No _-_____

In the Supreme Court of the United States

Abdul-Hakiym Ismaiyl

v.

Fatima D. Brown Et al.

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

Petition for writ of Certiorari

Abdul-Hakiym Ismaiyl Pro per
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STATEMENT OF THE ISSUES

1. Whether the fact finding process under Fed. R. Civ. Proc 52, allowing a court (judge) to present the facts of a case in their own words, also permit a court to fabricate or use- fabricated facts not found in the four corners of the pleading altering the issues; would the use of such facts be clearly erroneous and an abuse of discretion.

2. Whether a Circuit court abuses it discretion when it fails to review the record independently but defers to the Dist. Court, after being informed that the factual findings relied upon by the Dist. Court were fabricated, clearly erroneous, and not found in the record or pleadings.

3. Whether the deliberate presentation of a fabricated fact and reliance upon that fact by a judicial officer affecting the outcome of a federal proceeding warrants relief under Fed. R. Civ. Proc. 60(b)(6),or 60(d)(3).

4. Whether the application of Fed. R. 12(b)(6) for failure to state a claim is clearly erroneous when there has been no presentation of factual findings under R. 52 to test the legal sufficiency of the claim, or claims found within the pleadings.

PARTIES TO PROCEEDING

Fatimah D. Brown individually, Rebecca Botchway Individually; Eleanor E. Hilow individually and as the Magistrate of the Court of Cuyahoga County Common Pleas, Juvenile Division; Stephen Dejohn individually and Official capacity as Attorney; Donald L. Ramsey individually and official capacity as Judge of the Cuyahoga County Common Pleas Court, Juvenile Division; Sean C. Gallagher, Tim McCormack, Kenneth A. Rocco individually and official capacity as Judges of the Cuyahoga County Eighth District Court of Appeals; Joseph C. Young, individually and official capacity as Asst. Prosecutor Cuyahoga County; Timothy J. McGinty, individually and as The Cuyahoga County Prosecutor; John Jackson individually, and as Assistant Cuyahoga County Prosecutor.

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In The Supreme Court of the United States

No.

Abdul-Hakiym Ismaiyl

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

PETITION FOR A WRIT OF CERTIORARI

Abdul-Hakiym In Propria Persona respectfully petitions for a writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the Sixth Cir. Court of Appeals whose judgment is herein sought to be reviewed is unpublished and reported at 2018 U.S. App. LEXIS 7358 (App., A9). The orders of the district court unpublished are reported at 2016 U.S. Dist. LEXIS 118324 and 2017 U.S. Dist. LEXIS 38780 (App., A5-8).

JURISDICTION

The judgment of the court of appeals was entered on March 22, 2018. A petition for rehearing was denied on May 3, 2018 (App. A10). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1)

CONSTITUTIONAL PROVISIONS, STATUTE, AND RULES OF PROCEDURE

Federal Rules of Civil Procedure 7, 15(a), and Fed. R. 59(e) and Title 28 § 1915 of the United States Code are reproduced in the appendix to the petition (App.A11).

STATEMENT OF THE CASE

With all of the great achievements accomplished within our Constitutional form of government, done in the spirit of Due Process, and Justice. One impediment most trying to this spirit is the abdication of the duty of an appellate court to a proper review of the actual record; the abandonment of this duty allows clear error from being detected, and in our opinion resulting in a miscarriage of justice. *See Warner v. Gross,* 135 S. Ct. 824, at ***11, 190 L. Ed. 2d 903, 2015 U.S. LEXIS 615 (2015). The Petitioner, Abdul-Hakiym Ismaiyl, a Pro se litigant appealing from the Final judgment of the United States Sixth Circuit Court of Appeals. Petitioner supplicates to this honorable court that it accepts jurisdiction over this case in the interest of justice. This case is a civil rights case which federally began in the Sixth Cir. Northern Dist. of Ohio. The matter sub judice owes its origin to a consolidated civil action filed in the Cuyahoga County Court of Common Pleas Juvenile division on March 15, 2013, in Cleveland Ohio which entailed a motion to dismiss for lack of personam jurisdiction also a collateral attack brought by petitioner pursuant to Oh. Civ. R. 60(B)(5); Fed. R. Civ. Proc. 60(d)(3); due to (1) a conspiracy to

defraud; (2) fraud upon the court; also for (3) tampering with evidence and court records in violation of Oh. R.C. 2913.42; R.C. 2921.12, which had been done by State Actors namely one Stephon Dejohn Esq. and one Magistrate Eleanore Hilow during a custody proceeding on Nov. 2, 2011. During the proceeding of March 15, 2013, Petitioner encountered fraud on the court and records that had been tampered with by one Judge Donald Ramsey whom Defs.[’] Brown and Hilow acted in concert with. On May 21, 2013, during a custody action before Def Hilow; Def. Hilow inter alia again actively participated in a conspiracy to defraud, and presented altered court records presented by Def. Ramsey in the previous proceeding, and had altered court records herself pertaining this proceeding. The deliberate reliance on and use of the altered court records was done as an overt act in furtherance of said conspiracy, which Def. Hilow knew that the record in use was fabricated, and verbally denied the Petitioner the procedural right to object or proffer proof to expose it's use for purposes of appeal denying the Petitioner the right of Due Process, the right to be heard. See *Transcript* 16-1314 ECF #: 11-2 Page 5-6 of 9. PageID #: 405. Petitioner was faced with the same three issues as stated above during the Appellate process before the Eighth Dist. Cuyahoga County Court of Appeals on the 22, of April 2013, under CN. 99808; the issues on Appeal were consolidated entailing three consecutive proceedings from Nov. 2011, March 2013, and May of 2013, where State Actors had committed fraud

on the court by tampering with court records conspiring to defraud, and at each step Judicial Officers had altered court records and or fraudulently concealed that the record had been tampered with to protect other State Actors. The difference with the March 15, proceeding is that the Petitioner had presented a Fourteenth Amendment Due Process issue for lack of personam jurisdiction due to lack of service process and non-residency also a collateral attack on the judgment of Nov. 2011 due to fraud on the court and tampered records, for which Petitioner presented the application for relief pursuant Oh Civ. R. 60(B)(5) and R.C. 2901.13 (B)(1). It was during the appeal before the Cuyahoga County Eighth Dist. in 2013, where the Petitioner, having access to the full record discovered that the alteration of the record by State Actors did not start at the proceeding on Nov. 02, 2011, but began as far back as 2009, and had occurred in subsequent proceedings going forward from 2011. The facts pertaining court records being altered and the conspiracy to defraud by State Actors consecutively from Nov. 2011, Mar. 2013, and May 2013 were at issue on appeal as well as the lower court's lack of personam jurisdiction whereby Petitioner explained that the actions were all a product of the same conspiracy to defraud. Also that there were independent counts of fraud on the court and tampered records done in furtherance of said conspiracy; these facts were acknowledged on appeal, for which the Asst. Pros. Joseph C. Young, Appellee at the time, offered no rebuttal. However, on July 09, 2014 the Eighth Dist.

affirmed the Juvenile Courts dismissal. Judge Rocco speaking for the court deliberately altered the record, and fabricated facts from the record to protect State Actors stating that the petitioner had filed a motion on August 28, 2012, arguing that the 2011 custody proceeding was a product of "lies by witnesses." Further, stating that the Magistrate suggested that the motion be denied and because Mr. Hakiym, (the Petitioner), did not appeal this denial pursuant to Oh. App.R. 4(A) the court lacked jurisdiction to entertain the appeal. And that [t]he doctrine of res judicata bars the relitigation of issues that were raised on appeal or could have been raised on appeal. Further stating that [t]he doctrine applies to a party's claim, not the lower court's jurisdiction over the subject matter of that claim. A review of the record reveals that none of appellant's allegations as argued in the 60(B) motion were new; [he] merely reargued] issues settled" in the juvenile court's previous orders. See *IN RE: A.I., ET AL,* 2014-Ohio-2259, 2014 Ohio App. LEXIS 2202 ¶ 31-35 (8th Dist.). Contrary to this, the Supreme Court of Ohio has held that Res judicata or as here claim preclusion is a *valid, final judgment rendered upon the merits* [which] bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was *the subject matter of the previous action*. Also, *an existing final judgment or decree between the parties to litigation is conclusive as to all claims which were or might [or should] have been litigated in a first lawsuit. (Emphasis added) (Citations omitted) Holzemer v. Urbanski,* 86 Ohio St. 3d

129, at *** 11, 1999-Ohio-91, 712 N.E.2d 713, 1999 Ohio LEXIS 1948 (1999). However, it is a fundamental axiom of Ohio jurisprudence that a *court* of record *speaks only through its journal entries.* *Gaskins v. Shiplevy* (1996), 76 Ohio St. 3d 380, 382, 667 N.E.2d 1194 citing *State ex rel. Fogle v. Steiner* (1995), 74 Ohio St. 3d 158, 163, 656 N.E.2d 1288. *(Emphasis added) Phoenix Office & Supply Co. v. Little Forest Nursing Ctr.*, 2000 Ohio App. LEXIS 798, 2000 WL 246593, at *9 (7th Dist.). As such, . . . [an appellate] court is not in a position to read matters into a trial court's judgment entry which are not present on its face. *Id. Phoenix Office & Supply* at *9. A review of the trial court's actual entry does not reveal any reference nor does it remotely imply the reasons presented by Def. Rocco found in the Cuyahoga County Eighth Dist.'s opinion. However, the journal and judgment entries explicitly articulated that the dismissal was because the instrument was an ex parte pleading and lacked service attestation, and there is no language found in either entry that reached to the merits of any claim other than lack of obtaining service on Def. Brown. (*See* STATE JUDG. ENTRY , AND JOURNAL *16-1314DCN ECF #: 10-2 Filed: 59,60 of 131. PageID #: 253).* The law establishes that [w]here a case is dismissed because the court did not have jurisdiction, such as in a case where service has not been perfected, the dismissal is always otherwise than on the merits. Therefore, Ohio. R. Civ. P. 41(B)(4) is the controlling subsection. *Thomas v. Freeman,* 79 Ohio St. 3d 221, at ***9, 1997-Ohio-395, 680 N.E.2d 997, 1997 Ohio LEXIS

1787(1997) paragraph two of the syllabus. Furthermore, [a] judgment of a court having jurisdiction of the parties and of the subject matter operates as res judicata [only], in the absence of fraud or collusion, even if obtained upon a default. *Riehle v. Margolies*, 279 U.S. 218, 225, 49 S. Ct. 310, 73 L. Ed. 669, 1929 U.S. LEXIS 319 (1929). At the time, and shown throughout the briefs, and during oral argument, on appeal, the Petitioner had demonstrated that there had been actual fraud on the court and collusion involving State Actors at different times; therefore, in that regard Res Judicata would not have been applicable. On June 6, 2014 Petitioner moved for reconsideration[1] and reminded the court to consider that there were unrebutted facts in the record showing a conspiracy to defraud, tampered records, and fraud on the court by the active participation of Officers of the Court one being an attorney, namely Stephon Dejohn, acting in concert with Eleonore E. Hilow for which OH. Civ. R. 60(B)(5) is applicable. (*See Exhibit(A) to complaint App., A2. P. 5-6*). Also, a Fourteen Amendment issue pertaining lack of personam jurisdiction that was never addressed. Petitioner addressed the altering of material facts by Def. Rocco of documents found in the record which when presented altered ultimately the issues to be one in the same when the matter at issue was completely different and distinct from previous unrelated matters. Petitioner

[1] This Motion for Recon. was attached as Exhibit A in support to the Complaint for Preliminary Injunction filed 6th Cir, N.D. of Ohio on May 31, 2016.

also reminded the court according to OH. R.C. 2913.42 that Def. Ramsey had tampered with the record and committed fraud on the court, and that this amounted to reversible error.(*See App. A2 P.7-8*) On July 9, 2014, the Motion for Recon. was denied. On August 25, 2014, the matter was appealed to the Ohio Supreme Court to address the errors which had occurred at the appellate level. However, the Petitioner discovered while visiting the Eighth Dist. Court of Appeals to gain access to the record preparing for the appeal to the OH. Supreme Court that the complete record was no longer available and had been removed and placed under seal, and was given a contact number to someone at the Cuyahoga County Common Pleas Court Juvenile Division. The confiscation of the complete record was done 15 days after the notice of appeal was made to the Ohio Supreme Court, and six months before jurisdiction was declined on Feb. 18, 2015, under CN. 14-1480. On Feb. 12, 2015, Petitioner, upon discovery, filed a motion to the OH. Supreme Court requesting that the record be secured and sealed due to the nature of the claims surrounding the record[2]. In the interim before Petitioner filed his complaint under § 1983 in 2016; his complaint was waylaid by a silent indictment on May 17, 2016, alleging tampering with records in violation of Oh. R.C. 2913.42, unbeknownst to Mr. Hakiym. However, in this instance, the indictment was brought due to

[2] This Motion filed with the OH. Supreme Court was also attached to the Motion for Preliminary Injunction filed in the 6th Cir. N.D. of Ohio. As exhibit B in support of the Mot. For Injunction.

a driver application at the Ohio BMV in January of 2011. *(See Indictment App. A3).* Petitioner was never serviced, but upon discovery of the indictment two days before arraignment petitioner filed a complaint/motion for preliminary injunction and gave notice of filing to said Defs.[’] pursuant to Fed. R. 65(a). Petitioner relied on the analogous context taken from the late Judge Tuttle that, [t]he grant of a temporary injunction need not await any procedural steps perfecting the pleadings or any other formality attendant upon a full-blown trial. . . *United States v. Lynd,* 301 F. 2d 818, 823 5th Cir. (1962). Because, although it is preferable to file the (legal) complaint first per se a preliminary injunction may be granted upon a motion made before a formal complaint is presented. See also *Wright & Miller Procedure and application for preliminary injunction* §2949. Meaning that a court may construe *a motion for an injunction* as a complaint. That being said, to stave off the indictment until the Petitioner’s claims could be heard on its merits federally. On May 31 2016, Petitioner filed a complaint for Preliminary Injunction instead of the initial complaint.(*See Complaint for Injunction App. A1*). The caption, however, was mislabeled and besides seeking a Preliminary Injunction consisted of Declaratory Relief; Intentional Infliction of Emotional Distress; and Punitive Damages. (*See Cover Page for Injunction App. A1).* On June 2, 2016, two days after filing the motion, Petitioner sought for an extension of time, and leave to amend his complaint/ motion fearing that the court will not read the actual

instrument and make its determination on the caption alone, which was the case. However, the motion to amend stated that the Petitioner had filed an action under § 1983 on various issues, "also seeking an emergency injunction. However, the complaint/motion only presented matters surrounding the injunction which is incomplete. Petitioner requested that he be granted leave and time to amend the complaint; in that the complaint is incomplete and if not allowed to be amended may serve to be unfavorable in preventing an unwarranted dismissal in the plaintiff's action". See Motion to Amend App., A4). The record shows that the Petitioner informed the court that the instrument as an complaint was legally imperfect, deficient thus being "incomplete"[3], and as is could not withstand a dismissal unless allowed to amend. The amendment was due to the motion only presenting a less complete summary of facts allowed when seeking to obtain an order for a preliminary injunction. It is well settled law that injunctions pendente lite pursuant to Fed. R. Civ. Proc. 65(a) *[A]re ordinarily intended to operate only* until a hearing on the merits can be had. They are granted upon a mere summary showing upon affidavits. Their issuance is not a matter of right, and rests in the sound discretion of the judge. (Emphasis added) *Co-operating Merchants' Co. v. Hallock,* 128 F. 596, at **2 (6th Cir. 1904); see also *Benson Hotel Corp. v. Woods*, 168 F.2d 694, at **8 (8th Cir. 1948) *Penn v. San Juan Hospital, Inc.,*

[3] See Imperfect Def. Black's Law 5th Ed. Page 678.

528 F. 2d 1181at **9 (10th Cir. 1975) *Northern Ky. Chiropractic v. Ramey, 1997 U.S. App. LEXIS 1734, at* *8 (6th Cir. 1997); *American Federation of Musicians v. Stein*, 213 F.2d 679, at **9 (6th Cir. 1954) *US v. Owens,* 54 F. 3d 271, at **14 (6th Cir.1995) *University of Texas v. Camenisch,* 451 U.S. 390, 395 101 S. Ct. 1830, 68 L. Ed. 2d 175 (1981); *Progress Development Corporation v. Mitchell,* 286 F. 2d 222, at **32 (7th Cir. 1961) (*Where the court held that, [n]o plaintiff is required to prove his case on the merits at a preliminary hearing. The argument, after such a hearing on an equity issue, that no genuine issue of fact is disclosed is fallacious. If summary judgment is appropriate on this ground after a preliminary hearing only, then the preliminary hearing becomes in fact a trial on the merits and its whole purpose is lost) (Emphasis added).* Furthermore, an injunction is a matter of equitable discretion; it does not follow from success on the merits as a matter of course. See *Winter v. NRDC, Inc.,* 555 U.S. 7, at *32, 129 S. Ct. 365, 172 L. Ed. 2d 249, 2008 U.S. LEXIS 8343 (2008) However, the opening recital of the actual instrument, explicitly declared that the instrument before the Dist. Court was a motion seeking a preliminary [in]junction to obviate irreparable harm. The body of the instrument consisted of six pages, and seven paragraphs minus the cover page; jurisdictional statement; and the two exhibits attached in support to the motion for preliminary injunction. And within the body of the instrument there were only two things sought from the Dist. Court, which was (1) an injunctive

order due to continuous violation of federal law from 2009 until 2016 (2) and enjoining the matter surrounding the indictment until after a trial on the merits could be heard. There were multiple claims made in the complaint/motion. However, the material allegations were less complete surrounding all of the claims and parties involved, particularly but not limited to Defs.['] Brown, Botchway, which was due to the filing being made in haste. The material facts plead relied on OH. Statute R.C. 2913.42; R.C. 2921.12, and the First, Fifth, and Fourteenth Amendment to the U.S. Constitution. Petitioner, alleged that the indictment was made in bad faith and a product of selective prosecution, done to prevent the right of redress retaliatory in nature creating a chilling effect with the threat or possibly being jailed to prevent him from coming forth with factual allegations that are criminal in nature pertaining State Actors. The artifice of the indictment was also brought strategically to give a false appearance of comity, which was is shown in the opinion of the Dist. Court. Furthermore, Petitioner's complaint never implicitly nor explicitly sought for damages of any form, nor was there any mentioning of the other tortious causes or remedies per se found in the caption. On August 31, 2016, the District Court rendered its Judgment on the Pleadings, denying the complete Action under Title 28 U.S.C. § 1915(e), and certified that under 28 § 1915 (a)(3) *that an appeal from its decision could not be taken in good faith.* (*See N.D. Judgment Entry App. A5*). In its opinion the court stated that, [i]n

the Complaint, he alleges the Defendants conspired against him in the course of a prior child custody case, and a current criminal prosecution pending against him in the Cuyahoga County Court of Common Pleas. He asks this Court to enjoin the pending criminal case, and award him punitive damages. The legal standard applied by the Dist. Court acknowledged that a Court is required to dismiss an *informa pauperis* action under 28 U.S.C. § 1 915(e) if it fails to state a claim upon which relief can be granted, or if it lacks an arguable basis in law or fact citing *Neitzke v. Williams,* 490 U.S. 319. And inter alia that [a] claim lacks an arguable basis in law or fact when it is premised on an indisputably meritless legal theory or when the factual contentions are clearly baseless. *Neitzke,* 490 U.S. at 327. (*See N.D. Memorandum and opinion denying Motion for Injunction* App., A6 P. 1-3) However, the Dist. Court only presented legal conclusions, but never a single material fact found within the "pleading or attachments" in support of §1915(e) dismissal; the Dist. Court referenced a fabricated fact eight times in its memorandum to the Petitioner seeking punitive damages from officers who are immune from suit. An example of this fact is seen where the Dist. Court found that, "[i]n the Complaint,. . . . *He asks this Court to enjoin the pending criminal case [true], "and award him punitive damages"[falsity] (Emphasis added).* The Court further stated that, *"[i]n the case caption on his Complaint, he **also** indicates he is seeking punitive damages."*([falsity] See App. A6 P. 2). The Court further acknowledged that

it could not enjoin a pending state court criminal proceeding. A federal court must decline to interfere with pending state proceedings involving important state interests unless extraordinary circumstances are present. *See Younger v. Harris,* 401 U.S. 37, 44-45 (1971).(*See N.D.* App. A6 P. 3). Not only did the Dist. Court not acknowledge any of the actual claims made or exhibits attached in support, it neither entered a judgment pertaining the motion to amend the complaint, and remained silent on if the amendment would be futile or prejudice the adverse party, however, at the time of the request for amendment the adverse party had yet to be serviced with summons. On September 28, 2016, the Plaintiff timely sought to Alter or Amend the Court's Judgment pursuant to Fed R. Civ. Proc. 59(e) by motion and affidavit in support with Exhibits attached (59 (e) Motion CN. 16-1314 DCN. ECF # 11 Page 1 of 54. PageID #: 326). In the 59 (e) application the legal, as well as factual errors, were brought to light made by the court in its opinion. One of the factual errors was that the Dist. Court altered the nature and character of the complaint by presenting it as a complaint seeking punitive damages contrary to the language found therein; the complaint sought only a provisional remedy for Preliminary Injunction pursuant to Fed. R. Civ. P. 65(a). (59 (e) Motion CN. 16-1314 DCN. ECF # 11 Page 10 of 54. PageID #: 335. Par. 6). [B]ecause such a decision [on an injunction] would in many cases be made on a different state of facts and upon different arguments from those presented at the final

hearing, and a court neither decide[s] nor intimate our opinion upon those questions. See *Benson Hotel Corp. v. Woods, supra* at **8; see also *Penn v. San Juan Hospital Inc,* supra at **9. Despite the fact that the Court was informed that the only facts (matters) before it was surrounding a Preliminary Injunction and nothing else, it still concluded without any factual evidence in support that the instrument sought for monetary damages due to a conspiracy. However, the Dist. Court omitted and replaced the actual claims, and material facts made in the instrument with that of its own; it also did not reference the attachments and the allegations found therein as a determining factor of the denial for failure to state a claim. Petitioner also expounded on the misapplication of the younger doctrine being that the issues before the Dist. Court are exhausted state-wise, and not incident to the indictment and have nothing to do with each other citing *RONNIE LEE BOWLING, v. GLENN HAEBERLINE* 246 Fed. Appx. 303, at **12 (6th Cir. 2007). (59 (e) Motion CN. 16-1314 DCN. ECF # 11 Page 20 of 54. PageID #: 345. L.14). Also that the injunction was needed due to an unbridled corruption in the Cuyahoga County; Petitioner presented evidence that after making the claims of tampering with records against State Officers in the Cuyahoga County under the color of law, his two properties were placed in foreclosure, and remains in foreclosure heretofore, without legal notice and opportunity, and one, however, has been demolished which in itself done without notice is a Due Process violation

warranting an injunction to protect the remaining one. Also, to show that the previously filed instrument was not intended to be construed as the initial complaint per se Petitioner presented the material facts more in-depth of the elements regarding the allegations briefly addressed in the motion with positive evidence which was authenticated records and court documents attached as exhibits showing the record in question. (59 (e) Motion CN. 16-1314 DCN. ECF # 11 Page 11 of 54. PageID #: 336 Par.7-14 EN. 2-3). Lastly, addressed was the denial of the one time request for amendment without any legal explanation, or that it would be futile to amend was an abuse of discretion. (59 (e) Motion CN. 16-1314 DCN. ECF # 11 Page25 of 54. PageID #: 350. Par. 19). On October 13, 2016, the Dist. Court rendered its judgment denying the 59 (e) application stating that [h]aving reviewed Mr. Ismaiyl's Motion, as well as the prior proceedings and orders,[not exhibits and material allegations] the Court, has determined that nothing in the motion alters the legal conclusion that led to the dismissal of this action. The Court further gave its reason stating, that, *"[t]his is not the proper forum for settling the Plaintiff's allegations because, as set forth in the Court's prior order, the abstention doctrine of Younger v. Harris, 401 U.S. 37, 44-45 applies in this situation." (Emphasis added).* The Court further stated that, *"Mr. Ismaiyl's attempt to provide additional factual details and clarification of his allegations does nothing to undermine the Court's prior decision. For the reasons set forth in the*

*prior opinion, Ms. Brown is not a state actor for purposes of liability under 42 U.S.C. §1983, and the state actors at issue are all protected by absolute immunity"[*not that the amendment would be futile*] (Emphasis added).* (*See Memorandum and Order denying 59(e)* App.A7.). On Oct. 24, 2016, Plaintiff filed an application with an affidavit, and exhibits attached in support seeking relief through Fed. R. Civ. Proc. 60(b)(6) also recusal under Title 28 U.S.C. § 144, 28 U.S.C.§ 455(a); and vacation of judgment through Fed. R. Civ. Proc. 60(d)(3) due to fraud upon the court; vacation of the judgment was sought because it appeared that Judge Nugent had given a false representation of the facts to support the Younger abstention; also the altering of the facts changed the nature and character of the suit from one in equity (Preliminary Injunction) into a legal action on its merits which prejudiced the Petitioner and prevented the matter from being heard fairly. (*See Motion for Relief* DCN.16-1314 ECF # 13 Page 1-16 of 16. PageID #: 412). Lastly perhaps not in this order addressed was the denial of the motion to amend the complaint. On March 17, 2017, the Court entered its Judgment denying the Plaintiff's (Petitioner) Motion for relief; however, the Court, continued to maintain that the Plaintiff sought Damages, this is found on Page two of the Court's opinion denying the Motion for Relief.(See Memorandum The Court did not apply the law pertaining Title 28 U.S.C. §144, 455(a) nor was the law applied pertaining Fed. R. Civ. Proc. 60(b) (6) and 60(d)(3) to the actual allegations found in the

pleading, and did not address the motion to amend. (*See Memorandum of opinion 60(d)(3)* App. A8 P.2). Plaintiff timely filed an amended Notice of Appeal to the United States Sixth Cir. Court of Appeals on April 3, 2017. On appeal the issues in short were that it is well-established law that the full facts are not required by a court when determining the approval of injunctions pendente lite; nor does the law require that the partial facts presented for purposes of injunction be used to decide the merits of matters outside of seeking the injunction without the parties being properly notified. Also that State officers are not insulated by actions brought in equity seeking prospective relief (Preliminary Injunction) unless money damages are sought which they were not. Further, a court does not look to the caption in determining the statement of the claim or nature of the suit alone. A relevant point, because there was no mentioning of damages, however the Dist. Court relied on the caption and created a fabricated narrative pertaining damages being sought. Oddly enough, the Dist. Court did not even acknowledge the fact that an injunction was sought until the judgment entry denying the Fed. R. Civ. Proc. 60(d)(3) application was denied, as if the request never existed when the complaint only sought injunctive relief. The reliance on the caption by the Dist. Court alone was clearly erroneous when it did not match the corners of the instrument. Furthermore, there was no evidence in the record to support the Dist. Courts factual findings, which were contested by the Petitioner. Also,

a Denial of a Preliminary Injunction does not foreclose on the independent Claims made in support of the relief sought by the Preliminary Injunction, unless the complaint has failed to state a claim upon which relief can be granted, which requires the test of legal sufficiency to be applied to the material claims, however, an injunction is not a matter of right (Right of Action), but it is only a matter of discretion given by a court sitting in equity. *Co-operating Merchants' Co. Supra* at**2. Also, the use of the Younger Doctrine cannot be applied to matters that are not continuing in the state forum. Nor is it applicable if the subject matter federally is not incident to the issues found in the state proceeding. Also, one is entitled a right as a matter of course to amend their pleading at least once pursuant to Fed. R. Civ. Proc. 15(a). On March 22, 2018, the Sixth Cir. affirmed the lower Court's judgment for failure to state a claim under § 1915(e)(2)(B)(ii). The Sixth Cir. deferring to the Dist. Court maintained that Ismaiyl sought monetary relief. However, the panel gave no reference independently to the record supporting this erroneous fact as it should have when the findings were contested, and not supported by the physical record.(*See Sixth Cir. Order* App. A9 P.2). In addition to this, the Panel gave no reference to the attachments and the allegations that they entailed in support of its finding of a failure to state a claim. The Sixth Cir. also misapplied the law as it pertained to the Younger application, and the law applied to Fed. R. Civ. Proc. 15(a) motions to amend, rendering a ruling

unsupported by law. Petitioner timely petitioned this honorable court from the final judgment of The Sixth Cir. United States Court of Appeals final judgment.(See App. A10).

EVIDENCE SUPPORTING MISAPPLICATION OF LAW OF R. 52(a), RELIANCE ON CLEARLY ERRONEOUS FACTUAL FINDINGS, MISAPPLICATION OF YOUNGER DOCTRINE, AND R. 15(a) IN RELATION TO R. 12(b)(6).

R. 52(a) CLEARLY ERRONEOUS

Ex facto jus oritur, which is to say, *the law arises out of the facts* (emphasis added).[4] We have presented this maxim as polestar pertaining two matters (1). The instrument filed by Petitioner and its nature and character (2). The actual claims, allegations, and law relied upon found within the 12 corners in support of said instrument. As mentioned above the Judgment Entry of the District Court's denial under 28 § 1915 (e) was done so without referencing any of the seven qualifying subsections. (See App. A11, 28 § 1915 (e)). § 1915 (e) was applied by the Dist. Court in an ambiguous fashion in contravention to Fed. R. Civ. Proc. 52 (a) giving no factual findings in support of its legal conclusions, which in our opinion was done deliberately. The Sixth Cir. Court of Appeals, on the other hand, filled in the blanks in its opinion, affirming the N.D.'s erroneous factual findings in the exact same words, if not verbatim stating

[4] See Black's Law Dict. 5th Ed. At 514.

that, "[I]smaiyl filed his complaint against the mother of his children . . . Ismaiyl alleged that the defendants conspired against him in a prior child custody-case and a pending criminal prosecution in the Cuyahoga County Court of Common Pleas. *He sought declaratory, injunctive, and monetary relief." (Emphasis added).* (See App. A9. P2). Here, we present a matter which may present a slight conundrum for the layman (myself). Because of the merger of law and equity, it has been said that a litigant cannot bring a matter on the wrong side of the court. *See Fed. R. Civ. Proc. 2.* Due to this merger procedural differences between law and equity rarely exist except for jury trials. That being said it matters not if an instrument seeking equity is titled now as it were before the merger, as a bill in equity, or like now as simply a complaint; because, [t]he legal or equitable nature of an action is determined by considering, *first, the pre-merger custom . . . second, the remedy sought; . . . The primary focus in the sixth circuit in analyzing the legal or equitable nature of an issue is on the second consideration [remedy sought]. If a party seeks solely injunctive relief . . . , the relief sought is equitable . . . See Bair v. General Motors Corp.,* 895 F. 2d 1094, 1097 (6th Cir. 1990) (*Emphasis added*)(*Citations omitted. See also Winter v. NRDC, Inc.,* supra at *32. Furthermore,"[t]he caption of an action is only the handle to identify it.". A court may look to the body of the complaint to determine the parties, in what capacity the defendants are being sued, *and the nature of the claims asserted.* (Emphasis *added*)

Indianapolis Life Ins. Co. v. Herman, 516 F.3d 5, 10 (1st Cir. 2008). This is because [t]he caption is not regarded as containing any part of plaintiffs' claim. *(Citation omitted) (Emphasis added) Blanchard v. Terry & Wright, Inc.,* 331 F. 2d 467, at **5;1964 U.S. App. LEXIS 5417 (6th Cir. 1990). Because[t]he caption to the complaint . . . *is not part of the statement of the claim under Rule 8. The caption is something apart, being mandated by a different rule: Fed. R. Civ. P. 10. The caption is chiefly for the court's administrative convenience.* It may, however, sometimes be useful to look at the caption -- when the Rule 8 statement of a claim is ambiguous about a party's capacity -- to settle pleading ambiguities. *Hobbs v. E.E. Roberts,* 999 F.2d 1526, 1529-30 (11th Cir. 1993) (using several factors, including caption, to resolve ambiguity of whether official sued in official or individual capacity). *Marsh v. Butler County, Ala.,* 268 F. 3d 1014,1024(11th Cir. 2001) ft. 4. *See also* Wright & A. Miller, Federal Practice and Procedure, Civil Section 1321. Yes, we concede that a cognizable claim must be stated plausibly [w]hether brought for declaratory, injunctive, or monetary relief, as stated in the opinion by the Sixth Cir. Court of Appeals. (*See App. P.3*). However, here we will deal with one aspect of a claim before we address if the claim has set forth a proper cause of action. And that aspect is the nature of the claim, the nature is determined by the remedy or relief sought. Id. *Bair at 1095.* To better understand this point of contention we bring forth an old age parable which is a tree is known by its fruit. As we all know

the fruit is the result of a thing or the effect or consequence of an act or operation[5]; here the fruit is the consequence of the "factual findings" made by the Dist. Court's legal conclusions. The process utilized to ascertain if the fruit of a Dist. Court is sound is accomplished by no other means than good old fashion reviewing the actual record, and to abandon the review of the record, would be an abdication of an appellate courts duty, as was the case here. *Warner v. Gross,* supra at ***11. Albeit, findings come with a buckler and shield, however, [t]he Federal Rule of Civil Procedure 52(a) establishes: Findings of fact shall not be *set aside "unless" clearly erroneous,* . . . [a] finding is clearly erroneous when although there is evidence to support it, *the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. (Emphasis added) Anderson v. Bessemer City,* 470 U.S. 564, at 573 (1985). Fed. R. Civ. P. 52(a) provides that findings of fact, whether based on oral or documentary evidence, shall not be set aside *unless clearly erroneous*. Appellate courts are not to decide factual questions de novo, . . . (Emphasis added) *Francis v. Goodman,* 81 F.3d 5, at**6 (1st Cir. 1996). Moreover, [a] *finding of fact is clearly erroneous if the record lacks substantial evidence to support it.* (Emphasis added) *Blohm v. CIR,* 994 F. 2d 1542, at **14 (11th Cir. 1993) If the district court's account of the evidence is plausible *in light of the record viewed in its entirety*, the court of

[5] Black's Law 5th Ed. At 602 Def. of Fruit.

appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views . . ., the factfinder's choice between them cannot be clearly erroneous. (Emphasis added) (Citations omitted) *id. Anderson* at 574. It has been clearly presented by the Sixth Cir. as well as the Dist. Court as a finding of fact that the Petitioner sued for monetary damages against Defs.[’] who are immune. This point is pivotal, because ex facto jus oritur, the law takes form due to the facts. A complaint stating a claim for monetary damages is a matter of ultimate fact and is reviewed de novo. The interpretation of the law granting or denying monetary damages from a defendant as a form of relief, that, however, is a legal conclusion. Therefore, a failure to state a claim is established legally when a Pauper litigant seeks monetary relief against a defendant who is immune from such relief under 28 U.S.C. 28 §1915(e)(B)(ii)(iii). Analogous example, The United States Court of Appeals for the Eleventh Circuit reviews the United States Tax Court's fact findings for clear error. *A finding of fact is clearly erroneous "if the record lacks substantial evidence to support it, such that appellate review of the entire evidence leaves the reviewing court with the definite and firm conviction that a mistake has been committed.* The tax court's rulings on the interpretation and application of the statute are conclusions of law reviewed de novo. Moreover, whether a taxpayer received income is an ultimate fact and as such is to be treated as a

legal rather than a factual determination to be reviewed de novo. *Weiss v. CIR,* 956 F. 2d 242, at **14 (11th Cir. 1993). It is for this reason the Dist. Court made false references to damages eight times in its opinion that the Petitioner "allegedly sought." The factual assertion for monetary relief is an ultimate fact that must be found within the statement of the claim in the body of the pleading or the documents attached and not the caption. Because[t]he caption to the complaint . . . *is not part of the statement of the claim under Rule 8. Hobbs Supra* at1529-30. And the use of the caption alone without supporting evidence in the pleadings is clearly erroneous, and abuse of discretion, because it is not permissible for a court to establish the statement of the claim or its nature from the caption per R. 8. The Dist. Court, however, is estopped by its statement of fact that, "[i]n *the case caption on his Complaint, he also indicates he is seeking punitive damages.*" Implying that damages were mentioned else were in the pleading by the word "also" *(See A6 P. 2)*. However, this statement is a fabricated fact, and falsity on the part of the judiciary speaking for the Dist. Court, because the Dist. Court was informed of this error before an appeal was made, but the error was never addressed. Furthermore, as it relates to the pleading, there was never any facts in the instrument that would imply a request for damages in any form or the exhibits found in the record. Therefore, if the Dist. Court inferred because of the caption that punitive damages were sought, which we have shown the error in that; no matter how inartful the

pleading was the Dist. Court could not properly deduce this by the pleading, because the pleading does not speak to obtaining damages, but only invokes the Dist. Court's strong arm of equity to enjoin a bad faith indictment preserving the status quo by an injunction until the claims could be heard on their merits. The Dist. made no finding of facts on this issue. In fact the Sixth Cir. deliberately omitted the wording altering the clearly erroneous issue raised on appeal; the first issue in part raised was on whether the Dist. Court using "clearly erroneous facts not found within the four corners of the Plaintiff's Pleading was an error and an abuse of discretion. The Sixth Cir. omitted the clearly erroneous part, and presented their version as "(1) converting his "Action in Equity . . . into a legal action seeking damages." (Emphasis sic). ."(See Opening Brief Sixth Cir. CN. 16-4308 ECF# 26. Page: 12). However, *[a] district court, not a circuit court, is charged with weighing the evidence and resolving conflicts*. When factual findings "*of a district court"* are supported by the evidence of record and are not clearly erroneous, a circuit court is bound [or not bound] by these findings [if clearly erroneous], under Fed. R. Civ. P. 52(a). (Emphasis added) *LAKESHORE TERM. & PIPELINE v. DEF. FUEL SC,* 777 F. 2d 1171, 1172(6th Cir. 1985). The Sixth Cir.'s blatant abdication of its duty to review and acknowledge that the facts relied upon were not in the record, and to omit this fact once informed is erroneous, abuse of discretion and should be reversed especially "since the District Court [not

the Cir.] bears an obligation to find the facts specially in an action tried without a jury". *Cafritz v. Koslow* 167 F.2d 749, at **3 (D.C. Cir. 1948). Furthermore, legal conclusions such as Def. Brown is not liable under § 1983, without presenting the factual allegations of her actions committed in concert with immune officers cloaked under the color of law; or stating the Younger abstention doctrine is just not applicable because there is an ongoing state case, without presenting how the state and federal case are related; or stating that said Defs.['] are immune without any factual reference point from the material allegations found in the pleading of how said Defs.['] are being sued for which they are immune;[6] only amounts to formulaic legal conclusion and are not findings of fact required under Fed. R. Civ. Proc. 52(a), and therefore clearly erroneous and an abuse of discretion. *See Khan v. Fatima,* 680 F. 3d 781, 786(7th Cir. 2012); see also *Case v. Morrisette,* 475 F. 2d 1300, 1308(D.C. Cir. 1973). However, [b]ecause . . . the record is without substantial evidence that . . . [Petitioner sought] . . . damages, . . .the court's findings . . . are clearly erroneous and . . . must therefore be reversed. *Red Lake Band of Chippewa Indians v. United States,* 936 F.2d 1320, 1325, 1991 U.S. App. LEXIS 13253 (D.C. Cir. 1991).

YOUNGER DOCTRINE

As it relates to the Younger Doctrine, we feel that it is a straightforward

[6] Sutton v. Evans, 918 F. 2d 654, at **8, 918 F.2d 654, 1990 U.S. App. LEXIS 19735(6th Cir.1990)

matter. In order for a federal district court to abstain from hearing a claim pursuant to *Younger*, the court must find that three requirements are satisfied: (1) there is an ongoing state judicial proceeding; (2) the proceeding implicates important state interests; and (3) there is an adequate opportunity in the state proceeding to raise constitutional challenges. *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). A litigant cannot enjoin a state matter federally "*so long as there is no showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate*, the federal courts should abstain." (Emphasis added) *Id.* at 435. Here, we have an allegation of bad faith. Furthermore, there are two distinguishing factors which set the instant matter apart. (1) In brief, the action initiated in the Dist. Court by Petitioner consisted of multiple claims on matters that began in 2009 until 2014 and ended in 2016 with the filing of an indictment made in bad faith by Cuyahoga County Prosecutor Tim McGinty. As we have mentioned above, the claims surrounded State Actors who at different times had altered and tampered with court records, actively participated in a conspiracy to defraud, and also fraud upon the court during different court proceeding at different times on different matters. The conspiracy to defraud alleged is not to be confused with a regular conspiracy. (*See OHIO JURISPRUDENCE 3D* Conspiracy-Civil aspect § 1 at 153, 158). To clarify the custody proceeding that the Sixth Cir., and Dist. Court has

referenced; that proceeding took place in Nov. of 2011, however, the proceeding of March 2013, was not a custody, but initiated by CJFS; however, Petitioner made a special appearance to attack the judgment of Nov. 2011 collaterally, and a request that the March Proceeding be dismissed due to lack of personam jurisdiction in violation of the Fourteenth Amendment due to lack of service process and non-residency. Petitioner, however, encountered a conspiracy to defraud, fraud on the court, and the use of tampered court records by Def. Ramsey during that proceeding. On May 21, 2013, during another custody proceeding filed by Petitioner, he encountered fraud on the court, and the use of tampered court records in violation of R.C. 2913.42, R.C. 2921.12 by Def. Hilow; Petitioner was also prevented from speaking, and told by Def. Hilow who was the same Magistrate over the 2011 proceeding while objecting to the use of tampered court record that he could not object, nor proffer proof into the record; inter alia this violated the Due Process Clause of the right to be heard. (See Transcript ECF# 16-1314-DCN Doc #: 11-2 Filed: 10/11/16 Page 6 of 9. PageID #: 406). All these actions were done under the color of law by said Defs.[’] in violation of state law and the Constitution of the United States. All three matters were consolidated before the Cuyahoga County Eighth Dist. Court of Appeals; we have discussed this matter up above. However, the matter was later appealed to the OH. Supreme Court and jurisdiction was declined. The record shows that these claims were exhausted state wise. Other claims

before the N.D. were the foreclosure of Petitioner's properties without legal notice depriving him of the opportunity to defend his liberty interest in said property. The factual allegations as mentioned here pertaining said claims were clarified and supported with authentic documents attached to the 59 (e) application. However, the Dist. Court erroneously stated that the reason it could not hear the allegations was not because they failed to state a claim or was futile, but because *"[t]his is not the proper forum for settling the Plaintiffs allegations because, as set forth in the Court's prior order, the abstention doctrine of . . . applies in this situation." (See* App. A7 P. 1 of 2). However, these claims have nothing to do with the indictment whatsoever. Therefore, because the state court proceeding have long since concluded and he [Ismaiyl] has no competing action pending there [on those claims]. The Younger abstention doctrine, therefore, is inapplicable because there are no proceedings in the state courts for the federal courts to defer to. *See Powers v. Hamilton County Public Defender Com'n,* 501 F. 3d 592, 606(6th Cir. 2007). (2) The claims previously mentioned are not incident to the indictment. The indictment finds its way into the pleading only as a selective prosecution claim being made in bad faith to prevent and chill the Petitioner from coming forth with the facts pertaining said Defs.['] actions, for which the law provides an exception. The indictment, although brought under the same Statute, was due to a driver's application at the Ohio BMV in 2011. The Sixth Cir. presented a statement of

fact to support why younger was appropriate stating, "[b]ut he [Ismaiyl] does not dispute that his state criminal prosecution was ongoing at that time." (*See App. A9 P. 4 of 6*). This statement adds nothing to justify the misapplication of Younger, and only begs the question on the premise that because there was a state criminal prosecution that was ongoing at that time, in and of itself, makes Younger applicable to claims which have nothing to do with the state action; this premise is erroneous. It is well settled that the Younger abstention is proper *only when the state asserts a vital interest which is directly in issue in the underlying state proceeding*. *Carras v. Williams,* 807 F. 2d 1286, **18 (6th Cir. 1986). Would this honorable court apply Younger to a federal action where an injunction is sought due to State Judges tampering with court records during a judicial proceeding in violation of the Due Process Clause, because there is a custody proceeding in the state court which has nothing to with the federal claims? I think not. Moreover, the federal claims are not incident to the indictment even if they failed to state a claim. We contend that both Courts misapplied the law of Younger, and as the law has established, [a]court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law. *Dart Cherokee Basin Operating Co. v. Owens,* 135 S. Ct. 547, at **505 (2014).

MOTION TO AMEND 15(a) IN RELATION TO R. 12(b)(6).

The denial of the request for leave to amend without reason was an abuse of

discretion by the Dist. Court. and not harmless error. Furthermore, we contend that the Sixth Cir. misapplied the law surrounding R. 15(a). As established above the Petitioner filed a complaint for an injunction pendente lite; two days afterwards sought leave for an extension of time, and leave to amend the complaint due to the complaint's vulnerability to a 12(b)(6) dismissal, because it lacked material facts to many of the claims found therein, and was intended only to preserve the status quo. (*See Mot. Amend App. A4*). On August 31, 2016, The Dist. Court rendered its judgment and did not mention the application under R. 15(a), as if there was never a request made. Petitioner sought to amend its judgment through the 59(e) application, and relief again through 60(b)(6),(d)(3), but to no avail, they were denied. We believe this matter turns more on R. 12(b)(6) in conjunction with §1915(e)(B)(ii) in relation to the denial of the R. 15(a) Application, rather than the particularity aspect in R.7(b), although pertinent, but misplaced. We first will address the Fed. R. Proc. 15(a). The Ninth Cir. has held that [g]enerally, Rule 15 advises the court that leave shall be freely given when justice so requires. This policy is to be applied with extreme liberality. (Citation omitted). In *Foman v. Davis,* 371 U.S. 178, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962), this Honorable Court offered the following factors a district court should consider in deciding whether to grant leave to amend: *In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure*

to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--the leave sought should, as the Federal Rules of Civil Procedure require, be "freely given.". . . . A simple denial of leave to amend without any explanation by the district court is subject to reversal. Such a judgment is "not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules." Foman, 371 U.S. at 182. *(Emphasis added) Eminence Capital, LLC v. Aspeon, Inc.,* 316 F.3d 1048, 1051-1052 (9th Cir. 2003). Among the grounds that could justify a denial . . . [is] futility. "Futility" means that the complaint, as amended, would fail to state a claim upon which relief could be granted (Citation omitted). In assessing "futility," the District Court applies the same standard of legal sufficiency as applies under Rule 12(b)(6). Id.; 3 Moore's Federal Practice, supra S 15.15[3], at 15-47 to -48 (3d ed. 2000). Accordingly, if a claim is vulnerable to dismissal under Rule 12(b)(6), *but the plaintiff moves to amend, leave to amend generally must be granted unless the amendment would not cure the deficiency.* (Emphasis added) *Shane v. Fauver,* 213 F.3d 113,115 (3rd Cir. 2000). When a district court denies a plaintiff's motion for leave to amend his complaint, this court generally reviews the decision for an abuse of discretion. Begala v. PNC Bank, Ohio, Nat'l Ass'n, 214 F.3d 776, 783 (6th Cir. 2000). When the district court bases its decision to deny leave to amend on a legal conclusion that amendment would be futile, however,

this court reviews the decision de novo. (Citation omitted) *Yuhasz v. Brush Wellman, Inc.,* 341 F.3d 559, at ***16 (6th Cir. 2003). However, the abuse-of-discretion standard is appropriate . . . [when] the court did not deem proffered allegations useless. The district court, instead, *denied the motion for failure to state the grounds for leave with particularity. Evans v. Pearson Enters.,* 434 F.3d 839, at **35(6th Cir. 2006). Here we present our polestar axiom again which is, ex facto jus oritur; that from the facts the law arises. It is a fact that leave to amend was denied by operation of law due to the Dist. Court remaining silent in all of its judgments on the R.15(a) request. It is also a fact that the Dist. Was reminded that a court abuses its discretion by a denial of leave to amend without any explanation in the 59(e) application. Nonetheless, the Dist. Court remained silent on the matter of amendment. The Sixth Cir., however, abused its discretion and erroneously affirmed the denial of leave to amend stating that "[a] motion for leave to file an amended complaint must state with particularity the grounds for seeking the order. (Citation omitted). Because Ismaiyl failed to do so, he was not entitled to the requested relief."(See Sixth Cir. order App. P. 5 of 6). First as an initial matter, [t]he standard for particularity has been understood to mean "reasonable specification." Thus, a motion that fails to state any grounds for relief or a motion that simply states that there are several reasons for relief without explaining those grounds for relief is insufficient under Fed. R. Civ. P. 7(b)(1). *Allender v. Raytheon Aircraft*

Co., 439 F.3d 1236, 1240(10th Cir. 2006). The Seven Cir. expounding on the liberality of the reasonable specification standard in Elustra v. Mineo, 595 F. 3d 699 (7th Cir. 2010), stated that Elustra Lopez filed a motion stating "[i] never aggred [sic] to settlement vacate order Dec 11-08 and reinstate case." The Court explained that "Defendants argue that this motion fails to satisfy Rule 7(b)(1). *But it is hard to see how this could be so. The motion complies with each element of Rule 7(b)(1): it is in writing; it states the grounds for relief (plaintiffs did not agree to the settlement); and it states the relief sought (vacate the order and reinstate the case). The purpose of Rule 7 is to provide notice to the court and the opposing party, and that is exactly what Lopez's motion does."* *Id. Elustra* at 708. In this case, the [Ismaiyl's] motion gave notice, and was in writing and states its grounds as seen here:

> ("Plaintiff filed a Title 42 action in this court . . . . However, the complaint motion only presented matters surrounding the injunction *which is incomplete*.").

And it further states the relief sought:

> ("The plaintiff request that he be granted leave and time to amend the complaint; *in that the complaint is incomplete and if not allowed to be amended may serve to be unfavorable in preventing an unwarranted dismissal in the plaintiff'[s] action.*").

Amendment was sought because the facts were legally incomplete pertaining the claims, multiple parties, and factually unable to withstand a 12(b)(6), because the instrument only sought an injunction, which would in many cases

will be made on a different state of facts and upon different arguments from those presented at the final hearing, and a court neither decide[s] nor intimate . . . [their] opinion upon those questions. *Benson Hotel supra at* ** 8. Second, when a Dist. Court renders a ruling denying an application to amend a pleading this is a matter of fact shown by the record. However, because the Dist. Court never entered a judgment in the record or presented findings articulating the particularity as a legal factor of the denial; this amounts to an abuse of discretion. We contend that the Sixth Cir. abused its discretion by placing itself as the trier of its own set of facts in place of the actual record, and the reviewer of those facts when the Dist. did not make a factual finding that a request was made. See *Lakeshore Term supra at 1172.* Furthermore, the statement that Ismaiyl failed to offer the particulars without referencing the actual request is no more than a legal conclusion, and a clearly erroneous fact because it contradicts the record. *Weiss supra at **14.* Contrary to the set of facts presented by the Sixth Cir., the sentence in the motion was sufficient under the rule 7(b). Which brings us here, we further contend that the Sixth Cir. abused its discretion by misapplying the law to cover the Dist. Court's abuse of discretion. The actions of the Dist. Court although erroneous spelled out futility of a claim. Because, when a claim is futile it is broken beyond repair, and as the adage nursery rhyme states, all the king's horses and all the king's man could not put Humpty Dumpty back together again; why, it is

unamendable, and no manner of amending would cure a futile claim. *Yuhasz supra at ***16.* The record shows that the Dist. Court rendered its judgment under §1915(e) without rhyme or reason to why it refused the motion to amend; this indicates that the reason was far beyond a discretional issue. Where "the district court, by refusing to grant leave to amend the original complaint . . . must implicitly have decided that such a claim was futile," and conducting de novo review. *Yuhasz supra at ***16.* From the facts the law leads us to the claim, we must look to the corners of the claim. A claim is plausible if the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . *The plausibility standard does not give district courts license to look behind a complaint's allegations and independently assess the likelihood that the plaintiff will be able to prove them at trial.* (Citations omitted) (Emphasis added) *United States v. Bollinger Shipyards, Inc.,* 775 F.3d 255, **11(5th Cir. 2010). Furthermore, "[a] copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." *Minch Family LLLP v. Buffalo-Red River Watershed Dist.,* 628 F.3d 960, at **14(8th Cir. 2010). *See also Gburek v. Litton Loan Servicing LP,* 614 F.3d 380, 384 (7th Cir. 2010). One of the allegations found in the pleading alleges in paragraph one inter alia that,

> ". . . said Defendants in their individual and official capacity. Defendants at all times material to this action between the periods of 2009 until 2016 did

> commit fraud upon the court, agreeing to conspire to defraud tacitly or otherwise and did aid and abet fraud[.] . . . doing so knowingly or should have known that their actions were in direct violation of both federal and state laws such as R.C. 2913.42, R.C. 2921.12. . . "(See Complaint App. P.3).

In paragraph three the pleading states that, "in 2013 after discovering the bad faith actions of a conspiracy to defraud and fraud upon the court committed by Defendants mentioned above and their accomplices. Declarant appealed to the Eighth Dist. Court of appeals. On appeal, he directed the Eighth District to the record that had been tampered with to defraud and also reiterated it several times during oral argument in support of his Civ. R. 60(B) motion, for fraud upon the court inter alia; the Prosecutor did not deny it, whereby Judge Tim McCormack stated that the appellant is right then, which established the facts of a great unlawful design at play; statutorily violating R.C. 2913.42 and R.C. 2921.12. The Eighth District Court of Appeals verbally through its judicial officers altered the record to conceal the facts of the fraud upon the court to protect the other co conspirator's (Judicial officers) involved. This was done in its opinion (See exhibit A Motion for reconsideration C.N. 99808). . ." (See Complaint App. A1 P.4). "The particularity standard of Rule 9(b) generally requires the plaintiff to plead the time, place, and contents of the false representation and the identity of the person making the representation. . . Furthermore, Rule 12(b)(6) does not require . . . to present its best case or even a particularly good case, only to state a plausible case. *United States v. Bollinger supra at **11, **18.* (See also R.C. 2921.12, R.C. 2913.42 App.). As

shown above, the requirements of R. 9(b) were met, the allegations also establish scienter on the part of Def. Rocco and other codefendants whom at the time were made aware orally of the fraud, and shown physically in the record pertaining records that had been tampered with. However, they fraudulently concealed these facts and altered the record to do so. Again, 12(b)(6) does not require the best case but rather a plausible case that shows that parties are liable. Here, liability would be under R.C. 2921.12, 2913.42 tampering with evidence or records amounting to fraud upon the court inter alia, which denied the Petitioner the right of Due Process to have his case heard meaningfully before an impartial tribunal, essentially denying him access to the courts by the egregious actions of State Actors tampering with the record during an official proceeding done under the color of law. The Dist. Court arbitrarily presented a fabricated fact that damages were sought in the pleading[s]. The Sixth Cir. added its own set of facts abdicated its review of the record for clear error, and also failed to review the allegations (claims) presented in either document depriving the Petitioner the substantive right to have his case fairly heard, because it is well-settled law that [t]he right to a full and <u>fair</u> hearing *is one of the substantial rights of a litigant, constituting one of "the rudiments of fair play.* (Emphasis added) *E. B. Muller & Co. v. FTC,* 142 F.2d 511, at **19 (6th Cir. 1944).

REASON WRIT SHOULD BE ALLOWED

We believe that the Sixth Cir. United States court of appeals has entered a decision not only in conflict with the decision of other United States court of appeals on the same important matter it has run afoul with that of its precedent, and its decision conflicts with relevant decisions of this Honorable Court on basic fundamental, but yet important federal questions, such as the substantial right to have a full and fair hearing on the merits. Every litigant may not achieve what he feels is just to him especially when the facts are not in his favor. However, *the law should be construed, administered, and employed by the court and the parties to secure the just . . . determination of every action and proceeding.* See FRCP 1. A court cannot derogate the law in the "interest of justice." It is the law and its rule that secures the just determination *of every action and proceeding.* If the laws cannot be applied evenhandedly then instead of a tool of justice, it would only serve to an arbitrary end, contrary to its purpose. It is said that the law never suffers anything contrary to truth. In the spirit of truth and justice, two wings of the same judicial bird, we supplicate this Honorable Court to accept this writ to prevent clear error and manifest injustice, under this guiding principle Fiat justitia ruat caelum, let justice be done though the heavens fall.

Dated July 30, 2018

SIGNED BY: Abdul-Khaliyq