No. _____

IN THE

Supreme Court of the United States

DONIVON CRAIG TINGLE,
Applicant,
v.
FLORIDA DEPARTMENT OF HEALTH
Respondent

EMERGENCY APPLICATION FOR IMMEDIATE EQUITABLE RELIEF TO ORDER THE IMMEDIATE ISSUANCE OF A FLORIDA MEDICAL MARIJUANA TREATMENT CENTER LICENSE BY THE FLORIDA DEPARTMENT OF HEALTH

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Dated: August 9, 2023

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To The Honorable Clarence Thomas,
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JURISDICTIONAL STATEMENT

The First District Court of Appeals for the State of Florida entered judgment against Applicant on April 14, 2023, and denied Applicant's Petition for Rehearing *En Banc* on May 24, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1) and United States Supreme Court Rule 13(3) because within 90 days after the First District Court of Appeals for the State of Florida denied Applicant's petition for rehearing, Applicant filed this application.

Applicant submits its application to the United States Supreme Court because the Supreme Court of Florida is not empowered to hear appeals from Per Curiam decisions of the District Courts of Appeal. See *R.J. Reynolds Tobacco Co. v. Kenyon,* 882 So. 2d 986 (Fla. 2004); *Beaty v. State,* 684 So. 2d 206 (Fla. 2d DCA 1996); Fla. Const. Art. V. §(3)b; Fla. R. App. P. 9.030(a); *Jenkins v. State,* 385 So. 2d 1356 (Fla. 1980); *Grate v. State,* 750 So. 2d 625 (Fla. 1999). However, this court has the authority to hear such cases. Per Curiam Affirmances by a Florida District Court of Appeals are, of course, not beyond the review of this Court. See *Palmore v. Sidoti,* 460 U.S. 429 (1984). In *Palmore,* another race based Equal Protection case

from Florida, this Court granted certiorari directly from the Florida Second District Court of Appeals because, "[the] Second District Court of Appeal Affirmed without opinion, 426 U.S. 2d 34 (1982), thus denying the Florida Supreme Court jurisdiction to review the case. See Fla. Const., Art. V. § 3(b)(3), *Jenkins v. State,* 385 So.2d 1356 (Fla. 1980). **We granted certiorari,** 464 U.S. 913 (1983), **and we reverse."** There is further precedent for this Court to review the Per Curiam Affirmed of the lower court. See *Philadelphia Newspapers, Inc. v. Jerome,* 98 S.Ct. 546, 548 (1978).

The relief that is being sought in this Emergency Application is for this Court to order the immediate issuance of a Florida Medical Marijuana Treatment Center License (MMTC) to the Applicant. This is the same relief that has been sought four times from the Florida Courts. The Applicant sought this relief from the First District Court of Appeals for Florida and that court summarily rejected the relief being requested herein by issuing a PCA Affirmed. See Appendix A, App. 001a-App. 002a. The Applicant, at bar, asked the First District Court of Appeals for Florida, a second time, to grant the relief and issue a written opinion and was denied. See Appendix B, App. 003a-App. 004a. The Applicant, herein, asked the First District Court of Appeals for Florida to immediately grant a MMTC license by way of an *En Banc* hearing and written opinion and was denied for a third time by the First District Court of Appeals for Florida. See Appendix C, App. 005a-App. 006a. Each time, the requested relief was the exact same relief that is being sought in this

Application. This is the same relief that was also sought from the trial court before the Second Circuit for the State of Florida. See Appendix D, App. 007a-App. 008a. Furthermore, a copy of the Appellant's, Donivon Craig Tingle's, Initial Brief on the Merits to the First District Court of Appeals for Florida has been provided herein in order to demonstrate that the relief being sought from this Court is the same relief that has been consistently sought. See Appendix E, App. 009a-App. 029a.

Applicant submits this Application because the First District Court of Appeals for the State of Florida decided an important state and federal equal protection claim in a manner that conflicts with the relevant decisions of this Court, and the First Circuit decision so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of the United States Supreme Court's supervisory power.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the Constitution for the United States provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or

immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 1 of Article 1 of the Constitution of the State of Florida provides:

All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

Florida Statute § 381.986(8)(a)(2)(b) provides:

As soon as practicable, the department shall license one applicant that is a recognized class member of *Pigford v. Glickman,* 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.,* 856 F. Supp. 2d 1 (D.D.C. 2011). An applicant licensed under this sub-subparagraph is exempt from the requirement of subparagraph (b)2. An applicant that applies for licensure under this sub-subparagraph, pays its initial application fee, is determined by the department through the application process to qualify as a recognized class member, and is not awarded a license under this sub-subparagraph may transfer its initial application fee to one subsequent opportunity to apply for licensure under subparagraph 4.

OPINIONS BELOW

The published disposition (Per Curiam Affirmed) of the First District Court of Appeals for the State of Florida filed on April 14, 2023, is set forth in Appendix A, App. 001a – 002a.

The published disposition (Denial) of the Appellant's Motion for a Written Opinion of the First District Court of Appeals for the State of Florida filed on May 24, 2023, is set forth in Appendix B, App. 003a – 004a.

The published disposition denying Appellant's Motion for Rehearing En Banc of the First District Court of Appeals for the State of Florida filed on May 24, 2023, is set forth in Appendix C, App. 005a – 006a.

The Final Judgment of the Circuit Court for the Second Judicial Circuit of Florida in and for Leon County filed on April 11, 2022, is set forth in Appendix D, App. 007a - 008a.

INTRODUCTION

This is a matter involving race-based discrimination by the State of Florida in its licensing practices as they pertain to the Medical Marijuana Treatment Center Licenses (MMTCs). The Applicant, Tingle, filed a Complaint alleging that Florida Emergency Rule 64ER21-16, (hereinafter the "Rule"), which was later codified as Florida Statute Section 381.986(8)(a)(2)(b) (hereinafter the "Statute"), treats

similarly situated members of a suspect class differently, violating the principals of equal protection under the law. The Statute contains the following language:

> *"As soon as practical, the department shall license one Applicant that is a recognized class member of Pigford v. Glickman 185 F.R.D. 82 (D.D.C. 1999) or In Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011)."*

These two cases constitute the class membership requirement in the Statute which refers to litigation pursued by a group of African American farmers and ranchers seeking damages from the USDA for discriminatory lending practices. These litigants were successful in their efforts and the cases resulted in the largest civil rights settlement in U.S. History.

Subsequently, a group of Native American farmers and ranchers similarly sought damages from the USDA for historic discriminatory lending practices. These farmers were successful in their efforts and the case *Keepseagle v. Vilsak*, 102 F.Supp. 3d 205 (D.D.C. 2015), *Keepseagle v. Purdue,* 856 F.3d 1039, cert denied ___ U.S. ___ (D.C. Circuit 2017) resulted in a settlement for damages as well.

DISCUSSION

The Statute creates a distinction, on its face, that treats similarly situated members of a suspect class, race, differently in violation of constitutional principles of equal protection under the law. The trial court in the Second Judicial Circuit of

Florida, without so much as a finding of fact or statement of law, threw out over a century of equal protection under both the U.S. Constitution and the Florida Constitution.

To make matters worse the intermediate appellate court, the First District Court of Appeals, after nine months, without providing any analysis or explanation on the lower court's decision, issued its own vacuous decision, a PCA Affirmed, making it impossible to have this matter heard by the Florida Supreme Court. See Appendix A, Decision from the Florida District Court of Appeal dated April 14, 2023, App. 001a–002a. After more than five years of litigation, Applicant has been denied his day in court because there has never been any analysis. The U.S. Const. Article III Section 2 states in relevant part, "The Judicial Power of the federal courts shall extend to all cases in law and equity, arising under the Constitution [and] the laws of the United States." See also *Boyle v. Zacharie* 32 US. 648, 658 (1832); *Hobby v. Unemployment Appeals Commission of Florida*, 480 U.S. 136 (1987).

It has been said that "what separates the courts from rogues and politicians is its analysis" and here there has been no analysis. The power of the court lies in its reasoned analysis and the establishment of principled legal analysis. The First DCA has opened a Pandora's box of nefarious speculation regarding its motivation because it has issued a PCA under facts and circumstances that cry out, not only for

an opinion, but a mandatory reversal of the trial court. See Appendix B, Denial of Written Opinion from the Florida District Court of Appeal dated May 24, 2023, App. 003a-004a.

Prior to the filing of this application and prior to any pursuit of a judicial remedy, Applicant exhausted all administrative relief by reaching out to both of his current and former state representatives, his state senator, the director for the Office of Medical Marijuana, the Secretary of the Florida Department of Health, and the Governor for the State of Florida.

It has long been held as the rule that any law that implicates a suspect class or a fundamental right must pass a test of strict scrutiny:

> *"When legislation classifies persons in such a way that they receive different treatment under the law, the degree of scrutiny the court applies depends on the basis for the classification. If a law treats individuals differently on the basis of race or another suspect classification, or if the law impinges on a fundamental right, it is subject to strict scrutiny."* See *Leib v. Hillsborough County Public Transp. Com'n* 558 F.3d 1301 (11th Cir. 2009); citing, *Gary v. City of Warner Robbins, Ga.*, 311 F.3d 1334 (11th Cir. 2002).

Other than their racial identity, *Pigford* and *Keepseagle* class members are identically situated. The Statute's carve out for licensure of a *Pigford* class member, while not providing the same opportunity to an identically situated *Keepseagle* class member is a patent violation of the equal protection principles

that underpin the entirety of the United States and Florida constitutional law and must be evaluated with strict scrutiny. You, Justice Thomas, say it best when you articulate that "racial discrimination in all forms is prohibited by the U. S. Constitution. See *Students for Fair Admissions v. Harvard,* 600 U.S. ____ (2023), 20-1199 (June 29, 2023). See also, "any statute which is not equal to all, and which deprives any citizen of civil rights which are secured to other citizens is an unjust encroachment upon his liberty and a badge of servitude. *Id. at 55.*

In truth, everyone knows all of this. Every student and practitioner of the law recognizes strict scrutiny and equal protection under the law. The problem is that in Florida, at least, some white people are comfortable with these principles only as esoteric concepts. Once a person of color actually strives for and approaches equality, then we really see how bigoted and white supremacist the state really is.

White people that can afford politicians get special legislation just for them, at times rewritten the night before the vote. Black people, a preferred racial minority, can harness the power of the Democratic Black Law Caucus and get an exception to the rule. The individual Indian, I am an Indian, as my good friend Sam Deloria used to say, I am too old to call myself a Native American, as usual, are left in the cold to fend for themselves.

The trial court and the DCA created an impenetrable legal construction that conveniently and politically allows them to provide nothing at either the trial court level or the appellate level, and then eliminate any prospect of being able to appeal to the Florida Supreme Court. See Appendix C, Denial for Rehearing En Banc from the Florida District Court of Appeal dated May 24, 2023, App. 005a-006a. Fortunately, there are U. S. Constitutional issues at stake as well. This matter is the very essence of a violation of equal protection of a race-based classification and, therefore, strict scrutiny must apply. The mantra that Applicant teaches is: When there is an Equal Protection issue that involves a suspect class (race) and the members are similarly situated and there is disparate treatment, then strict scrutiny must be applied. The trial court stated the opposite of what the law required and it even managed to get that wrong by saying, "Based on everything presented in the papers and here today, I'm going to find that the rational basis test applies to this case under Jana Rock, and that even if that's wrong and the strict scrutiny test applies, either way, the State has met its burden and therefore, I'm going to grant the State's Motion for Summary Judgement." See Appendix D, Order and Final Judgment from the Circuit Court for Leon County, Florida, Dated April 11, 2022, App. 007a-008a. In addition to being completely wrong, it is intellectually absurd because both can never be correct. The DCA with their PCA; said "yup that is

correct," and three learned jurists unanimously affirmed a violation of the Florida and U. S. Constitutions, as well as an intellectual absurdity. This is the sum total of the legal analysis to such a bedrock principle of law. Imagine for a moment if *Loving v. Virginia,* 388 U.S. 1 (1967) or *Brown v. Board of Education,* 347 U.S. 483 (1954) were Florida cases under this oppressive regime, we might very well have never abolished the Jim Crow laws in the United States. My family understands this because my father is part Indian but his birth certificate says white and my mother is full-blooded Indian. When in 1960 they decided to marry, the State of Florida would not marry them. In 1980, when we were traveling with family, my aunt would not go into the Burger King, in Jacksonville, FL because she was not white. When my brother and I wanted to swim at the municipal pool in the early 1970s, we could not. If you ask me, not much has changed. By the way, of the fifteen judges that sit on the First DCA, fourteen are white and one is black - what do they know about equal protection under the law! My county, which formed over 100 years ago, has only ever had white judges. The adjacent county from which my county was formed was established in 1824, before Florida was even a state, just a few months shy of 200 years. That omnibus county has only ever had white judges. The white people of these counties will never permit a non-white judge. I know this because I have appeared as an applicant on two

panels before the Judicial Nominating Committee and each time there was either another man or woman of color also applying to be a judge. So when I say things are not changing in Florida, I know what I am talking about. This case has only been presided over by white judges in Tallahassee. Nevertheless, Applicant is commanded under tacit threat of disbarment to be quiet and tow the line.

Enough is enough. The Applicant expects to be afforded equal protection under the law even when it is not convenient for rich white people and preferred minorities. Though not constitutionally required to explain, Applicant has paid his dues to be treated like an equal, especially as a proud American and a member of his race. Unlike incompetent white people who sought and received MMTC licenses through graft, Applicant has been proven time and again. Applicant has worked his way through college. He enlisted in the United States Marine Corps and later earned a commission, retiring as a field grade officer. He attended the Native American Pre-Law Summer Institute at the American Indian Law Center where he graduated number one in his class. In doing so, he was not number one in any class, but number two in every class. To accomplish this, he did what white people cannot even imagine; back then the law could only be found in the law library. So, he would hide in the bathroom of the law library, get locked in and spend the night researching and preparing for his classes while others were carousing. He would grab a couple

of hours sleep and just before the library opened, hide in the restroom once again, emerging as a patron.

In so doing he gave himself a competitive advantage, finished number one, was the escort of Chief Justice Robert Yazzi of the Navajo Supreme Court, and the recipient of the Chief Justice Robert Yazzi Book Award. Applicant was awarded a competitive, academic scholarship to Washington University School of Law in St. Louis.

In addition, Applicant also attended the University of Miami School of Law, earning an LLM in Real Estate Development, and also earned an MBA from the prestigious London Business School; he is board certified in real estate and is admitted to over a dozen states and/or jurisdictions and is a retired Marine JAG. Still he cannot get treated as an equal in his own state of Florida. Many will insist that the above is not relevant and should be stricken; however, the story of the Applicant and his people and the plight of the racially, historically, and systematically ignored cannot be irrelevant to an equal protection application; in fact, it goes to the very heart of the matter. Context matters when considering violations of Equal Protection. See *Students for Fair Admissions* at 160, the dissent of Justice Sotamayor, *citing, Grutter v. Bollinger,* 539 U.S. 306 (2003).

Interestingly, the DOH on the record, at the trial court level stated that "Mr. Tingle just wants to be treated like the *Pigford* people." See Hearing transcript dated March 30, 2022, Page 348, Lines 23-25. I think that is precisely the point of equal protection that similarly situated people must be treated equally, especially when a suspect class is involved. Applicant has said it before on the record and will say it again; "Indians have to work twice as hard just to have half as much". The above bears witness to this statement.

As Applicant said to the general counsel for the DOH; "unlike those already in the industry, this is not about yachts, planes, and mansions but rather this is about housing, healthcare, and education." Applicant further stated that the intent is to create an intertribal hedge fund so that all the proceeds benefit Indians. No one cares because some white people are not happy unless and until they have it all! That is the history between whites and Indians, between states and Indians and not much has changed. The plan of the Governor of Florida is to deny Indians the ability to use the formation of capital as a tool for building wealth in the burgeoning Medical Marijuana Industry so that his chosen cartel participants can control the industry in Florida. See *"The Color of Money"* Professor Baradaran; *as cited by* Justice Jackson, *Students for Fair Admissions at 217.*

As recently as last month, white people were trying to take away the rights of Indians to raise their own children. See *Haaland v. Brackeen*, 21-380, June 15, 2023. Thankfully this court put a stop to that injustice. Now you are being asked to stop another. As Applicant sits here writing this Application, there is not one person of color that has a MMTC license in Florida. When the dust finally settles on the *Pigford* license, it, too, in all likelihood, will be owned by whites considering the backers in the *Pigford* applications.

If the United States Supreme Court does not enforce the principles of equal protection under the law in Florida, then it is not going to happen because no branch of the government in Florida supports equal protection for Indians. In the fifty years that Applicant can recall personally, it has never been this bad for Indians. We are not talking about tribes that can buy their way in or be otherwise treated as equals, rather, we are talking about powerless, individual Indians. White people have all the political and judicial power in the state and use it to their exclusive advantage to the distinct disadvantage of the rest of us.

To say there is no adequate remedy at law is the epitome of understatement. The governor and the legislature he controls has seen to this. It is as if George Wallace has risen from the dead and moved to Florida to become its governor. However, instead of saying "segregation today, segregation tomorrow, and

segregation forever," the white supremacists have all completed finishing school because our current Governor and his ilk use the phrase "anti-woke", and he opposes with all the might of his office, "Diversity," "Equity," or "Inclusion". He has so incited radical Americans in Florida that uttering "DEI" has become a racial slur and fighting words. To make matters worse, now that every redneck with an agenda is lawfully armed to the teeth in Florida, perhaps "Diversity," "Equity," and "Inclusion" will become killing words. So, just to be clear, no, there is not an adequate remedy at law in Florida, and there never will be an adequate remedy at law in Florida.

If this Court does anything short of ordering the trial court to issue a MMTC license to the Applicant, then the DOH will simply find some way ensuring the supremacy of white power in Florida and the Tallahassee judges will ratify whatever the trial court sends them. If the current decision with the complete absence of discourse can be upheld, then anything will be upheld. The problem with presumptions in this instance is that this trial judge is not entitled to the benefit of the doubt. Unlike the Applicant, she has been disciplined for dishonesty and misconduct, so that ship has sailed, perhaps with her integrity on board as well. As a retired Officer of Marines, Applicant knows that upon the first lie, integrity is squandered, but perhaps there is a different rule for some judges. The above is necessary information for this Court to have in front of it. Frankly, the law is so

basic that every first year Constitutional law student understands it. When trial and appellate judges in Tallahassee are unable to grasp such fundamentals, it is time to worry and, despite their displeasure, it also invites questions.

The seminal case in Florida from which equal protection, strict scrutiny analysis arises is *McLaughlin v. Florida, 379 U.S. 184, 196 (1964),* which opined:

> *"Such a law, even though enacted pursuant to a valid state interest, carries a heavy burden of justification, as we have said, and will be upheld only if it is necessary, and not merely rationally related, to the accomplishment of a permissible state policy."*

The *McLaughlin* Court was evaluating the constitutionality of a law that made it a crime for "any negro man and white woman, or any white man and negro woman, who are not married to each other" to "habitually live in and occupy in the nighttime the same room" *Id. at 184.* Here the Court found that while the State had a compelling interest in preventing breaches of basic sexual decency, it could not justify the disparate treatment of the suspect class members and struck the law down as unconstitutional.

> *"But we deal here with a classification based upon the race of the participants, which must be viewed in light of the historical fact that the central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States. This strong policy renders racial classifications constitutionally suspect ... and subject to the most rigid scrutiny and in most circumstances irrelevant to any constitutionally acceptable legislative purpose".*

Therefore, even if Florida might be able to articulate a compelling interest in creating the *Pigford* exception, the case law shows that the Statute's failure to treat similarly situated members of the same suspect class, race in this instance, in the same manner results in an impermissible violation for equal protection principles.

APPLYING THE REMEDY

Under the circumstances, there can be only one remedy and that is for the United States Supreme Court to order the trial court judge to issue a Florida Medical Marijuana License immediately to the Applicant. Applicant agrees that this is an unusual path to the U.S. Supreme Court, but one borne of necessity as a result of the intentional actions of the Florida courts to stifle judicial discourse on this issue. In fact, they have gone out of their way to deny a person of color his day in court and to further deny an entire race of equal protection under the law.

It has become so bad in Florida, and it is regrettable that Applicant only recently recognized this, but it is material to the outcome in Florida, whether the matter is filed in Federal Court in Florida or in State Court in Florida. If the petition is against the wishes of Governor Ron Desantis and you file in Florida state court, you have no chance of prevailing; heck, you have no chance of even getting a reasoned decision or well-analyzed, written opinion.

The antics of every component of the State of Florida has caused the necessity of this remedy, the Applicant has done all he can do and is blameless.

Fortunately, there is a doctrine in Florida, known as, "The Inherent Powers Doctrine" and it supplies all the authority this Court needs to provide the remedy that Applicant seeks. See *Rose v. Palm Beach County*, 361 So. 2D 135 (Fla. 1978). The Emergency is that if this Court does not act, then a tragic miscarriage of justice will continue and will never get resolved and people will prevail in their graft and greed.

The Inherent Powers Doctrine establishes the implied right of the judiciary to accomplish all objectives naturally within the judiciary, to accomplish all objectives naturally within its realm, thereby making it possible for courts to carry out their constitutional responsibilities as an independent branch of government. See *U.S. v. Hudson,* 11 U.S. 32 (1812). See also "The Inherent Power of the Florida Courts," University of Miami Law Review Vol. 39 No. 2 Article 3 1-1-1985. The doctrine helps courts respond to practical problems not contemplated in legislative acts, express provisions and court when court rules have not contemplated a solution; it may be used to fill in gaps. This is just the kind of situation that the doctrine was intended to address. Every court has inherent powers to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction. *Univ. of Miami Law Rev. at 267.*

The emergency currently pending before this court involves violations of both equal protection and fundamental rights. It is here that the most compelling rationale

for the application of the Inherent Powers Doctrine arises. See *Rose v. Palm Beach County,* 361 So. 2d 135 (Fla. 1978), the Florida Supreme Court noted that the invocation of the doctrine of the inherent powers appears most compelling when the judicial function at issue involves the safeguarding of fundamental human rights.

When the actions being reviewed are final actions, then the courts may fully apply the Inherent Powers Doctrine. See *Florida Senate v. Florida Public Employees Council*, 784 So.2d 404 (Fla. 2001), Florida courts have full authority to review the final product of the legislative process. See also *Moffit v. Willis*, 459 So.2d 1018 (Fla. 1984) It is the final product of the legislature that is subject to review by the courts.

It is clear that the courts in Florida, and by analysis the United States Supreme Court, is empowered with the fullest, broadest, and most expansive powers necessary to correct a problem or to fulfill its judicial mandate. See *Peters v. Meeks*, 163 So.2d 753,755 (Fla 1964), A fundamental principle of constitutional law is that each branch of government has, without any express grant, the "inherent right to accomplish all objects naturally in its orbit.

CONCLUSION

The problem and the solution presented here are simple and straight forward. So much so that it is difficult to understand why sharper minds have failed to grasp them. This is as basic a violation of equal protection under the law as could ever

exist. The solution is equally as simple, to issue a MMTC license immediately to the Applicant. It is straight forward and is the only solution available. This Court has the authority to immediately instruct the trial court to order the Florida Department of Health to issue the license and this has been demonstrated to be within the Court's purview under the Inherent Powers Doctrine.

Finally, after more than twenty-five years of practicing law for firms, as a JAG, as a public defender both state and federal, having represented Indians, and in private practice, our system of justice represents the interests of the poor, the minorities, and other disenfranchised people far less now than it ever did. I seek your help in reversing this trend. Thank you so much for listening.

Respectfully submitted,

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