No. 23-7500

IN THE

SUPREME COURT OF THE UNITED STATES

Jonathan E. Pendleton,
Petitioner,

v.

Jason S. Miyares, Attorney General of Virginia, et al,
Respondents.

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

PETITION FOR REHEARING

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October 24th, 2024

PETITION FOR REHEARING

Pursuant to Rule 44.2, Jonathan E. Pendleton hereby petitions this Court to reconsider its October 7th order denying a writ of certiorari and request for an extraordinary writ, and limits the grounds for rehearing to these intervening circumstances and other substantial grounds not previously presented:

1. There appears to be the makings of a so-called 'Brady' claim of prosecutorial misconduct after *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) lurking in the state and federal petitions but only now identified as such.

2. A denial of this petition invites further retaliation from the state and federal governments which has already caused the Petitioner to apply for political asylum in Canada on August 26th, 2024.

REASONS FOR GRANTING THE WRIT

I. The Grounds For A Likely Brady Violation Have Been Factually Pleaded But Not Previously Identified As Such.

This case involves a statutory challenge and application for an extraordinary writ stemming from a 2014 verdict of not guilty by reason of insanity, and alleging that Virginia's NGRI statutes, Va. Code § 19.2-182.2, *et seq.*, are in violation of this Court's equal protection and due process holdings in *Foucha v. Louisiana*, 504 U.S. 71, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992) both on their face and as applied. The claims have thus far focused primarily on Virginia's post-verdict procedures.

However, the initial habeas petition in the Circuit Court of Arlington County, Virginia, originally filed on August 22nd, 2022, and then attached to an abbreviated petition in the Supreme Court of Virginia on March 13th, 2023, also states that Pendleton was "overcharged by a prosecutor who was probably guilty of misconduct in this case." E.D.Va. No. 1:23-cv-446, ECF 1-1 at 4. The Supreme Court of Virginia dismissed that petition on June 29th, 2023, because Pendleton could not afford process service on the respondents. *Ibid.*, ECF 8-1, 10-1. Cf. *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971).

When a subsequent petition for habeas corpus under 28 U.S.C. § 2254 in the U.S. District Court at Alexandria went unanswered, Pendleton filed a petition for a writ of mandamus in the Fourth Circuit that proclaimed his innocence, explaining that his plausible legal defense was never presented,[1] and went on to refer to two news articles from 2014 that contrast the clear public accusations Pendleton was making prior to the March 26th arrest incident, as quoted in the Huffington Post:

[1] See "Emergency Petition For Writ of Mandamus," E.D.Va. No. 1:23-cv-446, ECF 12 at 16.

> "If the police and FBI won't arrest you for hacking my computer and sexually harassing me over the past several months, I will do it myself — in the next couple weeks before school starts again."[2]

As compared with the alleged victim Cowen's account of the accusations during testimony at an evidentiary hearing on April 29th, 2014:

> "I was accused of having controlled his mind at a distance and also [of] sexual harassment," Cowen said, explaining that the mind control allegedly occurred "by computer technology at a distance. … Pendleton's attorney, Jason S. Rucker, tried to ask Cowen during his testimony about the blog comments under Pendleton's name, a line of inquiry that the judge ruled irrelevant."[3]

The footnote in the mandamus petition, E.D.Va. No. 1:23-cv-446, ECF 12 at 19, describes this as perjured testimony because the first thing Pendleton did after flying from Seattle to Virginia in 2014, roughly a week before the March 26 arrest incident, was go to the George Mason University Police at the Fairfax campus, and both the prosecution and defense were aware when this testimony was given that the GMU police had thereafter discussed the accusations of computer hacking with Professor Cowen.

Petitioner has since been unable to examine the record and it is not known when, if ever, the prosecution disclosed either the falseness of this testimony or the fact of the GMU police discussion with Cowen to the defense. What is known is that (1) Pendleton was denied bond at a hearing where this prior testimony was not challenged, the result being that his ability to participate in his own defense was severely limited, and (2) other than a flaccid cross-examination, this testimony was also not challenged at trial; the GMU police did not testify, the key witness was not impeached. This suggests that there is either a *Brady* violation of the type found in *Smith v. Cain*, 565 U.S. 73, 132 S. Ct. 627, 181 L. Ed. 2d 571 (2012) (key witness

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[2] See https://www.huffpost.com/entry/tyler-cowen-pepper-sprayed_n_5042358

[3] See https://www.washingtonpost.com/local/crime/tyler-cowens-attacker-thought-the-professor-was-controlling-his-mind-cowen-testifies/2014/04/29/a4c5b9f4-cfb9-11e3-b812-0c92213941f4_story.html, archived at https://archive.ph/wFWw9

might have been impeached) or that there are additional grounds for ineffective assistance claims that would tend to undermine confidence in the verdict.

There is still another possible violation of the *Brady* principle regarding testimony given at trial by one of the students in Professor Cowen's classroom during the arrest incident. A young woman testified that Pendleton jumped onto a table in the center of the room and discharged pepper spray in a helicopter motion above his head. The problem is that pepper spray comes out in a tight stream (rather than in an aerosol type spray), and if it had been discharged in a helicopter motion there would be streaks of red all over the room, the walls, the ceiling, etc. It begs the question of whether any of the other dozen witnesses corroborated this version of the event given at trial. The impression at the time was that the decision to present this testimony – which should have been easily recognized as inaccurate – was a transparent attempt by the prosecutor to make Pendleton's actions appear reckless or malicious. And while this issue alone is of less material weight than the impeachment of a key witness, it does at least reveal the mentality of the prosecutor.

As for the timeliness of these claims, Petitioner only became aware of the *Brady* case law earlier this year while researching defamation actions related to the news articles cited above, which have made it difficult for him to find or keep any sort of job without being harassed. While there may be nothing to gain from challenging the 2014 verdict of NGRI – after all, Petitioner *was acquitted* – these untimely claims are brought to the Court's attention to underscore the depth of the ineffective assistance that has been common to all previous petitions, and because this Court has shown a willingness to respond to exceptional cases involving a "fundamental miscarriage of justice," even in non-capital cases. *Dretke v. Haley*, 541 U.S. 386, 124 S. Ct. 1847, 158 L. Ed. 2d 659 (2004).

It should also be noted that there are no law libraries at the hospitals where Petitioner was held until 2017 in violation of *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977). Moreover, Pendleton has effectively been *under duress the entire time*, counseled by his own attorneys to "play along," and coerced by the state hospital's doctors to accept medical treatment that would justify his detention. Petitioner has never been allowed to question his diagnoses or maintain his innocence because that was regarded as evidence of a "lack of insight" into his mental illness. Even as late as 2020, as Mr. Pendleton is expecting to be released, and his then psychiatrist, Dr. Sashi Putchakayala, is openly questioning whether he has any mental illness at all, he was being warned not to challenge the diagnosis until he is clear of the court.

II. Because A Denial Of This Petition Could Lead To Further Retaliation From The State And Federal Governments, Petitioner Has Sought Asylum in Canada.

The scope of the First Amendment retaliation already on the record strongly implies that there may be further retaliation planned if the denial of certiorari in this case becomes final. Although Petitioner does not believe the state or federal government could possibly sustain valid convictions, any retaliatory prosecutions would dramatically increase the personal cost of bringing this statutory challenge and exact further punishment of the Petitioner for having the audacity to sue the government. The circumstances are strikingly similar to those found in *Dombrowski v. Pfister*, 380 U.S. 479, 85 S. Ct. 1116, 14 L. Ed. 2d 22 (1965).[4]

It is important to highlight for the Court that the pattern of retaliation thus far suggests collusion between state officials and the federal courts. When the suit on appeal here was filed on April 5th, 2023, in the U.S. District Court at Alexandria, Defendant Paul Ferguson, Clerk of the

[4] That is, Virginia's "threats to enforce the statutes against appellants are not made with any expectation of securing valid convictions, but rather are part of a plan to employ arrests, seizures, and threats of prosecution under color of the statutes to harass appellants and discourage them and their supporters from asserting and attempting to vindicate … constitutional rights." *Id.* at 482.

Circuit Court of Arlington County, was already being sued for First Amendment retaliation after he had denied Petitioner access to the court during the first attempt at habeas relief in Arlington, refused to respond to related FOIA requests, and began repeatedly delaying Petitioner's employment background checks. E.D.Va. No. 1:23-cv-446, ECF 1, ¶ 117-123. Bizarrely, Ferguson's response to being sued for retaliation was to *double down on further retaliation*: only a month later, in May 2023, Ferguson's office began reporting on Petitioner's employment background checks that he is wanted for the non-existent crime of "VIOLATION OF INSANITY CONDITIONAL RELEASE," which caused yet another lawsuit in the U.S. District Court at Austin, Texas, under the FCRA.[5] Ferguson's actions suggest that he may have considered himself immune from suit within the Fourth Circuit. Strangely enough, that is exactly what the federal courts in Virginia eventually decided, with the District Court in Alexandria vastly overstating the precedential value of *Mireles v. Waco*, 502 U.S. 9, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991) by concluding that "[judicial officers] have immunity from this lawsuit," E.D.Va. No. 1:23-cv-446, ECF 13 at *3, and the Fourth Circuit affirming, without comment, in contravention of its own recent decision in *Courthouse News Service v. Schaefer*, 2 F.4th 318 (4th Cir. 2021) (immunity of clerks was not at issue). USCA4 No. 23-7039, ECF 11.

There are other aspects of the Alexandria District Court's order of October 3rd, 2023, dismissing this constitutional complaint that seem to accord with a strategy of retaliation pursued by state officials. One is that the court compares the Complaint with others that have been dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) such as *King v. Rubenstein*, 825 F.3d 206 (4th Cir. 2016) (removal of penis implants), and *Thomas v. The Salvation Army Southern Territory*,

[5] "First Amended Complaint," W.D.Tx. No. 1:23-cv-01458, ECF 12, filed January 1st, 2024; "Appellant's Opening Brief," USCA5 No. 24-50121, ECF 14, filed April 9th, 2024.

841 F.3d 632 (4th Cir. 2016) (troubled woman alleging a conspiracy to evict her from homeless shelters), E.D.Va. No. 1:23-cv-446, ECF 13 at 2 – an especially odd comparison considering that the Clerk's office in Arlington County is, at that very moment, engaged in an exceedingly well-documented conspiracy under the second clause of 42 U.S.C. § 1985(2) designed to impoverish the Petitioner because of a class-based animus.

But the more telling aspect of the dismissal order is a mistake of fact relied upon to justify *Younger* abstention from, as the District Court put it, "an attack on ongoing state criminal and civil proceedings." E.D.Va. No. 1:23-cv-446, ECF 13 at 5 (there are, as a matter of fact, no ongoing state proceedings of any kind). The District Court itself admitted this error by first saying "[b]ecause Pendleton left Virginia while he was on conditional release and did not have permission from the court, he *could* be charged with a felony [escape under Va. Code § 19.2-182.15]," *Id.* at 3 (emphasis added), before later concluding that "plaintiff's pleading reads as an attack on an ongoing state criminal prosecution—the arrest warrant for leaving the state while on conditional release." *Id.* at 5. The bench warrant for Petitioner's arrest had only recently been obtained and exhibited with the mandamus petition 2 weeks earlier. It is not for escape (which would require an indictment before a grand jury), but, rather, for *failure to appear for a civil hearing*. *Id.*, ECF 12, exhibit A. This is an incredibly suspect finding of fact because no one was then alleging that Petitioner was charged with escape; none of the defendants had appeared or answered in any way during the 6 months the District Court spent ignoring the pleadings. Rather, Judge Brinkema read the statutes and decided to charge the Petitioner under state law herself, all while refusing to respond to the constitutional violations alleged in the Complaint. The order comes very close to creating a classic right of action under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971).

And here is where the state-federal collusion becomes more than a suggestion. As indicated in the original petition filed in this Court, Virginia officials then appeared on January 8th, 2024, in the Fourth Circuit in answer to a request for a certificate of appealability under 28 U.S.C. § 2253 and *repeated the same false statement*, saying, "a warrant was issued for [Pendleton's] arrest for the felony offense of leaving Virginia while he was on conditional release, pursuant to Va. Code § 19.2-182.15." USCA4, No. 23-7293, ECF 12 at 2. The order of the Alexandria District Court where this false claim originates had already been pilloried in the Fourth Circuit, sent to the judicial misconduct panel, and to every House representative in Virginia – much of this served on mailoag@oag.state.va.us. No judge on the Fourth Circuit would mistake the statements of the Attorney General's office as being true. What this Court may not have gathered is that the Fourth Circuit denied the certificate of appealability the very day this Petition for certiorari was filed, on May 14th, 2024, within hours of Petitioner emailing notice to the Attorney General. USCA4 No. 23-7293, ECF 18.

Further evidence of duplicitousness on the part of the federal government would come in the Court of Federal Claims in June 2024, this time from the executive branch. Realizing that he is being denied access to the courts and is likely to remain unemployable in the United States, Petitioner filed suit against the State Department seeking return of his passport which was unlawfully revoked in 2021. CFC No. 1:24-cv-00656-ZNS, filed April 22nd, 2024. Without disputing the facts, and without addressing whether they believe 28 U.S.C. §§ 2412(a)(1), 2465 are money-mandating statutes, the Government has absurdly claimed that the court lacks jurisdiction under the Just Compensation Clause of the Fifth Amendment. See ECF 11. Lawyers make specious arguments in court all the time, but we should expect more from the Department of Justice.

To summarize what can be gleaned from the public record thus far: Virginia has been avoiding compliance with this Court's equal protection holding in *Foucha* for more than 30 years and as a consequence has falsely imprisoned Mr. Pendleton for nearly 10 years; Pendleton has been rendered unemployable in retaliation for filing civil rights lawsuits against Virginia; he has been denied access to the courts, both state and federal; habeas corpus has been suspended; and the DOJ is aware of all this and does not want to return his passport for some reason.

In addition, there has been a great deal more retaliation that has not appeared on the record thus far. Petitioner has been dutifully reporting the aforementioned civil rights violations to the DOJ since fall of 2022. In November 2023, following the order of the Alexandria District Court, Petitioner complained that the Fourth Circuit had refused to enforce the canons of judicial conduct pursuant to 28 U.S.C. §§ 351–364, and the response was that Petitioner was subjected to warrantless wiretapping by the FBI and threatened with various criminal charges. Petitioner was first made aware of this in early 2024: he received an email from UMGC, a school he had not attended or heard from in several years, letting him know that he had been selected for their FBI honors program, a course of study in criminal justice (Petitioner's declared major was software development). A few days later Petitioner received an order for a book called "Managing Government Assets," a collection of studies in public finance; curiously, Petitioner's Amazon seller account that listed this book for sale had been deactivated years earlier. The FBI would go on to threaten Petitioner through various channels with disability fraud, filing false documents, tax evasion, and a variety of other federal charges he is unable to recollect – the Matt Taibbi treatment, if it pleases the Court.

For the past 2 years, signing into Petitioner's YouTube account has been like joining a video chat room full of federal agents (the Court would not believe the roll call). When the

Virginia officials were accused of defamation and abuse of process in the Fourth Circuit, USCA4, No. 23-7293, ECF 14 at 17-18, the Virginia Attorney General himself showed up threatening to bankrupt Petitioner by recommending videos of various bankruptcy cases. Miyares' comments are always childishly self-referential and easily identified. When Petitioner was typing his opening brief for the Fifth Circuit, someone assumed to be Miyares highlighted in a PDF file the phrase "subject him to the hatred, ridicule, or contempt of his fellow men." Warren, S. & Brandeis, L., *The Right to Privacy,* 4 HARV. L. REV. 193, 193 (1890): 197. And when Petitioner traveled to Washington D.C. in June of this year, he was greeted with images of S.W.A.T. teams, sting operations, and boxing matches from someone actively manipulating the background photos in Petitioner's browser tabs.

The final straw was encountering a man assumed to be a federal agent of some kind in the rooming house where Petitioner was staying in DC in early August of this year. The man overtly threatened Petitioner with tax fraud, going on aggressively about how "the last day of the week belongs to the tax man; gotta pay your taxes," and "pay your taxes or hedge your bets." This was the third such encounter Petitioner had had in the District where this topic came up. Ironically, Petitioner has been borderline destitute for years. These are the intervening circumstances.

As a precaution, in order put distance between himself and U.S. law enforcement, and to attempt to preserve his earning potential since he is now professionally unemployable in the United States, Petitioner made an irregular border crossing outside Alburgh, Vermont, on August 13th, and filed an asylum claim with the Canadian government on August 26th, 2024. The nexus of the claim involves government sanctioned defamation that has permanently impaired claimant's livelihood, persistent threats of trumped-up charges from state and federal officials, and a risk of cruel and unusual punishment upon return.

The day after Petitioner crossed into Canada, August 14th, 2024, someone in the Fifth Circuit clerk's office with the initials SME filed excerpts from the record for the appellant. See USCA5 No. 24-50121, ECF 34. It is not clear what prompted that filing, since the newly filed excerpt was already part of the record on appeal filed 6 months earlier.

Which brings us to the real problem with this case, as explained to the Canadians:

> "Though I wasn't aware of it at the time, the professor I arrested in 2014 has known ties to CIA surveillance company Palantir,[6] which routinely violates the Fourth Amendment on behalf of all levels of government.[7] It is part of a high level government effort to identify subversives for intimidation, social engineering, etc.[8] ... The FBI of course has known this the entire time because they are using the very same backdoors installed in the chipsets of all our devices for warrantless wiretapping. This started with the Intel Management Engine in 2006, and by 2008 there were similar toeholds in all commercially available chipsets where a rootkit could be installed.[9] Initially, this backdoor was installed on a ROM alongside the CPU and was well documented and could be removed or disabled with a modicum of expertise. However, as has been demonstrated to me recently, at a certain point [sometime before Petitioner's 2012 MacBook was manufactured] a fully functioning rootkit was integrated into all western CPUs where it is impossible to remove and very difficult to detect.
>
> "Thus, the real problem is that when the NGRI statutes in Virginia are inevitably overturned and my case ruled a mistrial, the nature of the American surveillance state will become obvious to everyone. This is why I've been harassed and threatened almost continuously for the past 2 years, and why I must leave the United States."

Basis of Claim filed with Canadian IRCC on August 26th, 2024.

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[6] The company's co-founder, Peter Thiel, also funded a program at Cowen's Mercatus Center called "Emergent Ventures."

[7] Munn, Luke. "Seeing With Software: Palantir and the regulation of life." Studies in Control Societies (2017) (The software is able to correlate a person's "home address, home telephone number, physical/mental information, social security number, and a photograph ... which enables the visualization of phone calls, emails, money, or any other material flows.").

[8] See https://www.theguardian.com/world/2017/jul/30/palantir-peter-thiel-cia-data-crime-police

[9] See https://libreboot.org/faq.html#intelme ("The Intel Management Engine with its proprietary firmware has complete access to and control over the PC: it can power on or shut down the PC, read all open files, examine all running applications, track all keys pressed and mouse movements, and even capture or display images on the screen. And it has a network interface that is demonstrably insecure, which can allow an attacker on the network to inject rootkits that completely compromise the PC and can report to the attacker all activities performed on the PC. It is a threat to freedom, security, and privacy that can't be ignored.")

There is a certain antipathy towards the insanity defense among the states which don't like this area of law and have avoided complying with it, and the federal government -- to include the judiciary -- is wary of lending credibility to this case because of the background information cited above.

Denying this petition is likely to significantly increase the amount of time spent resolving this matter, and greatly increase the personal cost to the Petitioner for attempting to challenge Virginia's NGRI statutes. When finality attaches to this Court's denial of certiorari, Petitioner will be vulnerable to criminal charges brought by state and federal authorities who have already threatened further retaliation.

CONCLUSION

For the foregoing reasons, the petition for rehearing should be granted and an original writ of habeas corpus should issue.

Respectfully submitted,

Dated October 24th, 2024.

/s/ Jonathan Pendleton

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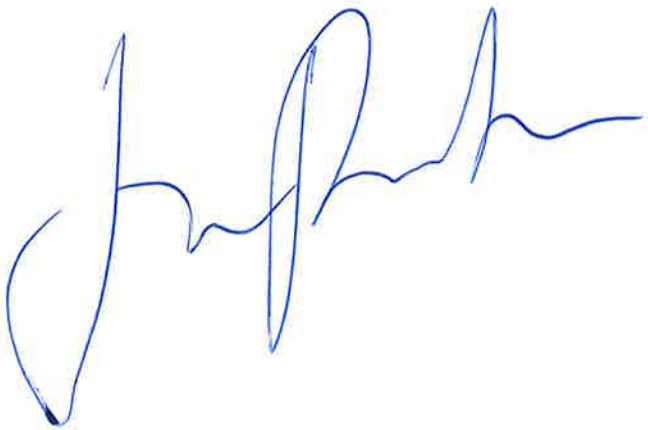
CERTIFICATE OF PETITIONER UNREPRESENTED BY COUNSEL

In accordance with Rule 44.2, I hereby certify that this petition is presented in good faith and not for delay, and its grounds have been limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.



/s/ Jonathan E. Pendleton
Petitioner, pro se

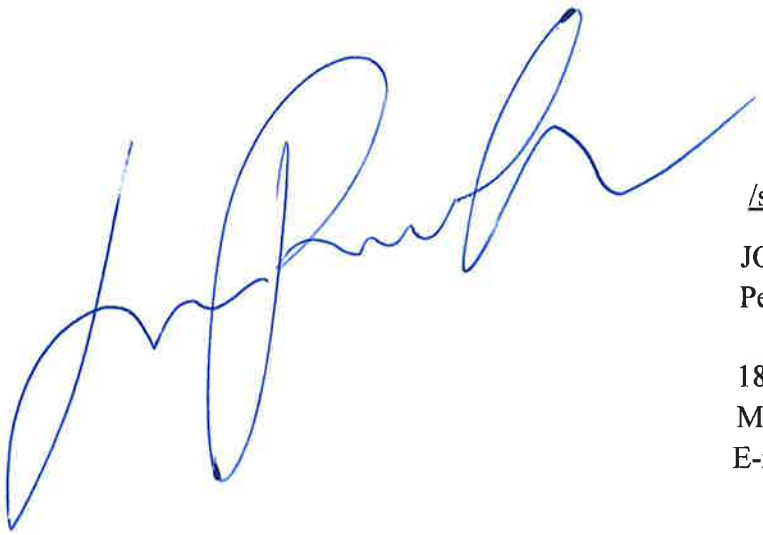
PROOF OF SERVICE

Petitioner Jonathan E. Pendleton certifies that on October 24th, 2024, as required by Supreme Court Rule 29, a courtesy copy of the foregoing PETITION FOR REHEARING was emailed to the Office of the Attorney General for Virginia at mailoag@oag.state.va.us, and further certifies that true copies will be served by U.S. Mail within 3 calendar days at:

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 24th, 2024.



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