

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN A. DeLOGE – PETITIONER

VS.

DeSOTO COUNTY SHERIFF'S DEPARTMENT, et al. – RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

PETITION FOR WRIT OF CERTIORARI

Steven A. DeLogé, No. 20652
Wyoming Medium Correctional Institution
7076 Rd. 55 F
Torrington, WY 82240-7771

QUESTIONS PRESENTED

WHERE PROPERTY AND EVIDENCE ARE SEIZED IN A STATE CRIMINAL PROSECUTION AND TRANSFERRED TO ANOTHER STATE IN VIOLATION OF DISCOVERY ORDERS AND WITHOUT BENEFIT OF A SEARCH WARRANT SPECIFYING THAT THE EVIDENCE IS TO BE REMOVED FROM THE JURISDICTION OF THE WARRANT-ISSUING COURT, DOES IT VIOLATE CONSTITUTIONAL DUE PROCESS AND EQUAL PROTECTION FOR THE RECEIVING STATE TO REFUSE TO ALLOW DEFENDANT ACCESS TO THE SEIZED EVIDENCE BY CLAIMING LAW ENFORCEMENT HAS AN INVESTIGATIVE INTEREST?

LIST OF PARTIES

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:

Steven A. DeLoge – Petitioner

DeSoto County Sheriff's Department, Sheriff Bill Rasco, and Lent Rice,
Director of Internal Affairs – Respondents

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	ii
INDEX TO APPENDICES	iv
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	6
REASONS FOR GRANTING THE PETITION.....	27
CONCLUSION	29

INDEX TO APPENDICES

APPENDIX A:	Decision Of The Court Of Appeals Of The State Of Mississippi affirming trial court judgment, March 14, 2017 (No. 2015-CP-01590-COA, <i>rehear. den.</i> July 18, 2017) App. 1
APPENDIX B:	Order On Defendants’ Joint Motion To Dismiss, in the DeSoto County Chancery Court, August 25, 2015 (No. 14-cv-352) App. 12
APPENDIX C:	Disposition Of The Mississippi Supreme Court denying writ of certiorari review, October 26, 2017 (No. 2015-CT-01590-SCT) App. 13
APPENDIX D:	Opinion Of The Mississippi Ethics Commission, October 11, 2013 (No. R-13-017) App. 23
APPENDIX E:	Complaint, Chancery Court of DeSoto County, State of Mississippi, February 27, 2014 (No.14-cv-352) App. 26
APPENDIX F:	Motion For Reconsideration Of The Court’s Order On Defendants’ Joint Motion To Dismiss, Chancery Court of DeSoto County, Mississippi, September 8, 2015 (Cause No. 14-cv-352) App. 43
APPENDIX G:	Brief For Appellant, Mississippi Court of Appeals, August 30, 2016 (No. 2015-CP-01590-COA) App. 51
APPENDIX H:	Motion For Rehearing, Mississippi Court of Appeals, March 28, 2017 (No. 2015-CP-01590-COA) App. 107
APPENDIX I:	On Petition For Writ Of Certiorari To The Mississippi Court Of Appeals, Mississippi Supreme Court, August 10, 2017 (No. 2015-CT-01590-SCT) App. 118
APPENDIX J:	Transcript Of Hearings conducted on May 4 th , 2015; June 29 th , 2015; and August 24 th , 2015. Chancery Court of DeSoto County, (No.14-cv-352)..... App. 129
APPENDIX K:	Complaint Exhibits A – C, Chancery Court of DeSoto County, State of Mississippi, February 27, 2014 (No.14-cv-352) App. 191

TABLE OF AUTHORITIES CITED

	Page
Cases	
Bowlby v. City of Aberdeen, Miss., 681 F.3d 215 (5th Cir. 2012)	24
Brady v. Maryland, 373 U.S. 83 (1963)	17, 18, 25
Burger King Corp. v. Rudzewicz, 105 S. Ct. 2174 (1985).....	23
DeLoge v. State, 123 P.3d 573 (Wyo. 2005)	8
DeLoge v. State, 156 P.3d 1004 (Wyo. 2007)	8
DeLoge v. State, 231 P.3d 862 (Wyo. 2010)	8
Franchise Tax Bd., 77 L Ed 2d 420, 103 S Ct 2841(1983)	18
Fuentes v. Shevin, 407 U.S. 67 (1972)	24
Glass v. City of Philadelphia, 455 F. Supp. 2d 302 (U.S. Dst. Ct. 3rd Cir, 2006)	22
Grant v. Cuellar, 59 F.3d 523 (5th Cir. 1995)	24
Gully v. First Nat. Bank in Meridian, 299 US 109, 81 L Ed 70, 57 S Ct 96 (1936)	18
Haskett v. T.S. Dudley Land Co., 649 Fed. App. 492 (5th Cir. 2016)	24
Herb v. Pitcairn, 324 U.S. 117, 65 S. Ct. 459 (1945)	3
Kea v. Keys, 83 So. 3d 399 (Miss. Ct. App. 2011)	22
Kyles v. Whitley, 115 S. Ct. 1555 (1995)	17, 25
Matthias v. Bingley, 906 F.2d 1047 (5th Cir. 1990)	15
Michigan v. Long, 463 U.S. 1032, 103 S. Ct. 3469 (1983)	2, 3
n re: DeLoge, et al, No. 14-8065 (10th Cir. Sept. 23, 2014)	8
Newman v. Stuart, 597 So. 2d 609 (Miss. 1992)	22
Owens v. Book, 809 So.2d 1217 (La. App. 3rd Cir. 2002)	15
Pennsylvania v. Richie, 107 S. Ct. 989 (1987)	17, 25
People v. Shapiro, 409 N.E.2d 897 (1980)	13
Redd v. Lambert, 674 F.2d 1032, 982 U.S. App. LEXIS 19584 (5th Cir. 1982)	18
United States v. Batato, 833 F.3d 413 (4th Cir. 2016)	23

United States v. Geller, 560 F. Supp. 1309 (E.D. Pa. 1983)	13
Woods v. Nierstheimer, 328 U.S. 211, 66 S. Ct. 996 (1946).....	2

Statutes

28 U.S.C. § 1257.....	2
5 USC 552	6, 9, 11
Miss. Code Ann. § 25-61-13.....	9
Miss. Code Ann. §25-61-1.....	6

Rules

Mississippi Rules of Civil Procedure, Rule 12.....	15, 19, 26
Supreme Court Rule 10.....	28

United States Constitutional Provisions

Fifth Amendment	passim
Fourteenth Amendment.....	passim
Fourth Amendment	3, 12, 13, 23
Sixth Amendment.....	passim
United States Constitution, art. VI, cl. 2.....	13, 21

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to the Court of Appeals of the State of Mississippi to review the judgment below.

OPINIONS BELOW

The opinion of the Court of Appeals of the State of Mississippi, the highest state court to review the merits, appears at Appendix A to the petition and has been designated for publication, but is not yet reported.

The judgment of the DeSoto County Chancery Court appears at Appendix B to the petition, and is unpublished.

The disposition of the Mississippi Supreme Court denying Writ of Certiorari discretionary review appears at Appendix C to the petition and is not yet reported.

JURISDICTION

The judgment below sought to be reviewed was entered on March 14, 2017 by the Mississippi Court of Appeals. A copy of that decision appears at Appendix A. A petition for rehearing was denied on July 18, 2017. Petitioner sought review in the Mississippi Supreme Court, the highest court in the State of Mississippi, and on October 26, 2017 the Mississippi Supreme Court denied certiorari review. A copy of that decision appears at Appendix C.

An extension of time to file this Petition for Writ of Certiorari was granted by this Court, to and including March 26, 2018 on January 12, 2018 in Application No. 17 A736.

This Court has jurisdiction to review the decision of the Wyoming Supreme Court in this case under 28 U.S.C. § 1257 (a), which provides as follows:

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn into question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C.S. § 1257 (2017).

In its decision below, the Mississippi Court of Appeals did not provide any statement indicating that its decision denying petitioner's request for relief rested on state law grounds. This Court has jurisdiction for review of a state court decision "in the absence of a plain statement that the decision below rested on an adequate and independent state ground." *Michigan v. Long*, 463 U.S. 1032, 1044, 103 S. Ct. 3469, 3478 (1983); *Woods v. Nierstheimer*, 328 U.S. 211, 213, 66 S. Ct. 996, 998 (1946) (Certiorari granted "because of uncertainty as to whether denial of [Defendant's] petitions rested on an adequate state ground.")

The Mississippi Court of Appeals interpretation of Mississippi state law cannot be accepted by this Court where it is repugnant to the United States Constitutional requirement that a citizen will not suffer from unreasonable seizure of his personal property and papers, that any seizure of must be based upon supported warrants describing in particularity the things to be seized, that a citizen charged with a criminal offense shall have access to the tools to defend himself, and equal protection under the law.

The Mississippi Court of Appeals has erroneously interpreted the federal Constitution to allow a Mississippi law enforcement agency to withhold from Petitioner the Wyoming seized property and evidence necessary to defend himself against the Wyoming charges. This Court will not allow obscure adjudications by state courts to stand as barriers to a determination by this Court of the validity under the federal Constitution of state action. *Michigan v. Long*, 463 U.S.at 1041.

This Court's power over state court judgments is to correct them to the extent that they incorrectly adjudge federal rights. *Herb v. Pitcairn*, 324 U.S. 117, 125-26, 65 S. Ct. 459, 463 (1945).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FOURTH AMENDMENT. Unreasonable searches and seizures.

The Fourth Amendment to the United States Constitution guarantees the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but

upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The State of Mississippi has deprived this citizen of his property by allowing a Mississippi state law enforcement agency to obtain and withhold the fruits of a seizure in the state of Wyoming which did not name or specify Mississippi in warrant or affidavit as the intended recipient of the seizure, did not specify the things to be seized, and did not establish probable cause to remove the seized items from the jurisdiction of the Wyoming court.

FIFTH AMENDMENT. Criminal actions – Provisions concerning – Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, [nor be deprived of life, liberty, or property, without due process of law]; nor shall private property be taken for public use, without just compensation.

The State of Mississippi has deprived this citizen of due process of law by allowing a Mississippi law enforcement agency to withhold the fruits of a seizure in Wyoming in direct violation of discovery orders, and without affording a legal avenue by which to return his seized property to the jurisdiction of the court of seizure so that he may utilize it in defense of the Wyoming case. Due process demands that a criminal defendant be afforded access to the evidence seized in his case to defend against the charges.

SIXTH AMENDMENT. Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; [to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense].

The State of Mississippi has subverted the confrontation process and rendered Petitioner's trial and appellate counsel ineffective by allowing a Mississippi state law enforcement agency to act in collusion with the Wyoming state criminal prosecution to obtain and withhold evidence in that state's case, to transfer it beyond the jurisdiction of the warrant-issuing court, and prevent the Petitioner and his attorneys from accessing the evidence for use in procuring witnesses and accessing impeachment and exculpatory evidence which are essential to defend the case.

FOURTEENTH AMENDMENT. Section 1. Citizens of the United States.

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 law].

The State of Mississippi has deprived Petitioner of Constitutional due process and equal protection of the laws by applying a state statute which deprives a citizen of access to his seized property and evidence when that

seized property and evidence has been illicitly removed from the jurisdiction of the court in Wyoming and secured in the state of Mississippi, preventing Petitioner from using it in the defense of the Wyoming criminal charges.

MISS PUBLIC RECORDS ACT

The Mississippi Public Records act, Miss. Code Ann. §25-61-1 et seq. is lengthy. References to the Act are found in the Petition Appendices at:

Appendix A: Decision of the MS Court of Appeals (App. 2, 8-9);
Appendix D: Opinion of the MS Ethics Commission (App. 23-25);
Appendix E: Complaint (App. 26, 34, 37, 39-40);
Appendix F: Motion for Reconsideration, p. 5 (App. 47);
Appendix G: Brief for Appellant (App. 56, 62-63, 67, 83-86, 89);
Appendix H: Motion for Rehearing (App. 111-112).

FEDERAL FREEDOM OF INFORMATION AND PRIVACY ACTS

The Federal Freedom of Information and Privacy Acts, 5 USC 552 and 5 USC 552a are lengthy. Reference to the Act are found in the Petition Appendices:

Appendix E: Complaint (App. 39);
Appendix F: Motion for Reconsideration (App. 47);
Appendix G: Brief for Appellant (App. 63, 83, 89).

STATEMENT OF THE CASE

Petitioner is incarcerated in the state of Wyoming under felony convictions of second degree sexual assault. He has steadfastly maintained innocence, that the plea was coerced, that his case involved prosecutorial misconduct including coercion, witness tampering, withholding of evidence, and that these acts rendered trial and appellate counsel ineffective.

Petitioner's challenges to his conviction in the state and federal courts have been deficient in that the proof of his claims are contained within the information and tangible exculpatory and impeachment evidence which the Wyoming prosecution seized under local warrants, and then immediately transferred beyond the jurisdiction of the trial court. The Cheyenne Police Department and the Laramie County, Wyoming prosecutor delivered the seized items to the FBI, who in turn delivered those items into the custody and control of Respondents in this case, the Sheriff's Department of DeSoto County, Mississippi (DCSD).

The Wyoming warrants authorizing the seizures did not specify that anything was to be removed from the jurisdiction of the warrant-issuing court. Neither the FBI, nor respondents DCSD were named or participated in the process of obtaining search warrants in the Wyoming court.

The transfer of the seized items occurred prior to trial, plea, or conviction, and in direct violation of the Wyoming court's discovery orders.

Petitioner has repeatedly litigated in the Wyoming courts for the preservation and return of his seized property and evidence, asserting that it is integral to his post-conviction relief and federal habeas corpus proceedings.

The Wyoming prosecution and DCSD acted in collusion to withhold information from the defense and the Wyoming court which would reveal the whereabouts of the seized items. After two Wyoming Supreme Court appeals remanding the matter back to the trial court for further proceedings, the

Wyoming prosecution revealed that it had retained some items, and transferred other items the to the DCSD in Mississippi. *DeLoge v. State*, 123 P.3d 573 (Wyo. 2005); *DeLoge v. State*, 156 P.3d 1004 (Wyo. 2007).

The Wyoming trial court ordered that the prosecution provide an inventory of the items DCSD held, and in response to the Interim Order the Wyoming prosecution claimed that DCSD would no longer cooperate with them. (**Appendix K**: Complaint, Exhibit A, Attachment 2: *State's Motion to Close Case & attached Letter from District Attorney to DCSD*)(App. 197-199).

The Wyoming court then ruled that because the fruits of the searches had been transferred to Mississippi, the court had no jurisdiction over Mississippi and no remedy was available. The Wyoming court dismissed the return of seized property matter. *DeLoge v. State*, 231 P.3d 862 (Wyo. 2010).

Following review, Petitioner's appellate counsel issued a declaration that the withheld evidence had prevented counsel from providing effective assistance of counsel. (**Appendix K**: Complaint, Exhibit B: *Declaration of Appellate Counsel Tina N. Olson*) (App. 217-222).

Petitioner used the newly-discovered evidence of prosecutorial misconduct of [withholding seized evidence] to petition the Tenth Circuit Court of Appeals to allow a successive habeas petition. The motion was inadequately supported due to Petitioner's inability to access the withheld evidence, and the motion was denied. *In re: DeLoge, et al*, No. 14-8065 (10th Cir. Sept. 23, 2014).

Petitioner followed up on the revelation that his seized evidence and property may be in the hands of the DCSD in Mississippi by filing a Freedom of Information and Privacy Act (FOIPA) claim with the FBI, pursuant to 5 USC 552 and 5 USC 552a. This produced a factual basis for Petitioner to request that DCSD return his seized evidence or reasonable facsimile thereof, to provide chain of custody information, and to preserve the evidentiary integrity of the items in their possession for their use in his Wyoming case. DCSD refused. Petitioner then filed a formal request with the DCSD, pursuant to the FOIPA¹ and the Mississippi Public Records Act of 1983 (MPRA), Miss. Code Ann. § 25-61-1 et seq. . (**Appendix K: Complaint Exhibit A, Attachment 4: *Formal Request From DeLoge to DCSD***)(App. 201-204).

The DSCD refused to comply with the formal MPRA and FOIPA request without a court order. Petitioner exhausted his administrative remedies by following the established state procedure of first seeking review by the Mississippi Ethics Commission, pursuant to Miss. Code Ann. § 25-61-13 (1)(b). It was the opinion of the Ethics Commission that because the DCSD was a law enforcement agency, it could withhold information as pertaining to their investigation. (**Appendix D: *Opinion of the Mississippi Ethics Commission***)(App. 23-25).

¹ Petitioner invoked the FOIPA, 5 USC 552 and 5 USC 552a in the state court proceedings because of the involvement of the FBI, a federal agency, working inside the State of Mississippi and cooperating with the DCSD and the Wyoming prosecution to remove the seized evidence from the Wyoming court's jurisdiction and deliver it to DCSD.

Petitioner then sought recourse in the Mississippi courts by filing a Complaint in the DeSoto County Chancery Court, seeking equitable and prospective relief to redress the denial of return of seized property; the denial of a Public Records Act Request by a public body; and, an order for injunctive relief to preserve his evidence and prevent permanent loss of the seized items. Petitioner's complaint and related filings in the chancery court raised claims against DCSD for denying Petitioner access to exculpatory and impeachment evidence in the Wyoming case, preventing a defendant access to the defense of his case, depriving a citizen of his lawful possessions, and subverting his Due Process and Equal Protection rights under the Fifth and Fourteenth Amendments to the United States Constitution. (**Appendix E: Complaint**)(App. 26-41).

In the Chancery Court proceedings, an In Camera Review Hearing was conducted wherein the Chancellor found that the Wyoming prosecution had likely "dumped" the seized items on Mississippi to subvert the discovery process in the Wyoming criminal trial (App.164-165, 171-172); that DCSD had retained the items in their possession for years but had not cataloged them (App. 145-146, 164); had allowed items to become water damaged and molded (App. 158, 162); had given items away to non-law enforcement third parties (App. 183); and, that DCSD had even marked boxes of items for disposal (App. 184). Regardless of this unconventional treatment of what

was alleged to be evidence in an open investigation, DCSD asserted that the items were relevant to their local investigation and nothing should be returned to Petitioner or his Wyoming lawyer. (**Appendix J:** Transcript of Hearings held in the Chancery Court)(App. 129-189).

The Chancery Court dismissed the Complaint. (**Appendix B:** Order On Defendants' Joint Motion to Dismiss)(App. 12).

Petitioner filed a Motion for Reconsideration in the Chancery Court, asserting that the decision failed to address Petitioner's claims made pursuant to the MPRA, Miss. Code Ann. § 25-61-1 et seq.; the FOIPA, 5 USC 552 and 5 USC 552a; the Due Process Clause of the United States Constitution; and, that allowing DCSD to continue to withhold the fruits of the Wyoming searches from Petitioner and his Wyoming lawyer denies Petitioner Constitutional due process. (**Appendix F:** Motion For Reconsideration)(App. 47).

Petitioner's Motion for Reconsideration asserted that the Chancery Court's dismissal of the Complaint failed to address the declaratory and injunctive relief requested by Petitioner including: a determination of which records or information may be released in any reasonable format including redacted sections; an Order instructing DCSD not destroy, dispose of, transfer, or take any action which may render the seized property permanently unavailable to Petitioner; and, an Order to provide Petitioner with a full inventory of the withheld items including chain of custody and

current status. (**Appendix F: Motion For Reconsideration**)(App. 48).

The Chancery Court denied the Motion for Reconsideration without opinion on September 15, 2015. Petitioner appealed to the Mississippi Court of Appeals, asserting that the chancery court had erred in failing to rule on the merits of his claims that DCSD's withholding of access to seized property and evidence removed from the jurisdiction of the Wyoming court has deprived Petitioner of specific rights guaranteed by the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and that the chancery court erred in failing to rule on Petitioner's request for declaratory and injunctive relief. (**Appendix G: Brief For Appellant**)(App. 51-106).

The Mississippi Court of Appeals affirmed the Chancery Court's dismissal of the Complaint. (**Appendix A: Decision of the Court of Appeals**)(App. 1-11).

Petitioner filed a timely Motion for Rehearing in the Mississippi Court of Appeals asserting that: the Court of Appeals had overlooked legal error in Chancery Court proceedings and the facts Petitioner had submitted in support; and, that the Court of Appeals interpretation of Petitioner's claims were a misapplication of the state and federal laws and statutes invoked in the Complaint and related filings. (**Appendix H: Motion for Rehearing**)(App. 107-117).

Petitioner's Complaint sued for equitable and prospective relief to redress the denial of return of seized property and evidence; the denial of a

Public Records Act Request by a public body pursuant to MPRA, § 25-61-1 et seq. and the FOIPA Act, 5 U.S.C. 552 (a); the denial of a citizen's right to personal property and due process of law as guaranteed by the United States Constitution; and additionally, the Complaint sought an order mandating specific action by the public body and/or injunctive relief. Petitioner asserted that the Court of Appeals overlooked or misapprehended these claims. **(Appendix H: Motion For Rehearing)**(App. 112).

Petitioner asserted in the Court of Appeals that his rights to access his seized evidence and personal items are found in the Supremacy Clause of the United States Constitution, which supersedes Mississippi law. United States Constitution, art. VI, cl. 2; *People v. Shapiro*, 409 N.E.2d 897, 906 (1980). "Title III . . . and the Fourth Amendment to the United States Constitution establish the outer limits of any intrusion into the protected privacy area. *United States v. Geller*, 560 F. Supp. 1309, 1312 (E.D. Pa. 1983), *aff'd* 745 F.2d 49 (3d Cir.), *cert. denied*, 469 U.S. 1109, 105 S. Ct. 786, 83 L. Ed. 2d 780 (1985). **(Appendix H: Motion For Rehearing)**(App. 112).

The Mississippi Court of Appeals ruled that Petitioner's Constitutional rights were not violated by DCSD's retention of his seized items because they were seized under a search warrant issued in Wyoming and transferred to DCSD "*only at the close of the Wyoming case*" against him. This finding is factually inaccurate. **(Appendix A: Court Of Appeals Decision)**(App. 9, ¶20)

Petitioner's Motion for Rehearing pointed out that the Court of

Appeals misapprehended the facts which he had presented to the Chancery Court, and also raised in his Appeal Brief. Petitioner was arrested in Wyoming on November 3, 1999, and sentenced on December 1, 2000. Petitioner's Complaint and attachments thereto, and the Appeal Brief filed in the Court of Appeals, clearly assert and document that the transfer was done prior to trial, plea, sentencing, or direct appeal:

Appendix E: Complaint (App. 34, ¶33);

Appendix G: Brief for Appellant (App. 57, 59-60, 78-79, 84);

Appendix H: Motion for Rehearing (App. 113);

Appendix K: Complaint Exhibit A, Attachment 6: *Cover Letter from DCSD and 4 pg.s of FBI Property Evidence Sheets showing transfer to DCSI in November and December of 1999, and January of 2000* (App. 207-211);

Appendix K: Complaint Exhibit A (App. 194).

DCSD also attests to this fact during the In Camera Hearing, referring to having received the items from the FBI in 1999. (**Appendix J:** Transcript) (App. 143, 152, 157).

Petitioner had asserted and documented in his Complaint and related filings that the items in question were seized and transferred to Mississippi *prior* to conviction in the Wyoming case, and in direct contempt of the warrant-issuing court's Discovery Orders instructing that the items be returned to the jurisdiction of the court, and access to defense counsel provided. Had the transfer occurred only after conviction, there would have been no such discovery orders issued by the trial court. (**Appendix G:** Brief for Appellant)(App. 59-60, 79, 84)

Petitioner also presented an Affidavit from Tina N. Olson, counsel on

direct appeal in the Wyoming case, declaring that the deprivation of access to the evidence withheld by DCSD had undermined both trial and appellate counsel, and continued to hinder Petitioner in his post-conviction attempts to present his evidence in that case. (**Appendix K: Complaint Exhibit B: Declaration of Appellate Counsel**) (App. 218-223)

The Mississippi Court of Appeals finding that the Wyoming evidence was received by DCSD *after* Petitioner's conviction became final is patently wrong, and affirming the Chancery Court's dismissal of the Complaint based upon this finding denies Petitioner Constitutional due process.

Petitioner's Appeal Brief and Motion for Rehearing asserted that pursuant to Respondents' M.R.C.P. Rule 12 (b) motion to dismiss, he was not afforded the requirement that the facts presented in his Complaint be treated as true by the Chancery Court and the Court of Appeals, and this deprived the proceedings of Constitutional due process. (**Appendix H: Motion For Rehearing**)(App. 113).

Petitioner's Appeal Brief and Motion for Rehearing asserted that the owner of the property, in fact, is entitled to request return of his property, and this is true even where the owner has never been prosecuted or convicted of any offense. *Owens v. Book*, 809 So.2d 1217 (La. App. 3rd Cir. 2002). Where the government permanently deprives petitioner of his even lawfully seized personal belongings, petitioner's due process property interest is implicated. *Matthias v. Bingley*, 906 F.2d 1047, 1050 (5th Cir. 1990).

(Appendix H: Motion For Rehearing)(App. 113).

Petitioner's Appeal Brief and Motion for Rehearing asserted that the failure of the Chancery Court to afford him opportunity to be heard before dismissing his complaint at the hearing on DCSD's motion to dismiss violated his Constitutional right to substantive and procedural due process of law.

(Appendix G: Brief for Appellant)(App. 98-101); **(Appendix H: Motion for Rehearing)** (App. 114)

Petitioner's Appeal Brief and Motion for Rehearing asserted that his Confrontation Clause claim pertained to the totality of DCSD's continuous acts of withholding the seized evidence from the Wyoming court and from Petitioner because it undermined trial counsel, undermined appellate counsel, and prejudiced Petitioner in his post-conviction attempts to litigate his innocence. Petitioner asserted that this deprivation continues to date, and constitutes an egregious violation of his Sixth Amendment rights to a fair trial, to access evidence for confrontation and impeachment of witnesses against him and compulsory process to locate witnesses for his defense, and to have effective assistance of trial and appellate counsel. **(Appendix G: Brief for Appellant)**(App. 99); **(Appendix H: Motion for Rehearing)**(App. 114-115).

This Confrontation Clause claim is also supported by the Affidavit of Tina N. Olson, Petitioner's Wyoming counsel on direct appeal, which was an Exhibit filed in the original Complaint, and stated that the evidence withheld

by DCSD is pertinent to address issues of taint and competency of the witnesses. (**Appendix K: Complaint Exhibit B**)(App. 221).

When law enforcement records are constitutionally material under the Sixth Amendment, inspection of such records is not only allowed, it is necessary. *Brady v. Maryland*, 373 U.S. 83 (1963); *Pennsylvania v. Richie*, 107 S. Ct. 989 (1987); *Kyles v. Whitley*, 115 S. Ct. 1555, 1567-68 (1995).

Petitioner's Appeal Brief and Motion for Rehearing asserted that this matter, although required to be filed in the Chancery Court as a civil complaint, was in fact a quasi-criminal matter due to the nature of the seized items properly being under the jurisdiction of the warrant-issuing criminal court in Wyoming; due to the seized items being the subject of the Wyoming court's discovery orders requiring their return; and due to the seized items status as exculpatory and impeachment evidence required by Petitioner to support his post-conviction claims of actual innocence in the state and federal courts reviewing his Wyoming conviction. (**Appendix G: Appeal brief**)(App. 97); (**Appendix H: Motion for Rehearing**)(App. 115).

That this is a quasi-criminal matter is supported by the Chancery Court's findings as such when denying DCSD's objections to allowing DeLoge to proceed in forma pauperis on appeal, and also by the Chancellor who repeatedly recognized the relevance of this matter to the criminal case in Wyoming in the transcript of the in camera review, most significantly when he found that the [Wyoming authorities subverted the Wyoming discovery

orders by sending the seized items to Mississippi]. (**Appendix G: Brief for Appellant**)(App. 73-74, 78-79).

The nature of Petitioner's request for access to the Wyoming seized evidence and the actions of DCSD working in conjunction with the Wyoming law enforcement from the very beginning of the prosecution in that state require that the DCSD comply with *Brady* and the rules of discovery.

Petitioner's Complaint made numerous claims that the acts of the DCSD in relation to the seized items have deprived him of the due process and equal protections provisions of the United States Constitution. The Chancery Court omitted any ruling on those Constitutional claims and the Court of Appeals failed to address the omission of those claims. (**Appendix H: Motion for Rehearing**)(App. 114-115).

State courts have concurrent jurisdiction to rule on federal constitutional claims, and when properly presented, a duty to adjudicate those claims. *Franchise Tax Bd.*, 463 US, at 13, 77 L Ed 2d 420, 103 S Ct 2841(1983); *Gully v. First Nat. Bank in Meridian*, 299 US 109, 112, 81 L Ed 70, 57 S Ct 96 (1936) (federal question exists when a "right or immunity created by the Constitution or laws of the United States is an element, and an essential one, of the plaintiff's cause of action"); *Redd v. Lambert*, 674 F.2d 1032, 982 U.S. App. LEXIS 19584 (5th Cir. 1982).

Petitioner's Motion for Rehearing asserted that he was deprived of substantive and procedural due process when he was denied return,

preservation, access to his seized property, declaratory and injunctive relief, and by exclusion from the hearing that resulted in dismissal of his complaint.

In dismissing the complaint under Mississippi Rules of Civil Procedure, Rule 12 (b)(6), the Chancery Court failed to address Petitioner's Constitutional claims, and entered a ruling allowing the DCSD to continue to prejudice Petitioner by depriving him of his protected property interest and material evidence. (**Appendix H: Motion for Rehearing**)(App. 116).

Petitioner's Motion for Rehearing asserted that the Chancery Court's dismissal of the Complaint without allowing fact development on these Constitutional claims, or opportunity to amend, deprived Petitioner of the Fifth and Fourteenth Amendment protections of due process, that he suffered prejudice thereby, and the Court of Appeals should reverse. (**Appendix H: Motion for Rehearing**)(App.116).

Rehearing by the Mississippi Court of Appeals was denied without opinion on July 8, 2017.

Petitioner filed a timely petition for Writ of Certiorari in the Supreme Court of Mississippi on August , 10th, 2017, asserting that this is a matter of significant public importance to both the jurists of the State of Mississippi, and those in other state jurisdictions who may be impacted by the actions of a Mississippi law enforcement agency. This matter also involves the question of a citizen's Constitutional rights to his personal property when it resides in the hands of a government agency. Further complicating the issue is the fact

that the items are asserted to be of evidentiary value in a court of law to the private citizen from whom it was seized, and also have been asserted to have investigative value by the governmental agency which retains possession.

(Appendix I: Mississippi Supreme Court Petition for Writ of Certiorari to the Mississippi Court of Appeals)(App. 120).

Petitioner asserted that the facts and lower court record show that while Petitioner's property and exculpatory evidence have languished for years in the control of the DCSD, it has proven to have no realistic evidentiary value to support DCSD's speculative claims that Petitioner may have committed a crime in Mississippi. The record shows that DCSD allowed the seized items to suffer degradation and loss. A reasonable person would conclude from the facts in record that if the seized items did possess actual investigative or evidentiary value to DCSD's cause, the agency would not have allowed them to become destroyed, degraded, or transferred into the hands of non-law enforcement third parties. Petitioner asserted that if the Mississippi Supreme Court does not act to address these claims, the seized items will continue to be destroyed, degraded, or given away without safeguards for its evidentiary value in the Wyoming case which generated it.

(Appendix I: MS Supreme Court Petition for Writ of Certiorari)(App. 120).

Petitioner asserted in the Mississippi Supreme Court that the decision of the Mississippi Court of Appeals failed to apply the controlling mandates of the Due Process and Equal Protection clauses of the United States

Constitution to the facts and circumstances of this case. (**Appendix I:** Mississippi Supreme Court Petition for Writ of Certiorari)(App. 120).

Petitioner asserted specific points of law and facts omitted or misapplied by the Court of Appeals, including that the Chancery Court 's findings of fact regarding DCSD claim of investigative exemption, and conclusion that the seized items were investigative, was clearly erroneous or manifestly wrong (**Appendix I:** Mississippi Supreme Court Petition for Writ of Certiorari)(App. 121-122).

Petitioner asserted that the rights to access his evidence and personal items are found in the Supremacy Clause of the U.S. Constitution, which supersedes Mississippi law. U.S. Const. art. VI, cl. 2. (**Appendix I:** Mississippi Supreme Court Petition for Writ of Certiorari)(App. 123).

Petitioner asserted in the Mississippi Supreme Court that the Court of Appeals review of his claim that his Constitutional rights were violated by DCSD's retention of his seized items was manifestly wrong when the Court of Appeals found the items at issue were seized in Wyoming and transferred to DCSD only at the close of the Wyoming case against him. (**Appendix I:** Mississippi Supreme Court Petition for Writ of Certiorari)(App. 123-124).

As detailed above, this finding is in error. The Complaint and related filings assert that the seized items and additional items from a storage garage in Green River, Wyoming were seized without benefit of search warrant naming DCSC as a receiving agency, were transferred to DCSD prior

to conviction in the WY case, and such transfer of evidence was in direct contempt of the warrant-issuing court's Discovery Orders instructing that the items be returned to the jurisdiction of the court. It is a denial of due process for the Court of Appeals to make findings of fact contrary to that asserted and documented in the Complaint, and use that to deny relief. **(Appendix I: Mississippi Supreme Court Petition for Writ of Certiorari)(App. 124).**

The Court of Appeals, citing *Kea v. Keys*, 83 So. 3d 399, 405, ¶15 (Miss. Ct. App. 2011) and *Newman v. Stuart*, 597 So. 2d 609, 614 (Miss. 1992) used this erroneous finding of transfer after conviction to construe legality to DCSD's receipt, possession, and retention of the items. Petitioner rebutted this contention in the Mississippi Supreme court, showing that *Kea* and *Newman* stand for the legality of the State to retain property seized by Mississippi *within* its jurisdiction, *not* property seized by another state and obtained illegally which subverts the jurisdiction and discovery orders of the warrant-issuing state. DCSD obtained the fruits of the Wyoming searches by illegal transfer and were without jurisdiction to possess it. *Glass v. City of Philadelphia*, 455 F. Supp. 2d 302 (U.S. Dist. Ct. 3rd Cir, 2006). **(Appendix I: Mississippi Supreme Court Petition for Writ of Certiorari)(App. 124).**

Petitioner asserted in the Mississippi Supreme Court that the original Complaint and related filings document that Wyoming dismissed his preservation and return of seized property actions as moot after the State asserted that it had given the items to DCSD, and that DCSD would no

longer cooperate with them to enable return. The Wyoming court ruled it had no jurisdiction over Mississippi to compel return, and dismissed the case.

Petitioner was forced to pursue his remedies in the Mississippi courts which are now ruling that DCSD's possession of his property and documents is allowable by claim of investigative interest, regardless of the illegal transfer into DCSD's possession. This places Petitioner in a "Catch 22" between the jurisdictions of the two states, and violates his rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. *United States v. Batato*, 833 F.3d 413 (4th Cir. 2016) (citing *Burger King Corp. v. Rudzewicz*, 105 S. Ct. 2174 (1985) (in rem jurisdiction over assets, constitutional reasonableness, and "the burden on the defendant, the forum State's interest in adjudicating the dispute, the Petitioner's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.")). (**Appendix I: Mississippi Supreme Court Petition for Writ of Certiorari**)(App. 124-125).

Petitioner asserted in the Mississippi Supreme Court that the Court of Appeals review of his claims under the Confrontation Clause erred by finding this was a civil proceeding, that he was not a criminal defendant, and that the Confrontation Clause was not implicated. This finding disregards that DCSC asserted criminal allegations against him in a Mississippi court, and

acted in companion with the Wyoming prosecution to deny him access to the seized evidence required to confront his accusers in the Wyoming case.

The Complaint is adequately clear and straightforward. The lower courts should not use Petitioner's novice filings to ignore the obvious issues. *Haskett v. T.S. Dudley Land Co.*, 649 Fed. App. 492, fn7 (5th Cir. 2016)(failure to liberally construe pro se pleadings informs our analysis of whether dismissal was proper); *Grant v. Cuellar*, 59 F.3d 523, 524 (5th Cir. 1995). (**Appendix I: Mississippi Supreme Court Petition for Writ of Certiorari**)(App. 125).

Petitioner asserted in the Mississippi Supreme Court that he was denied the opportunity to be heard in a meaningful time and manner by the lower courts. The right to notice and an opportunity to be heard in a meaningful time and manner were violated when the Chancery Court heard new allegations of criminal acts at the in camera hearing where Petitioner was not present and had no opportunity to rebut the allegations, and then excluded Petitioner from the hearing on DCSD's motion to dismiss, while giving the Respondents an opportunity to comment further after announcing the Court's intention to dismiss the matter. This denied Petitioner Constitutional due process. *Bowlby v. City of Aberdeen, Miss.*, 681 F.3d 215, 222 (5th Cir. 2012); *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). (**Appendix I: Mississippi Supreme Court Petition for Writ of Certiorari**)(App. 126).

Petitioner asserted in the Mississippi Supreme Court that his

Confrontation Clause claim pertained to the totality of DCSD's continuous acts of withholding the seized evidence from Petitioner and the Wyoming court of jurisdiction because it undermined trial and appellate counsel and prejudiced his ability to litigate his innocence. Petitioner asserted that this deprivation continues to-date, and constitutes an egregious violation of his Sixth Amendment rights to a fair trial, to confrontation and compulsory process, and to have effective assistance of trial and appellate counsel.

(Appendix I: Mississippi Supreme Court Petition for Writ of Certiorari)(App. 126).

When law enforcement records are constitutionally material under the Sixth Amendment, inspection of such records is not only allowed, it is necessary. The rules of discovery and disclosure [apply to the prosecutor and any agent thereof]. By acting in unison with the Wyoming prosecution to spirit the seized items beyond the jurisdiction of the warrant-issuing court, DCSD became an agent of the Wyoming prosecution. *Brady v. Maryland*, 373 U.S. 83 (1963); *Pennsylvania v. Richie*, 107 S. Ct. 989 (1987); *Kyles v. Whitley*, 115 S. Ct. 1555, 1567-68 (1995).

Petitioner asserted in the Mississippi Supreme Court the Complaint filed in the Chancery Court is a quasi-criminal matter by the nature of the seized items properly being the jurisdiction of the Wyoming court; by that court's Discovery Orders requiring return of the items to that jurisdiction; and, the by the asserted status of the seized items as exculpatory and

impeachment evidence required to support Petitioner's claims of actual innocence in the state and federal courts reviewing the Wyoming conviction.

Petitioner pointed out that the Chancery Court repeatedly recognized the relevance of this matter to the Wyoming criminal case during in camera review, finding significantly that the Wyoming authorities subverted the discovery orders by their act of sending the seized items to Mississippi.

(Appendix I: Mississippi Supreme Court Petition for Writ of Certiorari)(App. 126).

Petitioner asserted in the Mississippi Supreme Court that the original Complaint made numerous claims that the acts of DCSD in relation to the seized items have deprived him of the protections of the United States Constitution. The Chancery Court omitted ruling on those Constitutional claims, and the Court of Appeals in turn failed to address this omission.

Petitioner was deprived of substantive and procedural due process when he was denied return, preservation, access to his seized property, declaratory relief, and by exclusion from the hearing that resulted in the dismissal of his complaint. In dismissing the complaint under Rule 12 (b)(6), the Chancery Court failed to address these constitutional claims and entered a ruling allowing the DCSD to continue to prejudice Petitioner by depriving him of his protected property interest and material evidence. Dismissal without allowing fact development on these constitutional claims, or an opportunity to amend, deprived Petitioner of due process under the Fifth and

Fourteenth Amendments, and he suffered prejudice thereby. (**Appendix I:** Mississippi Supreme Court Petition for Writ of Certiorari)(App. 127).

The Mississippi Supreme Court denied certiorari review on October 26, 2017. (**Appendix C**)(App. 13).

REASONS FOR GRANTING THE PETITION

The state court's factual findings are erroneous and have misapplied properly stated Constitutional provisions and rules of law. Such treatment of the case may independently be sufficient reason to grant the writ. What is additionally significant on a national level is that, as the matter now stands, a defendant in a state criminal prosecution may be subverted in his defense by the police simply seizing evidence relevant to his defense, and then spiriting that evidence out of the jurisdiction of the warrant-issuing court and into the custody and control of a law enforcement agency in a different state.

The resulting game of prosecutorial "keep away" has no remedy when the trial court subsequently claims to have lost jurisdiction over the fruits of the search, regardless that the transfer was done illegally without properly issued warrants allowing delivery to another jurisdiction, and regardless of the violation of the discovery orders of the warrant issuing court which had ordered that the evidence be returned and access provided to the defendant.

The defendant is forced to proceed without access to the seized evidence, and expend years searching for the location and condition of the seized items. Once located in the hands of the out-of-state agency, the

defendant must petition courts of that state for the tools necessary to defend against the criminal charges in the state where the evidence was seized.

This presents compelling reasons for This Court to grant the Writ pursuant to Supreme Court Rule 10 (b) and (c).

The individual state courts have no United States Supreme Court precedent mandating that they afford an other-state criminal defendant access to items in the possession of their own law enforcement agency, as long as that agency asserts, however implausibly, that they have an “interest” in withholding it. This catch-22 denies a citizen charged with a state criminal offense the ability to defend himself, and clearly violates the Due Process guarantees contained in the Fifth and Fourteenth Amendments to the United States Constitution.

Petitioner can find no United States Supreme Court, Federal District or Circuit court case which is factually similar to the legal question now before This Court. The decision of the Mississippi Court of Appeals upholding the denial of defendant access to withheld evidence seized in a other-state case and illicitly transferred beyond the jurisdiction of the warrant-issuing court, and the refusal of the Mississippi Supreme Court to review the merits of the defendant’s claims, is a first instance wherein unconstitutional precedence has now become established by the lower court rulings in the matter of DeLoge v. DeSoto County Sheriff’s Department.

Should This Court decline to grant certiorari review, state court

prosecutors will be empowered by the Mississippi and Wyoming tactics and even encouraged thereby to subvert due process to severely undermine a citizen's United States Constitutional right to a fair trial, a citizen's right to confront his accusers with impeachment evidence, and a citizen's right to access exculpatory evidence to defend against state criminal charges.

CONCLUSION

For the reasons set forth herein, the petition for a writ of certiorari should be granted.

Dated this 19th day of March, 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DeLogé', written over a horizontal line.

Steven A. DeLogé, Petitioner