)**

The Petitioner's repetitive assertion that he was **ILLEGALLY** returned to the state of South Carolina, imprisoned under a **NEW** sentence **WITHOUT** Due Process, placed under a **ROUGE** " State Corrective Process" **INAPPLICABLE** to him, then subsequently Re-confined as a result of a **BAD-FAITH** prosecution, rallies tenacious support from the Material Fact(s) of the record.

The United States District Court of South Carolina abstained under **Younger v. Harris, 401 U.S. 37,91 S.Ct 746,27 L.Ed 2d 699 (1971);** even though the Petitioner's due process rights were violated Continually **BEFORE** and **AFTER** his extradition back to South Carolina.

If these circumstances are not **"EXTRAORDINARY"** enough, the court need look no further than the Material Fact(s) of the record for confirmation of the Petitioner's **UNLAWFUL** pre-trial detention, on a Constitutionally Inadequate **[PROBABLE CAUSE]** determination.

This **["PROBABLE CAUSE"]** determination was crafted **BEFORE** he Expired his **NEW** sentence within the South Carolina Department of Corrections. The governing body within this state agency and the South Carolina Attorney General's Office applied this initial "determination" with a Callous **INDIFFERANCE** strategically fashioned upon **FABRICATED, ERRONEOUS** and **STALE** **" Referral Data".**

The **BAD-FAITH** agenda was propelled by a Mental Assessment of the Petitioner established on **OUTDATED, NON-SPECIFIC, SENSATINALIZED** content; the specific diagnosis was deemed **[PSEUDOSCIENCE]** by the Psychiatric Community. **See Page v. King, 932 F.3d 898*; (2019)**

The State courts of South Carolina then subsequently suppressed the Petitioner's **RIGHT** to Pre-trial and Post-trial consideration of his Constitutional issues under an **[INORDINATE DELAY]**.

Federal Courts will **NOT** abstain under **Younger** in **"EXTRAORDINARY** circumstances where **IRREPARABLE** Injury can be shown". **Brown v. Ahern, 676 F.3d 899,903 (9th Cir 2012)**

The Petitioner's **IRREPARABLE** Injury is **BOTH GREAT** and **IMMEDIATE !! Fenner v. Boykin, 271 U.S. 240, 243 (1926)**

The **" IRREPARABLE HARM"** Exception to **Younger** abstention is set forth in **Arevalo v. Hennessy, 822 F.3d 763 (9th Cir 2018)** provides: (1). Regardless of the out come at trial, a Post-trial adjudication will **NOT** fully vindicate his Right to a **CURRENT** and **PROPER** Pre-trial **[PROBABLE CAUSE]** determination, (2). His claim which could **NOT** be raised in defense of the criminal prosecution, could **NOT** prejudice the conduct of the trial on the merits.

Abstention is **NOT** warranted if **ONE** of the following exceptions applies:

1). There is evidence of State proceedings motivated by **BAD-FAITH.**

2). The State law being challenged is patently **Unconstitutional** or,

3). There is **NO** Adequate Alternative State Forum where the Constitutional issue can be raised. **For Your Eyes Alone, 281 F. 3d at 1214 n.11**

(ALL of the EXCEPTIONS apply to the Petitioner !!)

(2nd) Judicial **"EXCEPTION"** has been made where the person about to be prosecuted in state court can show he **WILL**, if state court proceeding is **NOT** enjoined suffer **IRREPARABLE** damages. **Younger, 401 U.S. at 43**

The discarded Pre-trial requisite showing by the Petitioner required Federal Equitable Intervention or an Alternative State forum, upon which his Constitutional issues could be raised.

The **MONUMENTAL** evidence presented by the Petitioner exhibited state proceedings predicated on a Bad-Faith prosecution, which promoted a state law that is Unconstitutional in regard to the Petitioner. The absence of **EQUITABLE** consideration has resulted in **IRREPARABLE, IRREVERSABLE** damages !

Under **Younger**, abstention is appropriate when state court delay was **Extreme**, and there is **"NO END IN SIGHT"** to state court proceedings. **Phillips v. Vasquez, 56 F.3d 1030,1035,1038 (9th Cir. 1995)**

The Petitioner being subjected to **INDETERMINATE** Incarceration, with his avenue to his **MANDATED** Appeal **STIFLED**, warrants consideration of the **"NO END IN SIGHT"** criteria.

Additionally, it has been consistently recognized that **UNUSAL DELAY** in State courts may justify a decision to protect a prisoner's right to a **FAIR** and **PROMPT**

resolution of his Constitutional claims, despite the jurisprudential concerns that have led a court to decline to review claim, or require full exhaustion in other cases in which a proceeding related to the Federal petition is pending in state court.

The United States Court of Appeals for the Fourth Circuit insinuated in it's **July 24, 2023** Order that the Petitioner attributed to the delay of his trial date, trial and Appeal **AFTER** trial . **(Appendix- A)**

This ruling is in contrast to the **OVERWHELMING** evidence corroborated by the **RECORD**, which is **LUMINOUS** in regard to the Petitioner's **COUNTLESS** efforts in seeking an expeditious review of his Constitutional issues **PRE** and **POST** trial.

Pre-trial the Petitioner sought consideration of his properly submitted Constitutional claims, and he petitioned for his Speedy Trial Rights under South Carolina Statutory provisions to be recognized.

He did **NOT** seek to "abort a State proceeding" or "disrupt the orderly functioning of a State Judicial process". **Neville v. Cavanagh, 611 F. 2d 673,676 (7th Cir 1979)**

Younger exceptions provide protections against **INTENTIONAL DELAY** of proceedings, due to **BAD-FAITH,HARASSMENT** or Other **EXTRAORDINARY** circumstances attributed to State Court abuse.

These **"EXCEPTIONS"** also recognize the possibility that a state court could INTENTIONALLY DELAY proceedings to stave off Federal Habeas review or for OTHER Improper purposes. **Page v. King, 932 F. 3d 898*; (2019)**

18 U.S.C.S. 4248 sets forth the **"CLEAR and CONVINCING"** evidence standard, which is evidence being required to impose **CIVIL COMMITMENT.**

Observing this so-called **"INTERMEDIATE"** Standard is **MANDATED** not only by the plain language of the statute,**18 U.S.C.S. 4248 (d),** but by Constitutional Due Process constraints as well. **Addington v. Texas, 441 U.S. 418,427,99 S.Ct 1804,60 L.Ed 2d 233 (1979)**

Adherence to this standard is required in Civil Commitment proceedings because "[t]he individuals' interest in the outcome of a Civil Commitment proceeding is of such **[great]** weight and gravity". **U.S.C. 18 4248**

South Carolina Code Ann. **44-48-80,44-48-90** and **44-48-115** are **MANDATORY** provisions, and if an Act is MANDATORY it is termed **"MINISTERIAL DUTY". Wigfall v. Tideland Utils., Inc., 354 S.C. 100,111,580 S.E. 2d 100,105 (2003)**

A **"MINISTERIAL DUTY"** or Act is one in which a person performs because of a Legal **MANDATE,** which is defined with such precision as to leave **NOTHING** to the exercise of discretion.

"[T]he **5th Amendment** protection against **[Double Jeopardy]** ... is not against twice being punished, but against being twice put in jeopardy." That is, against facing two trials. **Mannes v. Gillespie, 967 F. 2d 1310 (9th Cir 1992)**

Here the Material Fact(s) of the record in the Petitioner's cause consistently and conclusively establish that the State of South Carolina violated his Due Process right not to be detained Pre-trial based on a **STALE,FICTICIOUS** and **SCIENTIFICALLY INVALID [PROBABLE CAUSE]** determination.

The complete loss of **LIBERTY** for the time of Pre-trial detention is **"IRRETRIEVABLE"** regardless of the outcome at trial, and Post-trial adjudication of his claim will **NOT** fully vindicate his right to a **CURRENT** and **PROPER** Pre-trial **[PROBABLE CAUSE]** determination.

Thus, the Petitioner's claim "fits squarely within the **IRREPARABLE HARM EXCEPTION"** to **Younger** applied in **Arevalo.Id at 766.**

The Petitioner challenges the State of South Carolina's failure to render a **CONSTITUTIONALLY** Adequate **[PROBABLE CAUSE]** determination, and his claim is likewise **NOT** "directed at the state prosecution [ ] as such, but **ONLY** at the legality of Pre-trial detention **WITHOUT** a **[Constitutionally Adequate]** judicial hearing; an issue that could **NOT** be raised in defense of the criminal prosecution", and thus "could **NOT** prejudice the conduct of the trial on the merits".

The Petitioner implicates the Integrity of Pre-trial **[PROBABLE CAUSE]** procedures, in which **Arevalo** shows that such a right is **NOT** a trial right and **CANNOT** be vindicated Post-trial !

In **Nivens v. Gilchrist, 319 F. 3d 151 (4th Cir 2003)** it was held that the District court properly abstained from exercising jurisdiction over appellant's case based on **Younger v. Harris, 401 U.S. 37,91 S.Ct. 746,27 L.Ed 2d 669 (1971).**

This decision was IN PART because Appellants had failed to take advantage of Pre-trial avenues to raise their Double Jeopardy defense in their state prosecution.

In the Petitioner's cause the State of South Carolina extinguished his Remedy at Law and Continues to do so...

The Petitioner's Pre-trial showing of **"COLORABLE CLAIM(s)** which inevitably resulted in an **IRREPARABLE Double Jeopardy violation**, is sufficient to establish **"EXCEPTIONAL"** Circumstances warranting Equitable Federal intervention.

It was and **STILL** is necessary for the federal court to assert jurisdiction in order to afford adequate protection to prevent further infringements on the Petitioner's Constitutional rights.

As provided under **Gilliam III, 75 F. 3d at 904**, the Petitioner made the requisite showing Pre-trial, of " the **SUBSTANTIAL** likelihood of an **IRREPARABLE** Double Jeopardy violation", which should have disbanded abstention consideration under **Younger**.

The lack of recognition of this showing has forced the Petitioner to endure [a] **SECOND** trial BEFORE being afforded the opportunity to vindicate his Constitutional right(s) at the Federal level. **Gilliam v. Foster, 75 F. 3d 881,904 (4th Cir. 1996)**

The Mandate of the **FOURTEENTH AMENDMENT** that **NO** State shall deprive any person of **LIFE** or **LIBERTY** without due process of law is a direct, traditional concern of the Federal government; a decision interpreting a Federal Law in accordance with its historical design, that is, to punish denials by State action of the Constitutional rights of a person, **CANNOT** be regarded as adversely affecting the wise adjustment between State responsibility and National control. **United States v. Price, Supreme Court of the United States, 383 U.S. 787*; 86 S.Ct. 1152**; 16 L.Ed 2d 267***(1966)**

REASON FOR GRANTING THE PETITION

The Petitioner comes before this honorable court on behalf of himself, as well as for those similarly situated; in his sincere effort to address the Constitutional question: **Can the application of Due Process be arbitrarily ABROGATED or DIVERTED?**

The judicial integrity of the State of South Carolina is LOST, as a result of it **NOT** being constrained by its **OWN** statutory and criminal laws.

Again, the Constitution and **ALL** Federal and State enacted guidance explicitly establishes the **FUNCTION, INTENT** and **NECESSITY** of Due Process; Nevertheless, the State of South Carolina continues to administer **"SELECTIVE"** Due Process, in Direct contrast to the **United States Constitutional Due Process Law.**

The law dictates with **AUTHORTY** " that under NO circumstances can a State commit criminal acts against it's citizens in the name of Judicial economy".

The Petitioner's proof is ever present within the Material FACT(s) of the record, and to this point **ALL** judicial mechanisms of Federal and State review have endorsed the State of South Carolina in its assertion that Due Process is a **[SUGESTIVE]** practice, as opposed to a **MANDATORY BEDROCK PROVISION OF THE UNITED STATES CONSTITUTION.**

Additionally, the "**DUE PROCESS LAW** requires that a person **SHALL** have a reasonable opportunity to be heard before a legally appointed and qualified impartial tribunal, before ANY binding Decree, Order or Judgment can be made affecting his right to Life, Liberty or Property". **Lasalle Bank National Assn's v. Davidson, (S.C. 2009) 386 S.C. 276, 668 S.E. 2d 121; U.S.C.A. Const. Amend 14; Const. Art 1 3.**

The lack of Moral justification that places the Petitioner in an Unusually **CRUEL** and **INHUMANE** condition, not only implies it also

amplifies CONTEMPT in observation of the inevitable effect of **IRREPARABLE, IRRETRIVABLE HARM!**

An even Broader concern is the significant probability of **[REPETITION]**, which would manifest the grave potential to erode the entire foundation that fortifies a Fair, Equitable and Impartial judicial review.

Our **United States Supreme Court** explained that to be granted relief under the provisions of **Rule 60 (b)(3), Fed. R. Civil Proc.,** the issues turns on whether the alleged misconduct "harms" the integrity of the judicial system.

The State of South Carolina abetted by the State agency arms of the South Carolina Department of Corrections, South Carolina Department of Probation, Parole and Pardon services, South Carolina Department of Mental Health services and counsel appointed by the court, has exhibited a **CALLOUS, MALICIOUS INDIFFERANCE** in it's tampering with the administration of Justice.

The manner undisputedly shown throughout this petition involves **FAR MORE** than Injury to a Single litigant; it is a **WRONG** against the Institution established to safeguard the preservation of the integrity of the judicial process. **U.S.C.A. Const. Amend. XIV- DUE PROC *** nor shall any state deprive any person of Life, Liberty or Property without due process of law. *****

It is undoubtedly disturbing and truly **ALARMING** when one considers how this **MONUMENTAL** transgression has advanced to our country's Supreme level of judicial review.

Finally, under **Rule 10 (a)** the Petitioner appeals to the court's discretion in his attempt to establish the character of the reasons for which he seeks the court's consideration.

The **United States Court of Appeals** has entered a decision in this Important matter in conflict with decisions of standing precedent set by this honorable court; and relied upon in the **U.S. Court of Appeals** throughout the U.S.

The honorable **Court of Appeals** has entered a judgement in regard to an important Federal Question, that departs from the accepted and usual course of judicial proceedings; and has sanctioned such a departure by the lower court, as to call for an exercise of this court's supervisory power.

The Federal Civil Rights Statute (18 U.S.C. 241), which makes a conspiracy to interfere with a citizen's free exercise or enjoyment of **ANY** right or privilege secured to him by the **Constitution or Laws of the United States** a criminal offense, includes rights and privileges protected by the **FOURTEENTH AMENDMENT**, and extends to conspiracies otherwise within the scope of the statute, participated in by officials alone or in collaboration with private persons.

18 U.S.C.S. 241 from original enactment through subsequent codifications, is intended to deal with conspiracies to interfere with **All** Federal rights.

The Supreme Court of the United States unanimously held **(1)** that private individuals were criminally liable under 242, if they were willful participants in joint activity with the state or its agents and **(2)** the 241 reached assaults upon rights under the entire Constitution, including rights under the due process clause.

The phrase "**Under Color**" of any statute, ordinance, regulation, or custom should be accorded the same construction in **BOTH** 18 U.S.C 242 which provides for criminal punishment of, and 42 U.S.C. 1983, which gives a right of action against, a person who, **"Under Color of"** State Law subjects another to the deprivation of **ANY** rights, privileges, or immunities secured by the Federal Constitution.

To act **"Under Color"** of law does **NOT** require that the accused be an officer of the state. It is enough that he is a Willful participant in joint activity with the state or its agents.

In cases under 1983 **"Under Color"** of law has consistently been treated as the same thing as the "State action" required under the **Fourteenth Amendment**. **See e.g. Smith v. Allwright, 321 U.S. 649; Terry v. Adams, 345 U.S. 461.**

Clarity **MUST** be appointed to this **DIRE** Constitutional concern; a Fundamental **MISCARRIAGE** of **JUSTICE** has occurred!! **Carrier, 477 U.S. at 495-96; Coleman,501 U.S. at 750**

CONCLUSION

The Petitioner Prays that he is Properly before this honorable court, and that his petition for Writ of Certiorari receives an Equitable review.

Respectfully Submitted,

Michael T. Burt

Date: **February 1, 2024**