IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

Jason Steven Kokinda,	)	
Plaintiff,		Case No. 3:21-CV-154
V.	)	Hon. Judge Johnston
Elkins Police Dep't., et al.,		(specially appointed)
Defendants,	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO AMEND/SUPPLEMENT § 1983 COMPLAINT

I. Introduction

Mr. Kokinda's claims are part of a complex white-collar RICO conspiracy that is elusive to prove if the detailed facts are not carefully considered. There is far too much *modus operandi* evidence demonstrating a pattern of events that carry a retaliatory signature for it to be mere coincidence.

Mr. Kokinda's claims are not unprecedented and are not implausible or far-fetched but are the grave reality of a new age of federalism that works jointly with diverse state actors, and the reality of crony capitalism corrupting key officials and the entire justice system by the malignant legalization of lobbying and dark money.

"***Twisted sister of pagan kin (Lady Justice), rotting black from corruption within." – Jason Kokinda, Vindication is Heaven-sent***

II. Scope and Standard of Review

See Montgomery v. Anne Arundel County, 182 Fed. Appx. 156, 162 (4th Cir. 2006) (When a party seeks to amend the Complaint after a scheduling order is issued, "due diligence" is the

primary concern.); *see also* Nourison Rug Corp. v. Parvizian, 535 F.3d 295, 298 ("[A]fter the deadlines provided by a scheduling order have passed, [Rule 16's] good cause standard must be satisfied to justify leave to amend the pleadings.")

See also Nixon v. Md. Dep't ofPub. Safety & Corr. Servs., 2018 U.S. Dist. Lexis 131346 (4th Cir. (D. Md) 2018) at Lexis 7 ("A party may supplement a complaint to add a claim that "set[s] out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." Fed.R.Civ.P. 15(d). Under the Federal Rules of Civil Procedure, "the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725, 86 5. Ct. 1130, 16 L.Ed.2d 218 (1966). In that regard, Rule 15(d):

is a useful device, enabling a court to award complete relief, or more nearly complete relief, in one action, and to avoid the cost, delay and waste of separate actions which must be separately tried and prosecuted. So useful they are and of such service in the efficient administration of justice that they ought to be allowed as of course, unless some particular reason for disallowing them appears[.] *New Amsterdam Cas. Co. v. Wailer*, 323 F.2d 20, 28-29 (1963).")

See also Farnsworth v. Davis, 2022 U.S. Dist. Lexis 99538 (4t1~ Cir. (W.D.Va.) 2022) ("In deciding whether to grant a motion to amend to join additional parties, the court "must considerboth the general principles of amendment provided by Rule 15(a) and also the more specific joinder provisions of Rule 20[]." *Hinson v. Norwest Fin. S.C., Inc.*, 239 F.3d 611, 618 (4th Cir. 2001). Rule 20 provides that "[p]ersons. . . may be joined in one action as defendants if:

(A) any right to relief is asserted against them. . . with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2) (emphasis added). Courts have interpreted this rule to permit claims against different defendants to be joined in the same action when there is a 'logical relationship' between them." *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 325 (4th Cir. 2021) (citing *In re EMC Corp.*, 677 F.3d 1351, 1357-58 (Fed. Cir. 2012); *In re Prempro Prods. Liability Litigation*, 591 F.3d 613, 622-23 (8th Cir. 2010)). "The logical relationship is satisfied if there is substantial evidentiary overlap in the facts giving rise to the cause of action against each defendant." *In re EMC Corp.*, 677 F.3d at 1358. In other words, the claims against different defendants "must share an aggregate of operative facts." Id.

Moreover, in making a joinder decision, the court must consider the underlying purpose of joinder, "which is to promote trial convenience and expedite the resolution of disputes, thereby eliminating unnecessary lawsuits." *Aleman v. Chugach Support Servs., Inc.*, 485 F.3d 206, 218 n.5 (4th Cir. 2007) (citations omitted). "[T]he court has discretion to deny joinder if it determines that the addition of the party under Rule 20 will not foster the objectives of the rule, but will result in prejudice, expense, or delay." Id. (quoting 7 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1652 (3d ed. 2001)).")

III. Discussion

A. Fundamental Lack of Due Process

1. This court cannot give any weight to any previous determinations made concerning the proposed amendment. Mr. Kokinda was never provided fundamental notice of the R&R or S.P.

Miller dismissal order.[1] And once he received the R&R, he was locked down at FCI-Otisville for weeks due to fights/stabbings on the compound and had little-to-no access to a law library, nor did he have his case-file or a laptop and access to pacer.gov.

2. Furthermore, because he was wrongfully imprisoned on the malicious SORNA prosecution, the "circumstances beyond his control" which estopped him from conducting depositions and discovery procedures and from access to his case-file, created an "unfair prejudice" that is only remedied by reviewing his claims *de novo*.[2]

3. In addition, Mr. Kokinda was obstructed even when trying to edit/amend his first 2nd Amended Complaint and memorandum by the halfway house staff writing him misconducts and limiting his computer use as retaliation.

B. Hollywood Delusions of How the Govt. Works

1. The Hon. Magistrate Eifert failed to digest the brief in support of Mr. Kokinda's Complaint, which was filed to assist the court in digesting complex white-collar crime claims.

2. Nevertheless, the key defect in her R&R is her idealized presumptions about the govt. official defendants, as if crony capitalism and RICO conspiracies (like those pled by Mr.

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[1] *See* Exhibit-A; *see also* United Student Aid Funds Inc. v. Espinosa, 559 U.S. 260, 272, 130 S. Ct. 1367, 176 L.Ed.2d 158 (2010) (indicating that due process requires the court to "afford [interested parties] an opportunity to present their objections.")

[2] *See Cf.* United States v. Williams, 2022 U.S. App. Lexis 2062 (4th Cir. 2022) (Remanding § 2255 appeal to provide *pro se* prisoner with opportunity to supplement claims with case-file after district court committed error by requiring prisoner to demonstrate "good cause" for production of his own case-file.); *Cf. Klapprott v. United States*, 335 U.S. 601, 613-614, 93 L. Ed. 266, 69 S. Ct. 384 (1949) (allowing Rule 60(b) motion to file appeal four years beyond deadline due to incarceration, ill health, and factors "beyond his reasonable control.")

Kokinda) are unprecedented. The U.S. Supreme Court does not hold such an **idealized** view of the justice system.

See United States v. Bailey, 444 US 394, 420-426, 100 S. Ct. 624, 62 L.Ed.2d 575 (1980) (discussing the realities of officials abusing their power without consequence and systematically retaliating against anyone who files **grievances** — (the requisite PLRA precursors to § 1983 lawsuits).)

See also Gamble v. United States, 587 U.S. 678, 139 S. Ct. 1960, 1994, 204 L.Ed.2d 322 (2019) (articulating exactly what the "new age" of unified federal/state cooperation is doing to Mr. Kokinda. We are now living in a world where "governments may unleash all their might in multiple prosecutions against an individual, exhausting themselves only when those who hold the reins of power are content with the result[.] [I]t is "the poor and the weak," and the unpopular and controversial, who suffer first—and there is nothing to stop them from being the last." *Id*. at 2009.

3. What is to stop Pennsylvania officials, such as former-Gov. Tom Corbett and the Penn. OAG, from calling their deep-state contacts to defeat Mr. Kokinda's strong civil rights litigation by method of *alternative litigation strategies* (*e.g.*, coordinating relentless retaliatory prosecutions to obstruct him)?

(a) Even casinos have long been known to take people who win by counting cards into the back alleys to beat them up, so they don't come in again. People are not so civil as the court tries to paint them. And as the Supreme Court acknowledges, there are no checks and balances on such retaliations against prisoners who are regarded as second-class citizens.

4. A lot of close parallels exist in Mr. Kokinda's pleadings similar to the Larry Householder case. *See* *United States v. Householder*, Dist. Ct. S.D. Ohio (June 9, 2023) (describing an elaborate RICO scheme to sponsor candidates and corrupt the majority of the Ohio State legislature for the benefit of a failing nuclear power company *FirstEnergy*.)

(a) Mr. Kokinda has similarly pled that Tom Corbett gave something of incredible value to the fracking industry ($28 billion in tax breaks) after the lobbying arm of big energy, Koch Industries, sponsored his election.

(b) And in obtaining this position, Corbett used something within the ambit of strategies the Koch network i360 commonly employs to help their candidates get into public office:

(c) Generating false arrest statistics with bogus "To Catch a Predator" stings to publicize Corbett's prowess and distance himself from the serial molestation of his best friend Jerry Sandusky was a politically savvy move. (There were other malicious stings, such as against the Outlaws motorcycle gang and an engineer for Tyco toys convicted under criminal organization laws when he never rode a motorcycle in his life and had nothing to do with the gang).

(1) It just had one collateral fallout, the pesky whistleblower, Mr. Kokinda, an extremely intelligent man, relentlessly trying to clear his name.

5. How hard is it to believe in the "new age of federalism" that the federal and state defendants thereafter simply coordinated to pursue retaliatory prosecutions against Mr. Kokinda on the false premise that he is mentally ill and dangerous to children, and "the means justify the end."

6. This Court doesn't want to focus on the seriousness of Mr. Kokinda's litigation in Pennsylvania and the millions of dollars at stake.[3] ***Motive*** is a major factor!

(a) He had the DOC officials deny his requested soy allergy accommodation, later proving he had a potentially deadly IgE Soy allergy. They admittedly lied to him that there was no soy in the food. For years, he suffered paralyzing myalgias, explosive acid reflux and diarrhea, tightness in his chest, difficulty breathing, swelling, *inter alia*, as side effects.

(b) Mr. Kokinda also presented hard evidence that his words were taken out of context to frame what he knew to be a conversation with an *adult* as if it was an *actual minor*.

(1) And he presented evidence that this was a scam the Penn. OAG was running to rack up lots of convictions by using the same unlawful methods, so Corbett could grandstand on TV and brag about all the pedophiles he caught [on the age-oriented role-play stings] as if legitimate.

(2) Then Mr. Kokinda presented evidence that his post-conviction proceedings were fundamentally obstructed by every dirty trick in the book, backdated judgment orders, total claim evasion, and even stealing his case-file to bar *de novo* review of his attorney's ineffectiveness.

(3) These aren't speculative claims, these are claims that are provable with hard evidence! The devil is in the details. And this court just skips right through everything it doesn't like and stamps **"frivolous**, **far-fetched**, **lacking factual basis"**, etc., without giving lip-service to the actual facts underlying such claims that it mischaracterizes as such.

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[3] *See* Burton v. City of New York, 630 F. Supp. 3d 586, n.9 (2nd Cir. (S.D.W.V.) 2022) (holding that $30 million, $1.5 million per year is reasonable for wrongful incarceration.); *see also* Kokinda v. Penn. Dep't. of Corr., et al., 2:17-cv-217, (W.D.P.A.) (lawsuit pending trial where Mr. Kokinda pled how he was thrown into RHU pursuant to retaliation that was used as a covering to steal long-sought-after case-file to subvert habeas corpus proceedings.)

Joel Snider, Star Witness, Found Dead, *Modus Operandi* Evidence

7. Joel Snider was the key witness in Mr. Kokinda's Penn. case-file theft lawsuit. Mr. Kokinda was afraid to contact him more than once in the prison, after his release, because he knew that they would come after him.

(a) Sure enough, they wrote Joel Snider up with malicious misconduct reports of making booze in his cell on the day he was found dead, no different than the phony misconduct and criminal charges filed against Mr. Kokinda to put him in prison and obstruct his litigation.

(1) And according to the press, guards allegedly spread rumors that he was "a snitch" wherever he went, just as they bad mouth and defame Mr. Kokinda as if he were "a chomo" at any opportunity, (still going on today with the Marshals trying to convince his former landlord not to rent an apartment in Morgantown to him where he'd have access to the college law library).

(b) The reality is that prison systems have become huge multi-billion-dollar corporations that are enriching parasitic prison-industry corporations owned by such powerful people as the presential Bush family who own the richest prison commissary company in the world, ***Keefe***.

(c) And through crony capitalism, the entire govt. has been corrupted to let these officials do whatever they want with very little accountability in filling prison bed space and exploiting the families of prisoners who pay through the nose for phone calls, video visits, music downloads, movies, lawyers, and food.

(1) Mr. Kokinda is the paragon of someone who can hold the prisons and corrupt prosecutors responsible because of his fearlessness, faith, legal experience, and writing skills.

(i) Yet, he is merely retaliated against harder than anyone else with an unprecedented chain of malicious prosecutions all carrying the same *modus operandi* of liberally construing the statutes, *ex post facto*, using novel theories they never charged on anyone else.[4]

(ii) Also, they plainly coerce civilians who never show up in court, and later recant their testimony, by defaming him so badly to make them emotionally react out of fear, as they told P.M., (as disclosed in her CPS interview,) that he raped a 10-year-old girl overseas; the same with Ms. Vermont smiling in a photo when she was supposedly being violated by Mr. Kokinda downtown in broad daylight in front of the mall.

(2) BAR Attorneys, with rare exceptions, will only litigate claims based on PREA or excessive force. Far and few will litigate criminal civil rights cases because the courts are notoriously hostile due to the internal pressures of criminal judges and prosecutors on court staff.

8. The *modus operandi* evidence linking the out-of-state defendants to the conduct in West Virginia is alarmingly strong. This Court wants to ignore it for the sake of simplifying litigation, but it is important for this evil to be exposed and for a jury to understand the pretextual nature of the retaliatory prosecutions in West Virginia.

(a) This Court largely dismisses the history of events that happened before West Virginia as irrelevant, but they are extremely relevant and on-point with a key aspect of proving

[4] Who has ever been charged with sexual abuse for pushing a consenting girl on a swing five times? No one. By construing sexual abuse statute liberally, hypertechnical contact is a crime. By construing SORNA liberally, commuting and traveling constitutes residing. By construing WV registry statutes liberally, merely renting a car a few days is a new violation. By construing obstruction liberally, merely walking away from police in an open field for a few seconds is obstruction. By construing obstruction liberally, mere auditory ambiguities in a name that is unnecessary for identification is obstruction. By liberally construing unlawful contact with a minor, a cop on an age-oriented role-play chatroom is the equivalent of proving capacity to harm an actual minor.

pretextual motives and malice. These claims remove any doubt regarding the reasonableness of the officer's conduct or maliciousness of their motives.

See United States v. Foutz, 540 F.2d 733 (4th Cir. 1976) (Rule 404(b) evidence is admissible to show "modus operandi," "handiwork," or "signature" of defendant when acts bear a high degree of similarity to current allegations and can be used to identify a defendant's involvement.); *United States v. Park*, 525 F.2d 1279 (5th Cir. 1976); *United States v. Uptain*, 552 F.2d 1107 (5th Cir. 1977), cert. denied, 434 U.S. 866, 98 S. Ct. 202, 54 L.Ed.2d 142 (1977); *United States v. Barrett*, 539 F.2d 244 (1st Cir. 1976) (Witness testimony as to "similar acts of conduct" perpetrated by defendant is admissible under Rule 404(b) to show "consistent pattern and scheme of operation.")

9. And if we look closely at the opinions in all the cases where Mr. Kokinda was denied justice, it is due to the judges acting *deliberately obtuse* to evade his claims or using some sort of external trickery to fabricate procedural bars as easy wins for the govt.

(a) When combined with the clear hegemony Corbett had over the officials he appointed into power when the courts and DOC acted corruptly, it is easy to draw the inference of an improper influence subverting the court processes to evade even the strongest claims for relief.

(b) Mr. Kokinda's 2nd Amended Complaint (Revised Version) is loaded with examples of where the courts had gone to great lengths to perpetually evade his claims, demonstrating external pressure to subvert justice and oppress him, an epic RICO conspiracy.

(c) This Court is, likewise, trying to stonewall, whitewash, and normalize the grave injustices that Mr. Kokinda has suffered through and continues to suffer with oppressive stigmatization and retaliations for assertion of his civil rights against an unprecedented chain of retaliatory prosecutions.

See also Melvin v. United States, 2018 U.S. Dist. Lexis 133427 (4th Cir. (E.D.N.C.) 2018) at Lexis 9 ("A judgment may be set aside under Rule 60(d)(3) if the movant provides clear and convincing evidence of "fraud on the court." Fed. R. Civ. P. 60(3). Fraud on the court, as the Fourth Circuit has emphasized, is "not your garden-variety fraud." Fox v. Elk Run Coal Co., 739 F.3d 131, 135 (4th Cir. 2014) (citation omitted). The doctrine instead involves "corruption of the judicial process itself," Cleveland Demolition Co. v. Azcon Scrap Corp., 827 F.2d 984, 986 (4th Cir.1986) (citation omitted), and "should be invoked only when parties attempt the more egregious forms of subversion of the legal process." Fox, 739 F.3d at 136 (citation omitted). Because of its "constricted scope," the fraud on the court doctrine is generally "limited to situations such as bribery of a judge or juror, or improper influence exerted on the court by an attorney, in which the integrity of the court and its ability to function impartially is directly impinged." … Rule 60(b)(4), allows relief from a judgment that is void. Fed. R. Civ. P. 60(b)(4). Rule 60(b)(4) applies "only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." United States v. Welsh, 879 F.3d 530, 533 (4th Cir. 2018) (internal citations omitted).")

9. The obstruction of notice to object to and further appeal the Third Circuit panel opinion (immediately following the false arrests in West Virginia) is a prime example of "fraud on the court" and speaks volumes to the overall systematic oppression of Mr. Kokinda by the use of legal fictions and artificial situations to accomplish the fraud. The Elkins charges were, likewise, facially fraudulent and calculated to enhance the penalty of the fraudulent § 2250(a) charge by more than three times advisory term.

See Dennis v. Sparks, 449 U.S. 24, 29, 101 S. Ct. 183, 66 L.Ed.2d 185 (1980) ("Private parties who corruptly conspire with a judge in connection with [an official act] are … acting under color of state law within the meaning of § 1983.")

C. Retaliatory Prosecution, A Pendent State Law Claim

1. Mr. Kokinda must wait on vindication in his SORNA prosecution to fully present his case on any claim. At this point, it would be premature for Mr. Kokinda to file a FTCA claim against the prosecutors because the *Heck* bar applies to FTCA claims.[5] However, Mr. Kokinda believes that all defendants, especially the state defendants may be sued under *Jarvis*, *infra*, West Virginia's analog to *Hartman*.

See Nieves v. Bartlett, 587 U.S. ___, 139 S. Ct. ___, 204 L.Ed.2d 1 (2019) (*citing* Hartman v. Moore, 547 U.S. 250, 126 S. Ct. 1695, 164 L.Ed.2d 441 (2006), and holding that the absence of probable cause generally provides "weighty evidence" of retaliatory causation in false arrests and malicious prosecutions.)

See also Jarvis v. West Virginia State Police, 227 W. Va. 542, 711 SE 2d 542 (2010) (adopting the federal standard for retaliatory prosecutions announced in Hartman v. Moore, supra. —

Hartman requires the plaintiff to plead that the but-for proximate cause of his injuries was a *malicious prosecution* lacking probable cause. In such case, "the presumption of regularity" normally attached to a prosecutor's charging decision no longer applies.

In addition, the plaintiff must prove that a third party improperly influenced the prosecutor's charging decision as retaliation for constitutionally protected conduct. — Hartman essentially creates a claim based upon that inducement rather than the charging decision itself.)

2. Mr. Kokinda's 2nd Amended Complaint properly pleads retaliatory prosecution claims because it alleges that the out-of-state defendants were seeking the § 2250(a) charge against him

[5] *See* Morrow v. Federal Bureau of Prisons, 610 F.3d 1271 (11th Cir. 2010).

since 2017, and the other allegations were merely used to pad up the penalty and dramatize hypothetical situations (legal fictions) of why stricter registry laws are beneficial.

(a) This clearly demonstrates that the charging decision was a result of a pretextual conspiracy as opposed to any independent act of Mr. Kokinda, no matter how compelling the defendants may attempt to present it as a well-intentioned mistake.

(b) It is well-established that access to the court and filing lawsuits is a form of speech protected by the First Amendment.[6]

(c) The West Virginia common law version of "retaliatory prosecution" announced in *Jarvis*, *supra*, eliminates disputes over whether *Hartman v. Moore*, is still good law after the U.S. Supreme Court disfavored *Bivens* actions applied to new contexts. The U.S. Supreme Court has not conclusively decided whether *Hartman* provides a permissible *Bivens* action going forward even though it was once presumed without deciding.[7]

See *Hernandez v. Mesa*, 589 U.S. ___, 140 S. Ct. ___, 206 L.Ed.2d at 51 (2020) ("Prior to *Bivens*, "[s]uits to recover such damages were generally brought under state tort law. *See* *Wheeldin v. Wheeler*, 373 U.S. 647, 652, 83 S. Ct. 1441, 10 L.Ed.2d 605 (1963)."); *Id.* at 53, noting how *Bivens* pre-empts state law tort suits pursuant to 28 U.S.C. § 2679(b).

3. Even if *Bivens* is disfavored and *Hartman* is not controlling, the same exact principles are controlling under pendent state law jurisdiction. And by the time the *Hartman* issue would be resolved, the jurisdictional question will have passed or become moot.

See *Banks v. Gore*, 738 Fed. Appx. 766, 773 (4th Cir. 2018) (Remanding because district court did not state whether it was dismissing pendent state law claims without prejudice for refiling in state court; also recognizing that pendent state law claims may be adjudicated in federal court even if the core federal claims are dismissed in some instances.)

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[6] "The filing of a lawsuit carries significant constitutional protections, implicating the First Amendment right to petition the government for redress of grievances, and the right of access to courts." *Hoeber on Behalf of NLRB v. Local 30,* 939 F.2d 118, 126 (3d Cir.1991).

[7] *See* *Reichle v. Howards*, 566 U.S. 658, 663, n.4, 132 S. Ct. 2088, 182 L>Ed.2d 985 (2012) ("This Court has recognized an implied cause of action for damages against federal officials for Fourth Amendment violations. *See* *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 91 S. Ct. 1999, 29 L.Ed.2d 619 (1971).")

4. Furthermore, *Hartman and Jarvis*, *supra*, noted how the prosecutors are not shielded by absolute immunity and may be held liable if they direct the activity of law enforcement to arrest someone without probable cause as alleged in Mr. Kokinda's 2nd Amended Complaint.

(a) Therefore, Lekta Poling, Michael Parker, and Jane Doe assistant can all be held liable for their role in the pretextual retaliatory prosecution conspiracy.

(b) *Hartman* acknowledges that it would be *rare* for a prosecutor to admit that their charging decision was improperly influenced. Therefore, it must be reasonably inferred from the totality of the circumstances.

(c) A jury may reasonably infer that the police officers would not risk liability, their jobs, and harming an innocent individual if not directed to execute the false arrests by the prosecutors.

(d) A jury may also reasonably infer that the prime movers would not have allowed the prosecutors to participate if they weren't onboard at the investigative stages and might throw a wrench in their plans by making decisions on their own accord.

(e) Therefore, a jury may find that the prosecutors at least *conspired* in directing the police officers to falsely arrest Mr. Kokinda, an analog more nefarious than directing it on their own accord.

5. Evidence that U.S. Marshals in the Pittsburgh District Court where Mr. Kokinda filed his civil rights lawsuit, (where his archenemy Gov. Tom Corbett was a former U.S. Attorney,) contacted Vermont officials seeking an affidavit to support a baseless § 2250(a) charge [that was later filed by rogue officials in West Virginia] is smoking-gun evidence in a RICO conspiracy.

(a) What more evidence do we need of out-of-state defendants being involved? This Court doesn't give lip-service to the claim because there is no reasonable explanation for why the same malicious charge was sought in Vermont and then filed in West Virginia, following a string of similar retaliatory prosecutions and smear campaigns, during serious litigation against Tom Corbett and his cronies that they are now trying to force settlement in.

(1) And the context of the VT SOR notes "requesting an affidavit to file a malicious SORNA prosecution" strongly infers a request for a **retaliatory prosecution** against Mr. Kokinda due to his *litigation* "disrupting the courts and judges lately," since he never stepped foot in the state.

(2) Mr. Kokinda doesn't have to prove that his case is factually identical to *Hartman*,— far from it. *Jarvis*, *supra*, announced a general rule applicable to a myriad of factual scenarios. Any kind of protected speech, especially lawsuits, are prime bases for pleading *retaliation claims* throughout national jurisprudence. *See Smith v. Cupp*, 430 F.3d 766, 777 (6th Cir. 2005) ("[W]here a general constitutional rule applies with 'obvious clarity' to a particular case, factually similar decisional law is not required to defeat a claim of qualified immunity." (citation omitted)).

6. Mr. Kokinda's conspiracy claims aren't delusional or far-fetched. This Court is just acting *deliberately obtuse* because they involve "detailed testimony of Mr. Kokinda," "*modus operandi* evidence," "reliance on reasonable inferences," and "viewing the justice system through a lens of reality that is rife with crony capitalism and retaliations against prisoners."

(a) The claims are not as black & white as the contents of the malicious affidavits of *probable cause* filed in West Virginia, but those affidavits only tell half of the story.

D. Detailed Damages/Prison Conditions/Supplemental Claims

1. Moving past the false stigma of conspiracy claims being a product of delusion or far-fetched, this Court cannot logically deny amendment and supplementation because the 2nd Amended Complaint (Revised Version) adds new facts to cure the noted deficiencies in pleading omissions and materially misleading affidavits by S.P. Miller.

2. The new Complaint is also loaded with factual details, especially important regarding the collateral damages that Mr. Kokinda suffered throughout his incarceration. Because these

injuries are collateral to his unlawful imprisonment, they are part of the damages and must be considered by the jury in the same trial. Adding them to one case removes burden of proving *independent constitutional violations* and makes addition a fundamental necessity.

(a) Admittedly, the bulk of these damages were *both independent and collateral* to the SORNA prosecution (that the magistrate falsely portrayed as if it was decided conclusively against Mr. Kokinda, refusing to wait for the ruling in *Loper Bright v. Raimondo*, 603 U.S. ___ (2024)).

3. It couldn't be any clearer, if this court takes judicial notice of Mr. Kokinda's "Motion to Stay Proceedings Pending Acquittal," that he will be presumably acquitted in that case and that it lacked *probable cause* like all the rest.

4. Waiting for vindication in the SORNA prosecution is important for all aspects of litigation. It brings Mr. Kokinda into court with clean hands and shows that he did nothing wrong, removing the "means justify the end" and "bad man" stigmas that an ***ultimate conviction*** after the dismissal of other charges can conjure up.

(a) Furthermore, it reaffirms an epic, retaliatory conspiracy and makes the potential damages well over $7.5 million (to $2 billion under his FTCA contract claim).

5. The SORNA case presents an "actual innocence" claim that cannot be defeated by time bars or even successive petitions in the Fourth Circuit.

(a) It is a claim that the statute doesn't reach Mr. Kokinda's conduct and is based on firmly established principles that prevent reinterpretation of "unambiguous" statutes construed by the Supreme Court.

See Daviams v. United States, 417 U.S. 333, 346-347, 41 L.Ed.2d 109, 94 S. Ct. 2298 (1974) (habeas petitioner's conviction and punishment "are for an act that the law does not make

criminal. There can be no room for doubt that such a circumstance 'inherently results in a complete miscarriage of justice' and 'present[s] exceptional circumstances' that justify collateral relief under § 2255.")

6. This amended complaint will be ready for the acquittal and should be held in abeyance pursuant to the requested stay motion. The Court should reference the previously filed memorandum and exhibits in support of the 2nd Amended Complaint for depth.

(a) But the general gist of the memorandum is that all the defendants can be tied to the retaliations by reason of unclean hands in other events that preceded it pursuant to *modus operandi* evidence. And a large number of officials acting corruptly is the essence of the Larry Householder case. It reflects the subtle aspects of how a RICO conspiracy works, just like any other Govt. operation, except there is a hidden and illicit motive to accomplish something unlawful.

(1) That is the ***critical nuance*** this court is missing. All the evidence of these officials investigating him, stalking him, working together to track him, communicating, etc., was all just normal and routine work except for the subtle-to-detect motive tainting the illicit objective of oppressing him by liberally construing statutes and eliciting false testimony, etc.

See, case in point, Am. Tobacco Co. v. United States, 328 U.S. 781, 809-10, 66 S. Ct. 1125, 90 L.Ed.2d 1575 (1946) ("Acts done to give effect to the conspiracy may be in themselves innocent acts. Yet, if they are part of the sum of the acts which are relied upon to effectuate the conspiracy which the statute forbids, they come within its prohibition. No formal agreement is necessary to constitute an unlawful conspiracy. Often crimes are a matter of inference deduced from the acts of the person accused and done in pursuance of a criminal purpose." … Conspiracy can be proven by "the action taken in concert by the parties to it" …)

(2) Mr. Kokinda's adversaries are no dummies. They are some of the smartest and most experienced legal minds in the world. Just because they are subtle and crafty about their white-collar crimes, like someone cooking the books in a medical overbilling case, does not mean they should get away with it. They are a malignancy to society who allow crony capitalism to flourish and erode the rights of the common man to transform him into an ***expendable slave commodity***.

7. The *Twombly* Court stated that "[a]sking for plausible grounds to infer an agreement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal[ity.]" 550 U.S. at 556.")

(a) When Mr. Kokinda presents evidence at trial of how the courts intentionally evaded his claims, how his case-file was stolen, and deposes various defendants about their subtle defects in their coordinated efforts to track him, prosecute him, *inter alia*, he will be able to develop more concrete claims. It is just like an Italian horn twisting justice to oppress targeted individuals.

(b) The oppression from the SORNA prosecution and ongoing retaliations through oppressive conditions of release are suspending his ability to pay for depositions and undermining the discovery process. Therefore, the stay is most appropriate at this point before the litigation can even develop to reach the out-of-state defendants.

E. FTCA Breach of Contract Claims

1. The new claims based on breach of contract are not ridiculous claims. Mr. Kokinda has pled that he had apostilled a pricelist of damages that he intends to seek if he is wrongfully imprisoned and that this was previously published in public records.

2. When the defendants then wrongfully imprisoned Mr. Kokinda, they received fair notice of the consequences and chose to engage in the nefarious conduct knowing explicitly that he would charge them this agreed-to sum of money for damages.

3. The document was thoroughly authenticated by multiple Govt. agencies to make it an official express contract between Mr. Kokinda and the United States.

4. The notice was clear, and the defendants chose to enter into it in the same manner that someone enters an implied-in-fact contract to pay for their meals when they sit down and order from a restaurant menu. The sum is not unconscionable if we look at recent defamation cases.

5. Implied-in-fact contracts are considered genuine contracts and are enforceable. They are not quasi-contracts. And in this case, it wasn't based on any possible misunderstanding of an oral contract, but it was instead based upon an express contract that's on public record in two courts.

6. And considering that the sovereign immunity of the United States was not designed to cover such unconstitutional conduct as that pled, according to the contours of the law as defined in case-law, Mr. Kokinda has the right to sue the U.S. itself for damages caused by its agents.

7. The contract claim itself is separate and does not fall under "interference with contract rights" but rather breach of an express contract made between Mr. Kokinda and the United States.

(a) The contract was signed by several officials who are employees of the separate states that are part of the corporate reorganization of the United States itself and within its commercial jurisdiction as an express contract with the United States itself, especially considering that the United States has authorized states to issue apostilles that are equally of force under an international law compact.

See Nicholson v. United States, 177 F.2d 768 (5th Cir. 1949) ("[I]nterference with contract rights" is a particular kind of tort barred by 28 U.S.C.S. § 2680(h) and does not relate to torts committed by persons sustaining contract rights with the United States.)

8. A certified lien was issued and declarations were made nullifying any adhesion contracts that might subject Mr. Kokinda to other contractual obligations that conflict with his agreement. Namely, the lien on his birth certificate dissolved any adhesion contracts that made him presumably a voluntary citizen, collateral, and subordinate of the bankrupt United States, Inc. and clarified that any such documents used as indicia of citizenship are carried under duress and invalid evidence of a knowing, intelligent, or voluntary contract.

F. False Framing of Possession Charge

1. The magistrate continues to defend Lt. Gary Weaver's reckless or intentional, materially misleading affidavit. The simple fact is that the *affidavit of probable* cause to arrest Mr. Kokinda and the *indictment* both misstate the essential elements. A neutral-and-detached magistrate would not have validated the prosecution. *Any* magistrate or a badly drawn indictment doesn't break the chain of causation, it merely compounds the injuries and injustice.

See United States v. Boffa, *513 F. Supp. 444* (3d Cir. (D. Del.) 1980) ("A […] less recognized but equally important, purpose of an indictment is to shield a defendant in a federal felony case from unfounded prosecutorial charges and to require him to defend in court only those allegations returned by an independent grand jury, as provided by the Fifth Amendment. *United States v. Goldstein,* 502 F.2d 526, 528 (3d Cir. 1974). By sufficiently articulating the critical elements of the underlying offense, an indictment insures that the accused has been duly charged by the grand jury upon a proper finding of probable cause, and will be convicted only on the basis of facts found by that body. *Id.* at 529; *see United States v. Shoup,* 608 F.2d 950, 960 (3d Cir. 1979).")

(a) That is where the error in the magistrate's R&R lies. Both charging documents misstate the essential elements because they predicate the prosecution on the presumption that Mr.

Kokinda can be convicted for inaccessible ghost data and character assassination, and merely *possession of a cellphone* that contained such "admittedly inaccessible data," rather than *possession of the contraband images themselves*.

(b) Possession of illicit images on a digital device is a *highly technical question* because it involves technology. The defendants had absolutely no evidence that Mr. Kokinda "possessed" the images at any time. It wasn't a magazine or book, so there are numerous speculative technical explanations for how such data could wind up on any device. The Fourth Circuit used a crude analysis that is not based "on the contours of the law and the facts known to the officer."[8]

(c) Had the affidavit been corrected to accurately reflect the whole truth known to Lt. Gary Weaver and Brandon Flower, and his co-conspirators, a neutral-and-detached magistrate or properly instructed grand jury would not have found probable cause. It isn't a question of evidence sufficiency, it is a question of having *any* evidence at all to separate Mr. Kokinda from someone who did not knowingly seek out and/or incidentally decide to retain such images.[9]

(1) There is simply no technical evidence of the circumstances to even allege that the images were intentionally downloaded or knowingly retained by anyone.[10] That is fatal to an arrest

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[8] *See* Hupp v. Cook, 931 F.3d 307, 318 (4th Cir. 2019) ("Probable cause is determined by a `totality-of-the-circumstances' approach." *Smith v. Munday,* 848 F.3d 248, 253 (4th Cir. 2017) (citing *Illinois v. Gates,* 462 U.S. 213, 230, 103 S. Ct. 2317, 76 L.Ed.2d 527 (1983)). The inquiry "turns on two factors: `the suspect's conduct as known to the officer, and the contours of the offense thought to be committed by that conduct.'" *Id.* (quoting *Graham v. Gagnon,* 831 F.3d 176, 184 (4th Cir. 2016)).")

[9] A past criminal record is not even sufficient to pass the reasonable suspicion test for a Terry stop. *See* United States v. Powell, 666 F.3d 180, 187-88 (4th Cir. 2011) (knowledge of a past criminal record and providing an officer with false information was insufficient to create even *reasonable suspicion*, the prerequisite of a *Terry* stop.)

[10] The .pdf file containing illicit keywords is an evidentiary nullity. It is not verifiable, nor is it a file created when people search for such keywords, the gravamen of an *actus reus*, nor is it even reasonable to speculate that anyone searched for such keywords since modern search engines use software, such as Microsoft's DNA software, to filter out such garbage. An expert like Lt. Gary Weaver would know that and did could not even speculate Mr. Kokinda did such.

warrant and indictment because it is lawful for someone to accidentally come across such photos and merely delete them or unknowingly download them on a phone to an inaccessible part. The Court is simply acting *deliberately obtuse* to protect the defendants.

(2) It is malicious and unconscionable that Magistrate Eifert actually calls Mr. Kokinda a "child pornographer" when he was never found to be in possession of such images, had reported such images to police before his arrest in 2007, was accused of momentarily possessing two nude images that were ambiguous as to their legality, and was entrapped in a lawless sting by reason of his desire to evangelize and socialize with people after he had shunned all his former friends for their drug use, with many dying from heroin soon after.

(i) And he did try to assess the problems of the NJ cop when he called her and tried to figure out if she was on drugs or if she was some diseased hooker, or God knows what. They prayed on his conscience and got him to think he had a duty to check people out because police he reported activity to did not care. And they tricked him into using reckless methods by wearing him down and manipulating him when he was socially vulnerable and mentally ill at that time.

2. Furthermore, a jury may find it more likely than not that Lt. Gary Weaver, at the direction of Brandon Flower, planted the data and then heated up the chip to scrub the incriminating footprints. The proximate timing of the charge when Mr. Kokinda was just released on bail and the fact that the witnesses in the dismissed state charges weren't cooperating altogether demonstrate strong motive (from circumstantial evidence) to enhance his sentence another way.

(a) Furthermore, the evidence that Mr. Kokinda read in a legal news publication of how hash values are manipulated by collectors to avoid detection by police scanners creates grave implausibility to the premise that someone had changed the values of these images, and yet one

out of thirty still triggered an alert. There is *subjective* evidence of evidence fabrication, *not a total lack of evidence*.

(1) What kind of serendipity luck is that? when the warrant was not even remotely related to looking for such evidence, and when there was no evidence whatsoever that the cellphone was even operable at any time related to travels in West Virginia.

(2) The warrant was limited to location information, so this discovery was well outside the limits of the warrant in any regard and would have been suppressed on other grounds, another Fourth Amendment violation of unlawful search and seizure.

3. An unlawful arrest is a very serious constitutional violation. This isn't some game. You don't file charges on someone based on a hunch or by planting evidence or by going on fishing expeditions and using other false charges as the predicate.

See Park v. Shiflett, 250 F.3d 843, 850 (4th Cir. 2001) ("No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)" (citation omitted)).

(a) Only a kangaroo court that is part of the ongoing epic retaliatory conspiracy alleged would act *deliberately obtuse* and ignore these grave and obvious errors.

(b) This Court refuses to draw any reasonable inferences against the defendants.

(c) This Court always paints them as having "good faith" intentions and minimizes all the errors until they vanish completely with sophistry and crude analyses that destroy the rule of law.

(d) Pursuant to *Hartman*, *supra*, there is no "presumption of regularity" when charges lack probable cause, and these charges do when you cut out the sophistry and dicta that declares otherwise.

G. Unconstitutionality of Registry Laws

1. The magistrate's *Heck* bar analysis of the registration claims developed in the amended complaint is bizarre. Registration is not a part of criminal punishment, and therefore does not affect "the length of sentence or fact of conviction" elements preserved by the *Heck* principle.

2. Furthermore, since the SORNA prosecution is obviously malicious on its face and the Fourth Circuit's opinion is worth a pile of garbage burning in hell, *Heck* doesn't apply or clearly won't apply in any arguable degree by the time the errors are adjudicated on the merits.

3. Additionally, what if someone is prosecuted for an offense and fails to challenge the constitutionality of the statute, would they be barred from challenging it in a separate prosecution with a more skilled attorney? I don't believe *Heck* doctrine can logically stretch that far, since new stakes and injuries result beyond the fact of a former conviction and sentence imposed.

III. Conclusion

As a fundamental of due process, the Court is required to allow the amendment, supplementation, joinder of parties & claims presented in the 2nd Amended Complaint (Revised Version).

X_____

Jason Steven Kokinda, Authorized Representative