[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-10886

Non-Argument Calendar

GLENN FRANCIS,

Plaintiff-Appellant,

versus

THOMAS SCARANTINO,
Warden,
LORI D. PALMIERI,
Court Appointed Counsel,
MARK J. O'BRIEN,
Court Appointed Counsel,
AMANDA ARNOLD SANSONE,
Judge at Bond Hearing,
SEAN P. FLYNN,

Judge at Competency Hearing, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:20-cv-02579-MSS-AAS

Before NEWSOM, GRANT, and JULIE CARNES, Circuit Judges.

PER CURIAM:

Plaintiff in this *pro se* action filed suit against numerous officials—including judges, prosecutors, court-appointed attorneys, an FBI agent, and wardens of facilities where he was detained at various times—involved in his criminal investigation and prosecution on wire and mail fraud charges. Plaintiff filed a motion to proceed *in forma pauperis*, which the district court granted. The court subsequently dismissed Plaintiff's third amended complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) based on its determination that the claims asserted in the complaint are facially meritless. After a careful review of the record and the appellate briefing submitted by Plaintiff, we **AFFIRM**. As there is no basis for granting Plaintiff's pending motions in this Court for entry of a default judgment and to amend his complaint, we **DENY** those motions.

BACKGROUND

Plaintiff's claims in this action arise from his investigation, prosecution, and detention pending trial on wire and mail fraud charges. Briefly, Plaintiff was indicted in January 2019 following an investigation by FBI agent Tina Repp.[1] Plaintiff's criminal case was assigned to Middle District of Florida Judge Steven Merryday. Assistant United States Attorney Rachel Jones, supervised by Florida United States Attorney Maria Lopez, was responsible for prosecuting the case. Attorney Lori Palmieri initially was appointed as Plaintiff's defense counsel, but she was fired and replaced by attorney Mark O'Brien, who at some point was joined in the case by attorney Scott Robbins.

After Magistrate Judge Amanda Sansone denied Plaintiff bond, he was held at the Pinellas County detention facility under Warden Bob Gualtieri from January 2019 to March 2020, at Butner Federal Medical Center ("Butner") under Warden Thomas Scarantino from March to August 2020 and again from January to April 2021, and at the Citrus County detention facility ("Citrus") under Warden Mike Prendergast from August 2020 to January 2021. Plaintiff was transferred to Butner after his attorney O'Brien filed a motion for a competency hearing in October 2019, which Magistrate Judge Sean Flynn granted. Based on the results of a psychiatric evaluation and Plaintiff's testimony at the hearing, Judge Flynn

[1] We take the background facts of this appeal from Plaintiff's third amended complaint, the operative complaint in the action.

determined Plaintiff was incompetent, and referred him to Butner for further evaluation and treatment to restore his competency.

Plaintiff filed the complaint underlying this appeal in November 2020, after being transferred to Citrus following a three-month stay at Butner. Plaintiff's initial filing was designated as a habeas corpus petition and it was filed *pro se*. In the petition, Plaintiff claimed he was innocent of the charges in the indictment, and that he had been denied effective assistance of counsel and access to discovery and had been falsely declared incompetent.

In December 2020, Plaintiff filed a purported amendment to his petition, to which he attached a *pro se* motion seeking civil damages from several individuals involved in his investigation, arrest, and criminal proceedings, including attorneys Palmieri and O'Brien, FBI agent Repp, Prosecutor Rachel Jones, and Magistrate Judges Sansone and Flynn. The district court granted Plaintiff leave to amend but advised him that his wrongful arrest and detention claims were not ripe for review because his criminal case was still pending. The court also instructed Plaintiff that (1) he could raise issues about his counsel in a motion for relief under 28 U.S.C. § 2255 if he was convicted, (2) his challenge to the order adjudicating him incompetent could be cognizable in habeas proceedings filed against the Citrus warden under 28 U.S.C. § 2241, and (3) his claim for damages might be cognizable in a proceeding under 42 U.S.C. § 1983 if he could show he was denied a constitutional right

under color of law. The court directed the clerk to send Plaintiff the standard prisoner forms for all three types of actions.[2]

Plaintiff subsequently was transferred back to Butner for treatment. While there, Plaintiff filed a prisoner complaint asserting § 1983 claims against attorneys Palmieri, O'Brien, and Robbins, wardens Scarantino, Gualtieri, and Prendergast, prosecutors Jones and Lopez, Judges Flynn, Sansone, and Merryday, and FBI agent Repp based on alleged violations of his Fourth, Sixth, and Fourteenth Amendment rights. Along with the complaint, Plaintiff filed a motion to proceed *in forma pauperis*, indicating that he was indigent. A few days later, Plaintiff filed a second § 1983 complaint and a document titled an "amended remedy" in which he essentially asserted the same factual claims and asked to be found not guilty of the charges pending against him, released from custody, and compensated at a daily rate for his wrongful incarceration.

While the above filings were pending, the doctors at Butner reported to the court that Plaintiff remained incompetent and was refusing to accept medication that might restore his competency. Upon receipt of the report, Judge Flynn held another competency hearing, after which he issued a report and recommendation ("R&R") finding that Plaintiff's condition had not improved and

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[2] Before the court could enter its order, Plaintiff filed two documents raising additional civil rights claims. The court construed those documents as amended petitions, advised Plaintiff that the claims may be cognizable under § 1983, and stayed the case to permit Plaintiff to refile them correctly using the standard form for a civil rights complaint enclosed with its earlier order.

there was no substantial probability he could be restored to competency in the foreseeable future. When the district court adopted the R&R, the Government filed a motion to dismiss the indictment against Plaintiff without prejudice. The district court granted the motion, and Plaintiff was released from custody in August 2021.

Thereafter, Plaintiff filed a third amended complaint against the same defendants. The district court granted leave to amend and accepted Plaintiff's third amendment as the operative complaint. Given Plaintiff's *in forma pauperis* motion, the court reviewed the claims asserted in the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B). Upon its review, the court concluded that Plaintiff could not assert a viable claim against the attorneys, prosecutors, or judges named in the complaint because all these individuals are immune from liability for claims arising from their participation in Plaintiff's criminal proceeding. As for the wardens, the court held that Plaintiff's claims were meritless because he failed to allege that any of the wardens personally participated in or contributed to his constitutional violations. Finally, the court determined that Plaintiff's allegations were too vague and conclusory to state a claim against Repp, and that any claim based on illegal surveillance in 2014 and an unlawful warrant in early 2016 were untimely because those claims are governed by a four-year statute of limitations and Plaintiff did not meet that deadline. The court concluded by dismissing Plaintiff's complaint with prejudice, noting that Plaintiff had failed to state a viable claim despite multiple opportunities to do so.

Plaintiff filed a notice of appeal and a motion in the district court to proceed with the appeal *in forma pauperis* and to appoint counsel to represent him. The district court denied Plaintiff's motions, stating that his appeal was meritless and that appointment of counsel to a civil litigant is only available in exceptional circumstances not present in this case. Plaintiff then filed a separate motion to "reopen" his case, in which he claimed he had retained an attorney, Ben Buck, who failed to take various essential steps in his case. Attorney Buck responded that he had declined to represent Plaintiff after Plaintiff refused to pay his hourly fee. The court interpreted Plaintiff's filing as a motion to reopen pursuant to Federal Rule 60(b), determined that it could deny the motion even though Plaintiff's pending appeal otherwise deprived it of jurisdiction, and denied the motion because the record refuted Plaintiff's claim regarding attorney Buck.

Thereafter, Plaintiff filed successive motions in this Court to proceed *in forma pauperis* and for appointment of counsel, multiple subpoenas for various individuals—including former United States Attorney General William Barr—to testify at a deposition, documents purporting to restate his allegations and "revise the defendants" listed in his appeal, and what appear to be at least two purported amended complaints. This Court denied Plaintiff's *in forma pauperis* motion and his request for appointment of counsel after finding that the appeal presented "no issue of arguable merit." Plaintiff subsequently paid the applicable filing fee and filed a motion to amend his complaint, which this Court denied. Plaintiff then filed motions in this Court for a default judgment and to add

parties and revise his complaint, both of which motions remain pending.

Plaintiff's appellate brief does not challenge any of the reasons provided by the district court for dismissing his complaint under § 1915(e)(2)(B)—that is, the immunities precluding liability for the prosecutors, attorneys, and judges named in the complaint, the statute of limitations bar applicable to claims arising from a 2016 search warrant and preceding surveillance, and the failure of the complaint to specifically allege any acts by the remaining defendants that arguably violated Plaintiff's constitutional rights. As such, we find that Plaintiff has abandoned these issues and we **AFFIRM** the district court's dismissal of his complaint on that ground. As for the pending motions, Plaintiff's purported amendment of his complaint is procedurally impermissible and there is no basis upon which to grant Plaintiff's requested default judgment. Accordingly, we **DENY** Plaintiff's motions.

DISCUSSION

The district court dismissed Plaintiff's complaint *sua sponte* pursuant to 28 U.S.C. § 1915(e)(2)(B), which applies to a complaint filed *in forma pauperis* and which requires the dismissal of such a complaint if it "fails to state a claim on which relief may be granted" or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(ii), (iii). *See also Hughes v. Lott*, 350 F.3d 1157, 1159 (11th Cir. 2003) (setting out the standards applicable under § 1915(e)(2)(B)). We review the *sua sponte* dismissal of a complaint under § 1915(e)(2)(B) *de novo*, viewing the

allegations in the complaint as true. *See Hughes*, 350 F.3d at 1160. Dismissal is warranted if the complaint, assuming its allegations are true, does not contain "sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

As a *pro se* litigant, Plaintiff's pleadings "are held to a less stringent standard than pleadings drafted by [an] attorney[] and will, therefore, be liberally construed." *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). But this leniency does not give a court "license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action." *GJR Invs., Inc. v. Cnty. of Escambia*, 132 F.3d 1359, 1369 (11th Cir. 1998) (citations omitted), *overruled on other grounds by Iqbal*, 556 U.S. 662 (2009). Accordingly, we will affirm the dismissal of Plaintiff's complaint if it does not meet the facial plausibility standard—that is, if its allegations do not support a reasonable inference "that the defendant[s] [are] liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

As mentioned, Plaintiff does not in his appellate brief address any of the district court's grounds for dismissing his complaint. Again, the court held that Plaintiff's claims against the court-appointed attorneys, prosecutors, and judges named in the complaint are barred by immunity, that any claim based on unlawful surveillance or an illegal warrant is time-barred, and that Plaintiff's allegations against the remaining defendants—the wardens and Agent

Repp—do not support a claim that these individuals personally participated in or contributed to any alleged constitutional violation, as required to support individual liability under § 1983.[3] Plaintiff's appellate brief does not even acknowledge the immunity or statute of limitations issues. Nor does Plaintiff explain in his brief how the wardens or Repp personally violated his constitutional rights. Indeed, Plaintiff does not mention Repp at all and he only discusses the wardens in passing. As such, Plaintiff has abandoned any challenge to the district court's rulings on these issues, and we affirm the dismissal order on that ground. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) ("We have long held that an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority."); *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) ("[I]ssues not briefed on appeal by a *pro se* litigant are deemed abandoned." (citation omitted)).

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[3] Plaintiff has named both state and federal officials as defendants in his complaint. We note that Plaintiff's claims against federal officials arise under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) rather than § 1983. *See Bivens*, 403 U.S. at 397 (authorizing an action for damages against federal officials based on their violation of the plaintiff's Fourth Amendment rights). For purposes of this appeal, there is no material difference between liability arising under § 1983 and that arising under *Bivens*, so we do not distinguish between the two in our discussion. *See Abella v. Rubino*, 63 F.3d 1063, 1065 (11th Cir. 1995) ("The effect of *Bivens* was, in essence, to create a remedy against federal officers, acting under color of federal law, that was analogous to the section 1983 action against state officials." (quotation marks and citation omitted)).

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We note briefly that the district court's rulings as to immunity, the statute of limitations bar, and Plaintiff's failure to allege sufficient facts to support a viable claim for individual liability against Repp or the wardens are correct, and that we would affirm those rulings even if they were properly challenged by Plaintiff on appeal. Judges enjoy absolute immunity from damages for acts taken in their judicial capacity so long as they do not act "in the clear absence of all jurisdiction." *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th Cir. 2005) (quotation marks omitted). Plaintiff does not allege that the judges named as defendants in this case acted in the absence of jurisdiction. Prosecutors likewise are immune from liability for acts "intimately associated" with the judicial phase of a criminal trial, a category that includes all the acts alleged by Plaintiff. *See Jones v. Cannon*, 174 F.3d 1271, 1281 (11th Cir. 1999) (quotation marks omitted). Prosecutors only have qualified immunity when performing functions that are "not associated with [the prosecutor's] role as an advocate for the state"—for example, investigative functions. *See id.* at 1282. But again, Plaintiff's claims against the prosecutors named in the complaint do not concern such functions. Finally, court-appointed defense attorneys are not subject to liability under § 1983, or under the *Bivens* corollary that applies when a federal official is involved, for acts related to their representation of an indigent defendant. *See Polk Cnty. v. Dodson*, 454 U.S. 312, 325 (1981) (explaining that a public defender does not act under color of law, as required to impose liability under § 1983, "when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding").

Regarding Repp, the district court did not err when it found Plaintiff could not assert a plausible claim based on allegedly unlawful surveillance in 2014 and an illegal warrant in March 2016 because the applicable statute of limitations required any such claim to be filed within four years of those events, and Plaintiff did not satisfy that requirement. *See Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003) (noting that § 1983 claims are governed by the statute of limitations for personal injury actions in the state in which the cause of action arose, which in Florida is four years). Nor did the court err when it determined that Plaintiff had failed to allege any other facts that could plausibly subject Repp to personal liability under § 1983. Plaintiff claimed in his complaint that Repp lied at a bond hearing, improperly used a confidential informant, withheld exculpatory evidence, and unlawfully arrested him. The court correctly disposed of these claims, holding that (1) Repp was immune from liability arising out of her testimony at a pretrial hearing, (2) the use of a confidential informant does not violate constitutional rights unless it is done in a manner that "shocks that conscience" or is arbitrary, which Plaintiff did not allege, and (3) the remaining allegations were too vague and conclusory to state a claim because Plaintiff did not identify the exculpatory evidence at issue or the purported defect in his search or arrest warrant, nor provide any facts indicating that Repp was personally responsible for any such defect.[4] *See Jones*, 174 F.3d at 1281 ("Police

[4] As the district court noted, Plaintiff's claim that Repp withheld exculpatory evidence also fails because he did not allege that Repp acted in bad faith. *See Porter v. White*, 483 F.3d 1294, 1308 (11th Cir. 2007) ("[W]e hold that mere

him for attorney visits), but again he does not allege that Gualtieri was involved in any of these acts, as would be required to impose individual liability under § 1983.

Furthermore, the district court did not abuse its discretion by dismissing Plaintiff's third amended complaint with prejudice and without granting him to leave to amend. As the court pointed out, Plaintiff had multiple opportunities to amend his complaint after being advised by the court in prior orders of the specific deficiencies in the complaint. It would have been futile to grant Plaintiff leave to amend as to most of the defendants named in the complaint, because they are immune from suit on his asserted claims. But even as to those defendants without clear immunity, Plaintiff tried numerous times and repeatedly failed to state a claim that would support § 1983 liability. *See Vanderberg v. Donaldson*, 259 F.3d 1321, 1327 (11th Cir. 2001) (upholding a district court's dismissal of the plaintiff's complaint without granting leave to amend where the plaintiff's motion to amend "failed to allege new facts from which the district court could have concluded that [he] may have been able to state a claim successfully").

Finally, we **DENY** Plaintiff's pending motions in this Court seeking a default judgment and to amend his complaint. As is apparent from the above discussion, Plaintiff is not entitled to a judgment in this action. Regarding his motion to amend, Plaintiff wants to assert new claims against additional parties. Any parties not named as defendants in Plaintiff's complaint below are not properly before this Court. Moreover, the Court has "repeatedly

held that an issue not raised in the district court and raised for the first time in an appeal will not be considered[.]" *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004) (quotation marks omitted). Accordingly, there is no basis for granting Plaintiff's motion to amend.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the district court's order dismissing Plaintiff's complaint under § 1915(e)(2)(B) and we **DENY** Plaintiff's pending motions in this Court to enter a default judgment and to amend his complaint.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GLENN FRANCIS,

Plaintiff,

v. **Case No. 8:20-cv-2579-MSS-AAS**

THOMAS SCARANTINO, *et al.*,

Defendants.
_____/

ORDER

An earlier order dismissed Francis's third amended complaint against the defendants for federal civil rights violations. (Doc. 23) The order entered on February 17, 2022 (Doc. 23), and the time to appeal expires March 21, 2022. Fed. R. App. P. 4(a)(1)(A).

Francis moves for access to Pacer without paying fees. (Doc. 24) He contends that he is indigent, an attorney who agreed to represent him for a contingency fee recently declined representation, he does not know if the attorney accomplished service on the defendants, he has not secured employment since his release from jail because he was "falsely declared incompetent" and a background check shows that he is a convicted felon, and his Pacer account is deactivated. (Doc. 24 at 1–3)

"Courts may exempt certain persons or classes of persons from payment of the user access fee" for Pacer. 28 U.S.C. § 1914, Elec. Pub. Access Fee Schedule, Free Access and Exemptions, Discretionary Fee Exemptions. To grant an exemption, a court must find "that those seeking an exemption have demonstrated that an exemption is necessary in order to avoid unreasonable burdens and to promote public access to information." *Id.*

The Court dismissed federal civil rights action. Accordingly, the Court **DENIES** Francis's motion (Doc. 24) for access to Pacer without paying fees. The Clerk is **DIRECTED** to enclose with this Order copies of the docket and the order of dismissal at Docket Entry 23. If Francis identifies a document on the docket that he would like to view, he may use the public access terminals in the Clerk's office on the second floor of the courthouse in Tampa, Florida.

The Court further construes the motion (Doc. 24) as a motion for extension of time to file a notice of appeal and **GRANTS** the construed motion. Fed. R. App. P. 4(a)(5). No later than **APRIL 5, 2022**, Francis may appeal. Fed. R. App. P. 4(a)(5)(C).

DONE AND ORDERED in Tampa, Florida on March 10, 2022.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GLENN FRANCIS,

Plaintiff,

v. **Case No. 8:20-cv-2579-MSS-AAS**

THOMAS SCARANTINO, *et al.*,

Defendants.
_____/

ORDER

Francis sues Thomas Scarantino, Lori Palmieri, Mark O'Brien, Judge Amanda Sansone, Judge Sean Flynn, Judge Steven Merryday, Rachel Jones, Mike Prendergast, Sheriff Bob Gualtieri, Scott Robbins, Maria Chapa Lopez, and Tina Repp for federal civil rights violations. Francis files a second amended complaint (Doc. 18), files documents titled "Amended Remedy" (Doc. 19) and "Update and Requests" (Doc. 20), files a third amended complaint without leave of court (Doc. 21), and moves for leave to proceed *in forma pauperis*. (Docs. 17 and 22)

Judicially noticed records show that an indictment charged Francis with conspiracy to commit wire fraud, wire fraud, mail fraud, and illegal monetary transactions. Superseding Indictment, *United States v. Francis*, No. 8:19-cr-9-TPB-SPF (M.D. Fla.), ECF No. 69. Judge Thomas Barber found Francis incompetent and dismissed the indictment without prejudice. Orders, *Francis*, No. 8:19-cr-9-TPB-SPF, ECF Nos. 144 and 149. The Federal Bureau of Prisons released Francis after the dismissal of his criminal case. Notice, *Francis v. United States*, No. 8:20-cv-2729-MSS-TGW (M.D. Fla.), ECF No. 16.

"Amended Remedy" and "Update and Requests"

Francis filed the documents titled "Amended Remedy" (Doc. 19) and "Update and Requests" (Doc. 20) after his second amended complaint. (Doc. 18) In the document titled "Amended Remedy," Francis asks to amend the remedy in his civil action to include a dismissal of all charges with prejudice in his federal criminal case, compensation for wrongful incarceration, and punitive damages. (Doc. 19 at 1) In the document titled "Update and Requests," Francis alleges additional facts in support of his claims. (Doc. 20 at 1–12) The Court construes the *pro se* documents as a motion for leave to amend the second amended complaint. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Because Francis files a third amended complaint (Doc. 21), the Court **DENIES** the construed motions (Docs. 18 and 19) as moot.

Third Amended Complaint

Francis files a third amended complaint (Doc. 21) without leave of court. The Court construes the *pro se* complaint as a motion for leave to file an amended complaint and **GRANTS** the construed motion. *Erickson*, 551 U.S. at 94. Fed. R. Civ. P. 15(a)(2) ("[A] party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."). The third amended complaint (Doc. 21) is the operative complaint.

Because Francis moves for leave to proceed *in forma pauperis*, the Court reviews whether the claims in the third amended complaint are frivolous, facially deficient, or seek monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). *Powell v. Symons*, 680 F.3d 301, 307–08 (3d Cir. 2012).

Lori Palmieri, Mark O'Brien, and Scott Robbins

In Francis's federal criminal case, the court appointed Palmieri, O'Brien, and Robbins to represent Francis. (Doc. 21 at 2) Francis contends that Palmieri, O'Brien, and Robbins waived his right to a speedy trial without his permission, refused to demand exculpatory documents from the prosecution, and refused to ask for a bond hearing. (Doc. 21 at 12–18, 26–28, 34–37) He further contends that O'Brien lied during his competency hearing, refused to show Francis discovery, and refused to file a motion to suppress evidence. (Doc. 21 at 14–18, 35–37) He contends that Robbins moved for an extension of time for a hearing on competency without Francis's permission and refused to share discovery with him. (Doc. 21 at 27–28, 46–48) Because a "court-appointed counsel in a federal criminal case is immune from liability" in a federal civil rights action, Francis's claims against Palmieri, O'Brien, and Robbins are meritless. *O'Brien v. Colbath*, 465 F.2d 358, 359 (5th Cir. 1972) (citing *Sullens v. Carroll*, 446 F.2d 1392 (5th Cir. 1971)).

Judge Sansone, Judge Flynn, and Judge Merryday

Francis asserts that Judge Sansone unlawfully denied him bond and refused to suppress evidence (Doc. 21 at 18–20, 37–38), that Judge Flynn unlawfully found him incompetent (Doc. 21 at 19–20, 38–41)), and that Judge Merryday unlawfully denied his right to a speedy trial, refused to suppress evidence, and knew that Francis lacked access to discovery and that Judge Flynn had unlawfully found him incompetent. (Doc. 21 at 21–22, 41–43) Because a federal judge is immune from suits demanding both monetary damages and injunctive relief, Francis's claims against Judge Sansone, Judge Flynn, and Judge Merryday are meritless. *Bolin v. Story*, 225 F.3d 1234, 1239–42 (11th Cir. 2000) (citing *Pulliam v. Allen*, 466 U.S. 522 (1984)).

Rachel Jones and Maria Chapa Lopez

Jones was the prosecutor in Francis's federal criminal case, and Lopez was Jones's supervisor. (Doc. 21 at 22, 28) Francis contends that Jones refused to sign the indictment in his case because Jones did not obtain any evidence of Francis's guilt. (Doc. 21 at 22, 43–44) He further contends that Jones withheld exculpatory evidence, presented false testimony by FBI agent Tina Repp, and unlawfully obtained confidential information from his appointed counsel. (Doc. 21 at 22–23, 43–44) He asserts that Jones violated the Sixth Amendment by unreasonably delaying Francis's trial and violated the Fourth Amendment by authorizing an unlawful seizure of Francis's mail. (Doc. 21 at 23–24)

Francis contends that Lopez is responsible for the prosecutors assigned to his case, and those prosecutors refused to dismiss the case even though the statute of limitation barred the prosecution, the prosecutors lacked evidence of guilt, Jones unlawfully obtained evidence, the prosecutors withheld exculpatory evidence, and appointed counsel deficiently performed. (Doc. 21 at 29–30, 48–49)

Because a prosecutor is absolutely immune for prosecutorial acts and respondeat superior liability does not apply to a federal civil rights claim, Francis's claims against Jones and Lopez for acts or omissions arising from the judicial process are meritless. *Ashcroft v. Iqbal*, 556 U.S. 662, 675–76 (2009); *Allen v. Thompson*, 815 F.2d 1433, 1434 (11th Cir. 1987) (citing *Butz v. Economou*, 438 U.S. 478, 504 (1978)).

Francis asserts that Jones "broke the Fourth Amendment knowing [the] FBI had no probable cause for [a] warrant and did an illegal outcome driven investigation, resulting in [the] Postmaster General shutting down my corporation by denying my mail." (Doc. 21 at 23) A prosecutor lacks immunity for misadvising police during the investigation of a criminal

case. *Burns v. Reed*, 500 U.S. 478, 493 (1991) ("We do not believe, however, that advising the police in the investigative phase of a criminal case is so 'intimately associated with the judicial phase of the criminal process,' that it qualifies for absolute immunity.") (citation omitted). "When a prosecutor performs the investigative functions normally performed by a detective or police officer, it is 'neither appropriate nor justifiable that, for the same act, immunity should protect the one and not the other.'" *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993).

However, Francis fails to alleges no facts to support a claim that Jones performed "investigative functions normally performed by a detective or police officer." *Buckley*, 509 U.S. at 273. *Iqbal*, 556 U.S. at 663 ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."). Francis merely alleges that Jones knew that the FBI both executed a warrant without probable cause and unlawfully investigated Francis. (Doc. 21 at 23.) Because Francis does not allege that Jones actively participated in the investigation, his claim against Jones fails. (Doc. 21 at 23)

Thomas Scarantino, Mike Prendergast, and Sheriff Gualtieri

Francis alleges that Scarantino was the warden at the institution where he was incarcerated and doctors at the institution tried to medicate Francis without examining him and denied him notice and the opportunity to consult with an attorney before an examination. (Doc. 21 at 9–12) Also, Francis contends that he informed Scarantino that his court appointed counsel acted against Francis's best interests at the competency hearing and contends that Scarantino ignored him and effectively denied him a hearing on competency. (Doc. 21 at 11–12, 33–34) Because respondeat superior does not apply to a federal civil rights claim, Scarantino is not liable for the acts of the doctors who work at the institution where he is a

warden. *Iqbal*, 556 U.S. at 676. Because Francis does not allege that Scarantino either personally participated or acted in a manner which was causally related to the alleged constitutional violation concerning the appointment of counsel and the order directing a competency evaluation in his criminal case, he further fails to state a claim against Scarantino. *Dalrymple v. Reno*, 334 F.3d 991, 995 (11th Cir. 2003).

Francis contends that Prendergast was the warden at another jail where he was incarcerated and that he informed Prendergast that he was illegally detained, denied a speedy trial, denied competent counsel, denied a hearing on competency, and denied disclosure of exculpatory evidence. (Doc. 21 at 24–25) He asserts that Prendergast violated his federal right to due process by ignoring his grievances (Doc. 21 at 24–25) and violated his federal right to a trial by detaining him for more than a year. (Doc. 21 at 44–45) Because Francis does not allege that Prendergast either personally participated or acted in a manner which was causally related to the alleged constitutional violation concerning his pretrial detention, the order directing a competency evaluation, and other rulings in his criminal case, he fails to state a claim against Prendergast. *Dalrymple*, 334 F.3d at 995.

Francis also contends that Gualtieri was the warden at a third jail where he was incarcerated and that a corrections officer who worked for Gualtieri twice lied to Francis. (Doc. 21 at 25–26) He alleges that the corrections officer told Francis that an attorney arrived to meet with him and instead a doctor came to the meeting. (Doc. 21 at 25) He alleges that he told the corrections officer that one of the doctors would falsely find him incompetent. (Doc. 21 at 26) He asserts that Gualtieri violated his federal constitutional rights by detaining him for fifteen months without a trial, allowing a doctor to evaluate him for competency without a recording device, allowing his attorney to "take credit" for attorney visits without

visiting Francis, and denying him access to a law library. (Doc. 21 at 26, 45–46) Because respondeat superior does not apply to a federal civil rights claim, Gualtieri is not liable for the acts of the corrections officer who works at the institution where he is a warden. *Iqbal*, 556 U.S. at 676. Because Francis does not allege that Gualtieri either personally participated in or acted in a manner causally related to the alleged constitutional violation concerning his pretrial trial detention and the order directing a competency evaluation in his criminal case, he further fails to state a claim against Gualtieri. *Dalrymple*, 334 F.3d at 995. Because Francis fails to "demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim," he also fails to state an access to courts claim. *Lewis v. Casey*, 518 U.S. 343, 351 (1996).

Tina Repp

Francis contends that Repp who was the lead FBI agent in his criminal case lied at a bond hearing, used a confidential informant to commit fraud on his corporation, executed a warrant at his home based on illegal surveillance, and ignored exculpatory evidence when drafting an affidavit in support of the indictment. (Doc. 21 at 30, 50) He alleges that the FBI conducted surveillance on him before securing a warrant. (Doc. 21 at 31) He further alleges that he reported to the FBI that other corporations committed crimes and the FBI failed to investigate those other corporations and instead investigated him because he is a Republican. (Doc. 21 at 31) He alleges that two years later Repp told Francis's son that the FBI did not have incriminating evidence against Francis. (Doc. 21 at 31)

He asserts that Repp intentionally inflicted emotional distress on Francis by unlawfully surveilling and arresting him. (Doc. 21 at 50) He further asserts that Repp denied him the right to confront confidential informants who work for Repp and withheld exculpatory

evidence including a transcript and audio of the bond hearing, evidence of benefits that Repp gave to confidential informants in exchange for their cooperation, an affidavit in which Repp admits to using Leo Corrigan as a confidential informant to entrap Francis, and bank statements.

Because a police officer enjoys absolute immunity for his testimony at a pretrial hearing and at trial, Francis's claim that Repp falsely testified at a bond hearing fails. *Briscoe v. LaHue*, 460 U.S. 325, 345–46 (1983); *Jones v. Cannon*, 174 F.3d 1271, 1286 (11th Cir. 1999).

Because the police's use of a confidential informant will not violate substantive due process unless "the act can be characterized as arbitrary or conscience shocking in a constitutional sense," Francis's claim that Repp used a confidential informant to commit fraud on his corporation fails. *Waddell v. Hendry Cty. Sheriff's Office*, 329 F.3d 1300, 1305 (11th Cir. 2003) (citing *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 128 (1992)). *Accord United States v. Russell*, 411 U.S. 423, 432 (1973) ("For an agent will not be taken into the confidence of the illegal entrepreneurs unless he has something of value to offer them. Law enforcement tactics such as this can hardly be said to violate 'fundamental fairness' or 'shocking to the universal sense of justice[.]'") (citation omitted). For the same reason, Francis's intentional infliction of emotional distress claim fails. *See, e.g.*, *Gallogly v. Rodriguez*, 970 So. 2d 470, 472–73 (Fla. 2d DCA 2007) (holding that the police's conduct was extreme and outrageous where "there existed a relationship of authority in this case that would lead Gallogly to believe he was subject to arrest for not giving in to the demands of the [police]").

Because Francis does not have a right to direct the FBI to investigate an individual, his claim that police failed to investigate other companies fails. *United States v. Ramos*, 933 F.2d 968, 971 n.1 (11th Cir. 1991) ("Criminal investigations are an executive function within

the exclusive prerogative of the Attorney General's Office."). *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) ("[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another."). Because Francis fails to identify a similarly situated individual whom Repp treated differently and fails to allege that Repp engaged in an investigation motivated by race, religion, national origin, or some other protected class, his claim that Repp investigated him because he is a Republican fails. *Draper v. Reynolds*, 369 F.3d 1270, 1278 n.14 (11th Cir. 2004) ("To state an equal protection claim, Draper must allege that 'through state action, similarly situated persons have been treated disparately,' and put forth evidence that Reynolds's actions were motivated by race.") (citation omitted).

Because Francis fails to allege that Repp either denied him the right to confront a witness at trial or personally participated in the alleged constitutional violation concerning his right to confront a witness, his claim that Repp denied him the right to confront confidential informants fails. *Pennsylvania v. Ritchie*, 480 U.S. 39, 52 (1987) ("The opinions of this Court show that the right to confrontation is a *trial* right, designed to prevent improper restrictions on the types of questions that defense counsel may ask during cross-examination.") (italics in original).

Francis's claims that Repp ignored exculpatory evidence when drafting an arrest affidavit, searched his home with an unlawful warrant, and conducted surveillance without a warrant are vague and conclusory. Francis neither identifies the exculpatory evidence that Repp ignored in the arrest affidavit nor shows that the exculpatory evidence would have demonstrated a lack of probable cause for his arrest. *Paez v. Mulvey*, 915 F.3d 1276, 1287 (11th Cir. 2019). "So long as it is reasonable to conclude from the body of evidence as a whole that a crime was committed, the presence of some conflicting evidence or a possible defense will

not vitiate a finding of probable cause." *Paez*, 915 F.3d at 1287. Francis further fails to identify defects in the affidavit for the search warrant and the warrant authorizing surveillance. *United States v. Leon*, 468 U.S. 897, 913–16 (1984). Lastly, Francis contends that police conducted the search pursuant to the unlawful warrant in March 2016 and conducted surveillance without a warrant in 2014. (Doc. 21 at 30–31, 51–52) Francis filed his initial complaint and raised the claims in 2021. (Doc. 16 at 30–32, 50–51) Because a four-year statute of limitation applies to a federal civil rights claim, his claim is untimely. *Villalona v. Holiday Inn Express & Suites*, 824 F. App'x 942, 946–47 (11th Cir. 2020).

Also, because Francis fails to allege that Repp acted in bad faith by failing to disclose evidence to the prosecutor and fails to show that he was convicted of a crime, his claim that Repp withheld evidence fails. *Porter v. White*, 483 F.3d 1294, 1308 (11th Cir. 2007) ("[W]e hold that mere negligence or inadvertence on the part of a law enforcement official in failing to turn over *Brady* material to the prosecution, which in turn causes a defendant to be convicted at a trial that does not meet the fairness requirements imposed by the Due Process Clause, does not amount to a "deprivation" in the constitutional sense."); *McMillian v. Johnson*, 88 F.3d 1554, 1567 (11th Cir. 1996) ("*Brady* requires disclosure of both exculpatory and impeachment evidence that is material. Evidence is material if its suppression undermines confidence in the outcome of the trial.") (citation omitted)); *Flores v. Satz*, 137 F.3d 1275, 1278 (11th Cir. 1998) ("Plaintiff, however, was never convicted and, therefore, did not suffer the effects of an unfair trial. As such, the facts of this case do not implicate the protections of *Brady*.").

Demand for Dismissal of Charges

Francis's demand for the dismissal with prejudice of his criminal charges is not cognizable in a federal civil rights action. (Doc. 21 at 52) *Abella v. Rubino*, 63 F.3d 1063, 1066 (11th Cir. 1995) ("[D]eclaratory or injunctive relief claims which are in the nature of habeas corpus claims—*i.e.*, claims which challenge the validity of the claimant's conviction or sentence and seek release—are simply not cognizable under § 1983. This rule applies equally to *Bivens* actions.") (citation omitted).

Because a more carefully drafted complaint could not state a claim against the defendants and Francis had multiple opportunities to adequately allege a claim and failed to do so (Docs. 1, 12, 15, 16, 18, 19, 20, 21), the claims against the defendants are **DISMISSED with prejudice**. *Woldeab v. Dekalb Cty. Bd. of Educ.*, 885 F.3d 1289, 1291 (11th Cir. 2018). Francis's motions for leave to proceed *in forma pauperis* (Docs. 17 and 22) are **DENIED** as moot. The Clerk is **DIRECTED** to **CLOSE** this case.

DONE AND ORDERED in Tampa, Florida on February 17, 2022.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

SUPREME COURT APPENDIX

My appendix is in response to the opinion from the 11th Circuit Court of Appeals, Atlanta. Please note that I called the court after two years of waiting for a final judgement. I called because they failed to rule on the add/remove motion where I was trying to take ten defendants off my lawsuit. I realized they failed to remove the ten defendants despite me asking them to remove them in three separate complaints and the add/remove motion that I filed. After six months with no response to the add/remove motion or the default judgement motion, I filed a Writ of Mandamus due to 180-day delay. I called the court and got the Clerk of the Court that was assigned to my case. After two years she literally knew nothing about my case. I informed her I had removed ten defendants from the case in three complaints and an add/remove motion, and I filed a Writ of Mandamus. This forced them to *finally read my case after two years and hurry to form an opinion. They did a 14-page* opinion in just a couple weeks.

They start on the first page by affirming my brief had no basis for entry of a default judgement motion despite no response by the government and Tina Rep (FBI agent) and *Rachel Jones (U.S. Attorney), or to allow my complaint to be amended despite no response* in the 180-day time limit they must respond to motions. The second page states FBI agent Tina Rep did an investigation. The three judges gave no response to the illegal two year and ten months of FISA warrants used by Tina Rep illegally per the Title III Omnibus Crime Control Act of 1968 18 U.S.C. Statute 2510-22 et seq. I mentioned many times in court docs that this law states all evidence is inadmissible after two years of wiretapping and surveillance and of course this instantly destroys the opinion and proves I was arrested with no evidence and of course gives obvious motive as to why they had to declare me incompetent to get me on medication so they could deny my compulsory right to call witnesses as the 6th amendment allows.

They mention Judge Stephen Merryday was assigned to my case and then they mention U.S, Attorney Maria Lopez was responsible for prosecuting my case. Then they mention Lori Palmieri was appointed as my counsel and fired and replaced by Mark O'Brien who at some point was joined in the case by attorney Scott Robbins. They continued on page two and state Magistrate Judge Amanda Sansone denied me bond. They failed to mention she denied me bond with no evidence of a crime or history of me ever committing a crime. So, I was denied bond illegally.

They did not mention Judge Merryday waited 10 months to state excludable delay from voluminous discovery that I have never seen. The voluminous discovery was all from *an illegal length of time of wiretapping and FISA surveillance which of course makes all the* evidence inadmissible. Plus, he denied my pro se motions knowing I told him I sent

certified mail to my first two attorneys to put in motions for a speedy trial, Barker v. Wingo 407 U.S, 514 (1972), United States v. Russell 411 U.S. 423 (1973), Marbury v. Madison 5 U.S. 137 (1803), United States v. Knight March 25, 2009, Nos. 08-10050, 08-10054. Plus, I told Judge Merryday he had me in a catch 22 because he was denying me pro se motions knowing I sent certified mail to both attorneys to assert my right to a speedy trial and to do the four motions. He knows Marbury v. Madison makes my right to assert my right for a speedy trial inalienable. This is why he had to state excludable delay from voluminous discovery to what I claim was done intentionally because he knew all the FISA evidence was inadmissible, and I was never notified per the law 50 U.S Code Statute 1806 (b) and (c) that FISA related evidence was going to used against me. He refused to fire Mark O'Brien as my attorney despite one attorney visit in 23 months and knowing Mark was brought into court to confront a witness I met that claimed Mark's wife was held in contempt of court stating she has video of my attorney smoking crack and meth and eleven months of texts ordering illegal drugs. How the appellate court fails to acknowledge this is astounding. Then I put in a motion that was logged in 04/16/2020. It was a motion to transfer power to Judge Merryday to vacate and dismiss by Fed. R. Crim. P.48 (b), USCA Title 18 Statute 4241 (d) (1) (B), P5.1 and 6(b)2. I figured since they were lying about my incompetency and of course Judge Merryday knew this, that I would force him to release me with this motion which by law he should have. Instead, he disappeared as my Judge. No surprise at all. Yet the Judges in the appellate court made know mention of Judge Merryday's poor ethics and intentionally denying laws and rights to keep me incarcerated. Once again, absolute immunity should never apply to people intentionally and knowingly and wantonly denying laws and statutes and rights especially when they lied on the affidavits and orders that were used to get FISA warrants from March of 2016 to January of 2019. Plus, now we know the FISC and ODNI said the FBI did not comply with the extremely low bar of showing evidence of foreign intelligence or state a reason they would find evidence of a crime in criminal cases between 2016-2020. This is stated on a memorandum and order and released by the FISC and ODNI on April 21st, 2022, in the 9th circuit court of appeals in San Francisco. This is 100% proof my FISA warrants were illegitimate and is why I am asking for an Amicus Curie brief.

When the Atlanta appellate court opined that I failed to recognize absolute immunity of the 12 defendants when I tried to remove ten defendants four times and they would not allow me to remove defendants they claim have absolute immunity, then this is yet another catch 22 that I cannot win because the Atlanta appellate court failed to remove the defendants per the law. Now they are calling the Supreme Court corrupt if they rule the ex-president of the United States has absolute immunity. Since the appellate court ruled judges, lawyers, wardens, U.S. attorneys and FBI agents have absolute immunity despite

lying on the affidavits and orders to get the 2016 FISA warrants used to wrongfully incarcerate me, then I am sure the president has absolute immunity. This is usurpation of the appellate court's responsibility. Atlanta has now set a new precedent in my case by using absolute immunity for the reason to turn down my 31.2-million-dollar civil suit and saying I did not recognize absolute immunity when they failed to remove the defendants from the case from failing to rule on my remove motion.

On page four of the opinion by the Atlanta appellate court, it states, "The district court granted Plaintiff leave to amend but advised him that his wrongful arrest and detention claims were not ripe for review because his criminal case was still pending." They go on to state the court instructed plaintiff "(1) he could raise issues about his counsel in a motion for relief under 28 U.S.C. statute 2255 if he was convicted, (2) his challenge to the order adjudicating him incompetent could be cognizable in habeas corpus proceedings filed against Citrus warden under 28 U.S.C. statute 2241, and (3) his claim for damages might be cognizable in a proceeding under 42 U.S.C statute 1983 if he could show he was denied a constitutional right under the color of law."

The answer to this is once again the Atlanta appellate court failed to recognize I did everything they said I must do and Judge Mary S. Scriven ruled I have cognizable facts backing up my claim of civil conspiracy in my competency proceedings in response to my request for relief in my habeas corpus. They failed to realize I sent a 2241 to the Tampa district and the Eastern division of North Carolina and the appellate court in Jacksonville. The Citrus warden was on those 2241's.

As for waiting to be convicted to put in a 28 U.S.C. statute 2255 when they never allowed me a trial under the false incompetency ruling as habeas corpus ruling by Judge Scriven has been stated, the Atlanta appellate court has once again failed to do their homework. I sent a 2255 to the Tampa division and the appellate court in Boston. To this day I cannot work because the government has me on a terrorist watch list under false pretext and as a fraud on Checkr background company which stopped me from being able to work for Uber as I have done in the past and I cannot be a mortgage broker with a fraud conviction on my background check as I have done in the past. The Atlanta appellate court has failed to recognize that this is equivalent to being convicted in a court of law when I was never convicted and never had a trial. They failed to recognize the tort law that shows under the Privacy Act that the government must fix this and did in fact share the untruth of a conviction and the untruth of me being a foreign agent associated with terrorists. It has been stated they call Catholics and a right to life activist domestic terrorists as well. How this insanity and law breaking by the FBI is allowed in my case, shows the usurpation of the Atlanta courts responsibilities.

Page five of the opinion goes on to state my 42 statute 1983 claims and asked for compensation for wrongful incarceration. Then they said, "while the above filings were pending, the doctors at Butner reported to the court that Plaintiff remained incompetent and was refusing to accept medication that might restore his competency. Upon receipt of the report, Judge Flynn held another competency hearing, after which he issued a report and recommendation ("R&R") finding that the plaintiff's condition had not improved and there was no substantial probability he could be restored to competency in the foreseeable future. When the district court adopted the R&R, the Government filed a motion to dismiss the indictment against Plaintiff without prejudice. The district court granted the motion, and Plaintiff was released from custody in August 2021." Once again, the Appellate court fails to acknowledge that in a habeas corpus filing, Judge Mary S. Scriven ruled I have "cognizable facts backing up my claim of civil conspiracy in my competency proceedings."

For the appellate court to fail to see my claims under 28 U.S.C. statute 1915 (e)(2)(B) for relief as frivolous due to immunity from defendants they would not even allow me to remove, and they failed to rule on my removal motion after six months which of course is why they had to allow me a Writ of Mandamus per the law, is egregious and once again they failed to follow the law. The Atlanta Appellate Court should have known that I documented the witnesses and the questions I wanted asked in my so-called 2nd competency hearing on 05/27/2021, yet they denied me this constitutional right. I asked in that hearing to be released with prejudice. Plus, I documented that I never had my Sell hearing within one year from the 1st competency hearing on 12/05/2019, which of course is the law, and I was denied this right. Plus, the appellate court states I did not state a viable claim. They know I documented that I wanted the Tampa district court and the Atlanta appellate court to do an in camera ex parte review of my affidavits and orders that the FBI used to get the FISA warrants that they used against me from March of 2016 to January of 2019, and once again the court failed to do their duty and took away this right under 50 U.S.C statute 1806 (f), which of course would have shown that the FBI failed at the low bar to get the warrants used to incarcerate me. The FISC and the ODNI have stated that in all criminal cases between 2016-2020, the FBI failed to provide this in all those criminal cases of which I am one. This of course is and was a viable claim and has come to light by the FISC memorandum and order. Plus, the court failed to recognize that Judge Scriven had already ruled I had cognizable facts backing up my claim of civil conspiracy in my competency proceedings before the 2nd competency hearing on 05/27/2021 and denied my documented witnesses and questions I wanted answered in a Sell hearing. Plus, they made no mention of the 16 pages I read in that hearing, and it is documented. They should have read it before forming their opinion. Once again this is usurpation of the appellate court's responsibility.

On page 7 of the opinion, they say how I was turned down from being in forma pauperis because my case lacked merit. Then states attorney Ben Buck responded that he declined to represent me for refusing to pay an hourly fee. My answers to these incredible lies should get me paid and get Ben Buck to lose his license. The merit of my case is simple. 1. The FISC and ODNI have stated the FBI failed to show evidence of foreign intelligence or state and reason why they would find evidence of a crime on criminal cases between 2016-2020 which of course I am one of these cases. 2. I have never had a trial and there is no probable cause. The Supreme Court ruled in Larry Thompson v. Pagiel Clark, No. 20-659. Argued October 12th, 2021---Decided April, 2022. Cite as: 596 U.S.___(2022), ruled the Writ of Certiorari was remanded for further proceedings. It was remanded as a 4th amendment violation because there was no probable cause as is the case in my case, and I had no trial. I documented many times to see my probable cause affidavit and I have been denied this right every time. Plus, I have never had a trial and I was denied exculpatory evidence that would have proved my innocence easily. I have documented all of this. It truly seems like the three judges did not read my case.

Supreme Court case Gideon v. Wainwright 372 U.S. 335 (1963) is a case that shows the 6th amendment guarantee of counsel being fundamental to a fair trial and as such, applies through the Due Process Clause of the 14th amendment. I documented only having one ten-minute counsel visit of about ten minutes and no phone calls for a two-year period between April of 2019 to April of 2021. I asked many times to see or talk to counsel and because I was denied counsel many times despite my requests that fell upon deaf ears, I asked to have my attorneys fired about five times and of course they fired the first attorney Lori Palmieri. They refused to fire Mark O'Brien despite his wife allegedly getting held in contempt of court stating she has video of Mark smoking meth and crack and 11 months of him texting to get illegal drugs. He was brought into court from these allegations, and I have been denied the particulars of that hearing despite asking for them. Then they gave me a third ineffective counsel and called him ad litem because of the false incompetent claim. Scott Robbins refused to give me his phone number or address and I only saw him once in the first ten months he was my attorney. Of course, his only objective was to convince me to play along with me being incompetent so they could drop my case and let me go home. What all these corrupt attorneys failed to realize, is I was innocent and had no desire to pretend to be incompetent just get sent home from a case that has an illegal FISA warrant and an illegal investigation of two-year time limit of wiretapping and surveillance with no evidence of a crime. The attorneys never even asked me once about the charges on the indictment. This is because I mentioned they all knew that 2016 FISA cases were no good and it was all over the news and I said in court docs that everyone knew I was never going to get to court. I listed everyone that I said knew I would not get to court and dared them to

take me to trial and warned them I would destroy them in court. This is not narcissism, which is one of the things they defamed my character by stating in the 05/27/2021 hearing, *this is me knowing I was not guilty and in fact they were guilty of entrapment and lying to* the FISA Court to get a FISA warrant and guilty of a two-year and ten-month FISA surveillance that makes all evidence inadmissible. This is why they denied me trial. Therefore, I should have been granted IFP status because my case does not lack merit and shows many exceptional circumstances from the government breaking and denying over 50 statutes and laws and rights as I mentioned in my Constitutional and Statutory Provisions Involved section of this Writ of Certiorari request.

On page 7 of the opinion, they go on to mention that my contracted attorney, Ben Buck, responded that he declined to represent Plaintiff after I refused to pay an hourly fee. *The amount of nerve for the Appellate court to say this should go down as the most corrupt* statement to cover up obvious and intentional ineffective counsel in history. I had sent the contract I had with Ben Buck showing he was to get paid on contingency. I stated the fact that Ben Buck did not respond to Judge Mary Scriven's request for a reason as to why he never entered as my attorney. Once she saw the contract, Ben Buck did not respond within the 15 days he had to respond and never asked for an extension. I documented the call I made to the Atlanta Appellate court and this phone call can easily be found. I also documented that Ben Buck lied because he stated he emailed me a termination letter. I told the Appellate court this was a lie and I wanted him to produce this email he did not send. Judge Scriven told me not to tell the Appellate court this fact. Well, I did tell them, and I produced six recent reviews of which three reviews show that Ben Buck has done this same thing to three other people by running out the statute of limitations. I claimed he does this on purpose, and he is the only one that responds to civil suits against the government on lawyers.com and intentionally tries to run out the 6-month statute of limitations to have the case dropped. *I presented a subpoena to put him on the stand to prove he lied, and the* Atalanta Appellate court has those bad reviews and questions I want answered and every email I sent to Ben Buck in their possession. This kind of response in an opinion, should show these Judges are forgetting fact.

The opinion once again goes on to say they denied me IFP status and will not appoint counsel because "no arguable merit." To say a case has no arguable merit when the FISC says the FISA warrants like mine are no good and the habeas corpus findings state I have cognizable facts of a fraudulent investigation because the FBI used FISA warrants for an illegal two years and ten months which of course makes all evidence inadmissible. Plus, denying me a trial or probable cause affidavit and counsel, makes this beyond reason that these Judges state no merit.

Page 8 of the opinion goes on to state I respond to immunities precluding liability for prosecutors, attorneys, and judges named in the complaint. Once again this proves they *did not read the complaints and the add/remove motion I sent them. I did try to remove 10* defendants, but the Appellate court failed to ever rule on that motion and after the 180-day time limit the Appellate court must rule on motions, I filed a Writ of Mandamus. They also failed to mention the 35 case laws I showed to prove the defendants do not have absolute immunity and gave the reasons why. The Supreme Court has taken immunity away when affidavits and orders that contain lies or omit exculpatory evidence from the affidavits to get warrants. The FISC and ODNI has stated the FISA warrants in criminal cases between 2016-2020 are no good. This should have my Writ of Certiorari remanded to a civil trial by jury in Tampa.

The discussion starts on page 8 of the Appellate opinion. They say I fail to mention in my brief that I fail to dispute the district courts grounds for dismissing my complaint. All 10 pages of the Tampa District Courts opinion, is stating reasons why all 12 defendants are immune. This is the only reason stated to dismiss my case. I intended to remove all 12 defendants in my Writ of Mandamus for that very reason. The Appellate court failed to remove 10 defendants and broke the law by not removing them after a 180-day delay causing me to file a Writ of Mandamus. I am flat broke and asked to be declared in forma pauperis so I could remove all 12 defendants to comply with the Appellate and District courts only reason to dismiss my case, which of course is the absolute immunity both *courts state as the reason to dismiss my case. This is why I have filed a Writ of Certiorari.* I am once again stating I want to remove all 12 defendants and continue the case only suing the United States of America. As a Pro Se litigant, I thought I presented irrefutable evidence from 35 case laws I mentioned, that these defendants are not immune when the affidavits used to gain the warrants against me have lies and exclude exculpatory evidence and they knowingly and wantonly deny me rights. As we all know by the memorandum and order released by the FISC and ODNI on April 21st, 2022, my warrants were illegal. Nonetheless, I am once again trying to drop the defendants off the case. As a Pro Se litigant, you are supposed to give me some wiggle room for not being well versed in the law and allow me to drop the 12 defendants from my case. I could have done this in my Writ of Mandamus, but I did not have the funds to pay for it. I am the longest pretrial detainee in history for fraud I did not commit and can not get a job due to being labeled a terrorist and fraud with no merit by the government that shared this defamation to truthfinder.com and Checkr background company. I understand the Courts wanting me to remove all 12 defendants *and not ruin their lives as they have done to my life and family's lives. I am ok with that. This* is why I keep trying to remove all 12 defendants so I can finally get my life back. President Trump is in the Supreme Court right now saying he has absolute immunity. If he doesn't

have absolute immunity, then my 12 defendants don't have absolute immunity. I was denied my right to depose the 12 defendants to prove they intentionally and knowingly and wantonly denied my rights and I was denied the right to see the affidavits and orders used to get the grand jury and illegal FISA warrants used for an illegal length of time. Either way, I am willing and have attempted to remove the defendants and continue my case against the United States of America.

They go on to say on page 10 of the Appellate court opinion that I don't acknowledge immunity or statute of limitations. When an Appellate court fails to acknowledge a statute of limitations of FISA surveillance only being allowed for two years or all evidence is suppressed and I should have never been arrested, then how can they hold a Pro Se litigant without a law degree responsible for failing to acknowledge immunity or a statute of limitations when I clearly tried to remove defendants. Does anyone consider the fact that I am not an attorney, and if I knew immunity was absolute, I would have only sued the government from the start. I was in six jails and two of them twice, and I was denied access to law libraries and Lexis Nexis for 28 of the 31 months that I was incarcerated. They failed to forward my legal mail when they transferred me 8 times around the country in ankle shackles that made me bleed. Let's not forget the wrist cuffs and must eat with them on for a 14-hour bus trip. Of course, this is against the law, and I could have proved it if I had my right to depose the witnesses I subpoenaed, but I was denied a trial. Surely you can allow me to remove the defendants with this absolute immunity to allow my civil case to *continue to trial because I did try to acknowledge immunity and tried to remove defendants* and the Appellate court makes no mention of this despite them not ruling on my remove motion after 180 days which of course is against the law. This should make both opinions moot and I should be granted my Writ of Certiorari.

Page 11 of the Appellate opinion try's to continue the absolute immunity of the defendants that they refused to remove as defendants by waiting over 180 days and still never ruling on removing defendants, is clinging to an immunity defense when I have tried and again I am trying to remove everyone accept the United States of America who is responsible for these 12 individuals under the color of law. This reason to dismiss my case when the court broke the law by not allowing defendants with immunity to be removed is meritless and moot. I have a right to remove defendants and I was denied this right. Obviously, the Appellate judges did not read three complaints and my add/remove motion or they would not argue this. They give my prosecutor absolute immunity when she withheld exculpatory evidence and discovery and trial and signed off on me being incompetent and conspired with my first attorney to get attorney-client information illegally and showed up as head U.S. Attorney in the competency hearing on 05/27/2021 even though she did not sign a 2nd indictment superseding all other indictments. She broke the

law keeping me incarcerated knowing there was no admissible evidence. This is criminal and she made me the longest pretrial detainee for fraud in history and falsely defames me and reports me to a government watchlist as a domestic terrorist for just doing business. Yet, I am trying again through this Writ of Certiorari, to remove the immune defendants and ask to allow me a civil trial with a jury in Tampa with an appointed attorney. Or just pay me.

On page 12 of the opinion, they go on to explain how Tina Rep (FBI Agent) is immune from the illegal FISA surveillance that they know the FISC and ODNI ruled the warrants were no good. How they are not aware of this ruling astounds me. Once again, remove her and let me continue without her on the indictment. She cried on my front lawn when I mentioned I knew she used Leo Corrigan to entrap me. She knew she had no evidence. She knows she failed at entrapment again with Thomas Fortman and Matthew Sipple. She knows I could prove this in a court of law. This is criminal. Yet I have no problem removing her because we all know that the 7th floor at the FBI was calling the shots with the 2016 FISA warrants that were all no good. The FBI was found to have altered emails to get a FISA warrant against Carter Page. I can quote Senator Kennedy and Senator Lee and James Comey and William Barr and Inspector General Horowitz saying the FISA warrants in 2016 were no good, but I am sure all of you already know this, unlike the Atlanta Appellate judges, and this is why I deserve my jury trial for punitive Damages and wrongful incarceration per the law, otherwise, compensate me.

On page 13 they defend the wardens and doctors and affirm the district court's opinion which is immunity. The immunity claim is moot as I want to move forward against the United States only.

The Supreme Court has set precedence in the two cases mentioned. There was no probable case or trial. They ruled to proceed on Writ of Certiorari. I ask for the same. I am asking for relief for punitive damages and wrongful incarceration. This is the only remedy I have.

Thank you, Glenn Francis

the agency authorizes its retention after making certain findings for the specific information to be retained. *See* NSA Minimization Procedures § 4(d); FBI Minimization Procedures § III.A.3; CIA Minimization Procedures § 8; NCTC Minimization Procedures § B.4.

Each agency's querying procedures contain recordkeeping requirements for the use of U.S.-person query terms in response to § 702(f)(1)(B). *See* NSA Querying Procedures § IV.B; FBI Querying Procedures § IV.B; CIA Querying Procedures § IV.B; NCTC Querying Procedures § IV.B. They permit investigative and analytical personnel at the CIA, NSA, and NCTC to conduct queries of unminimized Section 702 information if the queries are reasonably likely to return foreign intelligence information. *See* NSA Querying Procedures § IV.A; CIA Querying Procedures § IV.A; NCTC Querying Procedures § IV.A. Their FBI counterparts may conduct such queries if they are reasonably likely to return foreign intelligence information or evidence of a crime. *See* FBI Querying Procedures § IV.A.

B. Global Change to Minimization Procedures to Ensure Compliance with Statutory Limitations on Dissemination

There is one substantive change that cuts across all four agencies' minimization procedures, which is intended to clarify that disseminations must comply with 50 U.S.C. § 1801(h)(2). Section 1801(h)(2) specifies that minimization procedures must "require that nonpublicly available information, which is not foreign intelligence information, as defined in [50 U.S.C. § 1801(e)(1)], shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand

foreign intelligence information or assess its importance." Each set of minimization procedures before the Court includes the following language:

> Nothing in these procedures authorizes the dissemination of non-publicly available information that identifies any United States person without such person's consent unless: (1) such person's identity is necessary to understand foreign intelligence information or assess its importance; (2) the information is foreign intelligence information as defined in 50 U.S.C. § 1801(e)(1); or (3) the information is evidence of a crime which has been, is being, or is about to be committed and that is to be disseminated for law enforcement purposes.

See NSA Minimization Procedures § 8; FBI Minimization Procedures § IV; CIA Minimization Procedures § 5; NCTC Minimization Procedures § D.1. Adopting this language is a helpful clarification of the dissemination rules.

C. NSA, CIA, and NCTC Querying Procedures

The October 18, 2021 Submission, as amended by the March 18, 2022 Submission, does not propose any changes to the NSA, CIA, or NCTC querying procedures from those approved by the Court in connection with the 2020 Certifications. *See* October 18, 2021 Memorandum at 2 n.2; March 18, 2022 Memorandum at 2-3. Nothing detracts from the Court's earlier findings that these procedures as written are sufficient. Additional changes to the FBI Querying Procedures, NSA Minimization Procedures, and CIA Minimization Procedures are discussed in the following sections.

D. FBI Querying Procedures

The FBI Querying Procedures include new provisions adopted to address a pattern of broad, suspicionless queries that are not reasonably likely to retrieve foreign intelligence

information or evidence of crime. In order to evaluate those provisions, it is necessary to understand the historical pattern of non-compliant queries conducted by the FBI.

1. Background and Compliance History

The FISC first approved a separate set of FBI querying procedures in 2019. *See* Docket Nos. [redacted] Mem. Op. and Order at 16-17 (Sept. 4, 2019) ("September 4, 2019 Opinion"). Previously, the standard for FBI queries of Section 702 information appeared in FBI's minimization procedures, and provided that: "To the extent reasonably feasible," FBI personnel "must design" queries of unminimized Section 702 information "to find and extract foreign intelligence information or evidence of a crime." *See* October 18, 2018 Opinion at 67. The government represented that this querying standard was practically equivalent to the one for queries of raw information acquired under Titles I and III of FISA. It characterized that standard as

> a high one, having three elements: (1) a query cannot be "overly broad," but rather must be designed to extract foreign-intelligence information or evidence of crime; (2) it must "have an authorized purpose" and not be run for personal or improper reasons; and (3) there must be "a reasonable basis to expect [it] will return foreign intelligence information or evidence of crime."

Id. But the FBI querying procedures now in effect do not expressly include these three elements. Rather, they provide that FBI queries of "unminimized contents or non-contents (including metadata) acquired pursuant to Section 702 . . . must be reasonably likely to retrieve foreign intelligence information, as defined by FISA, or evidence of a crime, unless otherwise specifically excepted." 2020 FBI Querying Procedures § IV.A.1.

The FBI frequently violated the three-part standard articulated by the government. In October 2018, the Court concluded that "the FBI's repeated non-compliant queries of Section 702 information" precluded findings that its Section 702 querying and minimization procedures, as implemented, satisfied the definition of "minimization procedures" at 50 U.S.C. § 1801(h) and were reasonable under the Fourth Amendment. October 18, 2018 Opinion at 62. The Court cited as a contributing factor in FBI's non-compliance a "lack of a common understanding within FBI and [the National Security Division of the U.S. Department of Justice (NSD)] of what it means for a query to be reasonably likely to return foreign-intelligence information or evidence of crime." *Id.* at 77. The Court expected that a requirement to document the basis for believing that a query using a U.S.-person query term satisfied the querying standard would help ensure that the FBI personnel recalled and thoughtfully applied the standard before reviewing unminimized Section 702-acquired contents retrieved by using U.S.-person query terms. *See id.* at 92-93; *see also id.* at 96 ("The Court contemplates a brief statement of the query justification — in many cases it should suffice to succinctly complete a sentence that starts 'This query is reasonably likely to return foreign-intelligence information [or evidence of crime] because . . . .'"). The Foreign Intelligence Surveillance Court of Review (FISCR) anticipated that such a documentation requirement could have similar "potential benefits," though it stopped short of requiring the government to adopt that particular measure. *In re DNI/AG 702(h) Certifications*, 941 F.3d, 547, 565 (FISCR 2019) (per curiam).

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Eventually, after the FISCR affirmed the FISC's decision in part, *see* 941 F.3d at 566, the government revised these procedures to require FBI personnel to provide "a written statement of facts showing that the query was reasonably likely to retrieve foreign intelligence information or evidence of a crime" before reviewing the unminimized contents of Section 702-acquired information retrieved using a U.S.-person query term, except when a FISC order is required by Section 702(f)(2).[4] FBI Querying Procedures §§ IV.A.3, IV.B.4; September 4, 2019 Opinion at 8-9; Docket Nos. [redacted] Mem Op. and Order at 62 (Dec. 6, 2019) ("December 6, 2019 Opinion"). But the primary means of implementing this requirement was for FBI personnel to select from a pre-set menu of broad, categorical justifications, instead of drafting a case-specific explanation of why a particular query meets the standard. *See* November 18, 2020 Opinion at 44-47.

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[4] Section 702(f)(2) requires the FBI to obtain approval from the FISC before accessing the contents of communications acquired under Section 702 under the following circumstances:

> (1) such contents "were retrieved pursuant to a query made using a United States person query term,"
>
> (2) the query "was not designed to find and extract foreign intelligence information" and
>
> (3) the query was conducted "in connection with a predicated criminal investigation . . . that does not relate to the national security of the United States,"
>
> (4) unless "there is a reasonable belief that such contents could assist in mitigating or eliminating a threat to life or serious bodily harm."

§ 702(f)(2)(A), (E).

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In November 2020, the Court found "that the FBI's failure to properly apply its querying standard . . . was more pervasive than was previously believed," but noted that most of those queries "occurred prior to the implementation of the FBI's system changes and training" regarding the documentation requirement. *See id.* at 39, 41. "In addition, the COVID-19 pandemic severely limited the government's ability to monitor the FBI's compliance" after those systems changes and training had occurred. *Id.* at 41. Under those "unique circumstances," the Court concluded that the improper queries did not undermine its prior determination that the FBI's procedures, with implementation of the documentation requirement, met statutory and Fourth Amendment requirements. *Id.*

Nonetheless, the government continued to report significant querying violations. On September 2, 2021, the Court issued an order that questioned the effectiveness of the documentation process in view of a recent series of non-compliant FBI queries. *See* Querying Violations Order at 5. The Order focused on an apparent continued lack of a common understanding of how to apply the querying standard, as evidenced by queries that NSD found to have violated that standard, but that the FBI – sometimes at the management level – insisted were proper. Specifically:[5]

- Between late 2016 and early 2020, the FBI's [redacted] regularly queried unminimized FISA information using identifiers of individuals listed in local

[5] Many of the examples in this discussion involve queries of information acquired under provisions of FISA other than Section 702; however, as noted above, the government contends that the standard for the FBI to query raw Section 702 information is essentially the same as for queries of other categories of FISA information. Confusion or disagreement about what the standard requires is therefore unlikely to be limited to one such category.

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police homicide reports, including victims, next-of-kin, witnesses, and suspects. Supplemental notice of compliance incidents regarding the FBI's querying of raw FISA-acquired information at 1, 5-7 (May 21, 2021) ("May 21, 2021 Notice"). NSD found these queries to have violated the querying standard because there was no reasonable basis to expect they would return foreign intelligence or evidence of crime. *Id.* at 5. The FBI, however, maintained that querying FISA information using identifiers of the victims – simply because they were homicide victims – was reasonably likely to retrieve evidence of crime. *See id.* at 6; Notice of compliance incident regarding the FBI's querying of raw FISA-acquired information, including information acquired pursuant to Section 702 of FISA at 4-5 (May 28, 2021) ("May 28, 2021 Notice").

- [redacted] ran a batch query of unminimized FISA information in June 2020, using identifiers of 133 individuals arrested "in connection with civil unrest and protests between approximately May 30, and June 18, 2020." The query was run to determine whether the FBI had "any counter-terrorism derogatory information on the arrestees," but without "any specific potential connections to terrorist related activity" known to those who conducted the queries. Preliminary Notice of compliance incidents regarding the FBI's querying of raw FISA-acquired information at 2 (April 26, 2021) ("April 26, 2021 Notice"). NSD assessed that the queries were not reasonably likely to retrieve foreign intelligence information or evidence of a crime. May 21, 2021 Notice at 8. The FBI, however, asserted that those queries were reasonably likely to retrieve evidence of a crime simply because they pertained to persons who had been arrested and therefore reasonably believed to have committed an offense. *Id.* The FBI further maintained that there was a "reasonable basis to believe these queries would return foreign intelligence" because [redacted] information, not relied upon by the person who ran the queries, that suggested that [redacted] of a foreign power [redacted] a message on behalf of [redacted] organization 'protesting' U.S. [redacted] violence against African-Americans to various U.S. persons." *Id.* at 8-9.

- During June 11-15, 2020 [redacted] analyst conducted 656 queries of unminimized FISA information using identifiers [redacted] in the United States who were [redacted] thought to be of particular interest to the [redacted] May 21, 2021 Notice at 3-4. The FBI regarded [redacted] as potential sources, and the analyst ran the queries to check for derogatory information without having reason to suspect that any would be found. *Id.* at 3. NSD concluded that these queries "were not reasonably likely to retrieve foreign

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intelligence information or evidence of a crime." *Id.* The FBI took the contrary position, based on the individuals' [redacted] *Id.* at 3-4.

The government reported further querying violations at [redacted][6] and elsewhere. Since the Court issued the Querying Violations Order, the government has reported additional, significant violations of the querying standard, including several relating to the January 6, 2021 breach of the U.S. Capitol:

- An analyst [redacted] ran 13 queries of individuals suspected of involvement in the January 6, 2021 Capitol breach. The analyst said she ran the queries to determine whether these individuals had foreign ties, and indicated she had run "thousands of names within FBI systems in relation to the Capitol breach investigation" and did not remember why she ran these 13 queries on raw FISA information. NSD concluded the queries were not reasonably likely to retrieve foreign intelligence information or evidence of crime. Notice of compliance incident regarding the FBI's querying of raw FISA-acquired information, including information acquired pursuant to Section 702 of FISA at 3 (Dec. 1, 2021) ("December 1, 2021 Notice").

- [redacted] officer ran two queries for a person under investigation for assaulting a federal officer in connection with the Capitol breach. The officer could not recall why he queried raw FISA information, but FBI field office personnel participating in the query audit stated that the FBI viewed "the situation in general" at the time of the queries as a threat to national security. NSD

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[6] *See, e.g.*, April 26, 2021 Notice at 2 (May 2020 queries "using variations of the names of two known political activist groups . . . involved in organized protests"); May 21, 2021 Notice at 2 (697 queries conducted during January-June 2020 using identifiers for persons scheduled to visit [redacted]; *id.* at 3 (June 2020 queries using identifiers for at least 790 cleared defense contractors from whom the FBI might request cooperation); *id.* at 4-5 (330 queries conducted in June 2020 using identifiers of employees [redacted] whom the FBI might want to recruit as sources). The foregoing queries ran against unminimized information acquired under Titles I, III, and V of FISA. *Id.* at 1; April 26, 2021 Notice at 1. During July-August 2020, additional queries regarding visitors [redacted] were run against Section 702-acquired information. May 28, 2021 Notice at 1-3.