

No. 17-1646

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*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.*

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

**SUPPLEMENTAL BRIEF OF PETITIONER**

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September 14, 2018

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## SUPPLEMENTAL BRIEF

Since this Petition was submitted, this Court on June 28, 2018, granted the Petition for certiorari in *Nieves v. Bartlett*, No. 17-1174, 138 S. Ct. 2709, 2018 U.S. LEXIS 4069, 2018 WL 1023097 (2018), to address whether probable cause defeats a First Amendment retaliatory-arrest claim under 42 U.S.C. § 1983.

This Court's decision in *Nieves* may bear on whether the court of appeals correctly affirmed the district court's improper failure to consider petitioner's pro se *In Forma Pauperis* complaint <http://www.omegaarchive.com/K.pdf>, and Petitioner's proposed amended complaint <http://www.omegaarchive.com/A1.pdf>.

## INTRODUCTION

Currently two pending *pro se* Petitions for a writ of certiorari (No. 17-1646, April 4, 2018 and No. 17A1381, September 1, 2018 (*Fn*<sup>1</sup>)), and a pending proposed amended complaint, <http://www.omegaarchive.com/A1.pdf> that revolves around Petitioner's protected activity under 18 U.S.C. §1514A, 15 U.S.C. §78u-6(h), and intervention by Fifth Circuit Judge James E. Graves Jr. (father of defendant James E. Graves III), whom *poisoned the proceedings*.

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<sup>1</sup> <http://www.omegaarchive.com/Pet.pdf>

**No. 17-1646:** 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?

**No. 17A1381:** 1. Whether the Seventh Circuit decision conflicts with all Courts of appeals, and *Lozman v. City of Riviera Beach*, 138 S. Ct. 1945 (2018); *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911 (2017); *Hartman v. Moore*, 547

U. S. 250 (2006)— 28 U.S.C. §292(d)—28 U.S.C. § 455(b)—sealing without a Sealing Order—denying access to the court record—denying a criminal defendant counsel—when law enforcement agents and judicial officers, may be liable under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for retaliatory prosecution in violation of the First Amendment and Fourth Amendment when the arrest warrants, detention and prosecution was not supported by probable cause?

2. Whether the Seventh Circuit decision conflicts with all Courts of appeals, and this Court's decisions in *Lawson v. FMR LLC*, 134 S. Ct. 1158 (2014); *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767 (2018)—excluding court records—prohibiting a pro se plaintiff's Rule 60 complaint—contrary to 28 U.S.C. §1915, when the law to that effect was clearly established at the time that retaliatory criminal charges were filed against petitioner, such that respondents are not entitled to qualified immunity.

## ARGUMENT

### **I. The Court should grant and hear this Petition with *Nieves v. Bartlett*.**

Judicial prudence counsels granting and hearing this Petition in tandem with *Nieves v. Bartlett*, or alternatively, holding this matter in abeyance pending resolution of *Nieves v. Bartlett*.

This Court has not hesitated to hear appeals together that present related-but

different factual and legal permutations, either as consolidated cases or in tandem. *See, e.g., Ernst & Young LLP v. Morris*, 137 S. Ct. 809 (cert. granted Jan. 13, 2017).

**II. Grant this Petition on retaliatory arrests, when the arrest warrants could not support probable cause.**

Petitioner contends that prior to July 25, 2014, Respondents moved fraudulently revise the May 21, 2013, Rule 54(b) Judgment (Pet. App. 11a), enjoining Petitioner from bringing *Suppressed v. Suppressed*, [aka *Lyon v. Canadian National Railway, et al.*], No. 1:14-cv-03421 (N.D. Ill), or any claims, including claims he could not have brought and any future claims occurring after May 21, 2013, in any way related to the Rule 54(b) Judgment, including Petitioner's 2014 retaliatory arrests, detention, and retaliatory prosecution claims, to deprive Petitioner of his right to petition, "one of the most precious of the liberties safeguarded by the Bill of Rights," *BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 524-525, 122 S. Ct. 2390, 2395-2396 (2002). (Pet. App. 11a).

Petitioner argues the issuance of arrest warrants, when there is no probable cause to believe he violated 18 U.S.C. §3146, or any condition of release, **because he had not been arrested or charged and released under Chapter 207**, and thus could not have violated section 3146(a)(1) by failing to appear at the August 18, 2014 hearing, after he was denied

participation by phone and had given notice and informed the court he could not attend in person.

On August 19, 2014, Petitioner was arrested under 18 U.S.C. §3146, for “failure to appear,” and criminal contempt of court (*Fn*<sup>2</sup>) in the closed case, *Lyon v. Canadian National Railway, et al.*, No. 3:13-cv-00913 (S.D. Miss), for the May 9, 2014 filing of “*Suppressed v. Suppressed*” [aka *Lyon v. CN, et al.*] No. 14cv03421 (N.D. Ill), (*Fn*<sup>3</sup>), (*Fn*<sup>4</sup>).

On August 19, 2014, Judge Reeves in open court while Petitioner was in the custody of USMS, in full restraints consisting of leg shackles and handcuffs (also referred to as “five point restraints”), denied Petitioner’s motion for counsel, access to a copy of the District Court docket, and denied Petitioner required medical care, see 28 C.F.R. § 0.111(a), Fed. R. Crim. P. 4, and 5(a)(1)(A). Petitioner stated: “*So if you need to do anything further, I want counsel.*” (*Fn* 5, Tr. Pg. 5, 46, 51). “*I am going to invoke my Fifth Amendment and state to you clearly that I am mentally and physically incapable of doing anything else, going any further.*” (*Fn* 5, Tr. Pg. 58, 61). See August 19, 2014 transcript (*Fn*<sup>5</sup>).

On September 9, 2014, without probable cause Petitioner was arrested by USMS Deputies Tim Sanford & John Doe on Warrants without

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<sup>2</sup> <http://www.omegaarchive.com/0269.pdf>

<sup>3</sup> <http://www.omegaarchive.com/K.pdf>

<sup>4</sup> <http://www.omegaarchive.com/3340.pdf>

<sup>5</sup> <http://www.omegaarchive.com/L.pdf>



probable cause for failure to appear under 18 U.S.C. §3146, (NICI Criminal Code 5015) (*Fn*<sup>6</sup>), and criminal contempt of court (NICI Criminal Code 5005). Petitioner was shackled, assaulted by USMS, denied medical care, held in the courthouse lockup for more than five hours, without any hearing or detention order, informed he would not appear before a judge that week, transported, shackled in a wheelchair, booked and jailed at the Madison County Detention Center (MCDC). The criminal charges were dismissed on November 7, 2014 (*Fn*<sup>7</sup>).

Petitioner suffered serious incapacitating injuries, while illegally held in a Detention Center for 59 days, in the custody of the United States Marshal Service (USMS), without medical care, denied his Sixth Amendment right to counsel without a detention hearing or order, in conflict with *Lozman v. City of Riviera Beach*, 138 S. Ct. 1945 (2018); *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911 (2017); *Hartman v. Moore*, 547 U. S. 250 (2006).

Petitioner qualifies for protection after providing information he reasonably believes constitutes a violation of section 1341 [mail fraud], 1343 [wire fraud], to the DOL/OSHA and Securities and Exchange Commission ("SEC") or any "person with supervisory authority over the employee." § 1514A(a)(1)(A)-(C). *Lawson v. FMR LLC*, 134 S. Ct. 1158 (2014); *Digital Realty Tr.*,

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<sup>6</sup> <http://www.omegaarchive.com/0265.pdf>

<sup>7</sup> <http://www.omegaarchive.com/0232.pdf>

*Inc. v. Somers*, 138 S. Ct. 767, 773-74 (2018); 28 U.S.C. §292(d); and 28 U.S.C. § 455(b) (see proposed amended complaint, *Lyon v. Canadian National Railway Company et al*, No. 1:16-cv-06833 (N.D. Ill)), (*Fn*<sup>8</sup>).

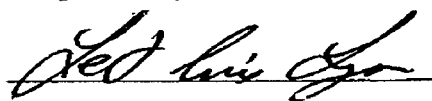
The August 19, 2014 and September 9, 2014 arrests are the subjects of Petitioner's Administrative Tort Claims Nos. OGC 50432 (*Fn*<sup>9</sup>) and No. 49658 (*Fn*<sup>10</sup>).

### CONCLUSION

This Court should grant the Petition, consolidated with *Nieves v. Bartlett*, or hold this Petition in abeyance pending the resolution of *Nieves v. Bartlett*, No. 17-1174, 138 S. Ct. 2709 (2018) or in the alternative reverse the judgment and remand for further proceedings.

September 14, 2018

Respectfully submitted.



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<sup>8</sup> <http://www.omegaarchive.com/A1.pdf>

<sup>9</sup> <http://www.omegaarchive.com/O.pdf>

<sup>10</sup> <http://www.omegaarchive.com/P.pdf>