IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT JAMES JAFFE, MD
Petitioner,

Vs.

Congressman BRAD SHERMAN and Does 1-10
Respondents,

PETITION FOR WRIT OF CERTIORARI
After a Decision by the California Court of Appeals
Ninth Appellate District

CENTRAL DISTRICT OF CALIFORNIA
Case No. CV18-9998-RFK(FFMX)

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QUESTIONS PRESENTED FOR REVIEW

(1) Congress delegated the US Supreme Court justices the discretion to choose the petition for certiorari cases they will grant and Congress has directed that the US Supreme Court justices create, adhere, and enforce the FRCP rules of law that the US Supreme Court and its lower courts are to adhere to. When US Supreme Court justices' supervisory power is called upon to enforce the US Supreme Court rules of law and U.S. Supreme Court precedent, may the US Supreme Court justices refuse to oversee and refuse to enforce the US Supreme Court FRCP rules and law and refuse to enforce the U.S. Supreme Court precedent?

(2) When a Congressman contrives through fraudulent misrepresentations of the facts of the case, to not allow Congress to exercise its inherent oversight over federal agencies and federal judicial misconduct, will the US Supreme Court exercise its supervisory power and its power of checks and balances?

(3) Whether an action for relief from judgment procured by judicial fraud on the court may be summarily dismissed and summarily upheld, without review of the fraud on the court allegations – the very allegations on which relief could be granted and the fraudulently procured judgment set aside?

(The fraudulently procured judgment upheld the removal of a constitutionally-protected property right without due process. All the Courts, have refused an evidentiary hearing through summary dismissals and summary affirmances *without review of the fraud on the court* allegation, violating U.S. Supreme Court precedent; Hazel-Atlas Glass Co. v. Hartford-Empire, 322 U.S. 250-51 and U.S. v. Throckmorton, 98 U.S. 61)(requiring an evidentiary hearing for actions for relief from judgment for fraud on the court.)The courts also ignored the holding in United States v. Alex, 81-6010, (summary affirmance is prohibited in cases where an evidentiary hearing has been denied.))

PARTIES TO THE ACTION

Petitioner in Pro Se: **ROBERT J, JAFFE, M.D.**

Respondent: **U.S. Congressman, BRAD SHERMAN.**

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1. Memorandum Ninth Circuit Court of Appeals dated June 22, 2010 (*Jaffe v. Yaffe, et al., Case No. 08-5513.*)(App. 44-45);

2. Order Dismissing District Court Complaint dated February 2, 2012, (United States District Court Central Division), *(Jaffe v. Pregerson, et al., Case #2:11-CV-08363-SVW.)* (App. 320-331);

3. Order, Ninth Circuit Court of Appeals dated June 14, 2012, *summarily affirming* the District Court's Dismissal of Complaint, *(Jaffe v. Pregerson, et al., Case No. 12-55664.)* (App. 352);

4. The Ninth Circuit Court Appeal's Order dated September 10, 2012 denying Motion for Reconsideration *(Jaffe v. Preg*erson, et al., Case No. 12-55664). (App. 353);

5. Mandate of Ninth Circuit dated September 19, 2012, for Order denying Motion for Reconsideration stating that Ninth Circuit Order Summarily affirming the District Court's Dismissal dated June 14, 2012 (App. 354);

6. The U.S. Supreme Court denial of Writ of Certiorari (*Jaffe v. Pregerson, et al.*, Case No. 2:11-CV-08363-SVW) dated March 3, 2014. (App. 432);

7. Medical Board Letter Mar 19, 1998 (App 441)

8. Medical Board Letter May 1, 1998 (App 442)

9 Judgment dated July 28, 2015 from U.S. District Court (*Jaffe v. Roberts et al.*, Case No.CV-15-1018. (App. 433);

10. Order granting Motion to Dismiss, dated July 28, 2015 from U.S. District Court (*Jaffe v. Roberts et al.*, Case No.CV-15-1018. (App. 434);

11 Order denying Motion for Reconsideration, dated 08/11/15 from U.S. District Court (*Jaffe v. Roberts et al.*, Case No.CV-15-1018. (App. 435);

10. Order dated 09/01/15 from Ninth Circuit Court (*Jaffe v. Roberts et al.*, Case No.CV-15-56328. (App. 436);

12. Order dated May 18, 2016 from the Ninth Circuit (*Jaffe v. Roberts et al.*, Case No.CV-15-56328, and (App.437);

13. Order dated August 24, 2016, Order on Motion for Reconsideration from the Ninth Circuit (*Jaffe v. Roberts et al.*, Case No.CV-15-56328,(App.438).

14. Minutes Re: Order Defendant's Motion to Dismiss Mar 20, 2019 No.2:18-CV-09998-RGK-FFP (App.531-537)

15. Mandate dated August 26, 2019 from the Ninth Circuit (*Jaffe v. Brad Sherman, U.S. Congressman,* Case No.CV-19-55364, (App.38).

16. Mandate dated October 18, 2019 from the Ninth Circuit (Jaffe v. Brad Sherman, U.S. Congressman, Case No.CV-19-55364,(App.539).

STATEMENT OF BASIS FOR U.S. SUPREME COURT JURISDICTION

The Ninth Circuit Court of Appeals entered its decision on August 26, 2019, and its Mandate on October 18, 2019.

This Petition is timely filed under 28 U.S. Section 2101(c).This Petition is proper pursuant to U.S. Supreme Court Rule 10(b) as:

(a) A U.S. court has *decided an important federal question in a way that conflicts with relevant decisions of the U.S. Supreme Court;*

(b) A U.S. court of appeals has entered a decision *in conflict with the decision of another U.S. court of appeals* on the same important matter – (The instant Order dated August 26, 2019 (*Jaffe v. Sherman*, (App.439), cites *United States v. Hooten,* 693 F, 2d 857, 858 (9th Cir. 1982) and states, "...the questions raised in this appeal are so insubstantial as to not require further argument. However, *United States v. Alex*, 81-6010) holds, "We did not believe that the question whether *Alex* was entitled to an evidentiary hearing was so insubstantial as to merit summary disposition.";

(c) A United States court of appeals has so *far departed from the accepted and usual course of judicial proceedings,* and/or has *sanctioned* such a departure by a lower court, *as to call for an*

exercise of the U.S. Supreme Court's supervisory power.

CONSTITUTIONAL PROVISIONS

U.S. Constitution, Amendment XIV, Due Process.

STATEMENT OF CASE

Petitioner a Board Certified Internist and an attending physician with the Kaiser Foundation Hospital (the Hospital), and partner with the affiliated Southern California Kaiser Permanente Medical Group for 17 years. (1977 to 1994).

The Hospital removed petitioner's "already-licensed" hospital privileges (*a constitutionally protected property right)* (see Lowe, supra at 323 and Board of Regents v. Roth, 408 U.S. 564 (1972)), without due process of law, through fraudulent peer review and fraudulent hearings.

Per California Business & Professions Code §809, et.seq., and Federal statute, 42 U.S.C.§1112, whenever a Hospital terminates a physician, the Hospital must afford peer review and hearings in strict accordance with statutory law (809, et seq.) and due process, to allow appeal of the termination. The Hospital held a fraudulent peer review and three fraudulent Hearings, wherein numerous due process violations occurred.

Per State law, having completed the peer review process and Hearings, Petitioner then had the right to petition the State court for Writ of Mandamus, to reverse the termination.

The State court procured a judgment in favor of the Hospital through judiciary fraud on the court, and in turn the State Appellate, through fraud on its court sustained the lower court's judgment.

Later, four Federal District Courts and five Federal Circuit Courts, through acts of judiciary fraud, denied review of plaintiff's Complaints and Motions, thereby denying an evidentiary hearing on a State court judgment procured and sustained by fraud on the State and Federal courts.

The four Circuit Courts' decisions are in direct contradiction to the holdings of five other Circuit Courts, FRCP Law, U.S. Supreme Court and State Appellate precedent as stated herein.

Petitioner now proceeds to the U.S. Supreme Court.

ARGUMENT/REASON FOR REVIEW

Petitioner requests the U.S. Supreme Court exercise its supervisory power, as the Federal District and Appellate Courts have through overt acts of judicial fraud on the court violated U.S. Supreme Court precedent and federal rules of law, by summarily dismissing and summarily

upholding the summary dismissals of Petitioner's Rule 60(b) Complaints and Motions to set aside a fraudulently procured state court judgment, procured by judicial acts of fraud on the courts),all without review of Petitioner's fraud on the court allegations - the very allegations upon which relief could be granted and the fraudulent judgment set aside.

Respondent Congressman Sherman also through deliberate fraudulent misrepresentation of the facts of petitioner's case denied Congress's ability to oversee the judicial misconduct.

I.
ALL THE COURTS HAVE SUMMARILY DISMISSED AND SUMMARILY AFFIRMED THE SUMMARY DISMISSALS OF PETITIONER'S ACTIONS FOR RELIEF FROM JUDGMENT FOR JUDICIAL FRAUD ON THE COURT, WITHOUT REVIEWING PETITIONER'S FRAUD ON THE COURT ALLEGATIONS - THE VERY ALLEGATIONS ON WHICH RELIEF CAN BE GRANTED AND THE FRAUDULENTLY PROCURED STATE COURT JUDGMENT SET ASIDE.

As shown herein and in petitioner's district court complaint, all the courts have, through judicial acts of fraud on the court, summarily dismissed and summarily affirmed the summary dismissals of petitioner's actions for

relief from judgment for judicial fraud on the court, admittedly without reviewing petitioner's fraud on the court allegations, the very allegations on which relief can be granted and the fraudulently procured state court judgment set aside.

Petitioner asks oversight from the U.S. Supreme Court, as he asked of respondent Congressman Sherman, as the judicial acts of fraud outlined herein, have admittedly not been reviewed or addressed by any of the courts, and have let stand a fraudulently procured state court judgment that took away a *constitutionally protected property right,* (petitioner's "already-licensed" hospital privileges), *without due process of law.*
(See Lowe, supra at 323 and Board of Regents v. Roth, 408 U.S. 564 (1972)) :(Hospital privileges, when already licensed are a constitutionally protected property right.

II

U.S. SUPREME COURT PRECEDENT REQUIRES THAT ACTIONS FOR RELIEF FROM JUDGMENT BE TRIED IN OPEN COURT, WITH THE FRAUD ON THE COURT ALLEGATIONS RECEIVING THE FULL CONSIDERATION OF THE COURT.

U.S. Supreme Court precedent requires that actions for relief from judgment be tried in open

court, with the fraud on the court allegations getting the full consideration of the court. The required standard of review for actions to set aside a judgment for fraud on the court is set out in *Hazel-Atlas,* 322 U.S. at 250-51:

> "This is a suit in equity in the District Court to set aside or amend the judgment. Such a proceeding is required to be settled by Federal law and would be tried, as it should be, in open court..."
>
> As to the immediate aim of this proceeding, namely, to nullify the judgment if the fraud procured it, and if Hazel is equitably entitled to relief, an effective and orderly remedy is at hand.
> . . .
> The District Court has the power upon proper proof of fraud to set aside [a judgment]...in a trial which has presented the claims of the parties and where they have received the consideration of the court . . . (*Hazel-Atlas,* 322 U.S. at 250-51)...If it is found that there was a fraud on the court, the judgment should be vacated...." *Hazel-Atlas,* 322 U.S. at 250-51. (See also FRCP Rule 60(b)). (Emphasis added.)

Thus, the summary dismissals and summary affirmances of the summary dismissals of petitioner's actions for relief from judgment for fraud on the court, *without review of the fraud*

on the court allegations, violated the required standard of review for fraud on the court actions set out by U.S. supreme court precedent requiring that they be tried in open court, and that the fraud on the court allegations receive the full consideration of the court.

III

THE COURTS' JUDICIAL ACTS OF FRAUD ON THE COURT, THROUGH WHICH THEY SUMMARILY DISMISSED PETITIONER'S ACTIONS FOR RELIEF FROM JUDGMENT FOR FRAUD ON THE COURTWITHOUT REVIEW OF THE FRAUD ON THE COURT ALLEGATIONS, DEPRIVED PETITIONER OF AN EVIDENTIARY HEARING PER U.S. SUPREME COURT PRECEDENT.

Regarding relief from judgment for fraud on the court actions, *U.S. v. Throckmorton*, 98 U.S. 61, 25 L.Ed. 93 hold that there must be a "real contest" before the court on the subject matter of the suit:

> "The cases where such relief has been granted are those in which, by fraud or deception practiced on the unsuccessful party, he has been prevented from exhibiting fully his case, by reason of which there has never been a real contest before the court of the subject matter of the suit."(Emphasis added.)

Thus, the courts' summary dismissals and summary affirmances of the summary dismissals of petitioner's fraud on the court actions –without reviewing plaintiff's fraud on the court allegations – the very allegations on which relief could be granted and the fraudulently procured judgment set aside,- deprived petitioner of an evidentiary hearing, violating U.S. Supreme Court precedent.

Bulloch v. United States, 763 F.2d 1115 (10th Cir.1985) *defines* "judicial fraud on the court: "Fraud on the court is...fraud where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function.

IV

SUMMARY AFFIRMANCEIS PROHIBTED WHERE THE PLAINTIFF HAS BEEN DENIED AN EVIDENTIARY HEARING.

The courts' summary affirmances of the District Court's summary dismissals of petitioner's complaints for relief from judgment for fraud on the court, without any review of the fraud on the court allegations, violates the holding in *United States v. Alex*, supra,707 F.2d. 519, 81-601081-6010, (holding that summary affirmance is prohibited where an evidentiary hearing was denied).

Thus, as shown above, Appellant's District Complaint arises from the named defendants' failure to perform their judicial functions in accordance with the *Bulloch* definition of judicial fraud upon the court, and in violation of the *Hazel-Atlas* requirement that an action for relief for judgment for fraud upon the court "is required to be settled by Federal law and would be tried, as it should be, in open court . . . instead of through the unsatisfactory method of affidavits . . ." (Emphasis added.)

V

U.S. SUPREME COURT PRECEDENT AND FEDERAL CASE LAW HOLD THAT *JUDICIAL ACTS OF FRAUD ON THE COURT*, JUSTIFY THE SETTING ASIDE OF A JUDGMENT SO PROCURED, AND THERE IS NO JUDICIAL IMMUNITY FOR JUDICIAL ACTS OF FRAUD ON THE COURT

The District Court on February 8, 2007 falsely summarily dismissed Petitioner's FRCP Rule 60(b) complaint for relief from judgment for judicial fraud on the state court,(*Jaffe v. Yaffe, etc., et al).(CV 06-08094-DDP (JTL)*(App. 35-41)without reviewing Petitioner's fraud on the court allegations, by falsely denying subject matter jurisdiction, despite FRCP Rule 60(b) set before it which confers such subject matter jurisdiction to the district court, and despite U.S. Supreme Court precedent holding: "The

power to vacate a judgment that has been obtained by a fraud on the court is inherent in all courts". *Wright, Miller & Kane* at § 2870 (citing *Universal Oil Products Co. v. Root Ref.Co.*, 328 U.S. 575, 580 (1946)).'

The District Court on February 2, 2012 dismissed Petitioner's Complaint for relief from judgment for fraud on the District Court (*Jaffe v. Pregerson, et al.*, Case No. 2:11-CV-08363-SVW), without reviewing petitioner's fraud on the court allegations, by falsely invoking "judicial immunity" is its reason to not review the fraud on the court allegations. (See Court's Order p. 2, fn. 1 (App. 320-332)): "Because of judicial immunity the court need *not* address whether plaintiff has sufficiently alleged fraud on the court."

(See outlined herein all the other courts' false claimed bases for summary dismissals and summary affirmances, and false claimed bases for not reviewing or addressing petitioner's fraud on the court allegations.)

Judicial immunity does not apply, nor shield "judicial acts" of fraud on the court. U.S. Supreme Court precedent and Federal case law hold that "judicial acts" of fraud on the court are grounds to set aside a judgment so procured.

See Trans Aero Inc. v. LaFuerga Area Boliviana, 24 F.3d 457 (2nd Cir. 1994):

"Fraud destroys the validity of everything into which it enters," *Nudd v. Burrows* (1875), 91 U.S. 426, 23 Led 286, 290; particularly when "a *judge himself* is a party to the fraud," *Cone v. Harris* (Okl. 924), 230 P. 721, 723. *Windsor v. McVeigh* (1876), 93 US 276, 23 Led 914, 918.

"One species of fraud upon the court occurs when an 'officer of the court' perpetrates fraud affecting the ability of the court or jury to impartially judge a case. Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court."

(*Pumphrey v. K. W. Thompson Tool Co.*, 62 F.3d 1128, 1130 (9th Cir.1995) "A judge is an officer of the **court,** as well as are all attorneys. A State judge is a State judicial officer, paid by the State to act impartially and lawfully. A Federal judge is a Federal judicial officer, paid by the Federal government to act impartially and lawfully. A judge is not the court." *People v. Zajic*, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).

"Fraud upon the court" has been defined by the 7th Circuit to "embrace that species of fraud which does, or attempts to, defiles the court itself, or is a fraud perpetrated by **officers of**

the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. *"Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 *Moore's Federal Practice, 2d ed.*, p. 512, ¶ 60.23.

The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final. No fraud is more odious than an attempt to subvert the administration of justice." *Hazel-Atlas supra,* 322 U.S. 238 (1944).

In *Browning v. Navarro,* 826 F.2d 335 (5th Cir. 1987) the court analyzed two Supreme Court cases dealing with 'fraud on the court' actions: *United States v. Throckmorton,* 98 U.S. 61 (1878), and *Hazel-Atlas.* Throckmorton stands clearly for the proposition that extrinsic fraud is that fraud that was not the subject of the litigation that infects the actual judicial process is grounds to set aside a judgment as procured by fraud.

Under Federal law, when any officer of the court has committed "fraud upon the courts", the orders and judgment of that court are void, of no legal force or effect. *Cobell v. Norton,* 226 F.Supp.2d 1 (D.D.C. 09/17/2002).)

It is clear and well-settled law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. *The People of the State of*

Illinois v. Fred E. Sterling, 3. In *re Village of Willowbrook,* 37 Ill.App.2d 393 (1962); *Dunham v. Dunham,* 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); *Skelly Oil Co. Manufacturers Hanover Trust Co. v. Yanakas,* 7 F.3d 310 (2nd Cir. 0/18/1993).)

"Fraud on the court...is fraud which is directed to the judicial machinery itself and is not fraud between the parties....It is thus fraud where the **court** or a **member** is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function--thus where the impartial functions of the court have been directly corrupted." *Bulloch v. United States,* 763 F.2d 1115 (10th Cir.1985). (Emphasis added.)

> "Fraud upon the court occurs whenever any officer of the court commits fraud before a tribunal. A judge is not a court; he is under law an officer of the court and he must not engage in any action to deceive the court." *Trans Aero Inc. v. LaFuerga Area Boliviana,* 24 F.3d 457 (2nd Cir. 1994).

The power to vacate a judgment that has been obtained by a fraud on the court is inherent in all courts." *Wright, Miller & Kane* at § 2870 (citing *Universal Oil Products Co. v. Root Ref. Co.,* 328 U.S. 575, 580 (1946). (Emphasis added.)

Hazel-Atlas, 322 U.S. at 250-51 States:

> "Finally, as to the immediate aim of this proceeding, namely, to nullify the judgment if the fraud procured it, and if Hazel is equitably entitled to relief, an effective and orderly remedy is at hand. This is a suit in equity in the District Court to set aside or amend the judgment. Such a proceeding is required by settled Federal law and would be tried, as it should be, in open court..." (Emphasis added.)

Thus, as stated above, U.S. Supreme Court precedence requires, that for actions for relief from a judgment procured by fraud on the court, the fraud on the court allegations must be reviewed and given full consideration and an evidentiary hearing in open court provided. With the proof of the judgment procured by fraud that judgment is to be set aside. This is mandated by US Supreme Court law and precedent and Federal and State Appellate precedent.

VI.

A JUDGMENT IS A "VOID JUDGMENT" IF THE COURT THAT RENDERED THE JUDGMENT ACTED IN A MANNER INCONSISTENT WITH DUE PROCESS

Klugh v. U.S. D.C.S.C., 610 F. Supp. 892, 901 States: a judgment is a "void judgment" if the court that rendered judgment... acted in a manner inconsistent with due process."

As shown herein, the Federal District and Appellate Court judges all acted in a manner inconsistent with due process and violated U.S. Supreme Court Precedent governing the standard of review for actions for relief from judgment for fraud on the court by, through their acts of judicial fraud on the court, summarily *dismissing,* and *summarily affirming* the summary dismissal of Petitioner's District Court actions for relief from judgment for judicial acts of fraud on the court - all without ever reviewing or addressing petitioner's fraud on the court allegations, the very subject matter of his action, the very allegations, that would entitle him to relief and the fraudulent judgment set aside.

Respondent Congressman Sherman also through fraudulent misrepresentation of the facts denied Congress's ability to oversee the judicial misconduct.

Peer Review Violations

The Hospital conducted a fraudulent peer review which included its August 1, 1994 meeting composed of its Medical Executive Committee (MEC). The MEC members all held Hospital and Partnership appointed administrative positions.

Included in the Hospital's actions:

The Hospital appointed five Hospital physicians to randomly review 85 of Petitioner's patient care records. These physicians wrote that in all instances Petitioner's care was fully satisfactory. The Hospital hid the existence of this panel and its findings from its MEC.

The MEC members then at their August 1st meeting as the "initial decision makers" voted to terminate Petitioner. The charges at this meeting were the basis for termination.

The Hospital per State Law and its Bylaws provided three hearings to appeal the termination recommendation. Prevailing at any one of these hearings would reverse the termination.

The First Hearing -Violations:

Conducted April 15, 1994, the Hospital installed its same MEC "fact-finders" to vote

and uphold their "initial findings and be the "final decision makers", violating Federal and State statute (809, et.seq.) (App. 92-111).

The Hospital ignored its Bylaws and installed its attorney into its Hearing while prohibiting Petitioner an attorney. The Hospital again withheld from its MEC the existence of a five physician panel and their positive letter of findings documenting no problems in any of the 81 files they randomly reviewed.

The Bylaws permitted Petitioner representation by a Hospital physician of the same specialty. Dr. Scott McKenzie represented Petitioner. His testimony included:

> "I found the reports [against Petitioner] to be extremely flawed. . . The bias concern has been born out... and when I read the Subcommittee report it seemed like a litany of horrors, and I was sure I would find a smoking gun . . . maybe even an arsenal. I didn't."....
>
> ...You all have to hear me out and bear with me because you all have self-interest in this report, and I know you will have difficulty admitting how badly flawed it are." . . . "I certainly didn't think this was the type of presentation I would make. When I read the report, I thought Dr. Jaffe would have no option but to beg for forgiveness. But the facts demanded this

> accounting, even though I realize injecting me into this conflict with administration could potentially involve personal and professional costs to me.
>
> ...
>
> Even his critics offer Dr. Jaffe significant praise - he is hardworking, extremely attentive to his patients' needs, conscientious, very caring, and dedicated to the department of internal medicine. In fact, when the department is plagued by multiple unexpected absences, he has pitched in and volunteered on short notice more often than any other internist, bar none. I know, because I'm responsible for the call schedule. . . .
>
> . . .
>
> Also, the Internal Medicine Department has a formula designed to measure meritorious service. The July '94 average score was 59.8; Dr. Jaffe's was 66.0. What does this reflect? The variables include practice size, productivity, number of Hospital discharges, L.O.S (length of stay); etc. My personal favorite variable is the number of patients who change doctors, a very strong indicator of patient satisfaction. Dr. Jaffe is consistently among the best 5% or 10% of the department."

The Hospital failed to provide the medical records for a number of its charges. Dr. McKenzie requested continuance until all

records were provided. The hospital went forward despite the missing records. Dr. McKenzie solidly refuted the charges for which he was provided the medical records. However, overseen by the Hospital's attorney and Medical Chair, the MEC members voted to uphold their termination.

The Hospital then backdated the minutes of its First Hearing and falsely declared it "a meeting" in order to escape it's Federal and State (B&P 805-809) statutory fair hearing mandates that apply to hearings.

The Second Hearing (Arbitration) - Violations

During the second hearing the Hospital removed some of the charges that were the basis for the termination and added new charges that were not the basis for the termination.

The Hospital selected and paid 100% an arbitrator/attorney whose career is arbitrating Hospital hearings. (App: 112-141. Such financial bias is prohibited by U.S. Supreme Court precedent[1].

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[1] *Tumey v. Ohio* (1927) 273U.S. 510, 523: "Of all the types of bias that can affect adjudication, pecuniary interest has long received the most unequivocal condemnation and the least forgiving scrutiny...It certainly violates the Fourteenth Amendment, and deprives a defendant due process of law, to subject his liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a **conclusion** against him in his case...While the rules governing

Petitioner's expert witness testimonies, supportive authoritative text and literature, the medical records, the Hospital's own guidelines, together with the investigational findings of the Medical Board (Apps 441, 442) solidly proved Petitioner within the standard of care on all the Hospital's charges.

The Hospital provided no such witnesses, texts, literature or guidelines to support its charges, withheld portions of the administrative record, and misstated, tampered with and/or creatively photocopied the medical records to make the records fit its charges.

Expert Witness Testimony

Lead expert witness, David Goldstein, M.D, Chief of Medicine, University of Southern California testified:

> ".... in the end, this case is about a man's career, his life. While the Medical Executive Committee has ignored their community's standard for conducting fair and impartial peer review, the case against Robert Jaffe revolves around whether the fifteen cases under discussion prove his incompetence. Nothing could be further from the truth. Robert Jaffe is a dedicated, caring and

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the disqualification of administrative hearing officers are in some respects more flexible than those governing judges, the rules are not more flexible on the subject of financial interest."

bright physician. His patients adored him for good reason....If these cases had been presented to an objective panel of clinicians, the charges would have been summarily dropped as ludicrous. The Medical Executive Committee never provided one shred of evidence from an impartial expert. The Medical Executive Committee simply had one Kaiser Physician testify after another. Indeed, many of the cases merely represent differences in clinical judgment between Dr. Jaffe and the Medical Executive Committee. There are many different ways to treat patients. All but two of the patients had quite satisfactory outcomes. The two poor outcomes in no way resulted from Dr. Jaffe's performance. If, of all of the charts (from eighteen years' experience) that were culled by the Medical Executive Committee, these fifteen were the worst that they could find, then why did the patients do as well as they did. If there was such poor management by Dr. Jaffe, why was there such a dearth of poor outcomes? The vast majority of these cases arose not from quality fall-outs, but from proctoring, biased proctoring at that.

...Most troubling has been the Medical Executive Committee's lack of awareness of current clinical practice. Some examples of the Medical Executive Committee's poor judgment and

inadequate fund of medical knowledge appeared in the cases of CW, ES, WC, DR and EH. The Medical Executive Committee's contention that Dr. Jaffe used the wrong antibiotic for CW not only reflects their bad judgment and poor knowledge, but also their inability to keep up with current literature. The Medical Executive Committee's argument that ES should have had a transfusion again speaks to their poor judgment and, at the same time, refutes Dr. Schottinger's claim as an expert in hematology. The Medical Executive Committee's assertion that WC was not a prime candidate for a trial on oral hypoglycemic agents is pure nonsense. The testimony of their supposed expert, Dr. Fatemi was an embarrassing display of ineptitude. Her lack of familiarity with the writings of Mayer Davidson[2], as well as the teachings of her own mentor, Dr. Jorge Mestman[3], clearly reflected her below-average level of knowledge. Ms. Meinhardt's assertions that DR and EH received inappropriately voluminous fluids is simply ludicrous. Were the Medical Executive Committee to share this latter opinion with an objective

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[2] Meyer Davidson-Professor of Medicine, UCLA School of Medicine, President American Diabetes Association

[3] Jorge Mestman- Professor of Medicine and Diabetology University of Southern California. Recipient yearly of the House-staff best teacher- professor award.

> physician, or panel of physicians, the Medical Executive Committee would be advised to return to medical school for a refresher course in heart failure. Clearly the Medical Executive Committee could find no support for such a contention from their own doctors who also cared for these patients, namely Drs. Talkin Chief of Cardiology and (Internist Richard) Noceda, who saw these same patients as Dr. Jaffe, and advised fluid management.
>
> ...Finally, there is the case of EH. In this situation the Medical Executive Committee has behaved so unprofessionally that it should have warranted dismissal of all charges against Dr. Jaffe. The medical record was altered to make it appear as if Dr. Jaffe had performed badly when in fact he had done nothing wrong. Dr. Jaffe did nothing to contribute to this unfortunate man's demise. To imply so is at best hypocritical. The Medical Executive Committee should have displayed some small bit of courage, admit the unprofessional behavior and pulled this charge from the case against Dr. Jaffe. The fact that they have not, taints the Medical Executive Committee's entire closing argument."

The arbitrator ignored Petitioner's expert witness testimony and supportive literature and

text documenting Petitioner to be within the standard of care on all the charges, and cut short Dr. Goldstein as he successfully refuted each charge.

The arbitrator ignored the Hospital's violations of law and due process during the peer review and the First Hearing and allowed new violations to continue throughout his arbitration hearing.

On December 15, 1997, the arbitrator upheld the Hospital's termination, by devious methods, including changing the Hospital's charges, ignoring his own arbitration rules.

The Third Hearing – Violations:

At the Appellate Review Board Panel Hearing (third hearing) Petitioner was allowed to appeal the arbitrator's actions and findings. The panel was comprised of three Kaiser-affiliates where the Bylaws stated only one member must be Kaiser-affiliated. The Panel was selected by the Hospital. Petitioner was refused a say in the selection process.

The Hospital's lead member of its Board of Directors chaired the hearing and the Hospital's Assistant General Counsel was installed into the Hearing to oversee the Panel. Petitioner remained pro se. The Panel denied Petitioner

his right to voir dire and stated if he so attempted they would refuse him the hearing.

Petitioner raised before the Panel all the due process violations that occurred during the Hospital's Peer Review and Hearings. Petitioner also reviewed the medical charges with the Panel. The Panel testified that the Hospital had not provided them the medical records to review. The Panel ignored the Medical Board's Investigational Findings of no deviation from the standard of care on all the charges, and upheld the termination. (App.207-258)

Judicial Acts of Fraud on the Court - The Courts:

Petitioner filed a Petition for Writ of Mandamus challenging the Hospital's decision before Los Angeles Superior Court Judge Yaffe on December 16, 2001. Petitioner therein documented the Hospital's statutory and due process-fair hearings violations along with the probative proof from the administrative record that the medical charges were not supported by evidence. Petitioner included the California Medical Board's investigational determination of no deviation from the standard of care on all the charges (App. 1-2) and the independent expert witness testimony with supporting text and literature finding Petitioner to be within the standard of care on all the charges.

C.C.P. 1094.5 outlines the standard of review for Writ of Mandamus hearings: (§1094.5(*b*) requires the court review for due process and fair procedure. §1094.5(*d*) requires the court review the charges for substantial evidence. However, Judge Yaffe performed neither review. Instead of enforcing the statutory and due process law cited in Petitioner's trial court briefs, Judge Yaffe committed numerous acts of "fraud on his court." He falsely stated essential facts, dates, issues and law and devised a false premise in his Opinion which he used to "waive" and not address any of Petitioner's statutory and due procedure issues. Regarding the medical charges, Judge Yaffe addressed only one of the 12 alleged charges and he misapplied the required "substantial evidence test" to that charge by changing the charge to a non-existent charge. Through these acts of fraud on his court, on 1/10/03 Judge Yaffe denied Petitioner's Writ of Mandamus. (App. 3–41.)

Petitioner then appealed to the California Court of Appeals, Second Appellate District (Turner). Petitioner documented Judge Yaffe's acts of fraud upon his court that led to a fraudulent judgment (App. 97-153), and asked the judgment be set aside.

These judges falsely stated essential facts, dates, issues and law, and failed to address the statutory and due process violations that occurred during all three of the Hospital's

Hearings. They devised their own false premise to "waive", "forfeit" and not address Judge Yaffe's actions. (App.158-266) and committed their own acts of fraud on their court to sustain the lower court's and the Hospital's actions.

Petitioner then filed a Complaint with the (Pregerson) District Court (Case CV 06-8094DDP (JTLx), on December 18, 2006, under FRCP Rule 60(b) seeking to set aside the State court judgment for fraud on the State courts. (App.74-269.)

On 2/8/07 District Court Judge Pregerson, through false means shown below, summarily dismissed Petitioner's Complaint without review of the fraud on the court allegations.

On 12/8/07, Petitioner timely submitted a Rule 60b Motion to the Pregerson District Court, proving that Judge Pregerson unlawfully dismissed his Complaint, that *Rooker-Feldman* with its *Kougasain delineation* specifically directs the District Court to hear on State court fraudulently procured judgments.

On 12/14/07 Judge Pregerson issued his Order Not to File Petitioner's Rule 60(b) Motion App 42-43, thus refusing his jurisdiction.

Petitioner then filed his Opening Brief with the Ninth Circuit (Judge Canby) 2/2/08 (App.356).

The Ninth Circuit falsely claimed judicial immunity and lack of subject matter jurisdiction and summarily dismissed Petitioner's Complaint.

On 6/22/10, Ninth Circuit (Judge Canby) *upheld* Judge Pregerson's Order Not to File Petitioner's Rule 60(b) Motion, again refusing the required review of Petitioner's fraud on the court allegations: "We decline to address Dr. Jaffe's contentions regarding the underlying dismissal of his case." (App.44-45)

On 10/11/11, Petitioner filed a FRCP Rule 60(b) Complaint naming Judge Pregerson, requesting relief from Judgment for fraud on the District Court (Case No. 11-CV-08363-SVW), with District Court (Judge Wilson.)

On 2/2/12, District Court (Judge Wilson) summarily dismissed Petitioner's Rule 60(b) action without review of the fraud on the court allegations. See Court's Order page 2, fn. 1: "Because the court finds the action is barred by judicial immunity...the court need not address whether plaintiff has sufficiently alleged fraud on the court."

On 2/27/12, Petitioner timely filed a Motion for Reconsideration as the District Court had summarily dismissed his Complaint for relief from judgment for fraud on the court, *without review of the fraud on the court allegations,* thus denying an evidentiary

hearing. Petitioner also cited Federal and U.S. Supreme Court precedent holding that judicial immunity does not bar actions for relief from judgment for judicial fraud on the court.

On 9/10/12, District Court (Judge Wilson) denied Petitioner's Motion for Reconsideration without allowing a hearing. (App. 354).

On 4/30/12, Ninth Circuit (Judge Leavy) issued a 21-day Order to Show to Cause as to why the District Court Judgment should not be summarily affirmed.

On 5/21/12 petitioner filed his Response. (App.336)

The Ninth's Circuit (Judge Levy's) Order dated 6/14/12 (App. 353) summarily affirmed the District Court (Judge Wilson's) Dismissal of Petitioner's Complaint for Fraud on the Court by Judge Pregerson. The Ninth Circuit (Judge Levy) upheld Judge Wilson's refusal to hear Petitioner's FRCP Rule 60(b) Motion and refused their mandate to review de novo Petitioner's fraud on the court allegations, thereby acting with fraud on their Circuit Court.

On 6/26/13 Petitioner filed to the Ninth Circuit (Judge Leavy), a Motion for Reconsideration, (App. 415) again documenting the District Court (Judge Wilson) had dismissed Petitioner's Complaint for Fraud on the Court without any review of Petitioner's Fraud on the

District Court allegations, thus denying an evidentiary hearing. Summary affirmance in any action is prohibited when an evidentiary hearing has been denied. (*Alex*, supra,)

On 9/10/12, the Ninth Circuit's Order (Judge Leavy), denied Petitioner's Motion for Reconsideration (App. 354), without review of the fraud on the court allegations.

On 3/11/13 Petitioner timely filed in District court (Judge Wilson) a Rule 60(b) Motion to set aside his (Judge Wilson's Order on the basis that Judge Wilson had not performed his required standard of review.

On 3/13/13 the District Court (Judge Wilson) denied Petitioner's Rule 60(b) on false grounds: (1) falsely calling it a Motion for Reconsideration; (2) falsely stated it to be untimely under the rules of a Motion for Reconsideration, (a Motion for Reconsideration must be filed within 30 days, whereas a Rule 60(b) Motion for Relief from Judgment for Fraud on the Court within one year.) *Petitioner's 60(b) Motion* was timely filed within one year.

On 3/21/13 Petitioner appealed the District Court (Judge Wilson's) Order denying Petitioner's FRCP Rule 60(b) Motion to the Ninth Circuit (Judge Tashima).

On 9/9/13 the Ninth Circuit summarily affirmed the District Court's (Judge Wilson's)

summary dismissal of Petitioner's Rule 60(b) Complaint and Motion for relief from judgment for fraud on the court by citing holdings irrelevant to the required standard of review for actions for relief from judgment for fraud on the court. The order (App.432) citing *Palomo v. Baba*, stated, "The District court cannot act in a manner inconsistent with the mandate..."is contrary to U.S. Supreme Court precedent that any order (including a mandate) is a null and void. A mandate does not make a fraudulently procured order valid. *Valley v. Northern Fire & Marine Ins. Co. 254 US.S 348, 41 S.* Ct. 116 (1920): (an order procured by fraud on the court can *never* be final.)

Furthermore, *Fisher v. Amaraneni*, 565 So. 2d 84 (Ala. 1990) holds that "Rule 60(b) (4) motions **involve** a different standard of review: . . . "[w]hen the denial turns on the validity of the judgment, discretion has no place for operation. If the judgment is void it must be set aside".

Thus, the Ninth Circuit's (Tashima) statement "it cannot act in a manner inconsistent with the *mandate* of the court" does not apply to fraudulent judgments.

Furthermore, the Ninth Circuit's 9/9/13 order citing *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982)incorrectly stated *Hooton* sets the "standard" of review required for actions for relief from a judgment procured by fraud on the

court. However, *Hooton* is inapposite. *Hooton* involves motion to vacate a judgment based on newly discovered evidence, which is not the standard of review for actions for relief from judgment procured by fraud on the court. See *Fisher v. Amaraneni*, supra.

On 5/5/14 the U.S. Supreme Court denied Petitioner's Writ of Certiorari (*Jaffe v. Roberts).*

On 2/11/15 Petitioner filed a District court complaint naming the U.S. Supreme Court Justices (Jaffe v. Roberts, et al.,) (Case No. 15-1018-DSF), for fraud on its court in not exercising their supervisory power (per the *Bulloch, supra* definition of fraud on the court, - when the judge has not performed his judicial function), and citing *Fisher v. Amaraneni*, 565 So. 2d 84 (Ala. 1990): "[w]hen the...denial turns on the validity of the judgment, discretion has no place for operation." (Docket #1.)

On 5/18/15 the Ninth Circuit Court of Appeals issued its Order upholding summary dismissal of Petitioner's Complaint. (App. 434)

On 7/28/15 the District court granted summary dismissal of Petitioner's District Complaint and Action for relief from Judgment for fraud on the court (Jaffe v. Roberts, et al. Case No. 2:15 cv-01018-DSF), again without review of the fraud on the court allegations, the Hospital's medical charges, nor the Hospital's due process violations.(App. 435).

On 8/6/15 Petitioner filed a Motion for Reconsideration (Jaffe v. Roberts, et al. Case No. 2:15 cv-01018-DSF) on the basis that the District court overlooked and misstated essential facts and Petitioner has been denied an evidentiary hearing as all the courts, through judicial acts of fraud on the court as outlined, have not reviewed the fraud on the court allegations, the Hospital's medical charges, nor the Hospital's due process violations. (Docket #35).

On 8/11/15 the District Court denied Petitioner's Motion for Reconsideration (Docket #36) (App. 436).

On 12/4/15 petitioner filed an appeal in the Ninth Circuit Court, Case #15-56328 (Jaffe v. Roberts, et al., appealing the denial of Petitioner's Motion for Reconsideration and summary dismissal of Petitioner's District Court Complaint.) (AOB). (App. 356)

On 8/24/16 the Ninth Circuit (Jaffe v. Roberts, et al. (Case No. 2:15 cv-01018-DSF) denied Petitioner's Motion for Reconsideration and Motion for Reconsideration En Banc, without a hearing. (App.437.)

On 3/21/17, petitioner filed a Writ of Certiorari before the U.S. Supreme Court, (Jaffe, M.D., v. Roberts, Jr.,) Case No.16-1181.

The U.S. Supreme Court by letter dated 5/30/17 upheld the District Court's decision through judicial acts of fraud on the court, citing 28 USC section 2109falsely claiming lack of quorum under 28 USC section 1. See the Court's letter dated May 30, 2017:
"Because the court lacks a quorum (28 USC section 1) and since the qualified justices are of the opinion that the case cannot be heard and determined until the next term of court the judgment is affirmed under 28 USC section 2109. (Emphasis added.)

However, Section 2109 is not applicable to plaintiff's case and cannot be invoked to uphold the judgment in this case because Section 2109 requires that there be a "majority" of qualified justices taking part in the decision, and the Court's 5/30/17 letter had stated:

> ."The Chief Justice, Justice Kennedy, Justice Thomas, Justice Ginsburg, Justice Breyer, Justice Alito, Justice Sotomayer and Justice Kagan took no part in the consideration or decision of this petition."

Since eight of the nine justices took no part in the consideration or decision of the petition, there was, therefore, no "majority" of "qualified Justices" who took part in the

decision within the meaning of section 2109 for that section to be invoked for the purposes of upholding the judgment in plaintiff's action.

On 6/14/17 plaintiff timely filed a Petition for Rehearing. On June 23, 2017 his Petition for Rehearing was returned by the court clerk stating "Because the Court lacks a quorum in this case, 28 USC, section 1, the Court cannot take action on the Petition.

Plaintiff requested that the U.S. Supreme Court wait to convene quorum in this case as, as shown above, 28 USC, section 2109 was wrongfully invoked in this case to uphold the fraudulently procured judgment in plaintiff's case, and because actions for relief from judgment for fraud on the court must be heard in open court per the U.S. Supreme court precedent and federal law cited in plaintiff's Petition for Rehearing and also cited again above.

Congressman Sherman's Fraudulent Misrepresentation of Petitioner's Case Thereby Denying Congress' Ability to Oversee the Judicial Misconduct

On July 27, 2017, November 6, 2017; November 21, 2017; and December 23, 2017; (Apps.443-457,458-498,505-521).petitioner

wrote Respondent Congressman Sherman, reporting the judicial misconduct and judicial acts of fraud on the court which led to the fraudulent state court judgment, which had upheld the hospital's removal of his hospital privileges without due process of law. Plaintiff also listed the statutory due process violations and U.S. Supreme Court precedence that the courts failed to enforce.

Plaintiff requested Congressional oversight over the judicial misconduct and the judicial acts of fraud on the court by all the courts, including the U.S. Supreme Court, which had, through judicial acts of fraud on its court detailed herein, denied plaintiff's writ of Certiorari, thereby refusing to enforce its supervisory power over the lower courts, delegated to it by Congress.

However, respondent Congressman Sherman fraudulently and deceptively misrepresented the facts of plaintiff's letters and plaintiff's reason for contacting congress in response to plaintiff's letters to him, thereby perpetrating the judicial fraud on the courts.

Respondent Sherman responded via his attorney, Ms. Carolina Krawiec, through emails to petitioner dated November 28, 2017 (App.552-526), January 3, 2018, and January 8,

2018. (App.530), each time overtly fraudulently misstating petitioner's case and his reason for contacting congress. Her emails to petitioner stated, "Thank you for contacting our office in response to the difficulties you have encountered in pursuing your legal case against Kaiser...and Re: Your dispute with Kaiser."

She intentionally misstated petitioner's case and intentionally omitted the true facts of petitioner's case in order to render her conclusion that defendant Sherman and Congress cannot provide oversight. She intentionally omitted that petitioner presented to Congressman Sherman a case for oversight of Congress, -judicial acts of fraud on the courts - a fraudulently obtained state court judgment which upheld the hospital's termination of plaintiff's hospital privileges, which was obtained and summarily affirmed by the courts through their judicial acts of fraud on their respective courts, all without review of the hospital's due process violations, or the hospital's charges, or review of petitioner's fraud on the court allegations.

Carolina Krawiec's reply to petitioner dated Nov. 28, 2017 (App.522-526) stated:

"Re: Dispute with Kaiser. Thank you for contacting our office regarding the difficulties you have encountered in pursuing your legal

case against Kaiser...." Unfortunately, the issues you have raised in your correspondence are matters in which our office cannot intervene. . . I regret that we cannot offer you assistance with this matter. The type of assistance that we can provide constituents is help in resolving problems with administrative agencies of the federal government such as the Internal Revenue Service, the Social Security Administration, or United States Citizenship and Immigration Services. We are able to offer this assistance because Congress has an oversight role over federal agencies that is derived from its constitutionally defined powers, has been recognized by the Supreme Court, and is mandated by federal law. Please feel free to contact our office in the future if you have problems with a federal agency."

Carolina Krawiec's reply email to petitioner dated January 3, 2018 (App.527) stated:

> "Re Dispute with Kaiser. In November, I sent you the email below in response to your correspondence about your dispute with Kaiser. Today, we have again received correspondence from you about this same issue. Please refer to the information.

Carolina Krawiec's reply email to petitioner dated January 8, 2018 (App.530), again

misstating the facts and again ignoring petitioner's letters clarifying that she had misstated the facts of petitioner's letters, stated:

> "We have received a letter from you dated January 4, 2018. The contents of the letter are very similar to your previous two letters, and our response remains the same. As we have now read substantially the same letter three times, and have provided you the same response three times, this is the final response you will receive from our office regarding this issue."

The instant U.S. Supreme Court Writ of Certiorari follows.

Petitioner's FRCP Rule 60(b) Complaint and Motion documented that Petitioner was denied a hearing by the Hospital and the State and an evidentiary hearing by the Federal Courts.

The due process violations of the Hospital and the Hospital's charges received only fraudulent reviews by the State courts and therefore in fact never reviewed by the State courts. Petitioner's independent District Court Complaints and his Rule 60(b) Motions to set aside the judgment for fraud on the court were summarily dismissed and the summary dismissal then summarily affirmed without

review of the fraud on the State court allegations, in violation to the Ninth Circuit's holding in Alex. (*United States v. Alex.* 81-6010)

All the Federal courts unlawfully summarily dismissed and summarily affirmed their summary dismissals of Petitioner's Complaints and Motions to set aside the judgments procured by fraud on the courts, through judicial acts of fraud on the court, and all without ever performing their required standard of review for fraud on the court allegations. Thus Petitioner was denied an evidentiary hearing on the subject matter of his suit. See *Throckmorton,* 98 U.S. 61, 25 L.Ed. 93:

> "The cases where such relief has been granted are those in which, by fraud or deception practiced on the unsuccessful party, he has been prevented from exhibiting fully his case, by reason of which there has never been a real contest before the court of the subject matter of the suit."

Bulloch v. United States, 763 F.2d 1115 (10th Cir.1985) holds that **judicial** fraud on the court occurs where the judge has not performed his judicial function."

Furthermore, *Wonder v. Southbound Records, Inc.*, 364 So. 2d 1173 (Ala. 1978) holds

a judgment as void if the "court acted in a manner inconsistent with due process."

"[W]hen the...denial turns on the validity of the Judgment, discretion has no place for operation. *Fisher v. Amaraneni*, 565 So. 2d 84 (Ala. 1990).

CONCLUSION

In light of the foregoing, Petitioner requests this Court exercise its supervisory power to direct its District Court to review, hear in open court with jury, and with the readily proved facts, set aside the State court's judgment.

Furthermore, the instant Order dated August 26, 2019 (*Jaffe v. Sherman*, Case CV-19-5536 (App.439),cites *United States v. Hooten*, 693 F,2d 857, 858 (9th Cir. 1982) and states, "...the questions raised in this appeal are so insubstantial as to not require further argument. However, *United States v. Alex*, 81-6010) holds, "We did not believe that the question whether *Alex* was entitled to an evidentiary hearing was so insubstantial as to merit summary disposition."

Dated: November 15, 2019

Respectfully submitted,

/S_____

Robert James Jaffe, M.D.
Petitioner, in Pro Se