IN THE

Supreme Court of the United States

LEFLORIS LYON,

Petitioner,

v.

CANADIAN NATIONAL RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, WISE CARTER CHILD & CARAWAY, P.A., AND CHARLES H. RUSSELL, III.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

LEFLORIS LYON (*PRO SE*)
P.O. BOX 87245
CHICAGO, IL 60680
PHONE - (601) 259-0033
EMAIL: LEFLORISLYON@GMAIL.COM

QUESTIONS PRESENTED

The Sarbanes-Oxley Act of 2002 and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, forbids retaliation, against a whistleblower, law firm employees by a publicly traded company, any contractor, subcontractor or agent of such company.

The questions presented are:

1. Whether 18 U.S.C. 1503(a), a predicate act, applies to *any person—retaliation*, denial of access to the court, denial of the Sixth Amendment right to counsel, judicial misconduct, Rule 60 fraud on the court, and conduct under 18 U.S.C. §1514A?

2. *Whether* the Seventh Circuit erred—in conflict with all eleven other federal circuit courts of appeals and this Court—declined to rule on the application to proceed *in forma pauperis*, upholding dismissal with prejudice of a non-frivolous, non-malicious complaint stating a claim for relief?

3. Whether denying both converting a notice of appeal to a petition for a writ of mandamus and amending a notice of appeal pursuant to Fed. R. App. P. 4(a)(1)(A)-(B) within 30 days or 60 days, being jurisdictional, is an abuse of discretion?

PARTIES TO THE PROCEEDINGS

LeFloris Lyon, identified in the caption, is the only petitioner.

Respondents include:

Canadian National Railway Company ("CN"), a public traded corporation on the New York Stock Exchange (NYSE), (ticker CNI).

Illinois Central Railroad Company ("IC"), subject to the Illinois Central Railroad Tax Act (35 ILCS 605/18 and 605/22).

Wise Carter Child & Caraway, P.A., a private closely held Association and Law Firm.

Charles H. Russell, III ("Russell"), a Wise Carter Shareholder.

TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

CONSTITUTIONAL, STATUTORY, AND PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION 6

- I. ACCESS TO THE COURT 7
- II. IN FORMA PAUPERIS 15
- III. THE SIXTH AMENDMENT 18
- IV. AMENDED NOTICE OF APPEAL 18

CONCLUSION 24

APPENDICES

APPENDIX A: Seventh Circuit Order, October 11, 2017 .... 1a

APPENDIX B: Seventh Circuit Order, October 11, 2017 .... 4a

APPENDIX C: Seventh Circuit Order, September 8, 2017 .... 7a

APPENDIX D: Seventh Circuit Order, denying rehearing November 8, 2017 .... 10a

APPENDIX E: Final Rule 54(b) Judgment, (S.D. Miss.), May 21, 2013 .... 11a

APPENDIX F: District Court Order, (N.D. Ill.), August 15, 2014 .... 12a

APPENDIX G: District Court Contempt Order, (S.D. Miss), August 21, 2014 .... 17a

APPENDIX H: District Court Order, (N.D. Ill.), September 4, 2014 .... 23a

APPENDIX I: District Court Order, (N.D. Ill.), September 16, 2014 .... 27a

APPENDIX J: District Court Order, (N.D. Ill.), June 19, 2017 .... 31a

APPENDIX K: Fifth Circuit Order, February 8, 2012 .... 35a

TABLE OF AUTHORITIES

CASES Page(s)

Anderson v. Creighton,
483 U.S. 635 (1987) 11, 18

Armstrong v. Villa Park Police Dep't,
2015 U.S. Dist. LEXIS 191497, *1 14

Arthur Andersen LLP v. United States,
544 U.S. 696 (2005) 9

Baxter Int'l, Inc. v. Abbott Labs.,
297 F.3d 544 (7th Cir. 2002) 20, 23

Berry v. Stevinson Chevrolet,
74 F.3d 980 (10th Cir. 1996) 17

Block v. Block,
196 F.2d 930 (7th Cir. 1952) 4

Caperton v. A.T. Massey Coal Co.,
556 U.S. 868 (2009) 13

Coppedge v. United States,
369 U.S. 438 (1962) 17

DeGuelle v. Camilli,
664 F.3d 192 (7th Cir. 2011) .... passim

Digital Realty Trust, Inc. v. Somers,
138 S. Ct. 767 ....passim

Fowler v. Butts,
829 F.3d 788 (7th Cir. 2016) 12, 20

Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7,
570 F.3d 811 (7th Cir. 2009) 16

Hazel-Atlas Co. v. Hartford Co.,
322 US 238 (1944) .... passim

In re Murchison,
349 U. S. 133 .... 12, 13
Lawson v. FMR LLC,
134 S. Ct. 1158 (2014) .... passim
Locklin v. Switzer Bros., Inc.,
335 F.2d 331 (7th Cir. 1964) 4
Luevano v. Wal-Mart Stores, Inc.,
722 F.3d 1014 (7th Cir. 2013) 15
Lyon v. Canadian National Railway, et al.,
No. 3:13-cv-00913 (S.D. Miss) .... passim
Lyon v. Canadian National Railway, et al.,
[aka Suppressed v. Suppressed],
No. 14cv03421 (N.D. Ill) .... passim
Lyon v. United States of America et al.,
Marshall v. Jerrico, Inc.,
446 U.S. 238 (1980) 12
Marinello v. United States, 584 U. S. ____ ,
2018 U.S. LEXIS 1914,
2018 WL 1402426 (March 21, 2018) 4, 9
Realty Trust, Inc. v. Somers,
200 L. Ed. 2d 15 (2018) 4
Pierce v. Gilchrist,
359 F.3d 1279 (10th Cir. 2004) 11
Salinas v. United States,
522 US 52 (1997) 8
Suppressed v. Suppressed
[aka Lyon v. Canadian National
Railway, et al],
No. 14cv03421 (N.D. Ill) .... passim
United States v. Ashqar,
582 F.3d 819 (7th Cir. 2009) 9
United States v. Frank,
354 F.3d 910 (8th Cir. 2004) 9
United States v. Richardson,
676 F.3d 491 (5th Cir. 2012) 9

Williams v. Pennsylvania,
136 S. Ct. 1899, 195 L. Ed. 2d 132 (2016) . 13

CONSTITUTION

Sixth Amendment .... passim
Eighth Amendment 12

STATUTES

Dodd-Frank Wall Street Reform and Consumer
Protection Act of 2010 .... passim
15 U.S.C. §78u-6(h)(1)(B)(i) 4
18 U.S.C. § 1503(a) .... passim
18 U.S.C. § 1513(e) 4, 7, 11
18 U.S.C. § 1514A .... passim
18 U.S.C. § 1514A(b)(1)(B) 3
18 U.S.C. § 1961(1) .... passim
18 U.S.C. § 1962(c) 4, 7
18 U.S.C. § 1962(d) 7
18 U.S.C. § 2071 .... passim
28 U.S.C. §292(d) 9
28 U.S.C. § 294(b) 4
28 U.S.C. § 455(b) 6
28 U.S.C. § 1254 1
28 U.S.C. § 1291 .... 18, 19
28 U.S.C. § 1915(e)(1) 2
28 U.S.C. § 1915(e)(2) .... passim
28 U.S.C. § 1915(e)(2)(B) 2, 7

RULES

Fed. R. App. P. 4(a)(1) .... passim
Fed. R. App. P. 4(a)(1)(A) 17
Fed. R. App. P. 4(a)(1)(B) 17
Fed. R. App. P. 4(a)(4)(B)(iii) 23
Fed. R. App. P. 4(a)(4)(B)(ii) 23
Fed. R. App. P. 10(e) 15

Fed. R. Civ. P. 5(d)(2)(B) .... passim
Fed. R. Civ. P. 5(e) 6
Fed. R. Civ. P. 5.2(c) 13
Fed. R. Civ. P. 12(b)(6) 16
Fed. R. Civ. P. 54(b) .... passim
Fed. R. Civ. P. 60 .... passim
Fed. R. Civ. P. 60(b) .... passim
Fed. R. Civ. P. 60(d)(1) ....,,................ passim
Fed. R. Civ. P. (d)(3) .... passim

OTHER AUTHORITIES

Canon 1 9
Canon 2A, ... 9
Canon 2B.. 9
Canon 3A.. 9
Canon 3B.. 9
Canon 4G.. 9
Canon 4D(5) 9

MISCELLANEOUS

PUBLIC RECORDS, PACER ACCESSABLE

Proposed amended complaint, R. 64, *Lyon v. Canadian National Railway Company et al*, No. 1:16-cv-06833 (N.D. Ill) .... passim

Wise Carter v. Lyon,
No. 3:13cv913 (S.D. Miss) .... passim

PETITION FOR WRIT OF CERTIORARI

Petitioner LeFloris Lyon respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The Seventh Circuit October 11, 2017 Order denying briefing is unpublished (App. 1a-3a). The additional Seventh Circuit Order October 11, 2017 is unpublished (App. 4a-6a) and the Seventh Circuit September 8, 2017 Order is unpublished (App. 7a-9a). The November 8, 2017 Seventh Circuit Order denying the petition for rehearing is unpublished (App. 10a).

STATEMENT OF JURISDICTION

The decision of the Court of Appeals was entered on October 11, 2017 (App. 1a-3a) summarily affirmed the decisions of the district court. A timely petition for rehearing was denied on November 8, 2017 (App. 10a). Application extending the time until April 4, 2018, was granted by Justice Kagan (No. 17A796).

This jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND PROVISIONS INVOLVED

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

28 U.S.C. §1915(e)(1) *The court may request an attorney to represent any person unable to afford counsel.*

28 U.S.C. §1915 (e)(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

§1915 (e)(2)(B) (i) is frivolous or malicious;

§1915 (e)(2)(B) (ii) fails to state a claim on which relief may be granted;

STATEMENT OF THE CASE

On January 6, 2009, Lyon filed a Whistleblower complaint with the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), No. 4-1220-09-008 (OALJ No. 2010SOX00002), asserting claims under Sections 307 and 806 of the Sarbanes-Oxley Act ("SOX") 18 U.S.C. 1514A; the

Racketeer Influenced and Corrupt Organizations Act (RICO) 18 U.S.C. 1961 et seq., and in March 2009 provided information directly to the U.S. Securities and Exchange Commission ("SEC").

On November 5, 2010, Lyon removed his Whistleblower complaint seeking de novo review pursuant to 18 U.S.C. §1514A(b)(1)(B), styled *Lyon v. Canadian National Railway Company et al*, Nos. 4:10-cv-00185 [3:13-cv-00913] (S.D. Miss).

On February 8, 2012, Fifth Circuit Judge James E. Graves, Jr. ("Judge Graves"), the father of defendant James E. Graves, III intervened (App. 35a-37a), denying Mr. Lyon's petition for a writ of Mandamus, *In Re Lyon* (5th Cir. 11-60717, October 5, 2011), a "fraud on the court" that poisoned the proceedings, calling into question the legitimacy of orders and judgments in the Southern District Court of Mississippi and the Fifth Circuit Court of Appeals. See28 U.S.C. §455(b)(5) and *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U. S. 238 (1944).

On May 21, 2013, without notice or any opportunity to be heard, District Judge Carlton W. Reeves ("Judge Reeves") of the Southern District Court of Mississippi, and Canadian National Railway Company et al., ("CN"), held an ex parte hearing, presented fraudulent, false and fabricated evidence, sanctioned Lyon thereby violating his due process rights, dismissing all claims, entering a Final Judgment under Rule 54(b), which allows new claims based

on acts after May 21, 2013, and claims Lyon could not have brought in that case (App. 11a).

On May 9, 2014, Petitioner filed a *Pro Se* "independent action" styled "*Suppressed v. Suppressed*," No. 14cv03421 (N.D. Ill), in camera and under seal (App. 19a-23a) pursuant to Fed. R. Civ. P. 60(b), Rule 60(d)(1) and (d)(3), within one year of entry of the collaterally attacked May 21, 2013, Rule 54(b) "Final Judgment" (App. 18a); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244 (1944); *Locklin v. Switzer Bros., Inc.*, 335 F.2d 331, 334-35 & n. 9 (7th Cir. 1964); *Block v. Block*, 196 F.2d 930, 932 (7th Cir. 1952), with new claims under the Sarbanes-Oxley Act 18 U.S.C. § 1514A(b)(1)(B); see *Lawson v. FMR LLC*, 571 U. S. ___, 134 S. Ct. 1158 (2014); Racketeer Influenced and Corrupt Organizations Act ("RICO") 18 U.S.C. §§ 1961 et seq., 18 U.S.C. § 1964(c); The addition of 18 U.S.C.S. § 1513(e) as a predicate act raises issues about the relationship between retaliatory actions and the underlying wrongdoing. The language of § 1513(e) and logic imply that retaliatory actions always occur after a whistleblower reports others' wrongdoing. *DeGuelle v. Camilli*, 664 F.3d 192, 195, 204 (7th Cir. 2011); *Marinello v. United States*, 2018 U.S. LEXIS 1914, 2018 WL 1402426, with independent grounds of jurisdiction pursuant to the Dodd-Frank Act 15 U.S.C. §78u-6(h)(1)(B)(i); see *Realty Trust, Inc. v. Somers*, 200 L. Ed. 2d 15 (2018).

On June 30, 2014, the case was reassigned to District Judge Robert M. Dow, Jr., ("Judge Dow") pursuant to 28 U.S.C. §294(b).

Lyon v. Canadian National Railway Company et al.,[aka *Wise Carter, et al., v. Lyon*] Docket. No. 3:13-cv-00913 (4:10-cv-00185), in the Southern District of Mississippi was *closed* on July 25, 2014.

On August 8, 2014, Lyon requested unsealing "*Suppressed v. Suppressed,*" No. 14cv03421 (N.D. Ill), to allow service.

"The complaint alleges, among other things, a RICO conspiracy involving corporations, lawyers, public officials, and thus raises matters of public concern." (App. 12a-16a).

REASONS FOR GRANTING THE PETITION

The Seventh Circuit *departed from the usual course of proceedings,* requiring this Court's "supervisory power" to address "an important federal question" regarding the Sarbanes-Oxley Act of 2002 ("SOX") and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), provisions aimed at controlling the conduct of accountants, auditors, law firms and lawyers, employees working with public companies.

The Seventh Circuit evaded answering "an important question of federal law" that conflicts with *Lawson v. FMR LLC*, 134 S. Ct. 1158, 1162, 188 L. Ed. 2d 158, 171 (2014); *Realty Trust, Inc. v. Somers*, 200 L. Ed. 2d 15 (2018).

The employees of law firms and the unavoidable questions of 28 U.S.C. § 455(b), and Fifth Circuit Judge James E. Graves, Jr., an officer of the Court, *father* of defendant James E. Graves, failing numerous motions and requests to recuse, did sit on a case in which he has a personal and family stake (App. 35a-37a), poisoning the proceedings, and calling into question the legitimacy of all orders and judgments (App. 12a-16a, 17a-22a).

The Seventh Circuit erred—in conflict with the decisions of every other federal court of appeals and this Court—declined to rule on every plaintiff motion (App. 27a-30a), and failing

to rule on the motion to proceed in forma pauperis, upholding dismissal with prejudice of a non-frivolous, non-malicious complaint stating a claim for relief, thus dismissal under 28 U.S.C. § 1915(e)(2)(B) was improper (App. 23a-26a, 27a-30a).

The Seventh Circuit failed to decide an important question of federal law regarding the scope of amending a notice of appeal within the time allowed by Fed. R. App. P. 4(a)(1), that has not been, but should be, settled by the Court

I. ACCESS TO THE COURT

Petitioner contends this case did not commence, prior to docketing the complaint with the Court Clerk on December 1, 2016, pursuant to Fed. Rule Civ. Proc. 5(e), which Judge Dow maintained in camera from June 30, 2014, until December 1, 2016.

On or about August 8, 2014, CN, employed Judge Reeves to violate 18 U. S. C. §1503(a), obtain a copy of the sealed complaint (App. 12a-16a), to produce copies of all filings to CN and order Lyon to dismiss "*Suppressed v. Suppressed*," No. 14cv03421 (N.D. Ill), (App. 17a-22a) and employed his Court as "enterprises" to conduct racketeering activity in violation of 18 U.S.C. § 1962(c) and conspired to do so in violation of 18 U.S.C. § 1962(d).

... Indeed, "[a] conspiracy to violate RICO may be shown by proof that the defendant (App. 17a-22a), *by his words or actions*, objectively manifested an agreement to participate, directly

or indirectly, in the affairs of an enterprise"; mere participation is not enough. *DeGuelle v. Camilli*, 664 F.3d 192, 204 (7th Cir. 2011) (emphasis added). However, once the plan is in place, a partner, *supporter, or even a third party who agreed to participate can be guilty of RICO conspiracy. Salinas v. United States,* 522 US 52 (1997).

On August 12, 2014, Judge Reeves initiated criminal contempt proceedings, against Lyon, setting a Show Cause Hearing for August 18, 2014, hand-delivered a Certified Copy to the U.S. Marshal Service ("USMS").

On August 14, 2014, in Mississippi, Lyon submitted motions for clarification of the Order to Show Cause, to be adequately advised of the charges; motion directing USMS to provide transportation on August 18, 2014; motion for leave to seek counsel; motion for access and a copy of the Court docket; motion for a reasonable time to review and prepare a defense, and adequate opportunity to call witnesses.

On August 14, 2014, Judge Reeves, author of the May 21, 2013, Rule 54(b) "Final Judgment" (App. 11a), engaged in ex parte communications, corruptly endeavoring to obstruct or impede the due administration of Northern District Court of Illinois. Judge Reeves phoned Judge Dow [leaving an extended recorded voice message] and emailed Judge Dow, informing him of the criminal proceeding (App. 12a-16a).

On August 15, 2014 (App. 12a-16a), Judge Dow, having been fully informed of a criminal proceeding against Lyon, without notice provided Judge Reeves with a copy of the sealed complaint, implicating Canons 1, 2A, 2B, 3A, 3B, and 4G, Canon 4D(5), which expressly prohibits use or disclosure, which requires that *"[a] judge should not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's official duties."* This disclosure resulted in the illegal arrest of Lyon on August 19, 2014, and September 9, 2014 (see proposed amended complaint, R. 64, *Lyon v. Canadian National Railway Company et al*, No. 1:16-cv-06833 (N.D. Ill)).

Judge Dow "In aid of the Mississippi district court's jurisdiction" . . . (App. 15-a), violated his duty and authority under 28 U.S.C. §292(d), because only the Chief Justice of the United States may designate and assign temporarily a district judge of one circuit for service in another circuit, either in a district court or court of appeals, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

The "nexus" between CN, Judge Reeves and Judge Dow's obstructive conduct and a particular judicial proceeding, "*Suppressed v. Suppressed*," No. 14cv03421 (N.D. Ill), having a relationship in time, causation, or logic with the judicial proceedings. That reasoning applies here with similar strength. *Marinello v. United*

States, 2018 U.S. LEXIS 1914, *1-2, 2018 WL 1402426.

On August 19, 2014, Judge Reeves denied Lyon's August 14, 2014, submitted motions for clarification of the Order to Show Cause, to be adequately advised of the charges; motion directing USMS to provide transportation on August 18, 2014; motion for leave to seek counsel; motion for access and a copy of the Court docket; motion for a reasonable time to review and prepare a defense, and adequate opportunity to call witnesses, in open court, while Lyon was handcuffed, chained and in the custody of USMS (see proposed amended complaint, R. 64, *Lyon v. Canadian National Railway Company et al*, No. 1:16-cv-06833 (N.D. Ill)).

Judge Reeves "acted corruptly" with the intent to secure an unlawful advantage or benefit, for CN and Judge Graves (see proposed amended complaint, R. 64, *Lyon v. Canadian National Railway Company et al*, No. 1:16-cv-06833 (N.D. Ill)).

On August 21, 2014 (App. 17a-22a), Judge Reeves continued and "acted corruptly" with the intent to secure an unlawful advantage or benefit, for CN and Judge Graves. See, e.g., *United States v. Richardson*, 676 F.3d 491, 508 (5th Cir. 2012) (defining "corruptly" in Section 1503(a) to mean "knowingly and dishonestly" or "with an improper motive"); *United States v. Ashqar*, 582 F.3d 819, 823 (7th Cir. 2009) ("with the purpose of wrongfully impeding the due administration of justice"), cert. denied, 559 U.S.

974 (2010); *United States v. Frank*, 354 F.3d 910, 922 (8th Cir. 2004) ("with an improper or evil motive or with the purpose of obstructing the due administration of justice"); cf. *Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005) (interpreting "corruptly" in 18 U.S.C. 1512(b) to mean "wrongful, immoral, depraved, or evil"). See *Pierce v. Gilchrist*, 359 F.3d 1279, 1291-97 (10th Cir. 2004) (describing a Fourth Amendment malicious prosecution claim).

The addition of 18 U.S.C.S. § 1513(e) as a predicate act raises issues about the relationship between retaliatory actions and the underlying wrongdoing. The language of § 1513(e) and logic imply that retaliatory actions always occur after a whistleblower reports others' wrongdoing. *DeGuelle v. Camilli*, 664 F.3d 192, 195 (7th Cir. 2011).

On September 6, 2016, Lyon submitted his Motion to "Reschedule" the "Initial Status Report," set for September 15, 2016, in *Lyon v. United States of America et al.*, No. 16 CV 06833 (N.D. Ill), for disqualification of Judge Dow, for the following reasons:

c) "Mr. Lyon recognizes the necessity of disqualification of the Honorable Judge Robert M. Dow, Jr. ("Judge Dow"), and another judge assigned, as soon as possible. This case involves three inextricably intertwined cases arising from Judge Dow's conduct while presiding over *Suppressed v. Suppressed*, No. 1:14-cv-03421 (N.D. Ill), and his ex parte extrajudicial participation in *Lyon v. Canadian National Railway, et al.*, No. 3:13-cv-00913 (S.D. Miss)."

"Judge Dow is the only person that can fully testify as to what he did, when, how often, with whom and what information was exchanged or provided to Honorable Judge Carlton W. Reeves (S.D. Miss.) excluded from the court record in *Lyon v. CN*." *Fowler v. Butts*, 829 F.3d 788 (7th Cir. 2016).

Judge Dow's failure to recuse himself from this case violated Mr. Lyon's Due Process and Eighth Amendment rights. The "Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980); accord *In re Murchison*, 349 U.S. 133, 136 (1955) ("A fair trial in a fair tribunal is a basic requirement of due process. "). This Court has explained that

> [t]his requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law.

This Court's due process precedents do not set forth a specific test governing recusal when a judge like Judge Dow had prior involvement in the Mississippi criminal contempt case as a prosecutor; but the principles on which these

precedents rest dictate the rule that must control in the circumstances here: Under the Due Process Clause there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case. The Court should apply an objective standard that requires recusal when the likelihood of bias on the part of the judge "is too high to be constitutionally tolerable." *Caperton v. A. T. Massey Coal Co.*, 556 U. S. 868, 872, 129 S. Ct. 2252, 173 L. Ed. 2d 1208. A constitutionally intolerable probability of bias exists when the same person serves as both accuser and adjudicator in a case. See *In re Murchison*, 349 U. S. 133, 136-137, 75 S. Ct. 623, 99 L. Ed. 942. No attorney is more integral to the accusatory process than a prosecutor who participates in a major adversary decision. As a result, a serious question arises as to whether Judge Dow who has served as an advocate for Judge Reeves prosecution of Lyon in the very case the court is now asked to adjudicate would be influenced by an improper, if inadvertent, motive to validate and preserve the result obtained through the adversary process. In these circumstances, neither the involvement of multiple actors in the case nor the passage of time relieves Judge Dow, the former prosecutor of the duty to withdraw in order to ensure the neutrality of the judicial process in determining the consequences his or her own earlier, critical decision may have set in motion. Pp. ___ - ___, 136 S. Ct. 1899, 195 L. Ed. 2d, at 140-142. *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1901-1902, 195 L. Ed. 2d 132, 136-137,

2016 U.S. LEXIS 3774, *2-3, 84 U.S.L.W. 4359, 26 Fla. L. Weekly Fed. S 224.

In 2016, after being denied access to the court record contrary to local rules and being directed to Judge Dow's chambers (in camera), on November 21, 2016, Lyon filed his Unopposed Motion to unseal the entire record.

On November 29, 2016, a motion hearing was held, Judge Dow entered an Order granting Lyons' motion to unseal the entire case, directing the District Court Clerk's Office to unseal *Suppressed v. Suppressed*," No. 14cv03421 (N.D. Ill), which remained closed.

On December 1, 2016, the Court Clerk docketed some of the original filings that Judge Dow produced from chambers (in camera), in *Suppressed v. Suppressed*," No. 14cv03421 (N.D. Ill), providing Lyon with PACER access to records he was denied access since August 2014.

On December 7, 2016, Lyon submitted a supplemental motion to unseal the entire record with the Complaint Exhibits and on December 12, 2016, Judge Dow granted the motion.

Judge Dow denied Lyon access to the court and violated his substantive rights because he engaged in an abuse of discretion and a usurpation of power, by excluding Lyon from litigating his case, violating Lyon's Constitutional rights of meaningful access to the Courts, including:

a) Judge Dow engaged in misrepresentations and did not enter a "seal order" which governs sealed material pursuant to Fed. R. Civ. P. 5.2(c);

b) Judge Dow maintained the entire court record in camera from June 2014 until December

2016, failing to forward many of the original records delivered to Judge Dow in camera, pursuant to Fed. R. Civ. P. 5(d)(2)(B) to the district court Clerk and the record on appeal in violation of 18 U.S.C. § 2071;

c) Judge Dow altered, removed or excluded many of the original records delivered to Judge Dow in camera, pursuant to Fed. R. Civ. P. 5(d)(2)(B);

d) Judge Dow failed to maintain true and correct records and to make the appropriate corrections of records removed or excluded, pursuant to Fed. R. App. P. 10(e).

e) Judge Dow failed to comply with the January 14, 2015, No.: 15-1010 Circuit Order; It Is Ordered that the district court shall forward the notice of appeal to this court for filing.

Lyon's request for access and a copy of the "Flash Drive" containing USDC Case Number: 14-cv-3421, the docket for *LeFloris Lyon v. Canadian National Railway Company, et al.*, (Suppressed v. Suppressed), No. 14-cv-03421 (N.D. Ill), which was resealed by Judge Dow on August 11, 2017, was denied (App. 6a).

II. IN FORMA PAUPERIS

On September 4, 2014 (App. 23a-26a), Judge Dow dismissed the complaint and denied Plaintiff's "Emergency Motion for a Criminal Referral and Related Relief," filed on September 2, 2014. "Nonetheless, pursuant to 28 U.S.C. § 1915(e)(2), the Court is required to screen all complaints accompanied by an in forma pauperis request for failure to state a claim. See *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1018 (7th Cir. 2013). Courts screen claims under

Section 1915(e)(2) in the same manner as ordinary Federal Rule of Civil Procedure 12(b)(6) motions to dismiss. Id. at 1024-25. A motion under Rule 12(b)(6) challenges the sufficiency of the complaint. *See Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009)." *Armstrong v. Villa Park Police Dep't*, 2015 U.S. Dist. LEXIS 191497, *1.

On September 4, 2014, Jude Dow entered an Order: "Finally, because this case has been determined to have been filed in violation of a court order [by Judge Reeves], the Court declines to rule on any other pending motions, including Plaintiff's motion seeking leave to file his complaint under seal and in camera and without complying with other rules concerning the number of copies and format of certain exhibits to his filing, his application for leave to proceed *in forma pauperis*, his motion for attorney representation, and his motion for a criminal referral and related relief. All of those motions are stricken as moot in view of the dismissal of the case." (App. 23a-26a).

In violation of 18 U.S.C. § 2071, Judge Dow has failed to correct the court record and withheld or removed the original records Lyon delivered on September 8, 2014, including his "Notice of Appeal" by email pursuant to Fed. R. Civ. P. 5(d)(2)(B) for delivery to the Court Clerk, with his notice of Motion to Proceed on Appeal In Forma Pauperis; Motion to Proceed on Appeal In Forma Pauperis; Memorandum in support of Motion to Proceed In Forma Pauperis; Affidavit

Accompanying Motion for Permission to Appeal In Forma Pauperis.

On September 16, 2014 (App. 34a-37a), Judge Dow denied Lyon's motion to proceed on appeal in forma pauperis. Lyon raised non-frivolous claims, and thus dismissal under 28 U.S.C. § 1915(e)(2)(B) was improper.

Lyon contends he satisfied the requirement that his appeal in forma pauperis was taken "in good faith" without frivolous issues. *Coppedge v. United States*, 369 U.S. 438, 439-445 (1962). However Judge Dow holding proceedings in-camera removed and excluded Lyon's September 8, 2014, Notice of Appeal, Notice and Motion to Proceed on Appeal In Forma Pauperis, Memorandum in support of Motion to Proceed In Forma Pauperis and Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis, in violation of Fed. R. Civ. P. 5(d)(2)(B), and 18 U.S.C. § 2071.

On May 6, 2016, CN effectively retaliated against Lyon, a former employee by taking actions not directly related to his employment that did cause him harm outside the workplace by filing "false criminal charges" claiming that a Privacy Act request was criminal contempt, failing to cite any provision of law violated. Filed an Emergency Motion to enforce the fraudulent July 25, 2014, Final Judgment & Permanent Injunction, which was fully satisfied on August 4, 2014. (citing *Berry v. Stevinson Chevrolet*, 74 F.3d 980 (10th Cir. 1996)). Furthermore CN was dismissed from this case on April 10, 2012, yet submitted a proposed Order in retaliation.

III. THE SIXTH AMENDMENT

On August 8, 2014, Judge Reeves' initiated criminal contempt proceedings which are continuing at this time (see proposed amended complaint, R. 64, *Lyon v. Canadian National Railway Company et al*, No. 1:16-cv-06833 (N.D. Ill)).

On August 19, 2014, and September 9, 2014, Lyon was arrested, suffered serious incapacitating injuries, while in custody of USMS, illegally held in a Detention Center for 60 days, without medical care, without a detention order, denied his Sixth Amendment right to counsel, and denied a detention hearing (see proposed amended complaint, R. 64, *Lyon v. Canadian National Railway Company et al*, No. 1:16-cv-06833 (N.D. Ill)).

For a right to be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he [or she] is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

IV. AMENDED NOTICE OF APPEAL

Denying both converting a notice of appeal to a petition for a writ of mandamus and amending a notice of appeal pursuant to Fed. R. App. P. 4(a)(1)(A)-(B) within 30 days or 60 days, being jurisdictional, denial is an abuse of discretion.

On June 12, 2017 and June 19, 2017, the Judge Dow entered "final decisions" pursuant to 28 U.S.C. § 1291, in *Lyon v. United States of America et al*, No. 16-cv-06833 (N.D. Ill), that: (1) transferred to the Southern District of

Mississippi *Lyon v. United States of America et al,* No. 17-cv-00487 (S.D. Miss.), to be dismissed pursuant to Judge Dow's September 16, 2014, Order entered in *LeFloris Lyon v. Canadian National Railway Company, et al.,* (Suppressed v. Suppressed), No. 14-cv-03421 (N.D. Ill); and (2) denied Lyon's motion to disqualify, and (3) failed to allow amendment of the complaint.

On August 11, 2017, Judge Dow without reasonable notice improperly held an emergency hearing requested by nonparty Canadian Nation Railway Company, and entered "final decisions" pursuant to 28 U.S.C. § 1291, in *LeFloris Lyon v. Canadian National Railway Company, et al.,* (Suppressed v. Suppressed), No. 14-cv-03421 (N.D. Ill), and the transferred case *Lyon v. United States of America et al,* No: 1:16-cv-06833 (N.D. ILL) pending in the Southern District of Mississippi as *Lyon v. United States of America et al,*, No. 17-cv-00487, S.D. Miss.), and denied Appellant's motion to disqualify, and to allow Lyon to proceed with *Lyon v. Canadian National Railway Company et al.,* 2016-SOX-00036 (January 9, 2017).

Pursuant to *the* Amended Notices of Appeal of the Judgment, Opinion and Orders entered on June 12, 2017 and June 19, 2017, in *LeFloris Lyon v. United States of America, et al.,* Case No. 1:16-cv-06833, and from the Judgment, Opinion and Orders entered on August 11, 2017, in *Lyon v. Canadian National Railway Company et al.,* Case No. 14-cv-03421, Lyon requested

consolidation of docket NOS. 17-2279, 17-2675, 17-2684, and to unseal the record pursuant to *Baxter Int'l, Inc. v. Abbott Labs.*, 297 F.3d 544 (7th Cir. 2002).

On June 12, 2017, Judge Dow transferred *LeFloris Lyon v. United States of America, et al.,* Case No. 1:16-cv-06833, (ECF 69) pursuant to 28 U.S.C. 1404(a), to the District Court for the Southern District of Mississippi to be dismissed.

On June 12, 2017, Appellant filed a motion for reconsideration in Case No. 1:16-cv-06833 (ECF 76), attaching a combined Docket Summary with Case No. 14-cv-03421.

On June 19, 2017, Judge Dow entered an Order (ECF 78) in Case No. 1:16-cv-06833, denying Lyon's June 12, 2017, Motions to reconsider and to disqualify. See *Fowler v. Butts,* 829 F.3d 788 (7th Cir. 2016).

On June 19, 2017, Appellant filed a Notice of appeal (ECF 79) appealing the June 12, 2017, and June 19, 2017, Judgment and all rulings, proceedings, orders, findings, and decisions (whether oral or written) interlocutory thereto or underlying that judgment in Case No. 1:16-cv-06833, which was assigned Seventh Circuit docket No: 17-2264.

Pursuant to Federal Rule of Appellate Procedure, Rule 4(a)(1)(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is: (i) the United States; OR (ii) a United States agency; establishing a time

period of starting on August 19, 2017 and ending on September 19, 2017, pursuant to Rule 4(a)(4)(B)(iii), NO additional fee is required to file an amended notice of appeal.

On June 21, 2017, Appellant filed an Amended Notice of appeal (ECF 87) in Case No. 1:16-cv-06833, which was assigned Circuit docket No: 17-2279, regarding orders (ECF 68, 69, 78), attaching Judge Dow's Orders of June 12, 2017 and June 19, 2017.

On June 30, 2017, Appellant voluntary dismissed docket No: 17-2264, in accordance with Federal Rule of Appellate Procedure 42(b), as unnecessary.

On August 11, 2017, Judge Dow entered a final Judgment (ECF 57, 58), in *LeFloris Lyon v. Canadian National Railway Company, et al.*, No. 17-2684, District Court No: *1:14-cv-03421*, denying Plaintiff's Rule 60 motion [ECF 37] and both of Plaintiff's motions for recusal [ECF 41, 42], and resealed the record [ECF 49], contrary to Seventh Circuit law concerning the sealing of entire cases, which has been cited by Judge Dow in his earlier orders (App. 12a-16a).

On August 11, 2017, Judge Dow entered an Order: "In addition, on the Court's own motion, its November 29, 2016 order [23] directing the Clerk to unseal the case is vacated, as it was granted based at least in part on the representation by Plaintiff that the motion was "unopposed," when in reality Defendants' recent filing indicates that there are strong grounds to

conclude that the other parties to the litigation were never given notice of the motion, and thus Plaintiff's representation was misleading at best. In order to restore the status quo at the time of the unsealing order, the Clerk is directed to reseal the case in its entirety until further order of the Court, and *Plaintiff is prohibited from disseminating any materials on the docket without prior approval of this Court. If Plaintiff believes that he needs access to any specific docket entries in support of any appeals or petitions for writ of mandamus, he may file a motion identifying the documents he wishes to use and the reasons for seeking access to them."*

On August 16, 2017, out of an abundance of caution, after all fees had been paid Lyon again moved to file an Amended Notice of Appeal joining final decisions in *LeFloris Lyon v. United States of America, et al.,* No. 17-2675, District Court *Case No. 1:16-cv-06833*, and *LeFloris Lyon v. Canadian National Railway Company, et al.,* No. 17-2684, District Court No: *1:14-cv-03421,* regarding the final Judgment entered on August 11, 2017 (ECF 57, 58).

"Notice is hereby given that Plaintiff/*Appellant* LeFloris Lyon proceeding *Pro Se* hereby reaffirms his amended notice of appeal to the United States Court of Appeals for the Seventh Circuit from the Judgment, Opinion and Orders entered on June 12, 2017 and June 19, 2017, in *LeFloris Lyon v. United States of America, et al.,* Case No. 1:16-cv-06833, and from

the Judgment, Opinion and Orders entered on August 11, 2017, in *Lyon v. Canadian National Railway Company et al.*, Case No. 14-cv-03421, requesting consolidation of docket NOS. 17-2279, 17-2675, 17-2684, and to unseal the record pursuant to the specificity requirements set forth in *Baxter Int'l, Inc. v. Abbott Labs.*, 297 F.3d 544 (7th Cir. 2002)."

Lyon contends that only one fee is due for each notice of appeal (see Fed. R. App. P. 3(e)) and that a initial notice of appeal can be amended to contest additional orders and final decisions, including denying a Rule 60 motion, because no additional fee is required to file an amended notice of appeal. See Fed. R. App. P. 4(a)(4)(B)(iii). As in this case a notice of appeal may be amended within the time allowed for appeal. Rule 4(a)(4)(A) extends that time for specified motions that suspend a judgment's finality. If an appeal is filed before a motion has been resolved, then it may be amended after the motion is denied. Fed. R. App. P. 4(a)(4)(B)(ii).

Currently there is no procedure or method of amending a notice of appeal. The Seventh Circuit Clerk will direct that a new notice of appeal be filed with the district court clerk. However this direction will regardless of heading or caption "amended notice of appeal" generate a new docketed notice of appeal with a new docket number and generate an additional filing fee.

The problems include dealing with two dockets requiring consolidation and or dismissal

of one, the time permitted by the Federal Rules of Appellate Procedure, Fed. R. App. P. 4(a)(1), which provides 30 days or 60 days to appeal.

Pursuant to Federal Rule of Appellate Procedure, Rule 4(a)(4)(B)(iii) No additional fee is required to file an amended notice of appeal.

CONCLUSION

For the foregoing reasons, this Court should issue a writ of certiorari to the Court of Appeals for the Seventh Circuit, and reverse and remand for further proceedings.

Respectfully submitted,

LeFloris Lyon (*Pro Se*)
P.O. Box 87245
Chicago, IL 60680
Phone - 601) 259-0033
Email: leflorislyon@gmail.com