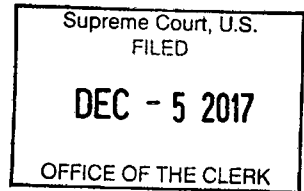


No. 17-5974



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IN THE  
SUPREME COURT OF THE UNITED STATES

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Ya'shua Amen Shekhem El Bey, PETITIONER

v.

United States of America, et. al., RESPONDENT(S)

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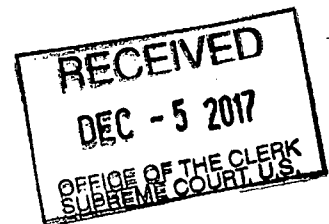
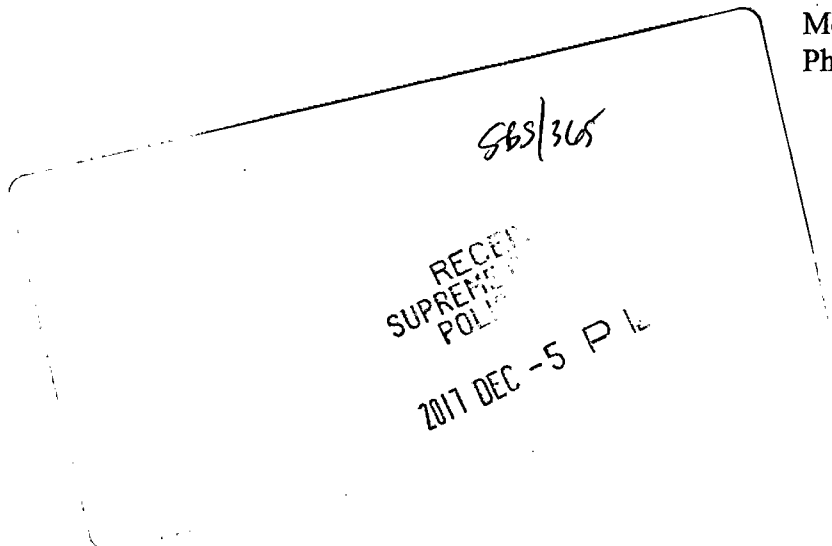
On Petition For Writ of Certiorari to the  
United States Court of Appeals For The District of Columbia Circuit

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PETITION FOR REHEARING

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## PETITION FOR REHEARING

Pursuant to Rule 44.2, Petitioner respectfully petitions this Court for rehearing.

### ARGUMENT

#### **I. Citizenship establishes Jurisdiction to hear Declaratory Judgment Petition Regarding First Amendment Rights verses a privilege to Petition Government for Redress of Grievances**

On November 13, 2017, Petitioner's motion for leave to proceed in forma pauperis has been denied and Petition for Writ of Certiorari dismissed by the U.S. Supreme Court and citing Supreme Court Rules 39.8 which states "If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ is frivolous or malicious, the Court may deny leave to proceed in forma pauperis." The Petitioner does not know how this Court arrived at such a blanket conclusion without explanation. In any event, Petitioner submits this Petition for Rehearing.

Petitioner as a Citizen of the U.S.A. had filed a declaratory judgment Petition pursuant to 28 U.S.C. § 2201 (and 2202), Fed. R. Civ. P. 57 and leave to proceed in forma pauperis in the U.S. District Court for the District of Columbia in Shekhem El Bey v. United States of America, et. al. 16-164-UNA, Dkt. No. 1 and 2, respectively; Petitioner was granted in forma pauperis status with no mention of being frivolous or malicious. Petitioner's Declaratory Judgment Petition was dismissed with prejudice for lack of subject matter jurisdiction on February 2, 2016, which Petitioner appealed, and is a final appealable order, 16-164-UNA, Dkt. No. 4; particularly, as "Generally, a dismissal with prejudice constitutes an appealable final order." *Camesi v. University of Pittsburgh Medical Center*, 729 F3d 239 (3<sup>rd</sup> Cir. 2013).

In Petitioner's Petition for Writ of Certiorari, it has fully expressed that Petitioner's declaratory judgment petition sought clarification of Petitioner's rights in a form of a, non-hypothetical, Constitutional question in light of a federal Judicial filing injunction that trumps the Petition clause of the First Amendment to the U.S. Constitution, essentially turning a right supposedly protected under the First Amendment to the U.S. Constitution into a privilege whereby Petitioner is required to ask permission that is subject to unchecked flagrant denials, an obvious justiciable controversy and a due process violation - *U.S. v. Barner*, 572 F3d 1239 (11<sup>th</sup> Cir. 2009) "to punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort."

Petitioner did not file a hypothetical Constitutional question. It's a Constitutional question of "facts" regarding the Petition clause of the First Amendment with respect to a filing injunctions that needed to be resolved and settled by this Court, as the D.C. district court chose the jurisdictional route ignoring the real issue being presented by Petitioner under the Declaratory Judgment Act, 28 U.S.C. § 2201 and 2202, as the district court avoided ruling on the merits of the declaratory judgment Petition.

Petitioner did not file his Declaratory Judgment Petition as a State Citizen seeking a State remedy as improperly inferred by virtue of the false 1983 civil rights cause of action designation appearing in the summary docket report of the district court below, *Shekhem El Bey v. United*

States of America, et. al. 16-164-UNA, which was noticed to the court, among other things, as well as in the Appellate Court USCA/DCC, 16-5102, USCA/DCC, Dkt. No. 16486222 – Appellant’s Brief, Dkt. No. 1648633 – Appendix to Appellant’s Brief, Dkt. No. 1648621 – Motion to take Judicial Notice, Dkt. No. 1678225 - Petition for Rehearing En Banc; but was all ignored, as it seems to not set precedent.

The district court granted in forma pauperis status while dismissing the case for lack of subject matter jurisdiction and its decision as a “final appealable Order” (See Certiorari Petition - App. F, 7a) to avoid ruling on the merits of a declaratory judgment Petition over which the district court does have jurisdiction.

The Petitioner contested the district courts “order” and appealed to the D.C. Circuit Court in Shekhem El Bey v. United States of America, et. al., USCA/DCC, 16-5102, which subsequently upheld the district court’s “order” without any explanation. The Petitioner’s appeal of the D.C. circuit courts decision to the Supreme Court of the United States is not frivolous or malicious by any stretch of the imagination, particularly, as the district court, much less the circuit court did not assert that Petitioner’s declaratory judgment Petition or the appeal of it’s dismissal is in anyway malicious or frivolous while granting in forma pauperis status and added that it’s a final appealable order; *Camesi v. University of Pittsburgh Medical Center*, 729 F3d 239 (3<sup>rd</sup> Cir. 2013).

Denying Petitioner’s leave to proceed In Forma Pauperis and dismissing the petition for writ of certiorari only undermines the integrity and strength of the First Amendment which is now subject to further abuses and not upheld by the district courts. This Court should be cognizant that “The loss of First Amendment freedoms, for even minimal periods of time, constitutes ‘irreparable injury’ for purpose of entitlement to injunctive relief.” *Gentala v City of Tucson*, 213 F3d 1055 (9<sup>th</sup> Cir. 2000). “The right to file a legal action is protected under the First Amendment” *Spencer v. Jackson County Mo.*, 728 F3d 908 (8<sup>th</sup> Cir. 2013); “The Government may not penalize an individual for robustly exercising his First Amendment Rights.” *McCutcheon v. Federal Election Com’n*, \_\_US\_\_, LEd2d \_\_, 134 SCt. 1434 (2014).

The People of the United States who rely upon First Amendment protections against abuses by Judicial Officers who arbitrarily and capriciously imposes filing injunctions without justification, as a practice, custom and policy, at the very least, “Trump’s” the Peoples “Right to Petition the Government for Redress of Grievances” in violation of the First Amendment, including Article 3 and 6. Thus, the U.S. Supreme Court should reconsider by granting Petitioner’s Petition for Rehearing, in forma pauperis status and Petition for Writ of Certiorari.

## **II. Declaratory Judgment Seeking Clarification on the First Amendment Right to Petition the Government In light of a Judicial Filing Injunction**

The Government of the United States, by and through it’s highest Court, the United States Supreme Court, has a duty and obligation to uphold and properly interpret the United States Constitution and to hear the Petition of the People, collectively or individually, in matters affecting public interest and the public trust. “Generally, public interest concerns are implicated when a Constitutional right has been violated because all citizens have a stake in upholding the Constitution.” *Rodriguez v. Robbins*, 715 F3d 1127 (9<sup>th</sup> Cir. 2013); and “to punish a person

because he has done what the law plainly allows him to do is a due process violation of the most basic sort.” U.S. v. Barner, 572 F3d 1239 (11<sup>th</sup> Cir. 2009).

Clearly, the district court has jurisdiction to try Petitioner’s declaratory judgment Petition pursuant to 28 U.S.C. § 2201 on Constitutional grounds, as a Citizen of the U.S.A. involving a judicial filing injunction with respect to the Petition clause of the First Amendment to the U.S. Constitution. “...jurisdiction has to do with authority or power of court to try case.” U.S. v. Josleyn, 99 F3d 1182 (1<sup>st</sup> Cir. 1996), which is inherent within the D.C. district court.

It is the Judicial Branch of the United States Government that is tasked to uphold and properly interpret the Constitution and Laws of the United States pursuant to Article 3 and 6 of the United State Constitution. “Judges must not only be scrupulously fair in the administration of justice, but also must foster an aura of fairness” U.S. v. Brooks, 145 F3d 446 (1<sup>st</sup> Cir. 1998).

The Petitioner clearly outlined the premises of his declaratory judgment petition under 28 U.S.C. § 2201 in the district court below that is ignored by both the district court and D.C. Circuit Court wherein Petitioner sought clarification of his rights under the declaratory judgment act, 28 U.S.C. § 2201, Fed. R. Civ. P. 57 regarding the First Amendment Right to Petition the Government for redress of grievances and freedom of speech, all of which has been reiterated and expressed in Petitioner’s Petition for Writ of Certiorari. Also, Petitioner, as “Pro se litigants pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers...” Boag v. MacDougall, 454 U.S. 364, 70 LEd2d 551, 102 SCt. 700 (1982) and Haines v. Kerner, 404 U.S. 519, 30 LEd2d 652, 92 SCt. 594 (1972).

For the Supreme Court to infer or cast a blanket assertion that Petitioner’s Petition for Writ of Certiorari is frivolous or malicious pursuant to Supreme Court Rule 39.8 to deny in forma pauperis and dismiss the Petition for Writ of Certiorari is most disingenuous, anathema and antithetical to the Constitution upon which the U.S. Supreme Court Justices has taken an Oath to uphold under 28 U.S.C. § 453 and only makes this matter ripe for Congress to clarify the matter, as there is no higher Court than the U.S. Supreme Court.

In the First Amendment to the United States Constitution, Congress has made it patently clear as restated from Petitioner’s declaratory Judgment Petition, 16-164-UNA, Dkt. No. 1, that was dismissed by the district court and unjustly upheld by the D.C. Circuit Court, in pertinent part that “Congress shall make no law...abridging the freedom of speech...and to petition the government for a redress of grievances.” If no such law exist that would abridge one of the Peoples right to Petition the government for redress of grievances, then how can a U.S. Federal Judge or Judicial Officer of the United States impose a restriction much less a filing injunction on a Constitutionally protected right to “Petition the government for redress of grievances”; particularly in light of 28 U.S.C. § 453, which all Federal Judges or Judicial Officers of the United States is bound by, together with Article 3 and 6 of the U.S. Constitution.

Petitioner’s Petition for Writ of Certiorari is not frivolous and malicious. The “Government may not legislate away the First Amendment” Kirkeby v. Hall, 92 F3d 655 (8<sup>th</sup> Cir. 1996), and likewise the Judicial branch of government task with upholding, protecting and properly interpreting the Constitution pursuant to 28 U.S.C. § 453 is not empowered to “Trump” the laws established by Congress and under which the Justices has taken an Oath to uphold pursuant to 28 U.S.C. § 453. If Petitioner is unable to Petition the Judicial branch of government,

does that mean that Petitioner would have to Petition Congress instead? Hence, Congress will have to shed light on this anomaly so the People can comprehend the scope of the First Amendment and what it means to Petition the Government for redress of grievances.

**III. Denial of Petitioner's Leave to Proceed In Forma Pauperis and dismissing Petitioner's Petition for a Writ of Certiorari pursuant to Supreme Court Rule 39.8 is a travesty of justice and undermines the First Amendment To The U.S. Constitution**

Petitioner had a reasonable expectation that his motion for leave to proceed in forma pauperis and Petition for Writ of Certiorari would have at the very least been granted given that Petitioner's in forma pauperis application was granted in the district court below which carried over to the Appellate Court, and given the public interest and public trust implications involved.

In light of what has already been presented in Petitioner's Petition for Writ of Certiorari, dismissing the Petition and denying Petitioner's motion for leave to proceed in forma pauperis completely undermines this Constitutional republic and grossly undermines 28 U.S.C. § 453 and essentially further damages the First Amendment, *Kirkeby v. Hall*, 92 F3d 655 (8<sup>th</sup> Cir. 1996), giving a green light of encouragement to the district court's to arbitrarily and capriciously impose filing injunctions whenever it suits them without checks and balances.

Essentially, the People of the United States, as Petitioner, has no First Amendment Right to Petition the Government for redress of Grievances as it has been judicially legislated away by the district court, upheld by the circuit court and not being corrected by this Court. This Court however, is reasonably expected, and is suppose to be in place to prevent such travesty of justice. Now, it would seem that Congress has to take a look at the First Amendment and clarify its meaning to the People of the United States and to the Petitioner herein, which may not be necessary if the U.S. Supreme Court grant this Petition for Rehearing, thus granting in forma pauperis and certiorari.

**IV. First Amendment Right To Petition The Government For Redress of Grievance is no longer a right but a privilege Administered by the district courts that can deny the Privilege.**

Congress has made it patently clear pursuant to the First Amendment to the U.S. Constitution that "Congress shall make no law...abridging the freedom of speech...and to petition the government for a redress of grievances." In *EJS Properties, LLC v. City of Toledo*, 698 F3d 1197 (6<sup>th</sup> Cir 2012) "The right of meaningful access to the courts is protected by the First Amendment's Petition Clause, among other provisions." Now becomes meaningless in light of an arbitrary and capricious filing injunction, given that the Right under the First Amendment is a privilege, as evidenced by a filing injunction without checks and balances. The D.C. district court did not fairly address the facts of Petitioner's declaratory judgment petition under 28 U.S.C. § 2201, but rather treated it as a 1983 civil rights cause of action in order to assert lack of jurisdiction to dismiss Petitioner's declaratory judgment petition.

"Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution." *Rodriguez v. Robbins*, 715 F3d 1127 (9<sup>th</sup> Cir. 2013). Given that the First Amendment Right can be enjoined, as a



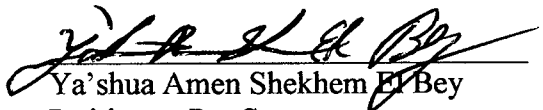
custom, policy and practice, vis-à-vis, a filing injunction, thus creates a conflict for which the lower court's had the opportunity to address, but was subterfuge under the guise of a 1983 civil rights cause of action referenced in the district court summary docket report, a false narrative inapplicable to a Petition under the Declaratory Judgment Act, 28 U.S.C. § 2201.

### CONCLUSION

Whether there exist a First Amendment Right to Petition the Government for redress of Grievances and Freedom of speech or this Right no longer exist because it has become or is converted into a privilege subject to restrictions, sanctions and injunctions without checks and balances is a matter that warrants clarification which was the purpose of Petitioner's declaratory judgment Petition that was not properly addressed by the district court below and overlooked by and circuit court. This matter having come before this Court is at the very least, not malicious or frivolous by any stretch of the imagination.

Based upon the foregoing, the Court should grant rehearing, Petitioner's leave to proceed in forma pauperis and Petitioner's Petition for Writ of Certiorari, vacate the district court's final order, dated February 2, 2016 and the Case remanded to the district court for the District of Columbia wherein the court is directed to address Petitioner's declaratory judgment petition under the Declaratory Judgment Act, 28 U.S.C. § 2201 and Fed. R. Civ. P. 57. and with the option to permit Petitioner to amend his Petition to correct any deficiencies, and as to such other and further relief deemed just and appropriate under the circumstances.

Respectfully submitted,



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December 4, 2017

### CERTIFICATE OF PRO SE PETITIONER

I, Ya'shua Amen Shekhem El Bey, as Petitioner Pro Se in this Case, believe this Petition for Rehearing to be meritorious and a matter of great public interest and importance in the public trust with broad implications and ramifications, and hereby certify that this Petition for Rehearing is presented in good faith and not for purposes of delay.



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