

23-7498

No. 24-

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SUPREME COURT OF THE
UNITED STATES

In the
Supreme Court of the United States

Lawrence Watson
Petitioner

v.

COMMISSIONER OF PROBATION EDWARD DOLAN AND
COMMISSIONER OF PROBATION DIANE FASANO
Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals for the First
Circuit

PETITION FOR WRIT OF CERTIORARI

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May 6, 2024

QUESTIONS PRESENTED

Whether an individual who is a defendant of an abuse prevention order and whose parental right are restricted or terminated is “in custody”, pursuant to *In Rex v. Clarkson*, 1 Str. 444, 93 Eng. Rep. 625 (K. B. 1722)

Whether abuse prevention proceedings that restrict or terminate parental right are constitutionally deficient, pursuant to *Matthews v Eldridge*, 424 US 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)

Whether an individual who is a defendant of an abuse prevention order under M.G.L. c209A is “in custody”, pursuant to *Jones v. Cunningham*, 371 US 236, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963)

RELATED PROCEEDINGS

Docket 9507RO0222 McRae v Watson, Dorchester District Court

Docket 9507RO0217 Lawrence Watson v Teal McRae, Dorchester District Court

Docket 9507RO0222 Teal McRae v Lawrence Watson, Dorchester District Court

(Docket Unknown) Commonwealth v Lawrence Watson, West Roxbury District Court

Docket 9607RO0254 Teal McRae v Lawrence Watson, Dorchester District Court

Docket SJ-1995-0140 Lawrence Watson v Teal McRae, Supreme Judicial Court (Single Justice)

Docket SJ-1996-0008 Lawrence Watson v Teal McRae, Supreme Judicial Court (Single Justice)

Docket SJ-1996-0189 Lawrence Watson v Teal McRae, Supreme Judicial Court (Single Justice)

Docket 1998-J-0050 Lawrence Watson v Teal McRae, Supreme Judicial Court (Single Justice)

Docket SJ-2005-0474 Lawrence Watson v Teal McRae et al, Supreme Judicial Court (Single Justice)

Docket SJC-09775 Lawrence Watson v Justices of the Dorchester Division of the District Court Department & another, Supreme Judicial Court (Full Panel)

Docket SJ-2007-0286 Lawrence Watson v Clerk's Office of Dorchester District Court, Supreme Judicial Court (Single Justice)

Docket SJC-10037 Lawrence Watson v Clerk Magistrate of Dorchester Division of the District Court Department, Supreme Judicial Court (Full Panel)

Docket SJC-10265 Lawrence Watson v Clerk's Office of Dorchester District Court, Supreme Judicial Court (Full Panel)

SJC-10677 Lawrence Watson v Sherry Walker and Justices of the Dorchester District Court, Supreme Judicial Court (Full Panel)

Docket 11-cv-11697 Lawrence Watson v Martha Coakley and Commissioner of Probation, U.S. District Court (Boston)

Docket 11-2402 Lawrence Watson v Martha Coakley and Commissioner of Probation, U.S. Court of Appeals for First Circuit

Docket 22-cv-00156 Lawrence Watson v Edward Dolan, U.S. District Court, Eastern District of Louisiana (New Orleans)

Docket 22-cv-11287 Lawrence Watson v James Dolan, U.S. District Court
(Boston)

Docket 23-1053 Lawrence Watson v Edward Dolan, U.S. Court of Appeals for
First Circuit

**Docket 03W0810 Watson v Walker, Probate and Family Court for
Suffolk County**

Docket 03RO0093 Lawrence Watson v Walker, Probate and Family Court for
Suffolk County

Docket 0307RO0378 Walker v Watson, Dorchester District Court

Docket 2006-J-0598 Walker v Watson, Appeals Court (Single Justice)

Docket 2006-P-1945, S.W. vs. L.W., Appeals Court (Full Panel)

Docket 2007-P-0887 Watson v Walker, Appeals Court (Full Panel)

Docket 2007-P-1273 Watson v Martines etal, Appeals Court (Full Panel)

Docket 2007-P-1789 Watson v Martines & others, Appeals Court (Full Panel)

Docket SJC-09488 Watson v Walker, Supreme Judicial Court (Full Panel)

Docket SJC-09510 Walker v Watson, Supreme Judicial Court (Full Panel)

Docket SJC-09511 Walker v Watson, Supreme Judicial Court (Full Panel)

Docket SJ-2007-0303 Watson v Clerk's Office of the Dorchester District Court, Supreme Judicial Court (Single Justice)

Docket SJ-2007-0378 Watson v Justice of the Dorchester District Court & others, Supreme Judicial Court (Single Justice)

Docket SJC-10265 Watson v Clerk Magistrate of the Dorchester Division of the District Court Department, Supreme Judicial Court (Full Panel)

Docket SJC-10038 Watson v Appeals Court, Supreme Judicial Court (Full Panel)

Docket SJC-10286, Watson v Walker & others, Supreme Judicial Court (Full Panel)

Docket SJC-10677 Watson v Walker and Justices of the Dorchester District Court, Supreme Judicial Court (Full Panel)

Docket SJC-10678 Watson v Walker, Justices of the Dorchester District Court, and Clerk's Office of the Dorchester District Court, Supreme Judicial Court (Full Panel)

Docket SJC-10680 Watson v Justice Miller et al, Supreme Judicial Court (Full Panel)

Docket 11-cv-11697 Watson v Coakley and Commissioner of Probation, U.S. District Court (Boston)

Docket 11-cv-11698 Watson v Coakley and Commissioner of Probation, U.S.
District Court (Boston)

Docket 11-2403 Watson v Coakley and Commissioner of Probation, U.S.
Court of Appeals for First Circuit

Docket 11-2404 Watson v Coakley and Commissioner of Probation, U.S.
Court of Appeals for First Circuit

Docket 22-cv-00151 Lawrence Watson v Edward Dolan, U.S. District Court,
Eastern District of Louisiana (New Orleans)

Docket 22-cv-10771 Lawrence Watson v James Dolan, U.S. District Court
(Boston)

Docket 23-1635 Lawrence Watson v Edward Dolan, U.S. Court of Appeals for
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PETITION FOR A WRIT OF CERTIORARI

Petitioner Lawrence Watson respectfully requests the issuance of a writ of certiorari to review two judgments of the United States Court of Appeals for the First Circuit that Petitioner seeks to combine.

DECISION BELOW

The judgments of the United States Court of Appeals for the First Circuit in the matter of Docket 23-1053 Watson v Dolan/Campbell and Docket 23-1635 Watson v Fasano are attached. **Pet. App. at 1,5**

JURISDICTION

The United States Court of Appeals for the First Circuit entered judgment on December 12, 2023 in the matter of Docket 23-1053 Watson v Dolan/Campbell. **Pet. App. at 1** The United States Court of Appeals for the First Circuit entered judgment on December 20, 2023 in the matter of Docket 23-1635 Watson v Dolan. **Pet. App. at 5** The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), 28 U.S.C. § 2254(a) and Supreme Court Rule 12.4 because Petitioner seeks to consolidate the matters.

FEDERAL STATUTES INVOLVED

Title 28 U.S. Code § 2254(a) - State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the

ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

STATEMENT OF THE CASE

A. Introduction

Since 1995, Petitioner has been a defendant of two abuse prevention orders, pursuant to Massachusetts General Law Chapter 209A (herein “M.G.L. c.209a”). This petition arises as a result of the violation of Petitioner’s constitutional rights in the two aforementioned proceedings

Petitioner maintains that the use of the preponderance of evidence standard in abuse prevention proceedings is unconstitutional, pursuant to Matthews v Eldridge, 424 US 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) and Santosky v Kramer, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982),

Petitioner contends that he is “in custody”, pursuant to Rex v. Clarkson, 1 Str. 444, 93 Eng. Rep. 625 (K. B. 1722) and Jones v. Cunningham, 371 US 236, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963).

Petitioner maintains that abuse prevention orders are issued, enforced and prosecuted in a biased manner against males, pursuant to Yick Wo v. Hopkins, 118 US 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886)

B. Chapter 209A proceedings in the matter of Docket 222

On February 8, 1995 Petitioner applied for and obtained an abuse prevention order in the Dorchester District Court (herein “the DDC”) against his former

girlfriend T. McRae, pursuant to M.G.L. c.209A, s3. Docket 9507RO0217 Lawrence Watson v T. McRae (herein “Docket 217”)

On February 9, 1995 in the DDC McRae applied for and obtained an abuse prevention order against Petitioner, pursuant to M.G.L. c.209A, s3. Docket 9507RO0222 T. McRae v Lawrence Watson (“Docket 222”)¹

On February 16, 1995 the DDC extended each order but failed to issue specific written findings of fact. M.G.L. c.209A, s.3 states, “A court may issue a mutual restraining order or mutual no-contact order...only if the court has made specific written findings of fact....”. (emphasis added) No specific written findings of fact were issued for the order of Docket 222. Petitioner was required to surrender his firearms and Firearms Identification Card to the Boston Police Department and furniture that was part of an agreement between the two parties to McRae and resign his position as an armed security guard

On the advice of the DDC on March 2, 1995 Petitioner mailed a timely notice of appeal to the Appeals Court for Suffolk County [herein “Appeals Court”] in the matter of Docket 222. SJ-1995-0140 Lawrence Watson v T. McRae (“Docket 140”)
Pet. App. at 15 Item 1

1. Petitioner cannot provide documentation of these two proceedings because the DDC refuses to provide them to Petitioner

On March 20, 1995 the Supreme Judicial Court (herein the “SJC”) denied Petitioner any relief in the matter of Docket 140. **Pet. App at 15 Item #2** In relevant part M.R.A.P. Rule 4 states:

“If a notice of appeal is mistakenly filed in an appellate court, the clerk of such appellate court shall note the date on which it was received and transmit it to the clerk of the lower court from which the appeal was taken and it shall be deemed filed in such lower court on the date so noted.”

On May 23, 1995 the DDC vacated nunc pro tunc the order of Docket 217; Petitioner did not appear at the hearing because he was not notified. **Pet. App at 15 Item #4**

On June 8, 1995 in the DDC McRae filed a complaint for the alleged violation of the order of Docket 222 against Petitioner.

On December 5, 1995, Petitioner went on trial in West Roxbury District Court for alleged violations of the abuse prevention order of Docket 222. Due to ineffective counsel that refused to address the improprieties of the issuance of the order of Docket 222, Petitioner was coerced to accept a plea bargain.

On February 16, 1996 the DDC extended the order of Docket 222 for one year, although Petitioner had no contact with McRae.

On November 15, 1996 Petitioner was sentenced to serve one year at the Suffolk County House of Correction for alleged violation of probation.

On February 14, 1997 the DDC issued a permanent abuse order against Petitioner under a new docket number. Docket 9607RO0254 Teal McRae v

Lawrence Watson (herein “Docket 254”) Petitioner continued to have no contact with McRae except for in the DDC.

On March 30, 2001 the DDC issued an order that prohibited Petitioner from filing any future motions in the matter of Docket 222/254.

On account of the actions of the DDC, Petitioner sought appellate review of Docket 222/254 in the SJC. **Pet. App. at 88, 89** Petitioner repeatedly asked the SJC to compel the DDC to provide him with court documents and court tapes. **Pet. App. at 89 Item 7.5, 9** The SJC denied Petitioner any relief (**Pet. App. at 91**). Watson v Clerk-Magistrate of the Dorchester Division of the District Court Dept, 452 Mass. 1025 (2008)

To date Petitioner has been denied an appeal of Docket 222/254

C. Chapter 209A proceedings in the matter of Docket 378

After suffering continued physical assault since ending their relationship (**Pet. App. at 16**), on April 16, 2003 Petitioner applied for and obtained an abuse prevention order in the Probate and Family Court for Suffolk County (herein the “Probate Court) under M.G.L. c. 209A, s.3 against Walker in the matter of Docket 03RO0093 Lawrence Watson v Walker [“Docket 93”] **Pet. App. at 18-22** In violation of M.G.L. c. 209A, s.4, on April 26, 2003 the Probate Court denied the extension of the order of Docket 93. **Pet. App. at 22** M.G.L. c. 209A, s.4 states, “[I]f the defendant does not appear at such subsequent hearing, the temporary orders shall continue in effect without further order of the court.” Walker did not appear at the hearing. **Pet. App. at 23** lines 1-11

On May 5, 2003 in the DDC Walker applied for and received an abuse prevention order under M.G.L, c209A, s3 against Petitioner in the matter of Docket 0307RO0378 Walker v Lawrence Watson [“Docket 378”] (**Pet. App. at 29-32**); the order contained a provision that prevented Petitioner from having contact with his daughter SLW. **Pet. App. at 29 Box A7**

On May 9th and May 16th of 2003 in the DDC Petitioner attempted to reschedule the hearing for the extension of the order of Docket 378 for an earlier date but was denied, in violation of M.G.L. c. 209A, s.4. **Pet. App. at 33** M.G.L. c. 209A, s.4 states, “[T]he court shall give the defendant an opportunity to be heard... **no later than ten court business** days after such orders are entered the question of continuing the temporary order.” (**emphasis added**)

On May 19, 2003 the DDC extended the order of Docket 378 for one year (**Pet. App. at 32 Box C**). Petitioner was not present at the hearing because he was scheduled previously to appear in another court for an unrelated matter. **Pet. App. at 34**

On June 8, 2003 in the DDC Petitioner filed a motion to dismiss and vacate nunc pro tunc the order of Docket 378. **Exhibit A Docket 378 Entry 6/9/03** On June 18, 2003 the DDC extended the order of Docket 378 for one year from date of the hearing. **Pet. App. at 30 Box D** M.G.L. c209A, s3 states restraining orders issued under c209A are extended initially for a period not to exceed one year. See also Vittone v. Clairmont, 64 Mass App Ct 479 at 484 (2005) (Upon a finding of abuse, the statute provides several abuse prevention remedies from which a judge

may choose, but relief on an initial complaint is limited to one year.) Petitioner filed a timely notice of appeal.

Despite Petitioner's filing of a timely notice of appeal at subsequent hearings, the DDC extended the order of Docket 378 several times without initiating appellate measures. **Pet. App. at 68 Item 3-4, Exhibit A Entry 12/15/04, Entry 12/16/05** Massachusetts Rules of Appellate Procedure ("M.R.A.P.") Rule 9(a) states, "{T}he clerk of the lower court as soon as may be after the filing of the notice of appeal shall..." assemble the record. M.R.A.P. Rule 9(d) states "[W]hen the record is fully assembled, the clerk of the lower court shall notify the parties and the clerk of the appellate court and shall transmit to the appellate court two certified copies of the docket entries."

On account of the failure and the refusal of the DDC to initiate appellate measures in the matter of Docket 378, on March 5, 2005 Petitioner sought relief with the single justice of the Supreme Judicial Court ["SJC"]. SJ-2005-0082 Lawrence Watson v Justice Rosalind Miller, Justice Timothy Gailey, Justice James Coffey, Justice Robert Ronquillo & Sherry Walker ["Docket 82"] **Pet. App. at 81**

On March 29, 2005 the SJC denied Petitioner's complaint of Docket 82 without a hearing. **Pet. App. at 81 Item 3** Petitioner filed a timely notice of appeal. **Pet. App. at 81 Item 5** The matter was docketed before the full panel of the SJC. SJC-9489 Lawrence Watson v Sherry Walker et al ["Docket 9489"] **Pet. App. at 83**

On December 5, 2005 Petitioner filed a petition for a writ of mandamus in the matter of Docket 9489, requesting copies of court documents and court tapes of the proceedings of Docket 378. **Pet. App. At 83 Item 8**

On September 16, 2006, Petitioner argued his complaint of Docket 9489 before the full panel of the SJC, simultaneously with five other complaints. **Pet. App. at 84 Item 15**

On October 16, 2006 the full panel of the SJC dismissed Petitioner's complaint of Docket 9489 (**Pet. App at 94-99**). Watson v Walker & others (and five consolidated cases), 447 Mass. 1014 (2006) The full panel of the SJC refused to act on Petitioner's petition for a writ of mandamus. **Pet. App at 98 Note 2**

On November 29, 2006 Petitioner filed a complaint in the Appeals Court for Suffolk County (the "Appeals Court"), requesting an order for the DDC to assemble and forward the record of Docket 378 to the Appeals Court. 2006-J-0598 Sherry Walker v Lawrence Watson ["Docket 598"] **Pet. App. at 91 Item 1** On November 30, 2006 the Appeals Court issued an order for the DDC to assemble and to forward the transcripts of the record of Docket 378 to the Appeals Court. **Pet. App. at 91 Item 3** On December 13, 2006 in the Appeals Court in the matter of Docket 598 Petitioner filed motion to compel the DDC to provide him with court documents and court tapes, pertaining to the proceedings of Docket 378. **Pet. App. at 91 Item 5** The Appeals Court refused to act on Petitioner's motion. **Pet. App. at 91 Item 6**

Per the order of Docket 598, on December 15, 2006 Petitioner's appeal of Docket 378 was docketed in the Appeals Court (**Pet. App. at 92 Item 2**). 2006-P-1945 S.W. v L.W. ("Docket 1945")

On December 15, 2006 the DDC made the order of Docket 378 permanent; the order maintained the provision that restricted Petitioner's access to SLW. **Pet. App. at 32 Box D** Petitioner filed a timely notice of appeal. **Exhibit A Docket 378 12-15-06**

On April 20, 2007 Petitioner filed a motion in the Appeals Court to extend the filing date of his brief for Docket 1945 because he was unable to obtain court tapes and court documents of the proceedings of Docket 378 that would allow him to create a record for his appeal. **Pet. App. at 92 Item 6** On April 24, 2007 the Appeals Court denied Petitioner's motion. **Pet. App. At 93** On May 18, 2007 the Appeals Court dismissed the complaint of Docket 1945. **Pet. App. at 93**

On July 30, 2007 the DDC assembled and forwarded the record of Docket 378 to the Appeals Court for Petitioner's appeal of Justice Coyne's decision on December 15, 2006. Docket 2007-P-1274 Walker v Lawrence Watson ("Docket 1274") **Exhibit A Cover Page** On July 30, 2008 the Appeals Court denied Petitioner's appeal of the issuance of the permanent order of Docket 378. **Pet. App. at 104,105** Petitioner sought further appellate review from the SJC but was denied.

In 2010 Petitioner filed complaints in the SJC, challenging the constitutionality of MG.L. c. 209A (**Pet. App. at 109,110**), declaring the order of

Docket 378 void ab initio (**Pet. App. at 111-113**), and seeking accountability for misconduct by the DDC (**Pet. App. At 114,115**).

On January 11, 2011 the SJC refused to address Petitioner's challenges to the constitutionality of M.G.L. c209A, voidness of the order of Docket 378, and request for accountability and issued an order that prohibited him from future filings in the SJC without prior approval. Lawrence Watson v A Justice of the Boston Division of the Housing Court, Lawrence Watson v Sherry Walker & Others, Lawrence Watson v Sherry Walker & Others, Lawrence Watson v A Justice of the Suffolk Division of the Probate and Family Court Department, Lawrence Watson v Five Justices of the Dorchester Division of the Boston Municipal Court Department & Others, 458 Mass 1025 (2011) (**Pet. App. at 116-122**)

D. Probate Court proceedings

Before the initiation of the c. 209A proceedings by Walker in the DDC, on April 4, 2003 Petitioner filed a complaint for visitation and joint custody against Walker in the Probate and Family Court for Suffolk County [herein the "Probate Court"] in the matter of Docket 03W0810 Lawrence Watson v S.W. ["Docket 810"]. **Pet. App. at 17** The initial hearing was scheduled for May 13, 2003. **Pet. App. at 17**

On June 13, 2003 in the Probate Court Petitioner filed a motion for a Guardian Ad Litem ["G.A.L."] investigation. On July 16, 2003 the Probate Court ordered a G.A.L. investigation by the Department of Probation and ordered him to begin paying child support. **Pet. App. at 37**

On November 13, 2003 the G.A.L. investigation was completed. **Pet. App. at 43**

On February 13, 2004 the Probate Court suspended the visitation rights of Petitioner. **Pet. App. at 45 Item 2**

On July 1, 2004 the Probate Court held the pre-trial hearing in the matter of Docket 810 and issued a final decision in the matter of Docket 810. **Pet. App. at 51-53** Petitioner did not appear at the hearing because the Probate Court failed to notify him of the hearing.

On July 19, 2004 Petitioner filed a timely notice of appeal of the decision of July 1, 2004. **Pet. App. at 56**

On August 16, 2004 in the Probate Court Walker filed a civil complaint for contempt of court against Petitioner for failure to pay child.

On September 17, 2004 in the Probate Court Petitioner's inability to read handwritten judgments was discussed again. **Pet. App. at 57 lines 14-21**

On September 29, 2004 the Probate Court acknowledged that Petitioner was not notified of the pre-trial hearing of July 1, 2004 but refused to vacate the decision. **Pet. App. at 63 Item 1** Also the Probate Court ordered Petitioner to report weekly to the Department of Probation to provide evidence of job searches; Petitioner was informed that failure to comply could result in incarceration. **Pet. App. at 65 lines 9-15**

On October 5, 2004 in the Probate Court Petitioner filed a motion to compel the assembly of the record of Docket 810 to the Appeals Court. **Pet. App. at 74**

On November 3, 2004 in the Probate Court Justice Moriarty found Petitioner guilty of contempt of court for alleged failure to pay child support; the sentence was suspended. **Pet. App. at 76 Item 4**

On November 22, 2004 the Probate Court sentenced Petitioner to 30 days of incarceration at the Suffolk County House of Corrections [“the SCHOC”] and maintained the order for Petitioner’s job search upon release; a notice of appeal was filed immediately. **Pet. App. At 79 lines 21-24, 80**

Since the Probate Court refused to comply with M.R.A.P. Rule 9, Petitioner sought appellate review of the decision of July 1, 2004 in the SJC, pursuant to M.G.L. c211, s3 and c249, s5 Docket SJ-2005-0019 Lawrence Watson v Justice Elaine Moriarty and Sherry Walker, Docket SJ-2005-0020 Lawrence Watson v Justice Elaine Moriarty and Sherry Walker, Docket SJ-2005-0021 Lawrence Watson v Justice Elaine Moriarty and Sherry Walker

On December 20, 2005 in the Probate Court Petitioner filed again a motion to compel the assembly of the record of Docket 810 to the Appeals Court. **Pet. App. At 85**

On January 24, 2006 the Probate Court ordered the assembly and the forwarding of the record of Docket 810 to the Appeals Court for Petitioner’s appeal of the order of July 1, 2004. **Pet. App. At 86**

On October 16, 2006 the SJC denied Petitioner’s request for appellate review of Docket 810. Watson v Walker & others (and five consolidated cases), 854 N.E.2d 1247, 447 Mass 1014 (2006) **Pet. App at 95,96**

On March 14, 2007 the Appeals Court denied Petitioner's appeal in the matter of Docket 810. 2006-P-0256 (**Pet. App at 100-103**). L.W. v S.W., 68 Mass. App. Ct. 1112 (2007) Petitioner sought further appellate review from the SJC but was denied.

On May 23, 2007 in the Probate Court Petitioner filed a certificate of his completion of the parenting program and a motion for modification of visitation.

Exhibit B at 13 Item 250

On April 7, 2008 Petitioner filed a complaint in the SJC concerning misconduct by court officers in the matter of Docket 810 . Docket SJ-2008-0155 Watson v Walker & others ["Docket 155"]

On May 28, 2008 in the Probate Court the Probate Courrt denied Petitioner's motion for modification of visitation and ordered a G.A.L. investigation in the matter. **Exhibit B at 14 Item 279** On October 6, 2008 G.A.L. report was completed. **Exhibit B at 15 Item 289**

On October 29, 2008 in the Probate Court Petitioner filed a motion for reinstatement of visitation in the matter of Docket 810. **Exhibit B at 15 Item 299**

On December 23, 2008 the Probate Court scheduled a trial for Petitioner's motion for reinstatement of visitation. **Exhibit B at 15 Item 305**

On April 7, 2009 in the Probate Court Walker filed a complaint for contempt against Petitioner. **Exhibit B at 16 Item 325**

The Probate Court scheduled Petitioner's motion for reinstatement of visitation and the trial for Walker's complaint for contempt against Petitioner for May 12, 2009.

On August 21, 2009 the probate Court issued a decision for the trial of May 12, 2009. On August 26, 2009 Petitioner filed a timely notice of appeal. **Exhibit B at 17 Item 335**

On October 30, 2009 the SJC denied Petitioner's complaint concerning misconduct by court officers in the matter of Docket 810. Watson v Walker & others, 915 N.E.2d 1064, 455 Mass. 1004 (2009) **Pet. App. at 106-108**

On December 16, 2009 Petitioner filed a motion for the assembly of the record to the Appeals Court for the trial of May 12, 2009. **Exhibit B at 17 Item 347**

On January 11, 2011 the SJC refused to address Petitioner's challenges concerning the misconduct of judges and court officers of the Probate Court and prohibited him from future filings in the SJC without prior approval. *Watson*, supra 458 Mass 1025 (2011)

On May 4, 2012 Petitioner filed again a motion for the assembly of the record to the Appeals Court for the trial of May 21, 2009. **Exhibit B at 20 Item 424** On May 7, 2012 the Probate Court assembled and forwarded the record of Docket 810 to the Appeals Court for Petitioner's appeal of the order of August 21, 2009.

Exhibit B at 20 Item 430

On April 13, 2016 the Child Support Enforcement division ["CSE"] of the Commonwealth's Department of Revenue filed on behalf of Walker a complaint of

contempt for alleged failure to pay child support against Petitioner. **Exhibit B at 23 Item 488**

On May 18, 2016 Petitioner filed a motion to dismiss the complaint for contempt, in part pursuant to M.G.L. c.231, s59, and a motion for a jury trial, pursuant to a decision from the Supreme Court. **Exhibit B at 23 Item 492, 493** In relevant part, M.G.L. c.231, s59H states that, “[I] in any case in which a party asserts that the civil claims, counterclaims, or cross claims against said party are based on said party's exercise of its right of petition under the constitution of the United States or of the commonwealth, said party may bring a special motion to dismiss.” The court is required to grant the motion, “unless the party against whom such special motion is made shows that: (1) the moving party's exercise of its right to petition was devoid of any reasonable factual support or any arguable basis in law and (2) the moving party's acts caused actual injury to the responding party.” Id

The Probate Court dismissed Petitioner's motion to dismiss immediately from the bench.

On June 2, 2016 the Probate Court denied Petitioner's motions for a jury trial (**Exhibit B at 23 Item 495,496**) and appointed the CSE as legal counsel for Walker, in violation of M.G.L. c.119A, s.3(a) which states, “[T]he provision of IV-D services under this chapter....shall create an attorney-client relationship with the IV-D agency and not the individual who may benefit from the service.”

In January of 2018 the Probate Court declared Petitioner guilty on the complaint of contempt for alleged failure to pay child support in the matter of Docket 810; Petitioner filed a timely notice of appeal. **Exhibit B at 25 Item 551**

On October 3, 2018 the Probate Court issued a formal final judgment for the decision of January 2018. **Pet. App at 129-132**

On November 8, 2018 the Probate Court issued a writ of habeas corpus for Petitioner for a matter of which again he was not served. **Exhibit D Document 27-2 at 6 Like the trial of July 1, 2004**, the Probate Court has refused repeatedly and frequently to inform Petitioner of scheduled hearings. **Exhibit B at 17 Item 359**

To date the Probate Court has failed and has refused to initiate appellate measures for the Petitioner's appeal of the judgment of October 3, 2018

E. Petitioner's petitions for a writ of habeas corpus in the U.S.

District Court

On September 21, 2011 in the U.S District Court for Massachusetts [the "District Court"] Petitioner filed a petition for a writ of habeas corpus in the matter of Dockets 222/254 and 810. 11-11697-DJC Watson v Coakley et al ["Docket 11697"], 11-11699-DJC Watson v O'Brien ["Docket 11699"] On October 11, 2011 the District Court denied Petitioner's petitions for a writ of habeas corpus and a certificate of appealability in the matters of Dockets 11697 and 11699. **Pet. App. at 123-126** Petitioner filed a timely notice of appeal in each matter.

On January 21, 2022 in the District Court in the Eastern District of Louisiana Petitioner filed a petition for a writ of habeas corpus in the matters of

Dockets 222/254 and 810. Docket 22-156 Watson v Dolan [“Docket 156”], Docket 22-151 Watson v Dolan [“Docket 151”] In each matter Petitioner filed a motion to transfer the petition of Docket 151 to the U.S. Court of Appeals for the First Circuit but was denied. (**Pet. App. at 2 Item 9, 11, at 6 Item 9, 11**) The District Court dismissed each of Petitioner’s petitions. (**Pet. App. at 3 Item 28, 7-12**

F. The U.S. Court of Appeals affirmation

On July 16, 2012 the U.S. Court of Appeals for the First Circuit (“COA 1st”) terminated Petitioner’s appeal of Docket 11697 (**Pet. App. At 127**). 11-2402 Watson v Coakley et al

On July 17, 2012 the U.S. Court of Appeals for the First Circuit (“COA 1st”) terminated Petitioner’s appeal of Docket 11699 (**Pet. App. At 128**). 11-2404 Watson v O’Brien

On December 12, 2023 the COA 1st denied Petitioner’s request for a certificate of appealability in the matter of Docket 11287 (**Pet. App. At 1**). 22-1053 Watson v Dolan, Campbell

On December 20, 2023 the COA 1st denied Petitioner’s request for a certificate of appealability in the matter of Docket 10771 (**Pet. App. At 5**) 22-1635 Watson v Fasano

REASONS FOR GRANTING THE WRIT

In 1978, the Massachusetts Legislature established a judicial framework to protect victims of domestic violence; the statute was M.G.L. c. 209A. Applying the preponderance of evidence standard, in c. 209A proceedings a defendant can be

restricted or denied his constitutional right to familial relations with his child[ren] (M.G.L. c209A, s3(d)), can be removed and/or ordered to vacate his residence (M.G.L. c209A, s3(c)), and can be denied or ordered to forfeit his right to possess firearms (M.G.L. c209A, s3B). The initial hearings are overwhelmingly ex parte.

Every state and every territory of the United States and the District of Columbia have similar legislation to Chapter 209A. (**Exhibit C at 1, 4, 9, 11, 16, 17, 23, 30, 33, 39, 41, 46, 49**)

Ch. 209A and other such proceedings are unique to prior cases before This Court in that substantive constitutional rights are infringed upon and/or deprived without initiation by the state. There is no national standard for habeas corpus review of these proceedings and such authority as exists in the lower federal courts is neither definitive nor forthcoming.

This Court should grant certiorari to determine the constitutionality of c. 209A and other such legislation in other states and territories, to clarify “in custody” in regards to abuse prevention orders for jurisdictions across the country, to determine the protection of Second Amendment rights in c. 209A proceedings since the decision in District of Columbia v. Heller, 554 US 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), and to provide Petitioner relief from 30 years of persecution by the Commonwealth.

I. Ch. 209A proceedings are constitutionally deficient

Massachusetts classifies the proceedings under c. 209A as civil but in fact they are quasi-criminal. M.G.L. c. 209A, s. 6(7) “The law provides that when the

police are provided with probable cause to believe that a c. 209A refrain from abuse, no-contact or vacate order...or protection order issued by another jurisdiction has been violated, an immediate warrantless arrest is required.”; M.G.L. c. 209A, s.7 (“Each abuse prevention order issued shall contain the following statement: **VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.** ”); See Also Guidelines for Judicial Practice – Abuse Prevention Proceedings 8:01 (“Violation of a vacate, refrain from abuse, or no-contact order issued under G.L. c. 209A, §§ 3, 4 or 5...is a criminal offense...); Guidelines for Judicial Practice – Abuse Prevention Proceedings 14:00 (“Violation of an order to surrender firearms, rifles, shotguns, machine guns, ammunition, licenses to carry firearms and firearms identification cards is a criminal offense...”) Violation of a c. 209A vacate order is included under the specific crime of trespass (see G.L. c. 266, § 120) and under the specific crime of stalking (see G.L. c. 265, § 43). Alleged violations of abuse prevention orders can be prosecuted as criminal contempt.

The Commonwealth's involvement in c. 209A proceedings is considerable and manifest, giving rise to a constitutional duty. Little v Streater, 452 U.S. 1 at 9-13, 101 S.Ct. 2202, 68 L.Ed.2d 627 (1981) (This Court discusses state involvement in paternity proceedings) The Commonwealth is inextricably involved in domestic violence proceedings and responsible for an imbalance and disparity between the parties. The Commonwealth provides applicants for abuse prevention orders advocates and counsel (**Pet. App. At 35 line 24-36 lines 1-4**); defendants receive no assistance and no representation. Such a practice is irreconcilable with the

command of the Due Process Clause. Dunn v Blumstein, 405 US 330 at 343, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972) ("In pursuing substantial state interest, state cannot choose means which unnecessarily burden or restrict constitutionally protected activity.")

In a long line of decisions This Court has recognized that matters involving the parent-child relationship are among those fundamental "liberty" interests protected by the U.S. Constitution. Troxel v Granville, 530 U.S. 57 at 65, 120 S.Ct. 2054, 147 L.Ed. 2d 49 (2000) (noting that the right to familial relations is "the oldest of the fundamental liberty interests recognized"); Santosky v. Kramer, 455 US 745 at 754, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) ("Even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life"); Smith v Organization of Foster Families for Equality and Reform, 431 U.S. 816, 97 S.Ct. 2094, 53 L.Ed.2d 14 (1977) (noting that "the liberty interest in family privacy has its source ... not in state law, but in intrinsic human rights, as they have been understood in 'this Nation's history and tradition'"); Prince v. Massachusetts, 321 US 158 at 166, 64 S. Ct. 438, 88 L. Ed. 645 (1944) ("It is cardinal with [This Court] that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.")

The use of the preponderance of evidence standard in c. 209A proceedings is constitutionally deficient under the criteria for procedural due process protections

in Matthews v Eldridge, 424 US 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) and violates Santosky v Kramer, 455 US 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)

The "three distinct factors" specified in Mathews are the private interests affected by the proceeding, the risk of error created by the State's chosen procedure, and the countervailing governmental interest supporting use of the challenged procedure.

In *Santosky*, This Court held that before a State could sever completely and irrevocably the rights of parents in their natural child, due process required that the State support its allegations by at least clear and convincing evidence. *Id.* at 747,748 This Court should note the Commonwealth's Guidelines for Judicial Practice: Abuse Prevention Proceedings 6:00 Commentary (2000) states, "[O]rdering a defendant to stay away from and to have no-contact with his or her minor children is tantamount to extinguishing parental rights, at least for the duration of the order." (emphasis added)

In furtherance of the unconstitutionality of c. 209A, in Stanley v. Illinois, 405 US 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972), This Court held that the State of Illinois was barred, as a matter of both due process and equal protection, from taking custody of the children of an unwed father, absent a hearing and a **particularized finding** that the father was an unfit parent. This Court concluded, on the one hand, that a father's interest in the "companionship, care, custody, and management" of his children is "cognizable and substantial," *id.*, at 651-652, and, on

the other hand, that the State's interest in caring for the children is "de minimis" if the father is in fact a fit parent, *id.*, at 657-658.

II. Ch. 209A is unconstitutional

In addition to the use of the preponderance of evidence standard, the service of abuse prevention orders under M.G.L. c209A is unconstitutional, pursuant to the Fifth and Sixth Amendment. Pursuant to M.G.L. c. 209A, s.7, a copy of the order is served to the defendant. However, the SJC has determined that the "necessary papers" to be served include a copy of the order and the complaint, but not the affidavit. *Flynn v. Warner*, 421 Mass. 1002, 1002 (1995)(“There is no statutory or constitutional requirement that a G. L. c. 209A complainant's affidavit be served with the order.“) In *Greene v Mcelroy*, 360 U.S. 474 at 496, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959), This Court stated, “...where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.”)

In relevant part M.G.L. c. 209A, s.3B states, “...the court shall, if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse, order the immediate suspension and surrender of any license to carry firearms and or firearms identification... (emphasis added) However, the Commonwealth's Guideline for Judicial Practice – Abuse Prevention Proceedings 4:04 states, “[B]ecause all ex parte orders must include gun license suspension and gun

surrender orders, box A.12 of the c.209A order form (FA2, 9/95) must be checked.”

(emphasis added) The SJC’s guidelines violate the Separation of Powers Doctrine.

Ch. 209A conflicts with Title 18 U.S.C. 921(a)(33)(B)(i)(II) (aa) & (bb) which requires representation of counsel and a jury trial for the denial of the right to bear arms.

Ch. 209A’s restriction and deprivation of parental rights infringes upon Petitioner’s rights under the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA).

Massachusetts argues c. 209A is facially constitutional but the law is applied and maintained in a discriminating manner against males, as set forth in Yick Wo v Hopkins, 118 US 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886). As in the instant case, Massachusetts issues abuse prevention orders under c. 209A against males in violation of the statute and then frustrates, impedes or denies the efforts of male defendants who seek to appeal the issuance of said orders. See Santiago v Young, 446 Mass. 1006 (2006) (Man’s motion to vacate c. 209A order is not heard for more than 2 years)

On December 26, 2007 in the Probate and Family Court for Norfolk County Kathleen Gerber filed a complaint for divorce from her husband Douglas George (**Pet. App at 140 Item 3**). Docket 07D1776-DV1 Gerber v George On the same day at the same court Gerber sought an abuse prevention order against George under M.G.L. c209A but was denied. **Pet. App. at 134** On December 31, 2007 in the Quincy District Court Gerber applied for and obtained an abuse prevention order

against George and then the matter was transferred to the Norfolk probate Court.

Pet. App at 136 As a result of the abuse prevention order, George was arrested and incarcerated multiple times for alleged violation of said order but never convicted; Gerber obtained full custody of the parties' children and relocated to Wisconsin.

Pet. App. at 137 Item 1, 138 Item 5

On March 16, 2005 in the Probate Court in the matter of Docket 03W1170 Adele Riesenber v Michael Watson Sr. ["Docket 1170"], Watson was required to enroll in a parenting course which would allow him telephone contact with his son MW. Watson satisfied the criteria to call his son and called his son but Riesenberger ended the call upon hearing his voice.

Within days after Watson's call, on June 16, 2005 Riesenberger applied for and obtained an abuse prevention under M.G.L. c209A, s3 against Watson in the West Roxbury District Court. Docket 0506RO0280 Riesenber v Michael Watson Sr. ["Docket 280"] The order of Docket 280 contained a provision that prevented Watson from having contact with MW. On July 1, 2005 the order was extended until June 30, 2006. On July 5, 2005 Watson filed a timely notice of appeal, On June 30, 2006 the order was made permanent. As a result of the issuance of the order of Docket 280, Watson was required to surrender his firearms, ammunition and firearms permit to the local police department; at the time Watson was an officer of the Boston Police Department. To date Watson has not had contact with MW and an appeal has not been initiated.

III. Petitioner's constitutional rights were violated

The issuance of the order of Docket 222 at the initial ex parte hearing violated Petitioner's equal protection rights and M.G.L. c.209A, s3 which states, "[A] court may issue a mutual restraining order or mutual no-contact order ...only if the court has made specific written findings of fact." The DDC issued no such findings. Village of Willowbrook v Olech, 528 US 562 at 564, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000) ("[Supreme Court] cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.")

The issuance of the permanent order of Docket 254 on February 14, 1997 violated Petitioner's Second Amendment rights and violated established case law. Jordan v. Westfield Division of the District Court Department, et al., 425 Mass. 1016 (1997) (abuse prevention order vacated when evidence showed that defendant was in prison and plaintiff did not allege nor produce evidence to warrant a finding by a preponderance of the evidence that, since his incarceration, defendant's words reasonably placed plaintiff in fear of imminent serious physical injury) Petitioner was incarcerated at the time and Petitioner had no contact with McRae.

The inclusion of SLW on the order of Docket 378 violated the First, Fourth, Fifth and Eighth Amendments and established state law. Smith v Joyce, 421 Mass. 520 at 522 (1995) (If there is to be a G.L.c. 209A order that a defendant stay away from and have no contact with his or her minor children, there must be independent support for the order.") Walker's affidavit in the order of Docket 378 makes no

reference and/or no allegations of abuse or threat of imminent abuse by Petitioner to his child SLW. **Pet. App. At 28**

The DDC failed and refused to issue specific written findings of facts for the extension of the order of Docket 378 on May 19, 2003 See. Guidelines for Judicial Practice: Abuse Prevention Proceedings 6:00 (2000) (“...if the judge orders the defendant to stay away from or to have no contact with the defendant’s minor children for more than a 10-day period, the judge should make written findings of fact that explain for the record the reason for the order.”)

The refusal of the DDC to grant Petitioner an opportunity to contest the extension of the order of Docket 378 on May 19, 2003 and the refusal of the Probate Court to grant Petitioner an opportunity to participate in the trial of July 1, 2004 rendered the respective decisions void ab initio and violated the due process clause of the Fourteenth Amendment. Mullane v. Central Hanover Tr. Co., 339 US 306 at 313, 70 S. Ct. 652, 94 L. Ed. 865 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections")

The DDC’s conversion of the order of Docket 378 to permanent violated Appellant’s parental rights under the First, Fourth, Fifth and Eighth Amendments and established case law. Wooldridge v. Hickey, 45 Mass. App. Ct. 637, 639 (1998) "Generalized apprehension, nervousness, feeling aggravated or hassled, i.e.,

psychological distress from vexing but nonphysical intercourse, when there is no threat of imminent serious physical harm, does not rise to the level of fear of imminent serious physical harm." Walker made no claims that she had any interaction or communication with Petitioner other than in judicial proceedings.

The repeated failure and repeated refusal of the DDC and the Probate Court to comply with state statutes violated the equal protection clause of the Fourteenth Amendment. *Olech*, supra at 564 (2000)

Petitioner attempted repeatedly to obtain copies of court tapes for transcription in the DDC and the Probate Court, pursuant to M.G.L. c.261, s.27B, but was denied the right to file a waiver of fees for said items. **Pet. App at 69 Item 4, Exhibit B at 13 Item 251, 261, 14 Item 269, 271, 19 Item 405, 20 Item 420** In relevant part, M.G.L. c.261, s27B states, "any party may file with the clerk an affidavit of indigency and request for waiver, substitution or payment by the commonwealth of fees and costs..."

The repeated refusal of the DDC and the Probate Court to provide Petitioner court tapes and court documents violated the First Amendment. Nixon v Warner Communications, Inc., 435 US 589 at 597, 98 S. Ct. 1306, 55 L. Ed. 2d 570 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents."

The refusal of the DDC to allow Petitioner to file motions violated the First and Fourteenth Amendments (**Pet. App at 69 Item 4,5**).

The repeated refusal of the DDC and the Probate Court to deny Petitioner access to the files of Dockets 378 and 810 respectively violated the First Amendment (**Pet. App at 70 Item 5, Pet. App. at 66 lines 7-15, Exhibit B at 14 Item 267, 17 Item 332, 18 Item 361, 19 Item 399, 22 Item 471, 472, 485, 23 Item 487, 510**). *Nixon*, supra at 597 (1978)

The refusal of the Probate Court to grant Petitioner a jury trial for the complaint of contempt after he stated for years that he would not pay child support violated the Sixth Amendment and established case law,

In violation of Griffin v. Illinois, 351 US 12, 76 S. Ct. 585, 100 L. Ed. 891 (1956), the DDC and the Probate Court failed and refused to initiate appellate measures in a timely manner (if at all) in the matters of Dockets 222/254, 378 and 810 respectively. Compare **Pet. App. At 68 Item 3-4, 73 to Exhibit A; Compare Pet. App. at 56, 73, 80 lines 1-2, 85 to Pet. App. at 86; Compare Exhibit B at 17 item 341, 347 to Exhibit B at 20 Item 430** In *Griffin*, Justice Harlan stated, “...the constitutional right under the Due Process Clause is simply the right not to be denied an appeal for arbitrary or capricious reasons.” Id, at 37 This Court should note that at all relevant times court tapes were retained for 18 months before disposal.

The SJC’s repeated requirement for Petitioner to argue multiple unrelated matters simultaneously violated Supreme Judicial Court Rules, the First Amendment, and the Fourteenth Amendment. See Watson v Walker & another, 458 Mass 1025 (2011); Watson v Clerk Magistrate of the Dorchester, Div. of the Dist. Ct.

Dept, 901 N.E.2d 663, 453 Mass 1007 (2009); Watson v Justices of the Dorchester District Court & another, 896 N.E.2d 1262, 452 Mass. 1025 (2008); Watson v Walker et al, 447 Mass 1016 (2006)

The order of Docket 378 prejudiced the proceedings of Docket 810. This Court declared that improper inclusion or exclusion of evidence in a matter is prejudicial if there is, "a reasonable probability that,...,the result of the proceeding would have been different", if the included or excluded evidence were not considered. United States v Bagley, 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985) (plurality opinion).

IV. Petitioner is “in custody”

Petitioner is “in custody” in the matter of Dockets 222/254 and 378. As a result of the abuse prevention orders of Docket 222/254 and 378, Petitioner endures restrictions on parental rights, firearms possession, housing, employment and freedom of movement. See Commonwealth v Stoltz, 73 Mass. App. Ct. 642 (2009) (Defendant arrested after dinner with a friend at a restaurant because alleged victim was present unbeknownst to Defendant); See Also Commonwealth v Delaney, 425 Mass 587, 595-597, 682 N.E.2d 611 (1997) (SJC stated that a violation prosecuted under G.L. c. 209A, § 7, "requires no more knowledge than that the defendant knew of the order," Id. at 596-597, and that a violation of G.L. c. 209A, prosecuted under § 7, does not require proof that the defendant actually intended to abuse the victim.) Petitioner can be rearrested for circumstances beyond his control.

Petitioner is “in custody” in the matter of Docket 378. This Court recognizes common law from England. In Rex v. Clarkson, 1 Str. 444, 93 Eng. Rep. 625 (K. B. 1722) the King's Bench granted habeas corpus relief to a husband whose wife was being constrained by her guardians to stay away from him against her will. The test used was simply whether she was "at her liberty to go where she please[d]. Id., at 445, 93 Eng. Rep., at 625 More than a century ago an English court permitted a parent to use habeas corpus to obtain his children from the other parent, even though the children were "not under imprisonment, restraint, or duress of any kind." Earl of Westmeath v. Countess of Westmeath, 1 Str. 444, 93 Eng. Rep. 625 (K. B. 1722)

Petitioner is “in custody” in the matter of Docket 810, pursuant to Jones v. Cunningham, 371 US 236, 83 S. Ct. 373, 9 L. Ed. 2d 285 (1963}. In explaining why petitioner was “in custody”, in *Jones* This Court discussed petitioner's restrictions in housing and employment, the constant fear of rearrest, and the scarcity, if any, of the procedural safeguards that normally must be and are provided to those charged with crime.” Id, 371 U.S. 236 at 242 (1963) The Supreme reasoned that the petitioner's release from physical confinement under the sentence in question was not unconditional; instead, it was explicitly conditioned on his reporting regularly to his parole officer, remaining in a particular community, residence, and job, and refraining from certain activities. Id., at 242; see also Hensley v. Municipal Court, San Jose-Milpitas Judicial Dist., Santa Clara County, 411 U. S. 345 (1973); Braden v. 30th Judicial Circuit Court of Ky., 410 U. S. 484 (1973).

On September 29, 2004 Petitioner was ordered to report weekly to the Department of Probation to provide evidence of searches for employment on account of his alleged failure and declared refusal to pay child support, pursuant to Title 42 U.S. Code § 666(a)(15). Petitioner was informed that failure to comply with the order risked incarceration. **Pet. App. at 65 lines 9-11** On November 22, Petitioner was incarcerated for alleged failure and alleged refusal to comply with the order. **Pet. App. at 79 lines 21-24** Petitioner remains subject to the order. **Pet. App. at 80 lines 12-14**

V. Petitioner's claims are not time barred

Petitioner's claims are not time barred because the issuance of the orders of Dockets 222/254 and 378 are void ab initio and subject to attack at any time. A void judgment is one which, from its inception, was a complete nullity and without legal effect. Further, the acts of fraud on the court from the onset of the proceedings of Dockets 222/254, 378 and 810 renders said proceedings void ab initio.

Federal Rules of Civil Procedure Rule 60(b) lists six grounds for "reliev[ing]" a party from a final judgment; Rule 60(b)(3)'s ground is fraud, Rule 60(b)(4)'s ground is the judgment is void, Rule 60(b)(6)'s ground is any other reason that justifies relief. The Commonwealth's counterpart to F.R.C.P. Rule 60 is Mass Rules of Civil Procedure Rule 60. In relevant part M.R.C.P. Rule 60 allows relief from final judgment for (3) fraud, (4) the judgment is void and/or (6) any other reason justifying relief from the operation of the judgment.

"`Fraud upon the court' should, we believe, embrace only that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication".

Kenner v. CIR, 387 F. 2d 689 at 691 (1968) (emphasis added) A decision produced by fraud on the court is not in essence a decision at all, and never becomes final. *Id*, at 691

A judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void, and attackable collaterally by habeas corpus because the United States is forbidden by the fundamental law to take either life, liberty or property without due process of law, and its courts are included in this prohibition. In Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461, 146 A.L.R. 357, the court was declared to have lost its jurisdiction in a trial for crime when it denied the constitutional right to the assistance of counsel.

The refusal of the DDC to allow Petitioner to file a timely notice appeal for the hearing of June 18th of 2003 constituted an act of fraud

The refusal of the DDC to allow Petitioner to file motions in the matter of Docket 378 constituted an act of fraud. **Pet. App. at 69 Item 5**

The DDC's refusal to depict accurately the record of Docket 378 constituted an act of fraud. Compare **Pet. App at 68 Item 3-4, 73, 87, 90 to Exhibit A**

The Probate Court's refusal to depict accurately the record of Docket 378 constituted an act of fraud. The Probate Court issued a judgment for the trial of

May 12, 2009 in August of 2009 but did not docket the decision until September 3, 2009 in an attempt to prevent Petitioner from filing a timely notice of appeal.

The repeated refusal of the DDC and the Probate Court to notify Petitioner of hearings constituted an act of fraud

The repeated refusal of the courts of the Commonwealth to comply with state statutes, court rules, and established case law in the matters of Dockets 93, 222/254, 378, and 810 constituted acts of fraud on the court.

Perjury by the Appeals Court and the SJC constituted acts of fraud on the court.

In the matter of Docket 1274, the Appeals Court stated, “[O]n May 5, 2003 in the Dorchester Division of the Boston Municipal Court, (Walker) obtained an abuse prevention order under G.L. c209A against (Petitioner), who did not contest or appeal the issuance of the order, electing instead to file a motion to vacate.” **Pet. App. At 104** Petitioner attempted twice to reschedule the hearing for the initial extension of the order of Docket 378 on May 19, 2003 in order to contest the order but was denied. **Pet. App. At 33** Then Petitioner filed a motion to dismiss and vacate the order of Docket 378 on June 8, 2003. **Exhibit A at 06-09-03**

Also in the matter of Docket 1274, the Appeals Court stated, “After hearing on his motion, the order was... extended for six months until December 16, 2004.” **Pet. App. At 104** Petitioner’s motion to dismiss and to vacate was heard on June 18, 2003. **Exhibit A at Entry 06-18-03**, Justice Gailey extended the order one year from the date of the hearing before him to June 18, 2004, in violation of c. 209A, s3

and *Vittone*, *supra* at 484 (2005) **Pet. App. At 32 Box C** The Appeals Court was trying to evade the violations.

Committing perjury in the matter of Docket 256, the Appeals Court stated, “[T]he case was scheduled for pretrial conference on July 1, 2004 (with proper notice given to the father)” and “[T]he record established that he received notice of the upcoming hearing orally at the hearing on April 14, 2004 (Tr. 4/14/04, p. 32), and of the specific date in writing.” **Pet. App. at 101, 103** The record proved Petitioner requested a trial date on February 9th and April 14th of 2004 but was not given a date, as acknowledged by the Probate Court. **Pet. App. At 49 lines 15-24, 50 lines 14-19, 63 Item 1**

The SJC’s repeated failure and repeated refusal to exercise its authority under M.G.L. c211, s3, when Petitioner had no other recourse to address the misconduct in the DDC and the Probate Court constituted acts of fraud on the court. See Commonwealth v. Amirault, 415 Mass. 112, 115 n.4 (1993) (“[T]he public has a right to expect the Supreme Judicial Court to correct any abuse of judicial power, if not under the statute, G. L. c. 278, Sect. 28E, then at least under its superintendence powers.”)

M.G.L. c.211, s.3 granted the SJC general superintendence of all courts of inferior jurisdiction, “to correct and prevent errors and abuses therein if no other remedy is expressly provided,” and allowed it to issue all writs and processes to such courts, “which may be necessary to the furtherance of justice and to the regular execution of the laws.”

The DDC's prohibition to prevent Petitioner from filing in the matter of Dockets 222/254 and refusal to allow Petitioner to file in the matter of Docket 378 violated Petitioner's First amendment rights and denied him the opportunity to seek relief under M.R.C.P. Rule 60

CONCLUSION

Petitioner respectfully requests that This Court issue a writ of certiorari.

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Date: May 6, 2024

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served by first class mail on May 6, 2024 upon Gabriel Thomas Thornton of the Office of the Attorney General at One Ashburton Place in Boston, MA 02108

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May 6, 2024