25-5826

No.

ORIGINAL

IN THE

Supreme Court of the United States

October Term 2025

Dover Davis Jr.

Petitioner

V.

Aaron Swann,
Police Officer City of Atlanta

Respondent

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

PETITION FOR A WRIT OF CERTIORARI

Dover Davis Jr.
Pro Se
P.O. Box 150485
Atlanta, Ga. 20215
470.618.2786

QUESTIONS PRESENTED

The questions are:

1. WHETHER THERE WAS A CONFLICT BETWEEN THE ELEVENTH CIRCUIT COURT OF APPEALS' DECISION AND THE NORTHERN DISTRICT COURT OF GEORGIA'S DECISION REGARDING THE "STATUTE OF LIMITATIONS" IN A FOURTH AMENDMENT CLAIM UNDER 1983 FOR MALICIOUS PROSECUTION.
2. WHETHER THE HAINES V. KERNER 404 U.S. 519 (1972) DECISION WAS IGNORED.
3. WHETHER THERE WERE ISSUES OF GENUINE MATERIAL FACTS.
4. WHETHER THE RESPONDENT IS IN DEFAULT.

LIST OF PARTIES

Petitioner Dover Davis Jr. was the plaintiff in the district court proceedings and appellant in the Court of Appeals proceedings. Respondent Officer Aaron Swann, City of Atlanta Police Department, was the police officer involved.

Dover Davis Jr.
Pro Se
P.O. Box 150485
Atlanta, Ga. 30315

Officer Aaron Swann
City of Atlanta
Police Department
Atlanta, Ga. 30303

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

FEDERAL COURTS:

Eleventh Circuit Court of Appeals: The opinions of the Eleventh Circuit Court of Appeals appear at Appendices: A through C to the petition and have been designated as unpublished. The Eleventh Circuit Court of Appeals denied the petitioner's appeal on February 19, 2025. A timely petition of rehearing was filed on April 2, 2025. The Eleventh Circuit denied the petitioner's petition for rehearing on May 14, 2025, and a copy of the order denying rehearing appears at Appendix A.

The Northern District Court of Georgia: The opinions of the Northern District Court of Georgia appear at Appendices: C through D to the petition and have been published. The date on which the Northern District Court of Georgia decided the petitioner's case was September 29, 2022. A timely Amended Complaint was denied by the Northern District Court of Georgia on the following date: September 29, 2023, and a copy of the order denying petitioner's Amended Complaint appears at Appendix D.

JURISDICTION

This Court has jurisdiction under 28 U.S.C 1254(1)

STATUTORY PROVISIONS INVOLVED
42 U.S.C 1983 states that:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress....."

STATEMENT OF THE CASE

A.

Introduction

The Petitioner respectfully requests this Court to grant his petition for a writ of certiorari to review the conflicting decisions between the Eleventh Circuit Court of Appeals and the Northern District Court of Georgia regarding the different "Statute of limitations" under a 1983 Fourth Amendment violation for a False Arrest claim and a Malicious Prosecution claim. Based on the Eleventh Circuit's varying decisions, the elements of false arrest and malicious prosecution are interchangeable and "seizure" ends when incarceration ends regardless if the legal process or prosecution continues. Thus, length of seizure determines if the statute of limitations is "tolled" or accrued.

B.

Statement of the Facts:

The Respondent arrested the petitioner on August 5, 2018 in violation of his

Fourth Amendment right without probable cause based on the word of a convicted felon whom he befriended. He omitted facts and information in the affidavit for the warrant and the police report, while charging the petitioner with two felonies: O.C.G.A 16-5-21 and O.C.G.A 16-11-106, when the valid charge was O.C.G.A 16-11-102 for pointing a handgun and Aggravated Assault with a deadly weapon...O.C.G.A 16-5-21 and Possession of a Firearm during Commission of a Felony ...O.C.G.A 16-11-106.

But, the Respondent charged the plaintiff with "pointing a gun" which is a Misdemeanor, O.C.G.A 16-11-102, which states, "A person is guilty of a misdemeanor when he intentionally and without legal justification points or aims a gun or pistol at another, whether the gun or pistol is loaded or unloaded. But, the petitioner did not have an argument with his accuser or point a gun.

The landlord burglarized the petitioner's room, took a picture of his handgun clip and his accuser stole his property. But, the Respondent cited O.C.G.A 16-5-21, which states, "(a) A person commits the offense of aggravated assault when he or she assaults: (1) with intent to murder, to rape or to rob; (2) With a deadly weapon or with any object, device, or instrument, when used offensively against a person, is likely to or actually does result in serious bodily injury; (3)....strangulation. The petitioner filed a verbal complaint the Respondent on August 4, 2018. On August 5,

2018, the Respondent transported the petitioner to the Fulton County Jail. The petitioner was detained for 17 days then released on August 21, 2018. Later, the Respondent filed an affidavit for a warrant without probable cause. The petitioner's charges were dismissed on May 20, 2018.

C.

Procedural History:

The Respondent arrested the petitioner on August 5, 2018 in violation of his Fourth Amendment right without probable cause. The petitioner's preliminary hearing was scheduled for August 6, 2018, but the Public Defender's Office did not send a representative to take him to court. A certificate of Discovery was drafted on August 6th. On August 13, 2018, a Public Defender's representative interviewed the petitioner and asked him to sign a waiver for his August 6, 2018 preliminary hearing.

The petitioner attended his Bond on August 20, 2018. He was released on two signature bonds on August 21, 2018. On August 24, 2018, the petitioner was indicted. On November 19, 2018, the petitioner was arraigned. The Scheduling Order was issued on November 20, 2018. On April 26, 2019, a final plea hearing was scheduled. On February 20, 2020, a status conference was held. On May 22, 2020, a Final plea and trial were set. On May 20, 2021, the prosecutor dismissed the petitioner's charges and case via Nolle Prosequi, which was a favorable termination.

On August 21, 2021, the petitioner filed a Fourth Amendment claim under 1983 for false arrest, false imprisonment and malicious prosecution against the Respondent, the City of Atlanta and the prosecutor. The Respondent had until September 6, 2021 to answer but he did not answer the complaint and Defaulted.

On September 29, 2022, the Northern District Court dismissed the petitioner's complaint, despite the fact that the Respondent did not answer or challenge the petitioner's allegations or facts, but stated the petitioner's malicious prosecution claim against the Respondent was not time barred, and gave him an opportunity to amend his complaint. On September 29, 2023, the Northern District Court dismissed the petitioner's Amended Complaint for "failing to state a claim" and "frivolousness". The petitioner appealed to the Eleventh Circuit Court of Appeals and the Court granted permission to appeal on October 24, 2023.

The Eleventh Circuit Court of Appeals dismissed the petitioner's appeal on February 19, 2025 for a "statute of limitations" violation based on "false arrest". The petitioner filed a timely Petition for Rehearing En Banc on April 2, 2025, but not one judge responded. The three-judge Panel's decision to dismiss for a "Statute of Limitation's" violation was upheld on May 14, 2025. The Eleventh Circuit issued a Mandate on May 23, 2025.

REASONS FOR GRANTING THE PETITION

I. There is a conflict between the Eleventh Circuit three judge-Panel's decision and the District Court of Northern Georgia's decision regarding the "Statute of Limitations" and claim filed.

The Eleventh Circuit Court of Appeals and the Northern District Court gave conflicting decisions regarding the "statute of limitations" for "false arrest" and "malicious prosecution" claims relating to the petitioner's Fourth Amendment rights violation claim that ended in a "Favorable Termination".

The Eleventh Circuit Court of Appeals dismissed the petitioner's appeal for a "statute of limitations" violation for a false arrest claim, while overlooking the petitioner's "malicious prosecution" claim. However, the Northern District Court of Georgia stated that the petitioner's claim for "malicious prosecution was not time-barred" in light of the "Favorable Termination" stated in the Thompson v. Clark, 596 U.S. 36, 142 S. Ct.92022) and Laskar v. Hurd No 19-11719 (11th Cir. 2020) decisions.

The petitioner mentioned "false arrest, false imprisonment and malicious prosecution" in his appeal brief, but he only argued "malicious prosecution". Also, additional elements in this conflict are the "legal process and seizure". The Eleventh Circuit three-judge Panel erred when deciding the petitioner's claim was "false arrest" because he made bond and was released on August 21, 2018.

The Panel v. The Northern District Court:

The Northern District Court accrued the statute of limitations in its decision for the petitioner's "Malicious Prosecution claim based on Thompson and **Laskar** and stated that his malicious prosecution claim was not time-barred. The Northern District Court stated,

"As a preliminary matter, Plaintiff's malicious prosecution claim is not time-barred. Plaintiff had two years from the date his charges were dismissed to file a malicious prosecution action under Section 1983. See Smith v. Mitchell, 856 F. App'x 248, 249 (11th Cir. 2021). "Plaintiff's criminal case was dismissed on May 20, 2021and he brought his first claim for malicious prosecution in his Amended complaint less than two years later, on October 28, 2022. Consequently, Plaintiff's malicious prosecution claim is not time-barred." (See App. 28A)

However, the Eleventh Circuit three-judge Panel held that the petitioner's claim was a "false arrest" and tolled the "statute of limitations" incorrectly. The three-judge panel concluded,

"Further, according to Davis, Officer Swann arrested him without probable cause in violation of the Fourth Amendment. Davis waived his preliminary hearing on probable cause on or about August 13, 2018, at which point he was held pursuant to legal process. His Fourth Amendment claim accrued at this point." Even if we accept Davis's claims that this waiver was suspect and improper, Davis's incarceration ended after his bond hearing on August 21, 2018. "Taking Davis's release as the latest time when his Fourth Amendment claim accrued, the two-year statute of limitations had run by the time he filed his complaint on August 16, 2021." See Aguirre, 965 F.3d at 1158. (See App. 13A)

The three-judge Panel of the Eleventh Circuit incorrectly concluded the petitioner's release from incarceration on August 21, 2018 ended his seizure and the legal process despite the fact the petitioner was prosecuted until May 20, 2021.

The two Courts were divided in their reasoning and holdings. The Northern District Court focused on the wrongful initiation or continuation of a legal proceeding without probable cause and with malice, despite the fact the petitioner's arrest was "warrantless". And the petitioner's case was started without reasonable grounds with malicious intent that ended favorably for him. The Northern District Court was guided by the U.S. Supreme Court decisions in Thompson v. Clark and Laskar v. Hurd.

But, in contrast, the Eleventh Circuit three-judge Panel focused on the warrantless arrest or an arrest made without a valid warrant or probable cause with the seizure occurring before the formal legal process was initiated. The three-judge Panel failed to consider all the specific facts and circumstances, such as malice, subsequent prosecution without basis and U.S. Supreme Court decisions.

In Cnty. of Riverside v. McLaughlin, 500 U.S. 44, 56-57 (1991), the Court held, "cannot hold a person longer than forty-eight hours after a warrantless arrest without legal process".

However, in some Eleventh Circuit Court decisions, "false arrest" was a starting point or precursor to malicious prosecution because the unlawful arrest led to charges pursued without basis. So, both claims were relevant to the petitioner's civil case. The three-judge Panel should have chosen both.

In Kingsland v. City of Miami 382 F.3d 1220 (11th Cir. 2004), the Eleventh Circuit reversed itself and vacated its previous opinion and remanded the case for

further proceedings in a 1983 claim for false arrest and malicious prosecution. The Eleventh Circuit also stated, "Plainly an arrest without probable cause violates the right to be free from an unreasonable search under the Fourth Amendment." (Durruthy v. Pastor, 351 F.3d 1080, 1088 (11th Cir. 2003).

The three-judge Panel chose "false arrest" because the petitioner was arrested without a warrant and released from detention after 21 days when stating that his "seizure" ended at that point, overlooking the fact that his "seizure" continued because the legal process and prosecution continued.

In Albright v. Oliver, 510 U.S. 266, 276-79, 114 S.Ct. 807, 127 L. ED.2d 114 (1994), Justice Ginsburg stated, "A person facing serious criminal charges is hardly freed from the states control upon his release from a police officer's physical grip. He is required to appear in court at the state's command. He is often subject.....to the condition that he seek formal permission....to travel. That difference, however, should not lead to the conclusion that a defendant released pretrial is not still seized for trial, so long as he is bound to appear in court and answer the state's charges."

The petitioner was subjected to a "continuing seizure" for Fourth amendment purposes because he had a (1) bond hearing on August 20, 2018; (2) appeared at his arraignment on November 19, 2018; and (3) Discovery Hearing on April 25, 2019; (4) Status of Case Hearing in February 2020. So, even though the petitioner made bond he was in a state of "continuous seizure" in a continuous legal process or prosecution. He could not possess a firearm; He could not consume alcohol.

He was required to keep his phone number and address updated; He could not leave the City of Atlanta or the State of Georgia; He had to maintain contact with his public defender or attorney who could verify his location; His felony charges enhanced his seizure; he could not find housing; he could not find employment in his field. He had to attend all court hearings.

In Murphy v. Llynn, 118 F.3d 938, 945 (2d Cir. 1997) the Court held, "that a plaintiff's obligation to attend court appointments, combined with prohibition against leaving New York, constituted Fourth amendment seizure. "

In Brendlin v. California, 127 S. Ct. 2400 (2007), that Court stated, "a person is seized when an official restrains one's freedom of movement such that they are not free to leave."

And in California v. Hodari, 111 S. Ct.1537 (1991), the Court held, "that the requirement to constitute "seizure of a person" (arrest) is either physical force or submission to the assertion of authority when physical force is absent."

Also, in Williams v. Aguirre, 965 F.3d 1147 (11th Cir. 2020), the Eleventh Circuit held, "Although the officers' arguments would have force in the context of a false arrest claim, William's claim of malicious prosecution involves a different kind of seizure. A claim of false arrest or imprisonment under the Fourth Amendment concerns seizures without legal process, such as warrantless arrests. Wallace v. Kato, 549 U.S. 384, 388–89 (2007). These claims accrue when either the seizure ends or the plaintiff is held pursuant to legal process. "Malicious prosecution, in contrast, requires a seizure "pursuant to legal process." **Black** v. Wigington, 811 F.3d 1259, 1267 (11th Cir. 2016). ....Of course, warrant-based seizures fall within this category. See, e.g., Black, 811 F.3d at 1267. ....So do seizures following an arraignment, indictment, or probable-cause hearing."See Kingsland, 382 F.3d at 1235; Kelly v. Curtis, 21 F.3d 1544, 1553–55 (11th Cir. 1994)."

And the Eleventh Circuit stated, "So do seizures following an arraignment, indictment, or probable-cause hearing ."

In Albright v. Oliver, 510 U.S. 266, 276-79, 114 S.Ct. 807, 127 L. ED.2d 114 (1994), the Court stated that a malicious prosecution claim could be found under the Fourth Amendment in that a defendant remains seized for trial so long as he is obligated to appear in court and answer the states charges.

In Manuel v. Joliet, 580 U.S. 357, 137 S. Ct. 911(2017), Elijah Manuel was arrested and jailed for 48 days in pretrial detention. More than two years after his arrest, but less than two years after his criminal case was dismissed; Manuel filed a 42 U.S. C. 1983 lawsuit against Joliet and several of its police officers alleging that his arrest and detention violated the Fourth Amendment.

The District Court dismissed Manuel's suit, holding, first, that the applicable two-year statute of limitations barred his unlawful arrest claim and second, that under binding Circuit precedent, pretrial detention following the start of legal process (probable cause determination) could not give rise to a Fourth Amendment claim. Manuel appealed the dismissal of his unlawful detention claim; the Seventh Circuit affirmed. But, the U.S. Supreme Court reversed and remanded.

In Manuel v. Joliet, the Supreme Court held, "Manuel may challenge his pretrial detention on Fourth Amendment grounds. This conclusion follows from the Court's settled precedent. In Gerstein v. Pugh, 420 U.S. 103, the Court decided that a pretrial detention challenge was governed by the Fourth Amendment, noting that the Fourth Amendment establishes the minimum constitutional "standards and procedures" not just for arrest but also for "detention,".....That the pretrial restraints in Albright arose pursuant to legal process made no difference, given that they were unsupported by probable cause."

The Court continued, "As reflected in those cases, pretrial detention can violate

the Fourth Amendment not only when it precedes but also when it follows, the start of the legal process. "The Fourth Amendment prohibits government officials from detaining a person absent probable cause. And where legal process has gone forward, but has done nothing to satisfy the probable cause requirement, it cannot extinguish a detainee's Fourth Amendment claim. That was the case here: Because the judge's determination of probable cause was based solely on the fabricated evidence, it did not expunge Manuel's Fourth Amendment claim. For that reason, Manuel stated a Fourth Amendment claim when he sought relief not merely for his arrest, but also for his pretrial detention. Pp. 6-10. "On remand, the Seventh Circuit should determine the claim's accrual date, unless it finds that the City has previously waived its timeliness argument...."

The petitioner states that the judge's determination of probable cause in his criminal case was based solely on the Respondent's omissions and lies from a convicted felon whom he befriended. So, the Respondent fabricated evidence. The petitioner did not point a gun and there was no evidence proving that he did and the Respondent did not produce evidence that he did in the warrant application. Thus, the Respondent did not have probable cause to arrest the petitioner.

In Thompson v. Clark, the Court reasoned that "the gravamen of the Fourth Amendment claim for malicious prosecution is the wrongful initiation of charges without probable cause. And the wrongful initiation of charges without probable cause is likewise the gravamen of the tort of malicious prosecution. The petitioner's criminal case was dismissed via Nolle Prosequi. Again, probable cause was absent when he was arrested. The arrest warrant did not establish probable cause.

In the petitioner's Appeal Brief he argued the Six elements of malicious prosecution: (1)an original judicial proceeding against him was commenced or

continued; (2)the present defendant was the legal cause of the original proceeding; (3) the termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff; (4) there was an absence of probable cause for the original proceeding; (5) there was malice on the part of the present defendant; (6) the plaintiff suffered damages as a result of the original proceeding. But, the Eleventh Circuit's three-judge Panel ignored his Malicious Prosecution argument.

The petitioner was seized/arrested and held for 21 days. The Respondent acquired a warrant; petitioner was released on bond, indicted, arraigned, had multiple court appearances and prosecuted for three years in a case that was constitutionally infirm based on a seizure that lacked probable cause and would not have been justified without the legal process, resulting in the legal procedure being terminated in the petitioner's favor.

The petitioner's criminal record was sealed after his criminal charges were dismissed via Nolle Prosequi, so the record was also sealed which included the case history, but the petitioner included a copy of the indictment and application for a warrant (warrant number: EW-0240101) in his Eleventh Circuit Appeal Appendix. The Warrant Application and Indictment documents show a continued legal process and prosecution. (See documents, "Appeal Appendix, pgs. 131-134")

In Sylvester v. Barnett, No. 22-13258 (11th Cir. 2024) the Eleventh Circuit stated, "A Fourth Amendment malicious prosecution claim requires that:

1. The legal process that justified the seizure was constitutionally infirm.
2. The seizure wouldn't have been justified without legal process.
3. The criminal proceedings terminated in the plaintiff's favor. Luke v. Gulley, 975 F.3d 1140, 1144 (11th Cir. 2020)

The Eleventh Circuit continued, "The duration of Sylvester's seizure—more than a year—means that valid legal process was constitutionally required. (Butler v. Smith, 85 F.4h 1102, 1112 (11th Cir. 2023)

Regardless of the fact that the petitioner was not imprisoned for three years, he was held more than 48 hours before a hearing and vehemently prosecuted and subjected to the legal process, which meets the requirements of malicious prosecution. (Sheffield v. Futch, 354 Ga. App. 661, 839 S.E.2d 284 (2020). Thus, the State common law malicious prosecution elements were satisfied. In McDonough v. Smith, 139 S.Ct.2149, 2156 (2019), elements typically involve an evidentiary showing that "defendant instigated a criminal proceeding with improper purpose and without probable cause" and termination of the prior criminal proceeding in favor of the accused.

In Laskar v. Hurd, No 19-11719 (11th Cir. 2020), the Eleventh Circuit stated, "We have held that a claim of malicious prosecution accrues when the prosecution against the plaintiff terminates in his favor. See Whiting v. Traylor, 85 F.3d 581, 585–86 (11th Cir. 1996), abrogated on other grounds by Wallace v. Kato, 549 U.S. 384, 389–90 (2007). We have also held that a prosecutor's unilateral dismissal of charges against a plaintiff constitutes a favorable termination." See Uboh v. Reno, 141 F.3d 1000, 1005–06 (11th Cir. 1998). (Opinion, pg. 10)

This U.S. Supreme Court granted a writ of certiorari in Laskar v. Hurd, and affirmed the Eleventh Circuit's decision that a "Favorable Termination" accrues the

"statute of limitations".

This is why this Supreme Court must issue a writ of certiorari. There was conflict and disagreement between Eleventh Circuit Court of Appeals and the Northern District Court of Georgia as to whether or not a defendant who makes bond and is released from detention is subject to a "continuing seizure" which determines if his claim is a "false arrest" or "Malicious prosecution". This Court must safeguard individual constitutional rights against potential abuses by state actors including lower court to remove any means through which the United State Supreme Court decisions can be usurped, ignored or manipulated.

This an important issue because it affects everyone who will be charged with a Crime or is pro se seeking civil remedies. The petitioner is asking this Supreme Court to issue a binding decision on the elements and applicability of the federal cause of action for false arrest and malicious prosecution under a 1983 claim.

II.

The Haines v. Kerner 404 U.S. 519 (1972) Decision was ignored.

The Eleventh Circuit and the Northern District Court of Georgia erred when ignoring the Haines v. Kerner, 404 U.S. 519 (1972) decision. The Eleventh Circuit three-judge Panel and the Northern District Court did not believe the petitioner's allegations or facts and did not give him a chance to present and prove his facts. Both Courts found the petitioner's allegations unlikely.

In "Genesee County Employees 'Retirement System v. Thornburg Mortgage Securities Trust 2006-3, 825 F. supp. 2d 1082, 1120-21(2007), the Court held, "The sufficiency of a complaint is a question of law, and when considering and addressing a Rule 12(b)(6) motion, a court must accept as true all well-pleaded factual allegations in the complaint, view those allegations in the light most favorable to the non-moving party, and draw all reasonable inferences in the plaintiffs favor."

The Northern District Court dismissed the petitioner's complaint for failing to state a claim and frivolousness, despite the Respondent failing to answer and oppose the petitioner's assertions and facts. Thus, there are genuine issues of material facts.

In Haines v. Kerner, 404 U.S. 519 (1972), the Court held, "Haines had a right to present evidence of the alleged harm he suffered before his case was dismissed. Without such an opportunity, there could be no certainty that there was no set of facts to support plaintiff's claims that would entitle him to relief.... "The only issue now before us is petitioner's contention that the District Court erred in dismissing his pro se complaint without allowing him to present evidence on his claims."

But, the Neizke v. Williams 490 U.S. 319, 109 S. Ct. 1827 (1989) Court held,

""In so holding, we observed that the informa pauperis statute, unlike Rule 12(b)(6), "accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Id., at 327. "Examples of the latter class," we said, "are claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar." Id., at 328. The Neizke v. Williams's decision specifically stated: "dismiss those claims whose factual contentions are clearly baseless." Id., at 327. "Examples of the latter class," we said, "are claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar."

The petitioner states that "Not one of his allegations was fantastic

or delusional." And his facts were not challenged by the Respondent.

However, the Northern District Court stated, "a sua sponte dismissal by the Court is authorized under 1915(e) (2) prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering frivolous complaints. Neitzke, 490 U.S. at 324. In the context of frivolity determination, the Courts Authority to pierce the veil of the complaint's factual allegations" means that it is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations. Denton v. Hernandez, 504 U.S. 25, 32 (1992) (See App. 38A)

The Northern District Court's statement "means that it is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations." This conclusion is not an element in the Neizke v. Williams 490 U.S. 319, 109 S. Ct. 1827 (1989) decision.

The Northern District Court's statement is evidence that it did not believe the petitioner's allegations or accept them as true and view the allegations in a light most favorable to him. Since the Respondent defaulted and did not answer the Complaint, the Northern District Court had no counter allegations to weigh the truth of the petitioner's allegations. The Court simply did not believe him. The Northern District Court dismissed the petitioner's Complaint and Amended Complaint for "failing to state a claim" and "Frivolousness". But the Respondent did not object to one fact and did not deny any facts in the petitioner's Complaint or Amended Complaint.

Thus, the Northern District Court erred by not "construing facts in a light most

favorable to the petitioner, accepting all allegations in the complaint as true".

STATING A CLAIM:

In Neizke v. Williams 490 U.S. 319, 109 S. Ct. 1827 (1989) the Supreme Court held that to survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' "A claim has facial plausibility when the plaintiff pleads factual content that allows the Conley v. Gibson, 355 U.S. 41, 45-46 (1957) decision, with the new standard of "enough facts to state a claim to relief that is plausible on its face and that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." 355 U.S. at 45-46.

In Denton v. Hernandez, 504 U.S. 25, 32 (1992) and Neitzke, the Courts stated, "In determining whether an action should be dismissed for failure to state a claim, the court must "accept the material facts alleged in the complaint as true, and not dismiss 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

The facts in the petitioner's complaint were provable, plausible, true and judicially noticeable and evinced genuine material facts, but he was denied a chance to prove his facts.

However, in Denton v. Hernandez, the U.S. Supreme Court stated, "An in forma pauperis complaint may not be dismissed, however, simply because the Court finds the plaintiffs allegations unlikely."

Frivolity:

In Neitzke v. Williams, 490 U.S. 319 (1989), the Court stated Neitzke v. Williams provided us with our first occasion to construe the meaning of "frivolous" under 1915(d). In that case, "We held that "a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact." Id., at 325. In Neitzke, we were concerned with the proper standard for determining frivolousness of legal conclusions, and we determined that a complaint filed informa pauperis which fails to state a claim under Federal Rule of Civil Procedure 12(b) (6) may nonetheless have "an arguable basis in law" precluding dismissal" under 1915(d) 490 U.S., at 328-329."

The Neitzke Court continued by stating that an informa pauperis complaint may not be dismissed, however, simply because the court finds the plaintiffs allegations unlikely. Some improbable allegations might properly be disposed of on summary judgment.....

In Neitzke, The Court stated, "At the same time, in order to respect the congressional goal of "assuring equality of consideration for all litigants," this initial assessment of the informa pauperis plaintiffs factual allegations must be weighted in favor of the plaintiff. In other words, the 1915(d) frivolousness determination, frequently made sua sponte before the defendant has even been asked to file an answer, cannot serve as a fact-finding process for the resolution of disputed facts.

In Denton and Neitzke, the U.S. Supreme Court stated, "It would be appropriate for the Court of Appeals to consider, among other things, whether the plaintiff was proceeding pro se, see Haines v. Kerner, 404 U.S. 519, 520-521 (1972) whether the court inappropriately resolved genuine issues of disputed fact, see supra, at 32-33; whether the court applied erroneous legal conclusions, see Boag, 454 U.S., at 365 ; whether the court has provided a statement explaining the

dismissal that facilitates "intelligent appellate review," ibid.; and whether the dismissal was with or without prejudice."

In Neitzke v. Williams, the Supreme Court stated, "When a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not."

Also, the court held that "a complaint filed informa pauperis is not automatically frivolous within the meaning of 1915(d) because it fails to state a claim."

THE PETITIONER WAS PRO SE:

The petitioner was treated like a lawyer, which violated the Haines v. Kerner, 404 U.S. 519, 520 (1972), Supreme Court decision and did not construe his pleading liberally.

In Haines v. Kerner, the U.S. Supreme Court held, "A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers."

The Eleventh Circuit three-judge Panel attacked the petitioner allegations and mocked his writing ability even though the Respondent did not answer. The three-judge Panel drew its own conclusions based on a personal standard. And the Northern District Court called the petitioner's allegations "frivolous". Both Courts did not construe the petitioner's pleading liberally. The petitioner is not a lawyer. He is not trained in litigation. He raised a "plausible" argument. He submitted evidence with judicially noticeable facts. The Haines v. Kerner decision was not upheld.

The District Court and the Eleventh Circuit's three-judge Panel dismissed the petitioner's complaint and appeal despite the fact that he argued violations of his Fourth, Sixth and Fourteenth Amendment rights.... despite the fact that the Facts were not heard.

And this is another reason why this Supreme Court must grant the petitioner's Writ of certiorari. The lower courts simply ignored the Supreme Court's decisions. Some Pro se litigants are ignored and the violations of their constitutional rights are overlooked.

III.

There were Genuine Issues of Material Facts.

In Anderson v. Liberty Lobby, INC., 477 U.S. 242 **(2986)**, the Supreme Court held, "The Court of Appeals did not apply the correct standard in reviewing the District Court's grant of summary judgment. Pp. 247-257. (a) Summary judgment will not lie if the dispute about material fact is genuine, "that is if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. At the summary judgment stage, the trial judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial..... Pp. 247-252."

The petitioner pled facts against the Respondent and the prosecutor for Malicious Prosecution. The Respondent arrested the petitioner without probable cause, falsified facts and lied in the police report and affidavit for the warrant stating that the petitioner pointed a gun. The prosecutor withheld evidence of the petitioner's accuser's, Frederick Bushau Boyd, criminal behavior who robbed

Georgia Tech students while dismissing felony charges against Boyd and continuing to use him as a witness against the petitioner which was a violation of the 14th Amendment, equal protection.

There were facts relating the petitioner's representation; the public defender abandoned the petitioner in court, a violation of his Sixth Amendment; the petitioner was not taken to his preliminary hearing, denial of due process; the laws were not applied equally, Fourteenth Amendment violation. The petitioner later hired a private attorney who charged him $2,000 but did not file one motion; his private attorney stated that he knew the prosecutor; He had a client who was desparate to be released; the facts will show "collusion" . There were facts regarding evidence. There was not any physical evidence. The Respondent relied on the word of a convicted felon who committed crimes after accusing the petitioner. These facts are genuine material facts that were not examined by both Courts.

There facts regarding the petitioner's personal suffering and financial losses. The petitioner has two degrees and was working as an insurance agent with a salary of $150,000+ per year. Because of the charges that was on record for four years, he did not receive his license and could not work using his degrees. Thus, he slept in his car during the Pandemic and lived in shelters until the charges were dropped in 2022.

His accuser, Boyd, was re-arrested in 2023 for probation violation and incarcerated. These facts are genuine issues of material facts that would persuaded a jury to rule in the petitioner's favor.

Furthermore, the petitioner was arrested on August 5, 2018 and on May 20, 2021, his charges were dismissed via Nollo Prosequi. His case occurred during the pandemic when the Courts were closed and extensions were given. The Eleventh Circuit did not toll the months and years of time for the pandemic. There are genuine issues of fact that were never challenged or analyzed. (Fed. R. Civ. P.56 (a).

In Goldring v. Vladimir Henry, et al, No. 19-13820 (11th Cir. 2021), the Eleventh Circuit concluded, "There are outstanding issues of fact in this case that cannot be resolved by summary judgment. Determining what happened during Goldring's initial arrest and the field test "on this highly deputed factual record" is "exactly the sort of factual, credibility' sensitive task best left to the jury."

IV:

THE RESPONDENT IS IN DEFAULT:

The Respondent violated Georgia Code 9-11-55 (2024) by not filing an answer to the petitioner's Complaint. The petitioner filed his complaint on August 21, 2021. The Respondent had 30 days and an addition 15 days to answer. The Respondent had until October 5, 2021 to answer, but did not answer. The Respondent defaulted and the petitioner should have received a default judgment, but the petitioner did not request default judgment because he was not familiar

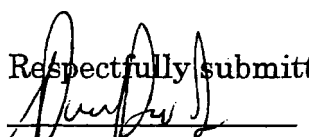
with the process at that time, as he should have been. But, the District Court of Georgia and the Eleventh Circuit Court of Appeals' three-judge Panel knew the Respondent was in "Default" because there was no "Answer". The Respondent was and is in default. Default is part of the legal process. The Eleventh Circuit and the Northern District Court should have corrected this violation. This evinces the fact that both Courts did not view the facts in a light most favorable to the petitioner.

This is why this Supreme Court should grant the petitioner's writ of certiorari. It must send a message to the lower courts that the laws and decisions of the Supreme Court will be upheld and applied to every civil case including cases filed by pro se litigants. And the granting of the petitioner's writ of certiorari will serve as a "hammer" of justice that will not be ignored.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Dover Davis Jr.

Date: September 30, 2025