

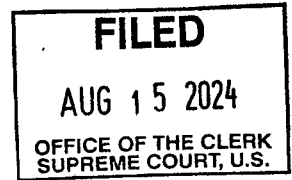
No. _____

24-5384

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Carlton E. Hooker Jr. — PETITIONER

VS.

Kevin Hanretta and Karen Mulcahy— RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH CIRCUIT COURT OF APPEALS – USCA NO. 23-12239

PETITION FOR WRIT OF CERTIORARI

Carlton E. Hooker Jr.

2678 N. McMullen Booith Road - #8111

Clearwater, Florida 33761

Phone Number (727)342-3282

QUESTIONS PRESENTED

1. Whether the Eleventh Circuit Court of Appeals abused its discretion on Denying the Appellant's motion for entry of judgment by remanding the following related appeal USCA Case No. 11-22-13342 due to the appellees' failure to file a response brief in this Court back to the District Court who fraudulently dismissed USDC Case No. 8:22-cv-01614-TPB-TGW after all defendants were properly served.

2. Whether or not the lower courts in both the Middle District of Florida and the Eleventh Circuit Court of Appeals abused their discretion, and violated Supreme Court binding precedent in General Electric Co. v. Joiner, 522 U.S. 136 (1997) when they bypassed ruling on the Judicial Notice of Adjudicative Facts at (Document 11) of USDC Case No. as noticed in the Notice of Supplemental Authority at (Document 10) of related appeal 11-22-13342 and (Document 24) of USDC Case No. 8:22-cv-01614-TPB-TGW, and (Document 22) of this appeal, 11-23-12239 which conclusively proves that the ban had no legal precedence and in fact was not in accordance with any law.

3. Whether USDC Case No. 8:22-cv-01614-TPB-TGW was improperly dismissed on Res Judicata grounds based on USDC Case No. 8:18-cv-00696-VMC-TGW being a Civil Rights Discrimination Complaint and not a Bivens Claim.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

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

Barber, Thomas P. - US District Court Judge -Middle District of Fl.

Bilirakis, Gus - US Congressman - Florida - District 12

Branch, Elizabeth L. - Circuit Judge - 11th Circuit Court of Appeals

Brown, Kristine - Asst Director - Department of VA - Bay Pines Fl.

Castillo, Alejandro - Deputy Clerk - US Middle District of Fl.

Castor, Kathy - US Congresswoman - Florida - District 14

Crist, Charlie - Former US Congressman - Florida - District 13

Covington, Virginia - US District Court Judge - Middle District of Fl

Grandy, Todd - Assistant US Attorney - Middle District of Fl.

Hanretta, Kevin T. - Appellee 1

Harwell, Lacy R. Jr. - Assistant US Attorney - Middle District of Fl.

Hooker, Carlton E. Jr. – Appellant

Honeywell, Charlene - US District Court Judge - Middle District of FL

Jordan, Aldaberto - Circuit Court Judge - 11th Circuit Court of Appeals

Klinker, Suzanne - Former Director - Department of VA- Bay Pines FL.

Lagoa, Barbara - Circuit Court Judge - 11th Circuit Court of Appeals

Leuthauser, Stephanie - Assistant US Attorney - Middle District of FL.

Luck, Robert J. - Circuit Judge - 11th Circuit Court of Appeals

Luna, Anna Paulina - US Congresswoman - Florida - District 13

McDonough, Denis - Secretary of the VA as a Non-Party to this case

Mizelle, Kathryn - US District Court Judge - Middle District of FL.

Moody, James S. Jr. - US District Court Judge - Middle District of FL.

Mulcahy, Karen L - Appellee 2

Pryor, William H. Jr. - Chief Judge, 11th Circuit Court of Appeals

Rhodes, David P. - Assistant US Attorney - Middle District of FL.

Senate Judiciary Committee – Subcommittee on Agency Action

Shogren, Robert C. - Former Police Chief – Bay Pines, FL

Siekkinen, Sean - Assistant US Attorney - Middle District of Fl.

Tuite, Christopher P. - US Magistrate Judge - Middle District of Fl.

Warren, Elizabeth - Clerk - US District Court - Middle District of Fl

Wilson, Charles R. - Circuit Judge - 11th Circuit Court of Appeals

RELATED CASES

Hooker v. Dept of VA, No. 8:18-mc-7-VMC-TGW (M.D. Fla. Feb. 5, 2018)

Terminated (Feb 12, 2018)

Hooker v. Dept of VA, No. 8:18-cv-349-VMC-CPT (M.D. Fla. Feb. 5, 2018)

Terminated (March 16, 2018)

Hooker v. Dept of VA, No. 8:18-cv-696-VMC-TGW (M.D. Fla. Mar. 22, 2018)

Terminated (Aug. 30, 2018)

Hooker v. Dept of VA, No. 8:18-cv-2000-CEH-JSS (M.D. Fla. Aug. 14, 2018)

Terminated (Jan. 21, 2020)

Hooker v. Dept of VA, No. 8:20-cv-2557-KKM-JSS (M.D. Fla. Oct. 30, 2020)

Terminated (Aug. 9, 2021)

Hooker v. USA, No. 8:22-cv-537-KKM-MRM (M.D. Fla. March 7, 2022)

Terminated (Aug 11, 2022)

Hooker v. Sly, et al., No. 8:22-cv-957-TPB-AAS (M.D. Fla. April 24, 2022)

Terminated (Aug 11, 2022)

USA v. Hooker, No. 8:22-mj-1206-CPT (M.D. Fla. Mar. 9, 2022)

Terminated (Sep. 14, 2022)

Hooker v. Covington et al, No. 8:22-cv-1763-SDM-AAS (M.D. Fla. Aug, 6, 2022)

Terminated (Aug. 16, 2022)

Hooker v. Barber, et al, No. 8:22-cv-1862-TPB-JSS (M.D. Fla. Aug. 16, 2022)

Terminated (Aug 22, 2022)

Hooker v. Hanretta, et al, No. 11-22-13342 (11th Circuit. Oct.4, 2022)

Remanded (April, 26, 2022), Terminated (May 22, 2023)

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☐ reported at ____ ;or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

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

☐ reported at ____ ;or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

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

☐ reported at ____ ;or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

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

☐ reported at ____ ;or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 3, 2024.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 28, 2024,

and a copy of the order denying rehearing appears at Appendix E.

The date on which the United States Court of Appeals decided my case was January 20, 2023.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 24, 2023, and a copy of the order denying rehearing appears at Appendix F.

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

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

CONSTITUTIONAL PROVISIONS INVOLVED

This petition involves a direct violation of 5th Amendment as it pertains to due process, as pertains to contesting penalty of a lifetime ban under the following criminal authorities referenced in the forthcoming Statement of the Case, for which the Petitioner was subjected to cruel and unusual punishment in violation of the 8th Amendment of the United States Constitution, for which the issues in this matter may set a new legal precedent which punishes individuals for crimes they did not commit.

STATEMENT OF THE CASE

The Appellant, Carlton E. Hooker Jr. hereby files this petition requesting that the Supreme Court reviews the decisions of the (United States Court of Appeals for the Eleventh Circuit) as it pertains to their decision of an important question of federal law that has not been, but should be, settled by this Court, and has decided an important federal question in a way that conflicts with relevant decisions of this Court under General Electric Co. v. Joiner, 522 U.S. 136 (1997) and conflicts with the decision of the (United States Court of Appeals for the Third Circuit) on the same important matter, NAHC Inc. Securities Litigation, 306 F.3d 1314, 1323 [3d Cir.] (2002). Binding precedent is a legal rule or principle, articulated by an appellate court, that must be followed by lower courts within its jurisdiction. Essentially, once an appellate court reviews a case, it will deliver a written opinion. This written opinion will include, among other things, the court's determination on some legal matter. This determination, known as a holding, is binding on all lower courts within the jurisdiction, meaning that lower courts must apply this decision when presented with similar facts. The Supreme Court, for example, is the highest court in the U.S. and so, its decisions are binding on all other courts in the U.S. Alternatively, the decisions of the highest court in New York are only binding on other New York courts, but not courts in other states.

TIMELINE OF EVENTS FOR STATEMENT OF THE CASE – ARGUMENT

1. On July 18, 2022, (Mr. Carlton E. Hooker Jr.) filed a Bivens Action against Mr. Kevin Hanretta – Individually and as a Federal Employee, and Ms. Karen Mulcahy as a Federal Employee. (Doc. 1)

2. On July 23, 2022 at (Doc. 4), (Mr. Carlton E. Hooker Jr.) filed his Return of Proof of Service on Mr. Kevin Hanretta as an Individual was provided. ^{1, 2}

1. In the remand of Eleventh Circuit Court of Appeals Case No. 22-13342, the three Circuit Judges fraudulently state as follows: We also note that there does not appear to be any personal service on the defendant who was named in his individual capacity.

2. 28 CFR § 50.15 Representation of Federal officials and employees by Department of Justice attorneys or by private counsel furnished by the Department in civil, criminal, and congressional proceedings in which Federal employees are sued, subpoenaed, or charged in their individual capacities, states as follows; (a) Under the procedures set forth below, a federal employee (hereby defined to include present and former Federal officials and employees) may be provided representation in civil, criminal and Congressional proceedings in which he is sued, subpoenaed, or charged in his individual capacity, not covered by § 15.1 of this chapter, when the actions for which representation is requested reasonably appear to have been performed within the scope of the employee's employment and the Attorney General or his designee determines that providing representation would otherwise be in the interest of the United States.

3. On August 19, 2022, (Mr. Carlton E. Hooker Jr.) filed his Proof of Service on the United States Attorney at (Doc. 8), on the United States Attorney General at (Doc. 9), and the Department of Veterans Affairs at (Doc. 10), as well as Joint Motion for Summary Judgment based on Judicial Notice of Adjudicative Facts, for which all evidence in support of the Motion was filed in accordance with **Rule 201** of the Federal Rules of Evidence. ³

4. On August 22, 2022, the following order was issued by United States District Court Judge, Thomas P. Barber, which states as follows: ENDORSED ORDER: This action constitutes an attempted end run by Plaintiff around orders entered by the Honorable Kathryn K. Mizelle in Hooker v. Wilkie , No. 8:20-cv-2557-KKM-JSS (Doc. 26) and Hooker v. United States of America , No. 8:22-cv-537-KKM-MRM (Doc. 29). ⁴ This case is hereby dismissed with prejudice. The Clerk is directed to terminate any pending motions and deadlines and thereafter close this case.

3. Rule 2.01(c)(2) of the Federal Rules of Evidence states as follows: (c) Taking Notice. The Court (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

4. Judge, Kathryn K. Mizelle only entered an order at (Doc. 26), while Judge Barber was the one who fraudulently entered an order at (Doc. 29), which was a case not assigned to him, in violation of Canon 3(A)(2) the Code of Conduct for United States Judges.

5. On October 3, 2022, a Notice of Appeal was filed by Mr. Carlton E. Hooker Jr. at (Doc. 13).
6. On October 4, 2022, the \$505.00 fee was paid for the appeal and the appeal packet at (Doc. 14) was transmitted to the Eleventh Circuit Court of Appeals and listed as (Doc. 1) of USCA 11-22-13342.
7. On October 24, 2022, I (Carlton E. Hooker Jr.) filed the following: Appellant Brief at (Doc. 3), the Appendix at (Doc. 4), and the Certificate of Interested Persons Statement at (Doc. 5) of USCA 11-22-13342.
8. On December 7, 2022 I, (Carlton E. Hooker Jr.) filed Motion Requesting Order Entering Judgment as Relief, at (Doc. 6). based on the Appellant's failure to file their brief on time. ⁵
9. On December 16, 2022, AUSA Sean Siekkinnen filed a Notice of Appearance at (Doc. 7), a Certificate of Interested Persons at (Doc. 8) and Motion Requesting and Extension of Time to File Appellee Brief on 01/13/23. ⁶

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5. 11th Cir. R. 31-1 Briefs - Time for Serving and Filing – states: The appellee shall serve and file a brief within 30 days after service of the brief of the last appellant.
 6. 11th Cir. R. 31-2 Briefs and Appendices states as follows under (e) A request for an extension of time to file the brief or appendix pursuant to this rule must be made or filed prior to the expiration of the due date for filing the brief or appendix.

10. On December 14, 2022 at (Doc. 10) Mr. Carlton E. Hooker Jr. filed in accordance with Rule **28(j)** of the Federal Rules of Appellate Procedure the following: Notice of Supplemental Authority in USCA No. **11-22-13342** which as follows: The Appellant hereby submits this Supplemental Authority letter pertaining to the Court's Abuse of Discretion in dismissing the Plaintiff's Joint Motion of Summary Judgment and Judicial Notice of Adjudicative Facts in Document 11 of USDC Case No. 8:22-cv-01614-TPB-TGW. In the case of General Electric Co. v. Joiner, 522 U.S. 136 (1997), the Supreme Court held that abuse of discretion standard is the proper standard to use when reviewing evidentiary rulings. In the Appellant Brief on Page 24, he relies on the following authority, NAHC Inc. Securities Litigation, 306 F.3d 1314, 1323 [3d Cir. 2002], which states as follows: In reviewing trial court decisions taking or refusing to take judicial notice, appellate courts have used an "abuse of discretion" standard. The abuse of discretion standard is also found in administrative law. 5 U.S. Code § 706(2)(a) states that when a court is reviewing an administrative agency's decision, the decision will be set aside when the decision was either "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." The Court fraudulently dismissed the case at Document 12, based on orders entered by the Honorable Kathryn K. Mizelle in Hooker v. Wilkie, No. 8:20-cv-2557-KKM-JSS (Doc. 26) ⁷ and Hooker v. United States of America, No. 8:22-cv-537-KKM-MRM (Doc. 29). ⁸ However, the Court

refused to produce the order entered and signed by the Honorable Kathryn K. Mizelle in **Hooker v. United States of America**, No. **8:22-cv-537-KKM-MRM** (Doc. 29) as certified by the Court on appeal, because she did not enter the order, but United States District Court Judge, Thomas P. Barber entered it, in order to modify the order in **Hooker v. Wilkie**, No. **8:20-cv-2557-KKM-JSS** (Doc. 26) to add the ban issued to the Appellant under the authority of **38 CFR 1.218** and **38 USC 901** by the Department of Veterans Affairs, based on the fraudulent actions of the Defendants, who knew there was no penalty of a ban under the regulation of **38 CFR 1.218**, or the law of **38 USC 901**, shown in the evidence intentionally bypassed by Judge Barber to now be judicially noticed on appeal.

7. On August 8, 2021, a district court judge issued a pre-filing injunction enjoining Hooker "from filing any new [pro se] action, complaint, or claim for relief against the Secretary of Veterans Affairs related to his employment in federal court, state court, or any other forum." Hooker v. Wilkie, No. **8:20-cv-02557-KKM-JSS**, Doc. 26 (M.D. Fla. Aug. 9, 2021).
8. On August 11, 2022, a different district court judge modified the earlier pre-filing injunction to enjoin Hooker "from filing [pro se] any new action, complaint, or claim for relief against the Department of Veterans Affairs, its employees, or any agency of the United States, related to his employment and/or the 'ban' imposed by the VA, under any theory." Hooker v. United States, No. **8:22-cv-00537-KKM-MRM**, Doc. 29 (M.D. Fla. Aug. 11, 2022).

11. On December 20, 2022, a NOTICE OF CIP FILING DEFICIENCY was submitted at (Doc. 11) of USCA 11-22-13342 to Sean Siekkinen for Karen Mulcahy and Kevin T. Hanretta, which states as follows You are receiving this notice because you have not completed the Web-Based Stock Ticker Symbol Certificate of Interested Persons (CIP) via the Court's public web-page. Failure to comply with 11th Cir. Rules 26.1-1 through 26.1-4 may result in dismissal of the case or appeal under 11th Cir. R. 42-1(b), return of deficient documents without action, or other sanctions on counsel, the party, or both. If you are an appellant or petitioner, upon expiration of 14 days from the date of this notice, your appeal will be dismissed for want of prosecution if the default has not been remedied, pursuant to 11th Cir. Rules 26.1-5(c) and 42-1(b). If you are an appellee or respondent, no action will be taken on documents submitted until the CIP deficiency is remedied. See 11th Cir. R. 26.1-5. [Entered: 12/20/2022 10:08 AM]

12. On January 13, 2023, Appellee's Brief filed by Appellee Kevin T. Hanretta was filed at (Doc. 12) of USCA 11-22-13342

13. On January 20, 2023, Appellee's Appendix filed by Appellee Kevin T. Hanretta was filed at (Doc. 13) of USCA 11-22-13342

14. On January 20, 2023, at (Doc. 14-1) USCA 11-22-13342 was remanded back to the United States District Court for the Middle District of Florida under (Doc. 15) of USDC Case No. 8:22-cv-01614-TPB-TGW

15. On February 6, 2023, I, (Carlton E. Hooker Jr.) filed a Petition for Panel Rehearing 9 in accordance with 11th Circuit Rule 40-3, for which in the Summary of Argument, it States as follows:

- I. Docket shows Appellant properly served the Appellees, and there is no need for a remand on this matter.
- II. Court made an error in it's opinion stating that the Appellant's appeal was untimely.
- III. The Court opinion made no reference of the evidence to be judicially noticed on remand
- IV. Error committed by the Court in its opinion.
- V. Appellant received information from the VA which proves that the 2016 ban was not related to any employment discrimination claim from 2010.

9. The Supreme Court should order the Eleventh Circuit Court of Appeals to submit entire record of USCA 11-23-13342 to them, to conduct a complete review of this matter as it pertains to the abuse of discretion standard, used to remand the case back to the United States District Court for the Middle District of Florida.

16. On February 24, 2023, the Petition for Panel Rehearing for USCA 11-23-13342 was denied at (Doc. 20-2) and is now Subject to Review by the Supreme Court.
17. On April 11, 2023, the Mandate was issued at (Doc. 27-2) of USCA 11-23-13442, which was also docketed under (Doc. 16) of USDC Case No. 8:22-cv-1614-TPB-TGW.
18. On April 26, 2023, United States District Court Judge, Thomas P. Barber issued an Endorsed Order at (Doc. 18) of USDC Case No. 8:22-cv-01614-TPB-TGW which states as follows: ENDORSED ORDER: The Clerk is directed to reopen the case and reinstate all motions pending when this case was closed on August 23, 2022. Signed by Judge Thomas P. Barber on 4/26/2023.¹⁰
19. On April 25, 2023, a Motion to Dismiss was filed at (Doc. 17) of USDC Case No. 8:22-cv-01614-TPB-TGW, by Mr. Lacey R. Harwell, before the case was reopened on April 26, 2023 for which that Motion was not pending when the case was closed on August 22, 2022

10. The following motions were pending when this case was closed on August 22, 2022

- A. MOTION to Disqualify Judge Wilson – under 28 USC 455(a) at (Doc. 3)
- B. MOTION to Disqualify Judge Barber under 28 USC 455(a) and (b)(1) at (Doc. 7) and
- C. MOTION for Summary Judgment / Judicial Notice of Adjudicative Facts. (Doc. 11)

20. On April 26, 2023, United States District Court Judge, Thomas P. Barber, issued an Endorsed Order at (Doc. 19) of USDC Case No. 8:22-cv-01614-TPB-TGW, which states as follows: ENDORSED ORDER: Plaintiff is directed to file a legal memorandum in response to "Defendants' Motion to Dismiss with Prejudice" (Doc. 17) on or before May 16, 2023. Plaintiff's response will comply with the form requirements of Local Rule 1.08 and will be limited to twenty pages, inclusive of all parts. See Local Rule 3.01(b). Plaintiff is directed to file his response, and any papers he seeks to file in the future in this case, by mailing a paper original to the Clerk's office by first class mail. The Court will not accept filings delivered to the Court by e-mail. Plaintiff will also serve counsel for Defendants with copies of papers he files, as required by Fed. R. Civ. P. 5.

21. However, based on the fact that the April 25, 2023 Motion to Dismiss at (Doc. 17) was not pending when the case was closed on August 22, 2022. I (Carlton E. Hooker Jr.) knew that I did not have to respond to that motion to dismiss at (Doc. 17), which was filed before the case was reopened at (Doc. 18), until the District Court complied with the Orders on remand. ¹¹

11. On Page 4 of the Remand Order of 11-22-13342, it states: We direct the district court on remand to determine whether Hooker served the defendants. No determination was made before Defendants' Motion to Dismiss with Prejudice (Doc. 17) was granted on May 19, 2023.

22. On April 26, 2023, a Motion to Stay the proceeding was filed by Mr. Lacy R. Harwell at (Doc. 20) of USDC Case No. 8:22-cv-01614-TPB-TGW.

23. On April 28, 2023 an Emergency Motion to Stay the proceedings at (Doc. 21) by Mr. Carlton E. Hooker Jr. until Judge Thomas P. Barber disqualified himself from USDC Case No. 8:22-cv-01614-TPB-TGW as noted in (Doc. 7) accordance with Federal Law: 28 USC 455(a) and (b)(1).¹²

24. On April 27, 2023, I, (Carlton E. Hooker Jr. filed a REQUEST for oral argument and Evidentiary Hearing on Judicial Notice of Adjudicative Facts at (Doc. 22), a MOTION for Hearing on Judicial Notice of Adjudicative Facts at (Doc. 23), and a NOTICE of Supplemental Authority at (Doc. 24), which was placed on the docket on April 28, 2023

25. On May 2, 2023, Magistrate Judge, Thomas G Wilson promptly and properly ORDER at (Doc. 25) denying the Motion to Disqualify himself at (Doc. 3) of USDC Case No. 8:22-cv-01614-TPB-TGW under 28 USC 455(a).¹³

12. 28 USC 455(e) states as follows: (e) - No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b).

13. 28 USC 455(e) states as follows: (e) - Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

26. In the context of the Notice of Supplemental Authority, at (Doc. 24) it states as follows: Local Rule 3.01(j) states as follows: SUPPLEMENTAL AUTHORITY. After filing of legal memorandum but before a decision, a party identifying a supplemental authority that is not merely cumulative may file - without argument or comment - a notice of supplemental authority that contains only

1. a citation of the authority; General Electric Co. v. Joiner, 522 U.S. 136 (1997) and NAHC Inc. Securities Litigation, 306 F.3d 1314, 1323 [3d Cir. 2002 and 5 U.S. Code§ 706(2)(a)
2. a specification by page, paragraph, and line of the issue or argument in the earlier paper that the authority supplements; On Pages 2 thru 7 of Document 11 it gives you the complete timeline of events, and on Page 70 of Document 11 at Paragraph 2, Mr. Hanretta states as follows: VA relies upon its statutory: authority to prescribe regulations to provide for the maintenance of law and order, and protect persons and property on VA property (38 USC section 901). Document 11, Pages 20 thru 85 shows that the ban was illegal as the Plaintiff was never charged with a crime as noted in the Clerks' Office Certificate of Search dated August 10, 2017 in response to a Records Check Request on August 7, 2017 as shown at Document 11, Pages 72 to 76;
3. a succinct quotation from the authority. In the case of General Electric Co. v. Joiner. 522 U.S. 136 {1997}, the Supreme Court held that

abuse of discretion standard is the proper standard to use when reviewing evidentiary rulings, and in NAHC Inc. Securities Litigation, 306 F.3d 1314, 1323 [3d Cir. 2002], states as follows: In reviewing trial court decisions taking or refusing to take judicial notice, appellate courts have used an "abuse of discretion" standard. The abuse of discretion standard is also found in administrative law. 5 U.S. Code § 706(2)(a) states that when a court is reviewing an administrative agency's decision, the decision will be set aside when the decision was either "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

4. The Legal Memorandum can be found on Pages 12 thru 14 of Document 11 as it pertains to the Judicial Notice of Adjudicative Facts

27. On May 3, 2023, I, (Carlton E. Hooker Jr.) filed a MOTION for Judgment on the Pleadings at (Doc 11) and Request for Hearing Before Trial - Fed.R.Civ.P - 12(c),(d), and (i) at (Doc. 26). 14, 15, 16

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14. Fed Rule Civ P 12(c): Motion for Judgment on the Pleadings. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.
 15. Fed Rule Civ P 12(d): (d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as a summary judgment under Rule 56.
 16. Fed Rule Civ P 12(i): Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

28. On May 19, 2023, United States District Court Judge, Thomas P. Barber, abused his discretion, and violated Federal Law, when he issued the following: ORDER: Plaintiff's "Motion to Disqualify USDC Judge Thomas Barber - 28 U.S. Code § 455(a) and (b)(1)" (Doc. 7) is denied, for which 28 USC 455(e) states as follows: (e) - No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Not only is Judge Barber in Violation of Federal Law, he is in violation of Canon 3(C)(1)(a) of the Code of Conduct for United States Judges, ¹⁷ and numerous other issues reference in the Emergency Motion filed in (Doc. 21) ^{18, 19}

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17. Canon 3(C)(1)(a) states as follows: (C) Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which: (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.
18. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." [Emphasis added]. Liteky v. U.S., 114 S.Ct. 1147, 1162 (1994).
19. The Supreme Court has ruled and has reaffirmed the principle that "justice must satisfy the appearance of justice", Levine v. United States, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954)

29. Immediately after violating Federal Law 28 USC 455(a) and(b)(1) and Canon 3(C)(1)(a), by blatantly refusing to disqualify himself, in accordance with Federal Law, and the Code of Conduct for United States Judges, United States District Court Judge, Thomas P. Barber issued the Order at (Doc. 28) granting the "Defendants' Motion to Dismiss with Prejudice" (Doc. 17). ^{20, 21}

30. On May 22, 2023, JUDGMENT in favor of Karen Mulcahy, Kevin T. Hanretta against Carlton Eugene Hooker, Jr. at (Doc. 29)

31. On July 7, 2023, NOTICE OF APPEAL as to 29 Judgment by Carlton Eugene Hooker, Jr. was docketed at (Doc. 30) of USDC Case No. 8:22-cv-01614-TPB-TGW.

20. Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which, possibly, further disqualifies the judge. None of the orders issued by any judge who has been disqualified by law would appear to be valid. It would appear that they are void as a matter of law, and are of no legal force or effect.

21. Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.").

32. On July 7, 2023, at (Doc. 1) of USCA 11-23-12239, the CIVIL APPEAL was DOCKETED. Notice of appeal filed by Appellant Carlton Eugene Hooker, Jr. on 07/07/2023. Fee Status: Fee Paid. Awaiting Appellant's Certificate of Interested Persons due on or before 07/26/2023 as to Appellant Carlton Eugene Hooker Jr.. Awaiting Appellee's Certificate of Interested Persons due on or before 08/09/2023 as to Appellee Kevin T. Hanretta [Entered: 07/12/2023 03:25 PM].

33. On August 14, 2023, I (Carlton E. Hooker Jr.) filed at (Doc. 6) my Appellant Brief to USCA-11-23-12239, for which I, (Carlton E. Hooker Jr.) raised the following arguments on remand on USCA 11-22-13342.

- I. Appellate Judges Committed Fraud on the Court on Remand
- II. Federal Judge failed to comply with orders on remand
- III. Federal Judge violated Federal Law 28 USC 455(a) and (b)(1)
- IV. Res Judicata does not apply based on "Fraud on the Court" by US District Judges and Attorneys for the Middle District of Florida.
- V. Appellant at (Doc. 25) filed a Motion for Judgment on the Pleading and Request for Hearing before Trial on (Doc. 11) and (Doc. 17).
- VI. A Request for Judicial Review of the Agency Action was sent to and received by the Senate Judiciary Committee – Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights as it pertains to the illegal ban.

34. On August 21, 2023, (Mr. Carlton E. Hooker Jr.) filed the following at (Doc. 7) of USCA 11-23-12239: Appendix filed [1 VOLUMES - 4 copies] by Party Carlton Eugene Hooker, Jr.. Service date: 08/22/2023 USmail - Appellant Hooker; Attorney for Appellee: Harwell; email - Attorney for Appellee: U.S. Attorney Service- Middle District of Florida. [Entered: 08/22/2023 12:10 PM]
35. On September 7, 2023, at (Doc. 8) of USCA 11-23-12239, the APPEARANCE of Counsel Form filed by Sean Siekkinen for United States of America U.S. Attorney Service - Middle District of Florida for Kevin T. Hanretta and Karen Mulcahy. **Related cases? No.** ²² [23-12239] (ECF: Sean Siekkinen) [Entered: 09/07/2023 02:55 PM]
36. On October 19, 2023 at (Doc. 12) of USCA 11-23-12239 the Appellee's Brief filed by Appellees Karen Mulcahy and Kevin T. Hanretta. [23-12239] (ECF: SeanSiekkinen) was **[Entered: 10/19/2023 12:37 PM]**
37. On October 26, 2026 at (Doc. 14) of USCA 11-23-12239, the Supplemental Appendix [1 VOLUMES] was filed by Appellees Karen Mulcahy and Kevin T. Hanretta. [23-12239](ECF: Sean Siekkinen) **[Entered: 10/26/2023 01:24 PM]**

22. USCA 11-23-12239, is related to USCA-22-13342 and USDC Case No. 8:22-cv-01614-TPB-TGW, for which U.S Attorney – Sean Siekkinen provided false and fraudulent information into the docket as it pertains to their being no related cases.

38. On November 3, 2023, the following: Reply Brief filed by Appellant Carlton Eugene Hooker, Jr. as docketed at (Doc. 16) of USCA 11-23-12239 for which Service 11/03/2023 US mail - Attorney for Appellee: Harwell; email - Attorney for Appellees: Siekkinen, U.S. Attorney Service - Middle District of Florida. [Entered: 11/03/2023 03:05 PM]

39. On January 4, 2024, I, (Carlton E. Hooker Jr.) filed the following: MOTION to stay further appellate proceedings at (Doc. 17) of USCA 11-23-12239 until the Senate Judiciary Committee – Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights, ruled on the Request for Judicial Review of the Agency Action that was submitted on December 19, 2022 by mail, and received by former Hearings Clerk, now Deputy Clerk, Ms. Kara Dubbs on January 3, 2023, for which the subcommittee has the authority to review Agency Actions.

40. On April 3, 2024, at (Doc. 19), the following: Opinion issued by court as to Appellant Carlton Eugene Hooker, Jr. Decision: Affirmed. Opinion type: Non-Published. Opinion method: Per Curiam. Motion to stay further appellate proceedings filed by Appellant Carlton Eugene Hooker, Jr. is DENIED. [17]. (See 04/03/2024 opinion) (WHP/AJ/BL) The opinion is also available through the Court's Opinions page at <http://www.call.uscourts.gov/opinions> [Entered: 04/03/2024 03:09 PM]

41. On. April 3, 2024, at (Doc. 20) Judgment entered as to Appellant Carlton Eugene Hooker, Jr.. [Entered: 04/03/2024 03:11 PM]
42. On May 2, 2024, the Mandate was prematurely filed, for which **FRAP 41. Mandate: Contents; Issuance and Effective Date, (b)** states as follows: **(b) When Issued.** The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order.
43. On May 8, 2024, I (Carlton E. Hooker Jr.) filed a timely Petition for Panel Rehearing on day **36 of 45** in accordance **FRAP 40. Petition for Panel Rehearing –(a)(1)(C &D)**, for which it states as follows: **(a) Time to File; Contents; Response; Action by the Court if Granted. (1) Time.** Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is: (C) a United States officer or employee sued in an official capacity; or (D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents

that person when the court of appeals' judgment is entered or files the petition for that person, for which it was listed as (Doc. 24) of USCA 11-23-12239

44. On May 8, 2024, I (Carlton E. Hooker Jr.), filed the following: Supplemental Authority filed by Appellant Carlton Eugene Hooker, Jr. Service date: 05/09/2024 US mail -Appellant Hooker; Attorney for Appellee: Harwell; email - Attorney for Appellees: Siekkinen, U.S. Attorney Service - Middle District of Florida. [Entered: 05/09/2024 12:56 PM], which was listed at (Doc. 22) of USCA 11-22-12239.
45. In the context of the Notice of Supplemental Authority, which was filed under 11th Cir. R 40-5, it states as follows: The Appellant submits this Supplemental Authority letter pertaining to the both the District and Circuit Court's Abuse of Discretion in dismissing my Joint Motion of Summary Judgment and Judicial Notice of Adjudicative Facts in Document 11 of USDC Case No. 8:22-cv-01614-TPB-TGW. In the case of General Electric Co. v. Joiner, 522 U.S. 136 (1997), the Supreme Court held that abuse of discretion standard is the proper standard to use when reviewing evidentiary rulings. In the Appellant Brief on Page 20, he relies on the following authority, NAHC Inc. Securities Litigation, 306 F.3d 1314, 1323 [3d Cir. 2002], which states as follows: In reviewing trial court decisions taking or refusing to take judicial notice, appellate courts have used an "abuse of discretion" standard. The abuse of discretion standard is also found in

administrative law. 5 U.S. Code § 706(2)(a) states that when a court is reviewing an administrative agency's decision, the decision will be set aside when the decision was either “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” On Page 24 of Document 11 of USDC Case No. 8:22-cv-01614-TPB-TGW and Page 31 of Document 7 of USDC Case No. 8:18-cv-00696-VMC-TGW it states in the footnotes as follows: To our knowledge, VHA has never sought to place a former employee/Veteran into a No Engagement Status outside of the Disruptive Behavior Program for patients, this this action may set precedence. That statement proves that the Court errored in it’ April 3, 2024 Opinion by acknowledging that the Appellant was banned under Federal Regulation 38 CFR 1.218, which is not the legal precedence, thus proving that the ban is not in accordance with Federal Law: 38 USC 901, which is the law that 38 CFR 1.218 falls under. The penalty for causing a disturbance or Disorderly Conduct under 38 CFR 1.218(b)(11) is a \$250.00 fine and not a lifetime ban. ²³

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23. In the Rules of the Eleventh Circuit Court of Appeals it states as follows: 11th Cir. R. 40-5 Supplemental Authorities. If pertinent and significant authorities come to a party’s attention while a party’s petition for rehearing or petition for rehearing en banc is pending, a party may promptly advise the clerk by letter, with a copy to all other parties. The body of the letter must not exceed 350 words, including footnotes. If a new case is not reported, copies should be appended. When such a letter is filed in paper, four copies must be filed.

46. On May 9, 2024, the United States Court of Appeals attempted to avoid granting the Petition for Panel Rehearing at (Doc. 24) based on the information referenced in both the Notice of Supplemental Authorities at (Doc. 22) and the Petition for Panel Rehearing at (Doc. 24), by issuing the Mandate at (Doc. 21) on May 2, 2024 to in effect close the case, for which at (Doc. 23) of USCA 11-23-12239, it states as follows: Notice that no action will be taken on Supplemental Authority filed by Appellant Carlton Eugene Hooker, Jr.. Reason(s) no action being taken on filing(s): This case is closed.. [Entered: 05/09/2024 01:00 PM] and (Doc. 25) of USCA 11-23-12239, where it states: Notice that no action will be taken on Appellant's 2nd Petition for Panel Rehearing filed by Appellant Carlton Eugene Hooker, Jr.. Reason(s) no action being taken on filing(s): This case is closed.. [Entered: 05/09/2024 02:49 PM].

47. On May 13, 2024, at (Doc. 26) of USCA 11-23-12239, it states as follows: The mandate has been clerically recalled. The mandate was issued prematurely. [Entered: 05/13/2024 02:31 PM]

48. On May 28, 2024 at (Doc. 27) of USCA 11-23-12239, it states as follows: ORDER: Petition for panel rehearing only filed by Appellant Carlton Eugene Hooker, Jr. is DENIED. [27][Entered: 05/28/2024 03:19 PM].

49. On June 6, 2024, at (Doc. 29) of USCA 11-23-12239 the following: **MOTION to stay mandate filed by Appellant Carlton Eugene Hooker, Jr.. Opposition to Motion is Unknown [29] [Entered: 06/24/2024 09:23 AM]**.
50. On June 11, 2024, at (Doc. 28) of USCA 11-23-12239 the following: **Mandate issued as to Appellant Carlton Eugene Hooker, Jr.. [Entered: 06/11/2024 09:08 AM]**
51. On June 24, 2024 at (Doc. 30) of USCA 11-23-12239 it states as follows: **The mandate has been recalled. A timely motion has been filed. [Entered: 06/24/2024 09:26 AM]**
52. On July 19, 2024, at (Doc 31) of USCA 11-23-12239, it states as follows: **ORDER: The motion of Appellant Carlton Eugene Hooker, Jr. to stay the issuance of the mandate pending a petition for writ of certiorari is DENIED. [29] ENTERED FOR THE COURT - BY DIRECTION. (See attached order for complete text) –[Edited 07/24/2024 by CRL] [Entered: 07/19/2024 10:36 AM]**.
53. On July 29, 2024 at (Doc. 32) of USCA 11-23-12239, it states as follows: **Mandate issued as to Appellant Carlton Eugene Hooker, Jr. [Entered: 07/29/2024 01:11 PM]**

REASONS FOR GRANTING THE WRIT

This Petition should be granted for the following compelling reasons

1. The evidence shows that the Appellant served the Appellee in his individual capacity and official capacity as a former VA employee, and it appears that he never asked for legal representation most likely because the case was dismissed by United States District Court Judge, Thomas P. Barber before he could request legal representation for which the United States Attorney's Office never received approval from the Attorney General's Office granting him legal representation.

24. 28 CFR § 50.15 (a) states as follows; (a) Under the procedures set forth below, a federal employee (hereby defined to include present and former Federal officials and employees) may be provided representation in civil, criminal and Congressional proceedings in which he is sued, subpoenaed, or charged in his individual capacity, not covered by § 15.1 of this chapter, when the actions for which representation is requested reasonably appear to have been performed within the scope of the employee's employment and the Attorney General or his designee determines that providing representation would otherwise be in the interest of the United States. **No special form of request for representation is required when it is clear from the proceedings in a case that the employee is being sued solely in his official capacity and only equitable relief is sought. (See USAM 4-13.000)**

2. The District Court and the Appellate Court abused it's discretion by refusing to Judicially Notice the Evidence attached to the Motion for Summary Judgement based on Judicial Notice of Adjudicative Facts at Document 11 of USDC Case No. 8:22-cv-01614-TPB-TGW, as it pertains to the Notice of Supplemental Authorities at (Doc. 24) of USDC Case No. 8:22-cv-01614-TPB-TGW, (Doc. 10) of USCA -11-22-13342, and (Doc. 22 of USCA-11-23-12239) for which the Department of Veterans Affairs acknowledged the following on Page 24 of Document 11 of USDC Case No. 8:22-cv-01614-TPB-TGW and Page 31 of Document 7 of USDC Case No. 8:18-cv-00696-VMC-TGW it states in the footnotes as follows: To our knowledge, VHA has never sought to place a former employee/Veteran into a No Engagement Status outside of the Disruptive Behavior Program for patients, this this action may set precedence. If the No. Engagement Ban had no legal precedent, then Mr. Kevin Hanretta lied on Page 70 of Document 11 at Paragraph 2, Mr. Hanretta states as follows: VA relies upon its statutory: authority to prescribe regulations to provide for the maintenance of law and order, and protect persons and property on VA property (38 USC section 901). Therefore the Supreme Court should order the lower court to send up the entire record for review to confirm that there was no legal precedent, for which it is also a well known fact that the VHA is prohibited by Federal Regulation 38 CFR 17.107 from banning or barring Veterans from receiving VHA health care as noted in the VA's Disruptive Behavior Committee Guidebook from (2021).

3. The District and Appellate Court abused by discretion further refusing to rule on the Motion for Summary Judgment and Notice for Judicial Review of Adjudicative Facts, because the evidence clearly shows that in the Amended Complaint at (Document 10) of USDC Case No. 8:18-cv-00696-VMC-TGW, Mr. Carlton E. Hooker Jr. made no reference to any claim under Bivens v. Six Unknown Fed. Narcotics Agents, 403 U. S. 388, for which the burden of proof lies with the Appellee to provide the page number for which the Appellant references a construed Bivens Claim, for which also in the context of the Amended Complaint the Appellant requested relief in accordance with the Civil Rights Act of 1964 and 1991, for which he exhausted all remedies as it pertains to those claims. The Supreme Court has recognized a Bivens action in two other contexts: in violation of the Fifth Amendment due process clause, Davis v. Passman, 442 U.S. 228 (1979), and in violation of the Eighth Amendment claim for cruel and unusual punishment. Carlson v. Green, 446 U.S. 14 (1980). A Bivens defendant is at risk of personal liability, including punitive damages, and a plaintiff is entitled to a jury trial in a Bivens action. See Carlson, 446 U.S. at 22. Because a Bivens action is brought against a federal official in the official's personal capacity, it is not considered to be an action against the United States and thus is not barred by sovereign immunity. Thus the Appellant asks that the Supreme Court orders the lower court to send up the case for review, to ask on what specific page on the Amended Complaint to USDC Case No. 8:18-cv-00696-VMC-TGW as shown in Document 11 of

USDC Case No. 8:22-cv-01614-TPB-TGW where a Bivens claim was referenced, for which if they can't, then that will prove that the USDC Case No. 8:22-cv-01614-TPB-TGW, is not barred under the doctrine of Res Judicata, which would justify the reopening of the following cases. Hooker vs Veterans Affairs. Case 8:18-mc-00007-VMC-TGW (2018), Hooker vs Veterans Affairs. Case 8:18-cv-00349-VMC-CPT (2018), Hooker vs Veterans Affairs and Klinker. Case 8:18-cv-00696-VMC-TGW (2018), Hooker vs Veterans Affairs. Case 8:18-cv-02000-CEH-JSS (2018), Hooker vs Veterans Affairs. Case 8:20-cv-02557-KKM-JSS (2020), Hooker vs United States of America. Case 8:22-cv-00537-KKM-MRM (2022), Hooker vs Sly et al. Case 8:22-cv-00957-KKM-AAS (2022), United States of America vs Hooker – Case 8:22-mj-01206-CPT (2022), Hooker vs Covington and Barber - Case 8:22-cv-01763-SDM-AAS (2022), and Hooker vs Veterans Affairs and Klinker. Case 8:22-cv-01862-TPB-JSS (2022). In addition, the sanctions levied under the All Writs Act should be rescinded, as USDC Case No. 8:22-cv-01614-TPB-TGW was still pending after the order was issued in a prior case, in a frivolous attempt to stop the Document 11 of USDC Case No. 8:22-cv-01614-TPB-TGW, from being deemed conclusive as it pertains to the Motion for Summary Judgment based on the Judicial Notice of Adjudicative Facts showing that the ban was arbitrary, capricious, and not in accordance with Federal Law: **38 USC 901** – Authority to prescribe rules for conduct and penalties for violations.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Carlta E Hooker J

Date: August 15, 2024