

In the Supreme Court for the United States of America

Walter Himmelreich	:	Case Number 23-7335
	:	
Petitioner	:	
	:	
Vs	:	
	:	
Janel Fitzgerald	:	
	:	
Respondent	:	

Petitioner's Motion for Rehearing (Reconsideration) Pursuant to Rule 44

Comes now the Petitioner, Walter Himmelreich, acting Pro Se, who certifies for this Honorable Court that this Motion (Request) for the Rehearing (Reconsideration) of the previously presented Petition for Writ of Certiorari is presented in GOOD FAITH; is NOT presented for delay; and pursuant to Rule 44.2, is limited to other substantial grounds not previously presented; and avers the following in support:

- 1) That the Petitioner is a Pro Se litigant and hereby requests that this Motion be construed liberally as this Court has previously determined Pro Se Motions should be in Haines vs. Kerner (1972).
- 2) That the Petitioner previously attempted to Supplement his filing with the Court, but improperly titled it as a Reply to the Solicitor General's Waiver of Response, with the issue that there is a Circuit Split concerning whether Federal Bureau of Prisons

- 2) properties are Federal Territories and come under the Federal Jurisdiction of the United States Court System, citing United States vs Davis, 726 F3d 357, 366-367 (2nd Cir., 2013) on one side of the fence saying that the MDC (Metropolitan Detention Center in New York) did not come under the court's Federal Territorial Jurisdiction; and United States vs Banks, 2022 WL 3278942 (9th Cir., 8/11/2022), finding that USPVI (the United States Penitentiary at Victorville) was Federal Territory and did come under the Federal Territorial Jurisdiction of the courts. United States vs Read, 918 F3d 712, 718 (9th Cir., 2019), similar. United States vs Blunt, 558 F2d 1245 (6th Cir., 6/13/1977), taking judicial notice that Federal prisons of the Federal Bureau of Prisons fell within the Territorial Jurisdiction of the United States Courts. United States vs Perez, 2023 WL 7027501 (ED VA, 10/25/2023), FCI Petersburg is within the Territorial Jurisdiction of the United States, referencing "practical usage and dominion ... over the federal establishment", citing Blunt 558 F2d at 1247. Banks concurrence cites that Davis does not agree with the rest.
- 3) That the question of Federal Territory of the Federal Bureau of Prisons facility goes back to the questions presented in the original Petition for a Writ of Certiorari with the Court.
- 4) That in the history of the case at bar, the Petitioner, a Federal Inmate, was placed in the SHU (Special Housing Unit) at the direction of the Respondent "for that F***ing Tort Claim you filed" in March of 2009, in FCI-Elkton, Ohio, in the Federal Bureau of Prisons Northeast Region.

- 5) That on November 6, 2007, the Honorable Thomas I Vanaskie found Assistant Warden Troy Levi and Security Lieutenant K. Gabrielson of the United States Penitentiary staff at Lewisburg, Pennsylvania (USP Lewisburg), also in the BOP Northeast Region, guilty of Bivens First Amendment Retaliation. There were cross appeals filed.
- 6) That even though Defendants Levi and Gabrielson, in the case of Brooks vs Smith, 2007 WL 3275266 (MD PA, 11/6/2007), were sued and found guilty in their individual capacities, on Appeal to the Third Circuit, went before mediator Joseph Torregrossa. At settlement, the UNITED STATES OF AMERICA committed Bribery and eventually a Fraud upon the Courts of the United States in offering Love Altonio Brooks (the underlying Plaintiff) \$5,000.00 on his prison books in exchange for an unopposed Motion to Vacate the underlying judgment against the two Federal employees in a First Amendment Bivens claim.
- 7) Brooks accepted the \$5,000 and on October 8, 2008, (five months before the Petitioner was placed in the SHU for First Amendment Retaliation), the District Court for the Middle District of Pennsylvania VACATED the underlying Judgment, unopposed, and buried the fact that a First Amendment Bivens Action had been successfully litigated in a United States District Court, thus being able to claim to the courts that no First Amendment Bivens Action had ever been successfully litigated when this Court heard Egbert vs Boule.
- 8) That post this Court's decision in Ziglar vs Abbasi, 137 S Ct 1843

- 8) (2017), Warden Troy Levi of the Federal Detention Center in Philadelphia (FDC Philly) was again found Guilty of First Amendment Retaliation against an inmate in Bistran vs Levi, 299 F Supp 3d 686, 710-712 (ED PA, 3/6/2018). This ruling was overturned by the Third Circuit in light of Abbasi in Bistran vs Levi, 912 F3d 79, 96 (3rd Cir., 2018).
- 9) That the Bistran case has been cited multiple times by the United States in their briefings against the Petitioner, but even in light of Abbasi, on September 25, 2019, the United States District Court for the Northern District of Ohio became (at least) the third United States District Court to find in favor of a Plaintiff that a proper Bivens First Amendment Retaliation Claim had been brought against a Federal Bureau of Prisons employee Defendant.
- 10) There have also been several case brought by American Samoans (a United States Territory) involving Civil Rights.
- 11) That prior to the codification of Revised Statute (R.S.) 1979 to what we know today as 18 USC § 1983, in Picking vs Pennsylvania Railroad Company, 151 F2d 240, n12 (3rd Cir., 10/3/1945) stated:
"A federal officer, however, may not be sued civilly under R.S.1979 except under the laws of the United States in effect in a territory."
- 12) That prior to 1870, when R.S.1979 first became part of the law, the United States was only composed of 36 or 37 States. The rest

12) of the United States was under Territorial Governmental rule.

Thus the clause within R.S.1979 and 42 USC § 1983 providing for Civil Rights Protections within United States Territories. The Circuit Split regarding whether or not Federal Prisons are U S Territories thus is a question of importance in the adjudication of whether a Federal Prisoner's First Amendment Retaliation claim may be brought under 42 USC § 1983 without a need for extending Bivens in accord with the Court's Egbert pronouncement.

13) That Article IV, Section 3, Clause 2 of the Constitution, dealing with Public Lands, states:

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;"

14) That given Art. IV, § 3, Cl.2 above, and the "or territory" clause found in 42 USC § 1983, and the fact that the majority of Federal Courts who have ruled regarding Federal Bureau of Prisons Institutions and buildings along with their employees are part of the Territorial Jurisdiction of the United States Courts, then this Honorable Supreme Court should not find it difficult to settle the Circuit Split regarding whether or not a Federal Prison is a United States Territory, and whether 42 USC § 1983 applies to Federal Prisoners in equal protection to their Rights with other non-Federal inmates housed within the FBoP.

- 15) That the Petitioner attempted in 7 above to show, in layman's terms and understanding, how the United States of America, through bribery, and inducing a Federal Inmate to commit Hobbe's Act Robbery by accepting the Bribe in exchange for his not opposing the Vacating of a legal opinion which would have affected almost 200,000 Federal Inmates at the time, thus committed Fraud upon the United States Court System in violation of Federal Rule of Civil Procedure 60.
- 16) That the Petitioner did not get a citation for finding that when a Fraud Upon the Court is committed and influences a particular ruling, then that ruling is supposed to be voided. If that is correct, and a payment in exchange for changing a court ruling is considered to be a Fraud Upon the Court; then reversing that ruling to VACATE, would mean that a Bivens First Amendment Retaliation for the Right to Redress Grievances in the Federal Bureau of Prisons would have invalidated the Government's claims in both Abbasi and Egbert that there have been no First Amendment Retaliation Bivens Actions adjudicated in favor of the plaintiffs in the United States courts.
- 17) That the Brooks vs Smith case was only published on Westlaw and the Petitioner, while in the Federal Bureau of Prisons to do much of his research for this case, did not have access to Westlaw as the BOP Prison Law Library only uses LEXIS citations. This is another factor why this was not brought to any court before now.

That for all of the above stated reasons, a Circuit Split, a Fraud Upon the Court, and the Territorial Claim under 42 USC § 1983, the Petitioner, Walter Himmelreich, acting Pro Se, does hereby humbly Request that this Honorable Supreme Court for the United States of America, reconsider the Petition for a Writ of Certiorari in the above captioned case and controversy under its Article III authority, the Petitioner certifying in Good Faith that these substantial grounds were not previously presented and this filing was NOT for delay, GRANTING the previously requested Writ of Certiorari.

Dated: June 27, 2024

Respectfully submitted,



Walter Himmelreich, Pro Se

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Federal Register # 13152-067

Verification and Certification

I, Walter Himmelreich, Pro Se, do hereby swear that the foregoing statements are true and correct to the best of my limited knowledge and ability so to state, under the Penalty of Perjury, 18 USC § 1746.

I furthermore swear that I will be placing the original plus 10 copies, as required by the Court's Rules, plus a copy for the Clerk of the Court to stamp-in and return to me, plus a copy for the Solicitor General's Office, plus a copy for the United States Attorney's Office in Cleveland, Ohio, along with the proper FIRST CLASS postage paid envelopes in the United States Postal Service system as a timely filing on or before June 28, 2024. Note: The Petitioner did not receive the rejection notice for the Writ of Certiorari until June 8, 2024.

Dated: June 27, 2024

Respectfully,



Walter Himmelreich, Pro Se

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On Federal Supervised Release