**IN THE UNITED STATES DISTRICT COURT FOR**

**THE NORTHERN DISTRICT OF WEST VIRGINIA**

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

**MEMORANDUM IN SUPPORT OF RESPONSE IN OPPOSITION TO DEFENDANTS' (C. BOATWRIGHT AND T.H. FOSTER) MOTION FOR SUMMARY JUDGMENT**

## I. INTRODUCTION

The defendants rely entirely upon blatant lies by asserting that Mr. Kokinda had failed to respond to their request for Admissions. Exhibit-A proves that he had typed up a response, and this Court can order the FCI-Otisville staff to produce any records related to him sending it if any reasonable doubt exits. In any regard, Fed.R.Civ.P. Rule 36 case-law demonstrates how courts are reluctant to deem requests admitted when they are central to the case, *inter alia*.

## II. COUNTERSTATEMENT OF RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

1. The defendants do not address the alleged pre-arrest background of the case or "unparticularized allegations." Plaintiff, Jason Kokinda, observed strong indicia in the days leading up to September 28, 2019, that law enforcement were working with civilians at the Elkins city park to falsely accuse him of lewd conduct, similar to the false allegations he just had dismissed in Vermont on July 29th (which were filed after U.S.

Marshals in Pittsburgh requested an affidavit against Mr. Kokinda for "disrupting the courts and judges lately" with his civil rights lawsuits against high-profile officials and the prison). The going rate of damages for such a wrongful conviction lawsuit averages 1.5 million dollars per year, and obviously put a bounty on Mr. Kokinda's head.[1] *See* Kokinda v. Penn. Dep't. of Corr., et al., No. 2:17-cv-217 (3d Cir. (W.D.P.A.) (pending trial on potential multi-million-dollar judgment for First Amendment obstruction of meritorious claim by theft of case-file during retaliatory RHU detainment to weaken habeas claims).

(a) The messages extracted from Mr. Kokinda's cellphone prove that he believed the warrant returning him to the United States was a subterfuge to commit retaliations against him for his lawsuits. Official SOR notes from Vermont later supported this theory (Exhibit-A included with original Complaint).

(b) It is implausible for it to be mere coincidence that an off-duty law enforcement officer was then trying to talk to him at the Elkins city park the day after he met P.M., followed by a uniformed officer arriving soon after.

(c) It is also implausible for it to be mere coincidence when he was twice accused immediately after that by people at the park of impropriety. First, he was accused of tapping K.L. on the shoulder by a so-called friend of K.L. and chided for allowing a girl at the park to take a mundane, tourist-type picture of him to send to his fiancé in Peru, all in an overdramatized manner.

(1) Second, some mother asked him in an accusatory tone, "Do you know these girls?" when he merely walked past two other girls and sat down several yards away to

[1] *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.)

charge his laptop at a separate picnic table and work on his Bible editing.[2] It also cannot be a coincidence that "this same exact catchphrase" was then used by Roseanne Bell on the day P.M. was acting strangely and wanted him to push her only five times on the swing.

(d) Mr. Kokinda had observed a friend of P.M.'s talking to all the mothers in the park and reasonably believed that he was recruiting them to call the police if Mr. Kokinda went near any kids (by saying he was a molester, like the friends of P.M. were chanting in the park as instructed on the day he was falsely arrested).

(e) Mr. Kokinda also observed that P.M. was oddly taking screenshots of his conversations with her on SnapChat and was trying to compile evidence. However, he had said nothing inappropriate at any time and told her he did not even want to be near her without her adult babysitter, cousin, present specifically for fear of being falsely accused.

(1) It was wise for him to keep his friends close and his enemies closer after suspecting police involvement and the potential for coercion. The police allowed or directed P.M. to corrupt the evidence on the cellphone by deleting any exculpatory messages and context. *See Cf.* Cox v. Mariposa County, *infra.*

(f) Mr. Kokinda never touched P.M. at all aside from a split-second of fully clothed contact between her shoulder blades when he gently pushed her six times on the swing, and she jumped off. If a jury believes him, why then did she fabricate these incredulous and inconsistent statements against him absent police pressure?

(g) It can be reasonably inferred that P.M. herself later felt guilty and said in the interview with CPS that Mr. Kokinda merely pretended he was plucking an imaginary leaf from

[2] Mr. Kokinda was merely using the park and libraries like a Starbucks café to sit down and accomplish some biblical proofreading on his laptop.

(inferably) the upper part of her butt area, aka the lower back, while she emphasized **sitting on the swing seat**. Simple physics dictate that he could not have touched her buttocks if she was sitting on the swing seat, and how would she know the leaf was imaginary if it was behind her? It is an obvious lie. The Govt.'s witnesses are about as credible as Huckleberry Fin. Their stories never seem to add up and capriciously change when a weakness is highlighted.

2. The SORNA prosecution is, likewise, retaliatory and malicious. The entire case is based upon using *Chevron* deference as a license to completely rewrite the criminal elements to achieve some perceived public policy purpose. *Chevron* has now been overturned and never applied to begin with because it was significantly narrowed over prior years. Mr. Kokinda's SORNA prosecution cannot reasonably stand and is facially infirm as evidenced by the courts expressly and solely relying on their crude notions of how *Chevron* applies, a doctrine that is now defunct. *See Loper Bright v. Raimondo*, 603 U.S. ___ (2024), which is applicable to Mr. Kokinda's case now pending on direct appeal.
3. Mr. Kokinda agrees with the defendant's that they failed to provide the context supplied above as highly valuable circumstantial evidence of a pretextual, retaliatory prosecution conspiracy. *See Hartman v. Moore*, *infra*, holding that a lack of probable cause is highly valuable circumstantial evidence of a retaliatory prosecution, here in over a dozen charges.
4. The defendants are blatantly lying about not receiving Admissions. Mr. Kokinda had sent the Exhibit-A admissions by Certified Mail and had confirmed their timely delivery while at FCI-Otisville. By asserting their claim after so much delay, it is now impossible to retrieve the official certified mail records. The court may order the prison to produce a

record from their logbooks, if available, but the 11th hour claim based on prejudicial evidence spoilage is reasonably inferred to be tactical in nature, a last-ditch effort.

(a) Mr. Kokinda has been incarcerated for the last five years on the final retaliatory SORNA prosecution with no access to his case-file, and limited access even while at the regional jail and halfway house. The policies of prisons have become very restrictive due to the epidemic of drugs laced on paper (K2) flooding the institutions and killing prisoners, compounded by a lack of storage space.

(b) The defendants fail to cite what specific Discovery items Mr. Kokinda has that he can hypothetically provide them and how they were prejudiced. How is Mr. Kokinda supposed to conduct depositions while he is incarcerated? He has no freedom to decide those matters in prison.

(c) Mr. Kokinda provided as much Discovery as he could attach with his Complaint and the Miller Response. Nearly everything else is available on Pacer.gov or through the WV court docket system online. Mr. Kokinda's attorney, David Frame, has retained the rest and will not surrender it pursuant to Prof. Conduct Rule 1.16(d) until his representation is terminated. At best, Discovery issues would form a basis for a motion to compel, not for summary judgment.

5. All of the charges were dismissed despite Mr. Kokinda's objections that he wanted a disposition on the merits to completely clear his name. The charges were then used to maliciously pad up the penalty and obstruct litigation on pending civil suits with the malicious SORNA prosecution by misapplying the now defunct *Chevron* doctrine.

## III. COUNTERSTATEMENT OF THE STANDARD OF REVIEW

*See* Pledger v. Lynch, 5 F.4th 511 (4th Cir. 2021) at Lexis 33 (Relief under Fed.R.Civ.Pro. Rule 56(d) is "broadly favored and should be liberally granted to protect non-moving parties from premature summary judgment motions."); *Marino v. Indus. Crating Co.*, 358 F.3d 241, 247 (3d Cir. 2004) ("[I]n considering a motion for summary judgment, a district court may not make credibility determinations or engage in any weighing of the evidence; instead, the non-moving party's evidence is to be believed [,] and all justifiable inferences are to be drawn in his favor."); *Coltex v. Catrett*, 477 U.S. 317, 323-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (The defendants must demonstrate that there is not more than a scintilla of evidence in favor of the plaintiff's claims to obtain summary judgment dismissing claims against them.); *Boitnott v. Corning, Inc.*, 669 F.3d 172, 175 (4th Cir. 2012) (In reviewing a motion for summary judgment, the Court views the facts in the light most favorable to the non-moving party.); *Paladino v. Newsome*, 885 F.3d 203, 209-10 (3d Cir. 2018) (Concluding that inmate's sworn deposition testimony, even though self-serving, created a genuine issue of material fact that could only be resolved by a jury at trial.); *Williams v. Griffin,* 952 F.2d 820, 823 (4th Cir.1991) (verified complaints by *pro se* prisoners are to be considered as affidavits and may, standing alone, defeat a motion for summary judgment when the allegations contained therein are based on personal knowledge.)

## IV. COUNTERARGUMENTS IN OPPOSITION TO SUMMARY JUDGMENT

### A. Total Reliance on Alleged Failure to Respond to Admissions

See *Kuhn v. Casto*, No. 3: 22-cv-00486 (S.D.W. Va. Nov. 3, 2023) (Magistrate Eifert opining, has held that "Rule 36 states that a matter "is admitted, unless, within 30 days of being served, the party to whom the request is directed serves on the requesting party a written answer or objection." Fed. R. Civ. P. 36(a)(3). Though this language may sound as though a failure to

respond will automatically deem the requests admitted, courts have discretion in determining whether to deem requests admitted by default. *Nguyen v. CNA Corp.*, 44 F.3d 234, 243 (4th Cir. 1995). In deciding whether to deem requests admitted, courts will consider, among other factors, the sophistication of the party to be bound by the admission and the centrality of the facts admitted to the case. Courts typically will not deem requests admitted where the party to whom the requests are directed is proceeding *pro se* and is unaware of the consequences of failing to respond. *See Fair Am. Ins. & Reinsurance Co. v. Capitol Valley Contracting, Inc.*, No. 2:21-CV-00212, 2021 WL 5774154, at *5 (S.D.W. Va. Dec. 6, 2021); *Simpson v. Kapeluck*, 2:09-cv-21, 2010 WL 1981099, at *5 (S.D.W. Va. May 14, 2010), *aff'd*, 402 F. App'x 803 (4th Cir. 2010). Courts are also reluctant to deem admitted facts which are central to the case, because the default admission may preclude a true decision on the merits. *See Pickens v. Equitable Life Assur. Soc. of U.S.*, 413 F.2d 1390, 1393 (5th Cir. 1969) (holding that requests for admissions as to central facts in dispute are beyond the proper scope of default admissions); *Uribe v. Aaron's, Inc.*, No. GJH-14-0022, 2014 WL 4851508, at *3 (D. Md. Sept. 26, 2014).

1. Magistrate Eifert has rejected the use of admissions to grant summary judgment in other cases. It would be personally vindictive to grant summary judgment in the instant case when Mr. Kokinda has evidence that he typed up responses (and would easily verify he served them precisely on time if the defendants had raised the issue in a reasonable timeframe; (USPS only retains certified mail delivery information for 120 days).
2. Furthermore, because Mr. Kokinda was granted a stay on his case in the May 24, 2023 (ECF Doc. 103) order "accepting the rationale that he cannot litigate without access to his case-file," that same principle should have operated *retrospectively* to deem it unfair for him to struggle with a premature Discovery schedule when he had no means to

substantially comply. *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.")

3. The only evidence the Defendants provide that Mr. Kokinda failed to serve admissions on them is their unsworn and unverifiable filings undercut by a prejudicial delay that makes it difficult to prove compliance one way or the other. Mr. Kokinda offers evidence that he prepared the document using a prison typewriter at that time.

   (a) It would be an odd result to go through that trouble and not mail it when he always responded to all filings in this case and dozens of past cases and never neglected to do so. And this court can order the FCI-Otisville prison staff to provide legal mail logbook verifications featuring the address of defendants in that April 2023 timeframe.

4. The defendants fail to even argue that the allegations are otherwise insufficient and are requesting a windfall victory on a technicality that hinges solely on their one-dimensional falsehood. That is the most unjust outcome possible and would set a precedent that any official can merely say the defendant did not serve admissions, years after the deadline has passed and conclusive evidence has spoiled, to undermine even an undebatable multi-million-dollar judgment against them.

5. Furthermore, Mr. Kokinda is being denied the opportunity to fairly conduct Discovery by the Court's recalcitrant refusal to consider how the "circumstances beyond his control" while in prison grievously affected his ability to litigate at the most fundamental level.

6. Additionally, the retaliatory acts to return Mr. Kokinda to prison from the halfway house may be reasonably attributed to a conspiracy involving this Court and defendants to prevent him from filing objections to the 2nd Amended Complaint R&R, steal certified mail slip from his legal property, and to otherwise prejudice him with unfair deadlines.

   (a) After the U.S. Marshals came for him, Dismas specifically searched the luggage that contained Mr. Kokinda's legal work at the halfway house and left the envelope on top where he kept the certified mail receipt of Admissions. (See Exhibit-B).

   (b) The halfway house had suspiciously sent him back to prison on phony misconducts at an opportune time by alleging he failed to maintain employment despite securing employment the next day, after being fired for false reasons by employers who spoke several times a day with halfway house officers on the telephone and likely conspired with them.[3] Then this Court used these events to give the defendants a windfall.

   (c) Mr. Kokinda's legal mail and access to the case-file were materially obstructed, and this Court has expressed grave hostility by refusing to recognize the injustice of the "circumstances beyond his control" pled in his (ECF Doc. 124) motion for extension of time to file objections to the 2nd Amended Complaint R&R.

[3] A lawsuit is pending against Chipotle for suspiciously making a false accusation that Mr. Kokinda may have intentionally bumped into an employee's shoulder when trying to squeeze through a tight bottleneck in the work aisles behind his cashier station one day and that unspecified females were complaining that he made them uncomfortable, after the manager admitted that all the specified females (all but two he didn't even speak to at all) feel comfortable around him and liked him, and that he did great work.

(d) Additionally, the verified statements in the 2nd Amended Complaint would have themselves provided more than enough evidence to prevent summary judgment, thereby inferring a tactical and concerted effort to weaken his strong lawsuits by the hostile rulings and timing of other retaliatory conduct by subordinate officials.[4]

*See* Williams v. Griffin, 952 F.2d 820, 823 (4th Cir.1991) (verified complaints by *pro se* prisoners are to be considered as affidavits and may, standing alone, defeat a motion for summary judgment when the allegations contained therein are based on personal knowledge.)

7. Magistrate Eifert works in both the Northern and Southern Districts. There is clearly no impartiality among the judges in this case. Instead, they are all working together (perhaps with greater subtlety), just as various state officials worked together with various feds in pretextual conspiracy to retaliate against Mr. Kokinda as pled in 2nd Amended Complaint.[5]

(a) There are so many manifest errors in the bogus legal analyses and rationales posited by this Court that it will be impossible to address them all on appeal.[6] The obvious goal is subversion of the legal process and ongoing "fraud on the court."

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[4] See Affidavit of Truth in Support of Response in Opposition to Defendants' (C. Boatwright and T.H. Foster) Motion for Summary Judgment (ECF Doc. 216) in support of all claims herein.

[5] The Fourth Circuit's recent United States v. Kokinda, 93 F.4th 635 (2024) opinion in his direct appeal is blatantly malicious and intentionally spins the facts in a materially misleading false light to defame him and intentionally misquotes the governing legal standards while evading grave errors.

[6] An obvious example is how this Court had denied his Rule 54(b) Motion for Reconsideration of retaliatory prosecution claims, citing Hartman v. Moore, by using the "strict standards" applicable only to final judgments. *See* (ECF Doc. 118, pg. 6) opinion compared to Am. Canoe Ass'm. v. Murphy Farms, Inc.,326 F.3d 505, 514 (4th Cir. 2003) (The Fourth Circuit has noted that Rule 54(b) motions are "not subject to the strict standards applicable to motions for reconsideration of a final judgment.") A true president judge who deals each day with Rule 54(b) motion practice would be embarrassed to sign his name to the epic list of shoddy rulings in this case, as if he has no working knowledge of the governing standards of law in any basic matter.

(b) Instead of simply acting deliberately obtuse regarding Mr. Kokinda's strong claims, the court is now actively involved in coordinating retaliatory events to wholly evade and weaken his claims by fabricating malicious procedural bars, like the 3rd Circuit did in obstructing his appeals and failing to provide notice after his false arrest.

8. These allegations are highly plausible because the Supreme Court itself has recognized the realities prisoners face with constant retaliation. *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).)

(a) They can only get away with these atrocities because the courts protect them from liability in most cases by acting deliberately obtuse towards *pro se* complaints and coordinating retaliations in the same manner when possible.

9. Furthermore, Gamble v. United States, 587 U.S. 678, 139 S. Ct. 1960, 1994, 204 L.Ed.2d 322 (2019) articulates 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.

(a) Mr. Kokinda's finances and speech are constantly under attack to cover up the grave injustices he has suffered and to obstruct his civil rights litigation.

(b) The new method is clearly to incarcerate individuals on new phony charges to stop them from gaining any footing to enforce judgments against the rogue officials who attacked them similarly in prior malicious prosecutions.

(c) This court is setting the precedent for this go-to method by forcing Mr. Kokinda to somehow litigate his case despite suffering the collateral effects of relentless retaliatory incarcerations and the inherent obstructions prisons effectuate.

(d) If Mr. Kokinda was represented by an attorney, these retaliations wouldn't work. Therefore, he is being particularly targeted because he is a relentlessly driven *pro se* litigant who will always make a record of each ongoing retaliation, like the Great St. Stephen, to obstruct him and never give up on obtaining justice in his claims. *See* Rule 56(d) Affidavit requiring dismissal or a deferred disposition on this motion.

B. False Arrests

*See* *Hupp v. Cook*, 931 F.3d 307, 318 (4th Cir. 2019) ("The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. A seizure is unreasonable under the Fourth Amendment if it is not based on probable cause. *Dunaway v. New York*, 442 U.S. 200, 213, 99 S. Ct. 2248, 60 L.Ed.2d 824 (1979). Thus, "[i]f a person is arrested when no reasonable officer could believe . . . that probable cause exists to arrest that person, a violation of a clearly established Fourth Amendment right to be arrested only upon probable cause ensues." *Rogers v. Pendleton*, 249 F.3d 279, 290 (4th Cir. 2001) (citation omitted).

"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)). While we look to the information available to the officer on the scene at the time, we apply an objective test to determine whether a reasonably prudent officer with that information would have thought that probable cause existed for the arrest. *Graham*, 831 F.3d at 185. Evidence sufficient to secure a conviction is not required, but probable cause exists only if there is sufficient evidence on which a reasonable officer at the time could have believed that probable cause existed for the arrest. *Wong Sun v. United States*, 371 U.S. 471, 479, 83 S. Ct. 407, 9 L.Ed.2d 441 (1963).

Because the probable cause inquiry is informed by the "contours of the offense" at issue, we are guided by West Virginia law in determining the scope of the offense of obstruction proscribed by West Virginia Code § 61-5-17(a)—the offense for which Hupp was arrested. *Rogers*, 249 F.3d at 291; *see Graham*, 831 F.3d at 188 (Although "an actual lack of probable cause is not *dispositive* for qualified immunity purposes[,]. . . [t]he boundaries of the statute [allegedly violated by the plaintiff] are extremely relevant to an assessment of whether [an officer's] mistake was reasonable."). The plain language of the statute establishes that a person is guilty of obstruction when she, "by threats, menaces, acts or otherwise forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a law-enforcement officer, probation officer or parole officer acting in his or her official capacity." W. Va. Code § 61-5-17(a).

Interpreting this statute, the Supreme Court of Appeals of West Virginia has held that a person is guilty of obstruction when she "check[s] or hamper[s] the action of the officer," does

"something which hinders or prevents or tends to prevent the performance of [the officer's] legal duty," or acts in "direct or indirect opposition or resistance to the lawful discharge of [the officer's] official duty." *State v. Johnson*, 134 W.Va. 357, 59 S.E.2d 485, 487 (1950). As West Virginia's high court has "succinct[ly]" explained, to secure a conviction under section 61-5-17(a), the State must show "forcible or illegal conduct that interferes with a police officer's discharge of official duties." *State v. Davis*, 229 W.Va. 695, 735 S.E.2d 570, 573 (2012) (quoting *State v. Carney*, 222 W.Va. 152, 663 S.E.2d 606, 611 (2008)). Because conduct can obstruct an officer if it is either forcible or illegal, a person may be guilty of obstruction "whether or not force be actually present." *Johnson*, 59 S.E.2d at 487. However, where "force is not involved to effect an obstruction," the resulting obstruction itself is insufficient to establish the illegality required by section 61-5-17. *Carney*, 663 S.E.2d at 611. That is, when force is not used, obstruction lies only where an illegal act is performed. This is because "lawful conduct is not sufficient to establish the statutory offense." *Id.*

Of particular relevance to our inquiry here, West Virginia courts have held that "when done in an orderly manner, merely questioning or remonstrating with an officer while he or she is performing his or her duty, does not ordinarily constitute the offense of obstructing an officer." *State v. Srnsky*, 213 W.Va. 412, 582 S.E.2d 859, 867 (2003) (quoting *State ex rel. Wilmoth v. Gustke*, 179 W.Va. 771, 373 S.E.2d 484, 486 (W. Va. 1988)). For example, the Supreme Court of Appeals has found that no obstruction is committed when a property owner asks a law enforcement officer, "without the use of fighting or insulting words or other opprobrious language and without forcible or other illegal hindrance," to leave her property. *Wilmoth*, 373 S.E.2d at 487. This principle is based on the First Amendment "right to question or challenge the authority of a police officer, provided that fighting words or other

opprobrious language is not used." *Id.*; *see* Graham, 831 F.3d at 188 ("Peaceful verbal criticism of an officer who is making an arrest cannot be targeted under a general obstruction of justice statute. . . without running afoul of the First Amendment." (citation omitted)).

On the other hand, certain "threats, language, and menacing demeanor" can constitute obstruction. *State v. Davis*, 199 W.Va. 84, 483 S.E.2d 84, 87 (1996)")

6. In the instant case, the material facts are hardly in dispute. (*See* Affidavit in Support of Memorandum in Opposition to Defendants' (C. Boatwright and T.H. Foster) Motion for Summary Judgment, at ¶ 1.-27.).
7. T.H. Foster alleged that Mr. Kokinda merely *walked* briskly away from him in an open field at the Elkins D&S College Campus on September 29, 2019.
8. The officers allegedly called a few times for Mr. Kokinda to come to them, inferably to talk to them, but Mr. Kokinda did not stop and allow them to catch up until they clarified seconds later that it was **mandatory**, and he'd be tased if he didn't stop.
9. Then they asked Mr. Kokinda for his first, middle, and last name. Mr. Kokinda responded by saying he was the "Authorized Representative of Jason Steven," or possibly "Stevens" as T.H. Foster heard it (outside near traffic,) and he did not want to contract with them because he is a "Sovereign American" or, as they supposedly heard, "Sovereign Citizen."[7]

[7] *See* United States v. Gomez`-Reyes, 2015 U.S. Dist. Lexis 197394 (1st Cir (D. Puerto Rico), June 10, 2015) at n.14 (Academic studies provide that the incidence of perjury by law enforcement in affidavits of probable cause is "rampant," and the FBI shows "minimal interest in even investigating the problem.")

10. Mr. Kokinda then admittedly asked to contact an attorney because he did not understand why they were detaining him by putting handcuffs on him at that point, and he wanted to consult with an attorney regarding the legality.[8]
11. Ptlm. K.A. Shiflett later admitted that the request for Mr. Kokinda's name was merely to run a moot warrant search on him that may affect his ability to bail out, but he admittedly had no outstanding warrants. (This was suspiciously redacted from the trial transcripts).
12. Days later, statements were provided by three civilians, Kimberly Butcher, P.M., and Roseanna Bell, who were inferably coerced into working with police and plausibly bribed with favors or money for their cooperation as pled in the 2nd Amended Complaint.[9]

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[8] *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)); *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.)

[9] *See* Chestnut v. Kincaid, 2021 U.S. Dist. Lexis 81428 (4th Cir. (D. Md.) 2021) at Lexis 27-28 ("If the Officer Defendants truly coerced the four witnesses (students) into identifying the Plaintiffs and falsely stating they were involved in the crime, it is hard to see how such statements could have provided the Officer Defendants with probable cause to make the arrests." … "Allegations of a knowing falsification of evidence, resulting in absence of probable cause, can also constitute actual malice." (citations omitted).); *Washington v. Balt. Police Dep't*, 457 F. Supp. 3d 520, 529 (4th Cir. (D. Md.) 2020) (Grave example where federal officials "coerced child witnesses to make false statements" in prosecuting numerous innocent people for interstate child sex trafficking, uncovered years later when the witnesses in all the cases independently alleged how they were coerced.); *Rossignol v. Voorhaar*, 316 F.3d 516, 526 (4th Cir. 2003) (case where police officers made thinly veiled threats to coerce all the local store clerks into selling them every copy of a newspaper that exposed negative character of sheriff to prevent the public from knowing.); *Cf. Cox v. Mariposa County*, No. 1:19-cv-01105 (9th Cir. (E.D.C.A.) Sept. 13, 2022) at Procedural History § B., ¶3.(Court found a "meeting of the minds" when county officials allowed civilian woman to selectively preserve cellphone chats to frame the plaintiff with kidnapping and rape charges while ignoring exculpatory messages; https://ncfm.org/2021/10/news/courts-news/court-cases/ncfm-member-jerry-cox-federal-case-alleging-misconduct-by-mariposa-county-and-the-sheriffs-office-will-move-forward/

13. These statements claimed that Mr. Kokinda had by some feat of the imagination touched a juvenile 12-year-old girl's butt during a final consensual swing push and were the predicate for a novel 3rdo Sexual Abuse charge that the West Virginia Supreme Court has only applied to serious acts of abuse, such as petting and masturbation, never in an athletic context for such fleeting contact described. The tall tale has grown over the years to darken the nonsensical allegations even further into incredulous *palming of the buttocks*.

    (a) An essential element of the charge is that the defendant made contact with the buttocks or other erogenous zones "for the purpose of sexual gratification."

    (b) No one would reasonably derive *sexual gratification* from a fleeting moment of clothed contact while exerting themselves in an athletic context to push someone on a swing, or from being pushed on a swing in such manner, absent a hypersexual meth addict like many of the Government's witnesses.

14. In order to make it sound compelling, however, T.H. Foster used a technique called "puffing" by compiling several salacious, unparticularized allegations to pad up the narrative.[10]

*See United States v. Bosyk, 933 F.3d 319, 366 (4th Cir. 2019)* "[T]he government may not seek relief under the good faith exception if "the magistrate or judge [] issuing the warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for [her] reckless disregard of the truth." *Id.* (citation omitted). One situation in which this Court has found an affidavit is sufficiently

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——— Compare to Mr. Kokinda's sentencing hearing where it was revealed that data on P.M.'s cellphone was corrupted and only selective messages that weakly inferred impropriety remained, whereat he stated, "Hey babe," a presumably flirtatious term of endearment).

[10] *See United States v. Coreas*, 419 F.3d 151, 156 (2d Cir. 2005) (rejecting the use of "unparticularized allegations" to justify an otherwise inadequate warrant application.)

misleading to establish an absence of good faith is when the affidavit includes "puffing"—i.e., irrelevant or inapplicable information—in an apparent "attempt[] to endue the affidavit with the appearance of genuine substance." *United States v. Perez,* 393 F.3d 457, 465 (4th Cir. 2004) (quoting *United States v. Wilhelm,* 80 F.3d 116, 123 (4th Cir. 1996))")

(a) Despite having access to P.M.'s cellphone for several days, there was no evidence to support allegations that Mr. Kokinda was bothering her or that he had asked for nudes or to shower at her house.[11]

(b) Regardless of the fact, these surplus allegations, of themselves, did not constitute crimes either unless they were accompanied by sexually explicit language, something not even alleged or inferred by the chatlogs provided.[12]

(c) T.H. Foster demonstrated an intentional or reckless disregard for the truth when he framed fragments of seemingly inculpatory bits in a vacuum as the basis for his false arrest of Mr. Kokinda on September 29, 2019, for a mere consensual swing push the day before.

15. Once arrested, Mr. Kokinda told police that his driver's license was in his vehicle at the college and signed UCC 1-308, a notation reserving his contractual rights.

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[11] *See* Clipper v. Takoma Park, 876 F.2d 17 (4th Cir. 1989) (law enforcement officer's failure to pursue an easily obtainable piece of information that could completely exculpate a suspect weighed heavily against a finding that the officer's conduct was reasonable.); *See also* Hoback v. Cox, 2021 U.S. Dist. Lexis 155095 (4th Cir. (S.D.W.Va.) 2021) at Lexis 15 (In West Virginia, "a defendant may be held liable for causing a prosecution to occur by reporting false information, despite having no control over the decision to prosecute.")

[12] *See* United States v. Doyle, 650 F.3d 460 (4th Cir. 2011) (quoting Kelly v. Borough of Carlisle, 622 F.3d 248, 258 (3d Cir. 2010) ("[P]olice officers generally have a duty to know the basic elements of the laws they enforce." Id. at 474. Insofar as possessing nude pictures of children is not per se illegal, reasonable officers should at least obtain a description of photographs before relying on them to [execute a warrant].")

(a) He allowed the State Police Barracks to take his electronic fingerprints. But then he was taken to the Elkins Police Dep't., whereat they charged him with "Refusing to *Sign* a Fingerprint" card, a facially illegitimate charge they made up.[13]

(1) At the same time, they tried to apply the sensor on his iPhone 6s cellphone to his thumb while he was handcuffed with his hands behind his back without a warrant.[14]

(2) When Mr. Kokinda was later transported to court, the other inmates told him they were never even asked to sign a fingerprint card. His attorney said the statute wasn't even a legitimate charge and only applied to officials in charge of handling fingerprint records at the official repository.

16. Mr. Kokinda was thereafter obstructed from proving that the allegations were factually impossible by visual demonstration of P.M.'s scrawny stature before the judge to prove that the swing seat would have fully covered P.M.'s lean butt during a swing push.

(a) To get around this, Ms. Bell, the menacing woman who started to act crazy and threaten Mr. Kokinda that she'd call the police for simply pushing P.M. on the swing, capriciously alleged that adolescent girls typically hang their butts of the swings.

(b) She also capriciously alleged that she had changed positions from where she was when she took the photo of Mr. Kokinda, a full 90 degrees and lengthy yardage, to observe

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[13] *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.)

[14] *See* United States v. Christian, 2017 U.S. Dist. Lexis 80251 (4th Cir. (E.D. Va.) 2017) *citing* Riley v. California, 134 S. Ct. 2473, 2490, 189 L.Ed.2d 430 (2014) (holding that cellphones should not be searched incidental to arrest, and discussing how general warrants are unconstitutional and undermine Fourth Amendment protections.)

two final swing pushes where Mr. Kokinda had somehow palmed her butt cheeks, one in each hand, during the split second of contact a swing push elapses within.

(c) The 300lb. Ms. Bell had made these new, and even more incredulous, allegations only after Attorney David Frame had raised the *implausibility* of contact by the swing seat covering her butt in his pre-sentencing memorandum.

(d) Ms. Bell admitted discussing her testimony and consulting with the prosecutors before the hearing, raising a reasonable inference of Brandon Flower and Sarah Wagner tampering with witnesses and coercing testimony.

(e) And despite her detailed statements regarding how Mr. Kokinda was using his laptop as a ruse to look at young girls (not boys) at the park, she added new double hearsay at the sentencing that P.M. had told her that he wanted to pay her for nude photos.

17. Because these offenses were not within the defined contours of West Virginia law as required by *Hupp*, *supra*, and were misleadingly presented to the magistrate judge to prevent a neutral and detached determination, the offenses *lacked probable cause* and were subsequently dismissed.

(a) *Hupp, supra,* is exactly on point in determining whether West Virginia law considers it obstruction to "merely delay compliance with an order by a few seconds" as alleged against Mr. Kokinda. The *Hupp* court held that a delay of mere seconds is not obstruction.

(1) Furthermore, *United States v. Jones*, 678 F.3d 293 (4th Cir. 2012) held that "[A]n officer's authority to initiate an encounter with a citizen rather than detain him is no greater than[] the authority of an ordinary citizen to approach another on the street and ask questions."

(2) So, why would Mr. Kokinda even know he was being detained, (as distinguished from a consensual encounter of police trying to ask him questions to coerce incriminating statements by twisting around his words,) if they merely asked him to come to them without saying "freeze, you're under arrest."

(3) Mr. Kokinda had a lawful right to refuse talking to police absent a warrant, just as if a cop knocked at his door without announcing a warrant.

(b) And because *Hupp* also held that the defendant must "use force or do something that is independently unlawful of itself" to obstruct police, the "refusal to sign fingerprint card" and "refusing to provide full name/or providing a false name" obstruction theories also fail on their face.[15]

(1) The police did not even need Mr. Kokinda's name to identify him because P.M. and her family were present to do so.

(2) Mr. Kokinda had a right to civilly challenge the authority of the officers, rather than providing his full name, by contacting an attorney. Defendants and suspects are entitled to consult an attorney at every phase of the criminal process to protect their rights.[16] This fits the *Strnsky* exception cited in *Hupp* above.

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[15] *See Hupp*, *supra*, at 319, "[W]hen force is not used, obstruction lies only where an illegal act is performed."

[16] *See Coleman v. Alabama*, 399 U.S. 1, 7 (1970) ("This Court has held that a person accused of crime "requires the guiding hand of counsel at every step in the proceedings against him," *Powell* v. *Alabama,* 287 U. S. 45, 69 (1932), and that that constitutional principle is not limited to the presence of counsel at trial. "It is central to that principle that in addition to counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial." *United States* v. *Wade, supra,* at 226. Accordingly, "the principle of *Powell* v. *Alabama* and succeeding cases requires that we scrutinize *any* pretrial confrontation of the accused to determine whether the presence of his counsel is necessary to preserve the defendant's basic right to a fair trial as affected by his right meaningfully to cross-examine the witnesses against him and to have effective assistance of

(3) Mr. Kokinda did not *technically* say "Jason Steven" was his name whatsoever even if T.H. Foster *technically* heard it as "Jason Stevens". Mr. Kokinda could have said that he was the Authorized Representative of Oprah Winfrey and would not *technically* be providing his name, let alone a false name.

(4) Furthermore, what if he said his name was *Jay* Kokinda or *Jase* Steven Kokinda, or even Jason Steven *Kokindas* would that also be a false name because it's a technical variation? They didn't ask him to write it out for need of clarity.

(5) If the police had a warrant in his name to make its production material, even then he had materially complied with their request, no matter how they may have *technically* heard it or how it may have sounded outside in the wind and traffic.

(6) What if he had a bad accent; he could be hauled into jail, strip searched, and possibly sentenced to one year in jail?

(7) The *reasonable inference* is that they already knew who he was and were investigating him and had the registered name the clerk at the YMCA wrote down, *Jason Stevens*, as technical proof to surmise he used it at the time of arrest as well, a surefire way to arrest him in their twisted book of "we are the law" theatrics.

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counsel at the trial itself. It calls upon us to analyze whether potential substantial prejudice to defendant's rights inheres in the particular confrontation and the ability of counsel to help avoid that prejudice." *Id.*, at 227. Applying this test, the Court has held that "critical stages" include the pretrial type of arraignment where certain rights may be sacrificed or lost, *Hamilton* v. *Alabama*, 368 U. S. 52, 54 (1961), see *White* v. *Maryland*, 373 U. S. 59 (1963), and the pretrial lineup, *United States* v. *Wade*, *supra*; *Gilbert* v. *California*, *supra*. Cf. *Miranda* v. *Arizona*, 384 U. S. 436 (1966), where the Court held that the privilege against compulsory self-incrimination includes a right to counsel at a pretrial custodial interrogation. See also *Massiah* v. *United States*, 377 U. S. 201 (1964).")

18. If a jury believes even half of Mr. Kokinda's testimony regarding the events prior to his September 29, 2019, arrest in Elkins, they would certainly believe that it was a pretextual conspiracy, inferring malice and that they knew who he was beforehand.

(a) In addition, the *Nieves v. Bartlett*, *supra*, court announced a basis to hold the officers accountable for retaliatory arrests, even if there was probable cause, by merely demonstrating *retaliatory causation* and that people are not commonsensically arrested for such petty acts, such as walking away from police, pushing a girl on a swing, or asking for an attorney, or technical aberrations heard in name, no matter how Elkins police try to hypersensationalize those allegations.[17]

(b) Additionally, *Nichols v. United States*, 136 S. Ct. 1113, 1118, 578 U.S. 104, 194 L.Ed.2d 324 (2016) held that criminal statutes are construed pursuant to "ordinary English usage" rather than by hypertechnical and expansive readings, such as those used in Elkins.

*See United States v. George*, 946 F.3d 643, 645 (4th Cir. 2020) ("Criminal statutes are "strictly construed and should not be interpreted to extend criminal liability beyond that which Congress has plainly and unmistakenly proscribed.")

19. This Court has no authority to expand the scope of the West Virginia state laws to apply them into novel contexts by statutory reinterpretation and conclude now that his acts were in the scope of the statute, *ex post facto*, absent analogous case-law examples.

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[17] If the threshold inquiry for criminality is pushing a girl on a swing a few times, walking away from police a few seconds, audible ambiguities in a name provided, or refusing to answer questions without contacting an attorney first, then just about anyone can be hauled into jail on a whim. Pennsylvania prison officials had put him under similar hyperscrutiny after filing lawsuits, the same *modus operandi*. The retrospective discovery that Mr. Kokinda had a (highly disputed) criminal record of victimless cybersex stings does not transform the total lack of essential *actus reus* elements into viable offenses because they appear sensational in misleading affidavits.

*See* Johnson v. Fankell, 520 U.S. 911, 916 (1997), cited more recently in Johnson v. United States, 559 U.S. 133, 138 (2010) (Federal courts do not have "any authority to place a construction on a state statute different from the one rendered by the highest court of the state."); "[s]tate courts are the ultimate expositors of the state law," Mullaney v. Wilbur, 421 U.S. 684, 691 (1975), and "a fixed and received construction of [a] statute [] of a state in its own courts" becomes "a part of the statute[]," Mudock v. City of Memphis, 87 U.S. 590, 611 (1874).

20. It is further demonstrated that Ptlm. Boatwright had merely copied T.H. Foster's affidavit of probable cause and puffed it up even further with "unparticularized allegations" that Mr. Kokinda was simply "unregistered" without anything more to believe that he had violated any duty to register as a sex offender in West Virginia.

21. Mr. Kokinda was also the victim of a false arrest on January 29, 2019, when Lt. Gary Weaver's Complaint was used as probable cause to detain him pending indictment.

22. Mr. Kokinda's Motion to Dismiss on the federal child pornography indictment proved how the facts alleged did not state an offense for a variety of reasons.

(a) Chiefly, it has been held in every circuit that the "Possession" element requires "access and control" of the contraband images *themselves*, not just the cellphone itself that images may have been accessible on under some uncertain circumstances, by some uncertain *actus reus* transferring them to the cellphone, and at some uncertain timeframe retained/deleted. The lack of *temporal limitation* also created a *general warrant*.

(b) The .pdf file with keywords could not be authenticated and was not even logical evidence that Mr. Kokinda typed those keywords to access illicit materials. Search engines have long used programs, like Microsoft's DNA software, to block such images.

(c) Had Lt. Gary Weaver described the evidence accurately without material omissions to mislead, a neutral and detached magistrate would not have found probable cause to arrest Mr. Kokinda or indict him on the same premise.

*See* United States v. Flyer, 633 F.3d 911, 919 (9th Cir. 2011) (recognizing that the strictly construed element of "possession" did not extend to data obtained by forensic chip extractions that provided no contextual metadata or file structure to provide evidence of access and control over the contraband images at any time., [the exact same situation in Mr. Kokinda's case]).

## V. CONCLUSION

The Defendants' Motion for Summary Judgment must be denied in accordance with *stare decisis* and the fundamental fairness guaranteed by the due process clause of the Constitution for the united States. Only this court may compel the FCI-Otisville prison to provide proof of Mr. Kokinda sending the defendants Admissions at this late juncture of evidence spoilage if they recorded it at all. They refuse to bother without a court order compelling them to do so.

Pursuant to Fed.R.Civ.Pro. Rule 56(d), Mr. Kokinda should not be forced to address premature Summary Judgment motions when he has been obstructed from Discovery procedures by relentless retaliations. The judges of this court are just padding up the public record of an epic retaliatory conspiracy (or the functional equivalent) by subverting proceedings with their sophistry-infected legal analyses and fundamental errors; the gains of evil are short lived.

I, Jason Steven Kokinda, certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed: July 30, 2024 X _____