No. 19-1230

In The

Supreme Court of the United States

BOBBY KNIGHT, a/k/a Bobby Knight, III,

Petitioner,

v.

JEH CHARLES JOHNSON, DHS SEC. *et al.*,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. DID THE COURT BELOW FAIL TO USE AN APPROPRIATE STANDARD OF REVIEW WHEN GRANTING ALL THE DISMISSAL MOTIONS WITHOUT RECOGNIZING THE PETITIONER'S EVIDENCE?

II. DID THE COURT BELOW BY FAILING TO GRANT THE PETITIONER A TRIAL CREATE A SERIERS OF REVERSABLE ERRORS AS THE UNITED STATES SIMULTANEOUSLY FILED IT'S MOTION TO DISMISS AS A DEFENDANT WHILE ELECTING TO NOT INTERVENE AS A QUI TAM PLAINTIFF?

III. DID THE DISTRICT COURT DENY THE PETITIONER'S MOTION FOR JUDGEMENT BY DEFAULT CREATE A REVERSABLE ERROR?

IV. DID THE DISTRICT COURT MAKE A REVERSABLE ERROR BY ALLOWING A VIOLATION OF THE STATE'S LAW THAT STRICTLY PROHIBITED THE S.C. STATE'S INSURANCE FUND ATTORNEYS TO REPRESENT A PRIVATE BUSINESS'S INDIVIDUAL OWNER? (*RICHARDSON, JR.*)

QUESTIONS PRESENTED

V. DID THE DISTRICT COURT CREATE A REVERSABLE ERROR CHANGING THE NAME OF RICHARDSON TO RICHARDSON, SR. WHO WAS DECEASED 9 YEAR PRIOR TO "AT ALL TIMES PERTINENT TO THE CASE"?

VI. DID THE DISTRICT COURT CREATE A REVERSABLE ERROR TO GRANT DEFENDANT CHENEGA SECURITY AND THORPE FIRST MOTION TO DISMISS BY SUBSITUTING THE SECOND MOTION TO DISMISS USING THE ROSEBORO ORDER WARNING OF THE SECOND ON THE FIRST ONE FILED (7) MONTHS EARLIER W/O THE ROSEBORO ORDER NOTICE TO PRO SE?

VII. DOES THE DISTRICT COURT CREATE A REVERSABLE ERROR WITH USE OF A FEDERAL EMPLOYED GHOSTWRITER ATTORNEY BETWEEN CHAMBERS IN THIS DISTRICT COURTS IN-HOUSE SECRETELY ASSIGNED TO ALL PRO SE CASES?

VIII. DID THE DISTRICT COURT GRANT MOTIONS TO DISMISS IGNORING THE VALUE AND WEIGHT OF THE EVIDENCE THE PETITIONER FILED UNDISPUTED PHOTO AND A FLETC INVESTIGATION REPORT CAUSE A REVERSABLE ERROR?

QUESTIONS PRESENTED

IX. DID THE DISTRICT COURT CREATE A REVERSABLE ERROR TO IGNORE THE EVIDENCE THAT THE UNITED STATES PERSONNEL AND EQUIPMENT WAS USED TO CREATE A UNLAWFUL VAULE CONVERTED INTO A PRIVATE DEFENDANT BENEFIT AND PROFITS?

X. DID THE DISTRICT COURT CREATE A REVERSABLE ERROR TO IGNORE THE UNITED STATES CONTRACT TECHNICAL REPRESENTATIVE'S TESTIMONY THAT THE PETITIONER WAS "WRONGED METHODICALLY" – WHILE THE COURT OF APPEALS GRANTED TO ADMIT THIS EVIDENCE INTO THE RECORD; THEN IT DENIED TO REMAND FOR A TRIAL?

XI. DID THE DISTRICT COURT CREATE A REVERSABLE ERROR IN FAILING TO PROTECT THE PETITONER FROM RETALLIATION AS THE ORIGINAL WHISTLEBLOWER?

PARTIES TO THE PROCEEDING

Petitioner BOBBY KNIGHT was the Plaintiff in the district court proceedings and Appellant in the Court of Appeals proceedings. JEH CHARLES JOHNSON, DHS SECRETARY: CHENEGA SECURITY, INC.; JOHN THORPE, Chenega Security, Respondents were the defendants in the district court proceedings and appellees in the court of appeals proceedings. The following Defendants did not appear after the Notice of Appeal to the Fourth Circuit: ROBERT J. PAPP, JR., United States Coast Guard Admiral; ATLANTICELECTRIC, LLC; LEGRANDE RICHARDSON; MICHAEL RICHARDSON, individually; LEGRANDE RICHARDSON, JR., South Carolina State Department of Labor Licensing & Regulation, as Contractor's Licensing Board; LEWIS M. CASWELL, South Carolina State Department of Labor Licensing & Regulation, as Contractor's Licensing Board; JAMES EDWARD LADY, South Carolina State Department of Labor Licensing & Regulation, as Contractor's Licensing Board; DANIEL B. LEHMAN, South Carolina State Department of Labor Licensing & Regulation, as Contractor's Licensing Board; KIMBERLY L. LINEBERGER, South Carolina State Department of Labor Licensing & Regulation, as Contractor's Licensing Board; BILL NEELY, South Carolina State Department of Labor Licensing & Regulation, as Contractor's Licensing Board; JAMIE C. PATTERSON, South Carolina State Department of Labor Licensing & Regulation, as Contractor's Licensing Board; W. FRANKLIN WALKER, South Carolina Slate Department of Labor

PARTIES TO THE PROCEEDING

Licensing & Regulation, as Contractor's Licensing Board; NIKKI R. HALEY, Governor; GEORGE SKIP ALDRICH, Individual, DHS- USCG CHAS; JOHN THORPE, Chenega Security; MICHAEL GLAZIER, Individual, DHS-FLETC CHAS,

RELATED CASES

- No related case law can be found where the United States is also the Statutory required Plaintiff in ALl Qui Tam matters and also the United States is a Defendant in this Qui Tam matter by virtue of Privity of Contract Prohibitions in Fed Contracting.

- No related case law can be found where the Statutory Relator who is assigned a United States no-bid contract by virtue of his Native American ethnic status and registered with the U.S. Small Business Administration and while being the sole-proprietor of his 8a business concern and whom has suffered individual as a third-party disparity-discrimination and for the retaliation treatment resulting in professional and personal losses, financial damages and social emotional injury due to the United States PRIVITY OF CONTRACT Acts that are Prohibited in bold letters as a condition of the SBA 8a Award.

- Fourth Circuit Opinion No. 12-1497U (trial evidence effects outcome of a trial) The Fourth Circuit {No. 1820) spoken with a forked tongue conflicting i[t]s affirmation of this case.

Reversable Error Standards:

- Montana Petroleum Tank Release Compensation Bd. v. Crumley's, Inc., 174 P.3d 948 (Mont. 2008).)
- Franki Foundation Co. v. Alger-Rau & Assocs., 513 F.2d 581, 586 (3d Cir. 1975)

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PETITION FOR A WRIT OF CERTIORARI

Bobby Knight petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit No. 18-1820 in this case.

OPINIONS BELOW

The Fourth Circuit's opinion is UNPUBLISHED the Fourth Circuit's denial of petitioner's motion for reconsideration and/or rehearing en banc is reproduced at APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI ..... {f/k/a App. 1 & 2} .... 303a to 337a

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JURISDICTION

The Court of Appeals No 18-1820 entered judgment on March 18, 2019. The Court denied a timely petition for rehearing (en banc) on June 4, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case does involve interpretation of statutory or constitutional provisions:

- United States Whistleblower Protection Act
  - 31 U.S.C. §§ 3729-32 (The "False Claims Act") FCA
  - FCA 31U.S.C. § 3730(h) & (h)(1)
  - FCA 31U.S.C. § 3730(b) & (b)(1)
  - SOX at 18 U.S.C. § 1514A(a)(1)(C)
- United State Constitution Fifth Amendment; Due Process & Substantive Rights of Petitioner denied
- US Code 28 §636
- Equal Protection Act – equal access court denied
- 42 U.S.C. §1983 et seq.
- Federal Code of Regulations [FCR] ·Disputes and Contract Closeout Procedures.

INTRODUCTION AND STATEMENT OF THE CASE

The issue presented in this case involves a genuine and current conflict between the Courts of Appeals that is significant and substantially important because it will determine the standard of review courts use when reviewing the dismissal of an entire cause of action This case through a tainted systemic dismissal motions process. also raises issues of exceptional importance under the whistleblower protection provisions of the 31 U.S.C. §§ 3729-32 et seq. The "False Claims Act as well as in all litigation in which a motion to dismiss is used as the legal equivalent of a summary judgment motion. Furthermore, the Fourth Circuit opinion affirming the district dismissal ruling created a circuit split regarding the proper standard of appellate review in such cases.

This matter has evolved since February 16, 2011 and now our United States Supreme Court Justices have the Exclusive Jurisdiction to settle my personal damages and injuries from a legitimate Federal Dispute about my SBA 8a Assigned Contract DHS-USCG CEU MIAMI and

Construction Group, LLC North Charleston, SC with the United States as material facts were well documented in my USDC pleadings 2:15-CV-03199 in my Verified Complaint & Amended Complaint; wherein the United States is also the Plaintiff and the Defendant having been simultaneously unethically and unlawfully represented by USAO-SC as both the Co-Plaintiffs and Co-Defendants. Petitioner's photos and the FLETC Investigation Report were never ruled upon at USDC – then those matters are ripe for resolving. A failure of the United States to resolve these matters opens wide doors for anyone to steal and not be prosecuted and for anyone to use the military for private profits and personal enrichments. – each a felony and each a federal contract PROHBITION.

Many times the last four years, all television media outlets are reporting that the DoJ top officers are/is biased and rigged unfairly about federal elections and here too about me and in this matter of my SBA 8s DBE and HUBZone small contracting business long claiming and showing in both photographs and a DHS-USCG FLETC Investigation Report that my claims are true and most accurate. Further, that the monetary proceeds for this theft of copper from Pier

PAPA USCG CHAS SC along with the subcontractor's enrichment from uses of the Military Personnel and Military Equipment due to a an unlawful and contract prohibited favoritism from/by Federal Employees towards the private Defendants and others.

Federal Law – Stolen from the Plaintiff still is the scrap-copper money. It was commingled into Atlantic funds that found its ways into the SC Republican Governors campaign and then the thieves were rewarded more with an appointment to the SC Labor Licensing and Regulation Contractors License Board, where the frauds and felonies of these attorneys and officers of the courts have committed and continued these felonies in two ways, First against the United States of America and all of us as Citizens. And, Secondly, against the United States Courts by withholding and not speaking to the Federal Judges of Knight's photographs and federal police reports – which are undisputed in any form or manner. There is no denying this the "smoking gun".

Additionally, if the United States Supreme Court fails to grant this Writ of Certiorari for Knight's Dispute, then the United States will partake in the serious precedent that will

destroy the Rule of Law – the Courts and its Officers, all, each and every one of them, will have granted permission for anyone to steal from federal contracting and sell the United States Property of "any value" and to use the military personnel and military equipment for private enrichments via federal contracting.

Qui Tam litigation was originally designed and has evolved into what is now named the United States Whistleblower Protection Act. 31 U.S.C. §§ 3729-32 (The "False Claims Act") FCA 31U.S.C. § 3730(h) & (h)(1); and FCA 31U.S.C. § 3730(b) & (b)(1); and

To the contrary, the routine pattern of behavior of the USAO-SC and the USDC Charleston with [i]ts anonymous pro se attorney acting between the USDC Magistrate Chambers, the USDC Judge Chambers and a slew of Defendant Attorneys; and the USCA of the Fourth Circuit ignoring that the United States and SC State Defendants were remaining named parties in the Appeal caption, is/were and still are a part of the Appeal process. Just because they've elected to be silent; have errored and stumbled on the requirement of Fair-Case Management resulting with that which does not protect this Petitioner or

any other whistleblower. If fact, The Petitioner repeatedly moved to have the docket caption corrected at USCA level. However, the Court below never acknowledged the behavior of these Defendants. The Court obviously only reviewed Respondents Chenega and Thorpe. An error again which makes all looks like 'there were no Reversable Errors at all' to review and remand upon.

. . . it puts whistleblowers in a class without publicizing of that court employees exitance. It makes worthless the US Code §636 that authorizes a District Judge assign pro se cases to a Magistrate Judge as the case work really is done by a secretly employed pro se attorney who behind the scene floats about as a **Ghostwriter** – which is a due process and federal court PROHIBITION in and of itself. e.g. Equal Protection Court Access is being denied to Knight. The Petitioner -Appellant has not been heard and his Substantial Rights and Due Process Rights were ignored and DENIED.

This Petition for a Rehearing is a just and proper for a de novo review of the United States Court of Appeals & District Court's Docket and to vacate and reverse itself for a new

trial about what are a series of compound **Reversable Error**(s)[1] as follows:

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1. [1] In United States law, a reversible error is an error of sufficient gravity to warrant reversal of a judgment on appeal. It is an error by the trier of law (judge), or the trier of fact (the jury, or the judge if it is a bench trial), or malfeasance by one of the trying attorneys, which results in an unfair trial. It is to be distinguished from harmless errors which do not rise to a level which brings the validity of the judgment into question and thus do not lead to a reversal upon appeal. . . . A finding of reversible error requires that one or more of the appellant's "substantial rights" be affected, or the evidence in question be of such character as to have affected the outcome of the trial. (See e.g., Montana Petroleum Tank Release Compensation Bd. v. Crumley's, Inc., 174 P.3d 948 (Mont. 2008).) Therefore, reversible errors resulting from the violation of an individual's "substantial right(s)" must be considered on an individual basis. . . . • {reversable errors} for excluding evidence which a party was entitled to have admitted; . . . If an appellate court determines that reversible error occurred, it may reverse the judgment of the lower court and order a new trial on such terms and conditions as are found to be just. . . . Technically, attorney misconduct is not reversible error. Failure of the judge to remedy it during the trial is reversible error. In cases such as unfairly or illegally concealing evidence, there is no error on the part of the court but the court's decision may still be vacated and the matter returned for a new trial, because there is no other way for justice to be granted.

1. The Respondent Chenega Security, Inc and its manager John Thorpe filed their first Motion to Dismiss after the Magistrate's Report and Recommendation had been submitted to the District Judge. NO Roseboro Order was issued to the Plaintiff, this Appellant. The Magistrate later wrote that she felt that "the plaintiff {PETITIONER} has abandoned his case altogether." This, after months had passed the R&R was submitted and objected to; the Respondent Chenega and Thorpe submitted a second Motion to Dismiss. The District Court held that the second was MOOT and that the first was valid and so the District Court granted the first. This was an error of law, precedent and requirement to comply with Due Processes. The Substantial Rights of the Appellant Knight were ignored.

2. The State Defendants were represented by the SC Insurance Fund. In so doing, the State is prohibited by State Codes from representing LeGrande Richardson, Jr. (originally plead as LeGrande Richardson without the Jr.) The State plead their representation was valid, the Appellant plead it was not per State Code of Laws, then the Defendants via the State filed a pleading stating the

LeGrand Richardson was the father of the two living owners of Atlantic Electric LLC (the first-tier subcontractors) and that the father had died 9 years earlier. The District Court wrote an ORDER that biased and arbitrarily changed the name-suffix to read L. Richardson **Sr.** and put that in bold print) and then denied the Petitioner's Motion for Judgement by Default. The Appellant plead typing first LeGrande Richardson and second after learning he was a Jr. typing as LeGrande Richardson, Jr.; who are and were one in the same persons and further, as shown and defined in the PARTIES section in Petitioners Verified Complaint (w/no Jr.) and his "continued" Amended Complaints (with the name-suffix Jr.) as shown and stated that these Defendants "... were living and conducting business in Charleston County SC " at all times pertinent to this lawsuit" the District Court ignored this oblivious assertion and therefore the Plaintiff, pro se, this Appellant was not heard at trial of this at a hearing to grant the Appellants Motion for Judgement by Default of Legrand Richardson, Jr, a private individual, who did not appear, did not Answer either of the Complaints at all. The State Insurance Fund attorneys could not lawfully represent him in his personal and business capacity, but only in his LLR Contractors

Board Capacity. This was a Reversable Error and had it not been for the mechanization of the Rule of Law, would have clearly been granted in favor of the Appellant. Certainly & clearly, there is no doubting that the Appellant did not file a suit or sue the Estate of Atlantic Electric LLC's father.

3. This Appellant complained by letters to the District Court in the early stages of the lawsuit, that Atlantic Electric LLC was a electrical contractor for the maintenance for the United States District Court in Charleston SC creating an atmosphere of undue influence when confronted with (1) the theft of 3000 lbs of Appellant's copper and (2) Privity of Contract. Every Qui Tam action is a Death Warrant for the wrongdoers and must not be a Death Warrant of the Whistleblower, this Petitioner-Appellant. AND;

i. The District Court did not respond, expose or deny to the exposure of this bias and favoritism while ruling against the undisputable facts, (1) the photo and (2) the FLETC Investigation Report that were presented in the Verified Complaint & Memorandum and then "continued" into the Amended Complaint and subsequent Appellant's Pleadings. This deliberate silence by the District Court is, in and of

itself, a violation of the Appellants Substantive Rights to be heard as a party, especially one pro se, Substantial Rights as a litigant . . . Excluding this kind of (relationship) evidence which a pro se party was entitled to have admitted and to be fairly used at a trial of the facts before any jury.

4. The Plaintiff learned – as plead in his Manila Envelope pleading, that the District Court had put items received ex parte from these Defendants, Respondents. The item was entered onto the docket and then removed without any order of the court to delete numbered items from the docket.

i. This action alone effects the proper review of the Case Management duty to be properly and openly supervised by the District Court.

ii. Too, this is a violation of the Appellants Substantial Rights and Due Process expectations.

5. The District Court employees an attorney that IT employs to case manage all pro se litigants. This is a patently secret of the District Courts and this person has become a communicator with the lawyers of these Respondent(s) Attorneys. This secret silence by an

anonymous bureaucrat whose name does not appear on the docket is in fact, acting like a Ghostwriter via a conduit with these Respondent's Attorneys. Ghostwriting is a prohibition in all Federal Courts and as such should not exist without this attorney filing persons exposure and identification to the pro se litigants.

i. This system is rigged in favor of attorneys and against the pro se litigants by his being "kept in the dark of all this *ex parte* communication"; is having the Appellant's Substantial Right Denied and Due Process not being made available to the Public Trust that Congress has instilled into the District Court System. Appointing of the Magistrate Judge for a Report and Recommendation is NOT authority to substitute with a employee pro se lawyer who is overboard in handling of the Case Management & treating pro se litigants as a class of misfits. *See* the USDC Dkt for the Petitioners' Motion Rule 60 to Adopt the United States Court's own Federal Law Center Brief (FLC) to allow USDC Judges to appoint Restricted Scope Attorneys in such Qui Tam cases. This was denied without statement.

ii. Congress mandated that the Petitioner-Appellant had a right to a hearing for the United States Motion to

Dismiss (filed by United States and before the USAO-SC entered its decision to or not to Intervene). As goes the General Rule that the layman cannot represent the United States was a **General Rule** and the Petitioner plead this exception and provided a Federal Law Center Brief for the District Court to adopt e.g. Restricted Scope appointment of an attorney for the United States. This was not responded to, just ignored.

Knight, pro se, having attended three (3) such hearing under transcripts filed at Appeal. Add too, the Court knew, but would never acknowledge the three undisputed pieces of evidence Knight filed on the record.

iii. Petitioner could have represented himself for the Retaliation and the Restricted Scope Attorney could have easily represented the United States as Plaintiff and the USAO-SC could have, without any conflicts, represented, as required, the United States as the Defendants. This was denied although theorized in the Federal Law Center Brief filed.

6. The Appellant plead that the DHS USCG CEU-MIAMI COTR , Mr. Russel Costa had facts and testimony

to be heard in favor of the Plaintiff, this Appellant. The Government kept him silenced during the Judge Ge rgel District Court processes and further hid COTR from this Appellant the Federal Law Enforcement Investigative Report – this is this Norton District Court cause of action plead for a Writ of Mandamus. Both Mr. Costa's testimony as a Federal Government voice, that the Appellant was "wronged methodically" along with the FLETC Officer, Lt Davis' Official Report to the Government (a contract document itself denied at the Gergel Court) that these Defendants 'admitted to stealing from the Appellant 3000+ lbs of copper metal – are undisputable facts that the District Court was required to let be heard at a Trial of the Facts and the Jury but District Court did not let the case proceed.

7. The Petitioner-Appellant complained to the District Court that the Federal Defendants **wrongfully administratively closed** the DHS-USCG CEU-MIAMI contract under dispute by Plaintiff Knight, who has claimed that a Third-Party Disparity-Discrimination violation against him was as such then created. The **Federal Code of Regulations** [FCR] outlines the step-by-step procedures for every contracts closure and to do so during a valid dispute

is "prohibited". The Appellant noticed the District Court of this breach and during the matter such far the government has kept $6,028 from the Appellant during this pending case.

8. The Petitioner-Appellant plead clearly, that the Federal Defendants', DHS USCG CEU-MIAMI caused a **Privity of Contract** breach against the Appellant's as a Third-Party Disparity-Discrimination violation as being the SBA 8a business concern owner that accepted the Small Business Administration [SBA] special no-bid assignment of the 8a set aside federal contract with DHS. The Federal and Private and State Defendants were photographed in the acts of working military equipment and military boots on the ground in strict prohibition of the federal contract and federal laws as a second-tier subcontractor to Respondents Atlantic Electric LLC and its co-owners, the Richardson Bros. This Privity of Contract ignored by the District Court while the federal government was both a Defendant and a Plaintiff due to Qui Tam Laws – is a conflict of the duty of the USAO-SC, Mr. Ragsdale.

i. A trial of these facts will show that the copper money from the theft was commingled by the private defendants

into Republican Campaign contributions in South Carolina and then the payback was a appointment to the State License and Labor Contractors Board membership to LeGrande Richardson, Jr. who in turn lead an unjust and unfair Disciplinary Action against the Appellant as a licensed contractor. The matter is pending South Carolina Court of Appeal to reverse the loss of the Appellant Contractors License but my attorney was able to prevent the Board and its general counsel from revoking the Appellants HVAC and Electrical Licenses to date. This was plead as further Retaliation(s) for Whistleblowing. e.g. when the Petitioner-Appellant's Amended Complaint was filed.

9. The District Courts General Rule[2] is that corporate entity and even the United States government must be represented by an attorney. This is a rule and not the law. In fact, the Appellant plead as seen by the three (3)

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[2] It must be noted again, if it is not already clear, that the general rule is not authorized by any statutory or jurisdictional limitation, but is a judicially-created rule. *See* Franki Foundation Co. v. Alger-Rau & Assocs., 513 F.2d 581, 586 (3d Cir. 1975) ("the general rule is only a rule of practice and may be relaxed whenever justice so warrants").

transcripts in the Record, that Congress had approved that before a Motion to Dismiss in a Qui Tam can be had, there MUST first be a hearing (and there were 3 hearings) and as such, the Appellant was allowed to speak to the District Court Magistrate, but this turned out to be upon deaf ears;

10. . . . The Appellant placed into the record a Brief written by the Federal Law Center that gave and step-by-step procedure for District Courts to appoint an Attorney with a Restricted Scope of Representation. This method was not adopted by the District Court and as such, the District Court's decision about this evidence, this case law in the Brief of the topic; is certainly for open consideration by the District Court of Appeals for vacating the District Orders and to return this matter for a new trial with a Restricted Scope of Representation Attorney – too because the USAO-SC was conflicted to choose to Not Intervene but first filed a Motion to Dismiss when IT knew IT had violated Privity of Contract prohibitions against this Appellant. [this is shown on the Record as PLAINTIFF SUPPLEMENTS RESPONSE TO DKT No. 179; 182, 183 dtd August 6, 2017]. In so doing, the District Court was ruling contrary to this United States District Court for the Fourth Circuit Case No. 12-1497;

11. . . . , with the undisputable evidences presented by the Petitioner-Appellant, all now a part of the Record on Appeal, the District Court must not find contrary to this United States District Court for the Fourth Circuit Case No. 12-1281U as the Appellant produced Material Facts beyond sufficient evidence standards vice that of Carlson v. DYNCORP's lack of proof of crimes and frauds.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit 's decision added to an existing circuit split of exceptional importance regarding the proper standard of appellate review when a district court denied the legal equivalent of a partial summary judgment by excluding evidence through a defunct motion to dismiss ruling process. This Court should grant review to eliminate discrepancies among the circuits, and clarify a uniform standard for the Case Management Reversable Error(s).

The District Court failed to afford Knight the procedural protections required under the Federal Rules of Civil Procedure, such as allowing an opportunity to submit evidentiary materials at the hearing(s) in opposition to each of the Defendants motions to dismiss. The District Court's

decision about the evidence Motions to Dismiss said did not exist at all, is certainly was for serious consideration by the District Court and of the Fourth Circuit Court of Appeals to have vacated, reversed or remanded the District Orders and to return this matter for a new trial .

The **Reversable Errors** exist in the Record Docketed in the appeal and one, or any or all of the above are sufficient to vacate the Fourth Circuit Court of Appeals and the District Court and return the entire matter for a trial.

Other Courts of Appeals, confronted with similar circumstances, have rejected applying the traditional standard of review applicable to evidentiary motions to dismiss. These courts recognize that a motion to dismiss can be inappropriately used to dismiss an entire cause of action. In these contexts, the circuit courts have developed multiple standards of review of evidence required, none of which are consistent with the standards applied by the Fourth Circuit to this pro se Petitioner. Under any of these standards, this District Court case would have been properly reversed on Appeal.

When a district court denied a motion for Judgement by Default and then systemically granted motions to dismiss that is in essence a motion for summary judgment, that grant must be reviewed by the appeals court under the standard used to review motions for summary judgment. The Fourth Circuit & USDC failed to do so, dismissing Petitioner's cause of action without proper grounds or procedures. (e.g. the Petitioner's Case Management failure claims)

This Court should grant a review to prevent abusive uses of motions to dismiss and correct the Fourth Circuit 's erroneous holding.

I. The Fourth Circuit's Decision Reflects an Existing Circuit Split Regarding Review of Improper Grants of Summary Judgment Through Motions in Limine, Motion to Dismiss erred from this cases Magistrate Judges procedurally flawed Report(s) and Recommendation(s).

The Fourth Circuit 's application of the harmless error standard stating that it found no Reversable Errors to review all the motion(s) to dismiss, rather than the Court of Appeals applying a more stringent finding for Reversable

Errors that has the more practical effect of granting a favorable judgment on a valid cause of action added to a circuit split of exceptional importance. This issue could impact any civil case and presents the opportunity for litigants to abuse court procedures – severely prejudicing the non- movant – without an effective cure. Given the number of appeals court decisions addressing this issue, and the differing standards applied by these courts, it is evident that this abuse of the dismissal procedure is not uncommon, and, as in this case, can have a devastating impact on an otherwise valid case.

If this case had been filed in the other circuits that have addressed this issue, the district court's exclusion of all evidence related to this Petitioner's three main issue through a motion ito dismiss would have been reversed on appeal. When faced with similarly overbroad dismissal rulings and de facto/sua sponte summary judgment motions, courts in these circuits have labeled such requests as improper. Consistently avoiding utilizing the heightened harmless error review applicable to evidentiary rulings, these courts either apply a variety of less stringent standard than harmless error, or simply reverse and remand.

However this Petitioner Knight set forth a solid Reversable Error appeal. The Court applied the wrong standard and gave a blessing to the Two Judge Rule of South Carolina, which was ruled unconstitutional by the SC Supreme Court (2018). Court of Appeal have a tendency to read a Judge below RETURN and not give the de novo review.

As set forth below, including the Ninth Circuit position, there are now four separate standards applied to this issue:

A. Majority of Circuits Decline to Review Disguised Dispository Motions, Choosing to Simply Reverse.

The USDC Charleston failed to apply any consistently used standard about the Petitioner's Motions, regardless of the types of motions he filed.

The Sixth, Seventh, and Federal Circuits do not apply the traditional "harmless error" standard when reviewing a judgment predicated on a motion in limine that has the practical effect of dismissing a cause of action. These Circuits unequivocally decline to review the merits of the underlying claim when it is dismissed by a disguised summary judgment motion, instead choosing to simply reverse and remand without substantive review of the

motion itself. In short, these Circuits not only reject the harmless error standard, they apply a standard that is in fact the exact opposite of that standard.

See, **APPENDIX 3.1** *supporting citations:*

See Louzon v. Ford Motor Co. 718 F.3d 556, 562-63 (6th Cir. 2013). AND See Id. at 563.

See, e.g., Louzon v. Ford Motor Co., 718 F.3d 556, 563 (6th Cir. 2013)

See Mid-Am. Tablewares, Inc. v. Mogi Trading Co., Ltd., 100 F.3d 1353 (7th Cir. 1996)

See Meyer Intellectual Properties Ltd. v. Bodum, Inc., 690 F.3d 1354 (Fed. Cir. 2012)

See, e.g., Williams v. Rushmore Loan Mgmt. Servs. LLC, No. 3:15CV673(RNC), 2017 WL 822793 (D. Conn. Mar. 2, 2017)

See Meyer Intellectual Properties Ltd. v. Bodum, Inc690 F.3d 1354, 1378 (Fed. Cir. 2012).

B. Other Circuits Use Less Stringent Standards to Review Disguised Summary Judgment Motions.

The First, Third, Tenth, and Eleventh Circuits review grants of disguised summary judgment motions either *de*

novo or using other less stringent standards than harmless error. These circuits also stress the importance of procedural safeguards and timeliness of such motions.

See, **APPENDIX 3.2** *supporting citations:*

See Berkovitz v. Home Box Office, Inc., 89 F.3d 24, 30 (1st Cir. 1996)

See, Stella v. Town of Tewksbury, Mass., 4 F.3d 53, 56 (1st Cir. 1993)

See, Bradley v. Pittsburgh Bd. of Educ., 913 F.2d 1064 (3d Cir.1990); AND See 913 F.2d 1064, 1069 (3d Cir. 1990).

See, Brobst v. Columbus Servs. Int'l, 761 F.2d 148, 154 (3d Cir. 1985), cert. denied, 484 U.S. 1043 (1988)

See, Givaudan Fragrances Corp. v. Krivda, 639 F. App'x 840, 843 n.6 (3d Cir. 2016) (

See, Zokari v. Gates, 561 F.3d 1076, 1082 (10th Cir. 2009)

See, Massey v. Congress Life Ins. Co., 116 F.3d 1414, 1417-18 (11th Cir. 1997)

See, **APPENDIX 3.3** *supporting citations:*

See Berkovitz v. Home Box Office, Inc., 89 F.3d 24, 30- 31 (1st Cir. 1996 AND See Id. at 31. AND See Id. at 30. AND See Id. at 30-31.

For Knight, this best opportunity would have been preserved, but he was not served a Roseboro Order for Defendant Chenega and Thorpe's first-Motion to Dismiss as it was filed immediately after the Petitioner was to file his Objections to the District Judge on the Magistrate's Report and Recommendation. The Court using the second-Motion to Dismiss Roseboro order served by the Magistrate to claim a notice that it mysteriously now included the first-Motion to Dismiss FILED some 6 months earlier is a chutzpah! The Magistrate later wrote, "her court; .."*assumed that the Plaintiff had abandoned his case*.." This is **Ghostwriting** at its worst afterwards.

C. The Circuit Split Has Serious, Wide- spread Practical Ramifications on All Litigation.

Because this issue is broadly applicable in any civil case, the circuit split has serious, widespread practical ramifications impacting all litigation, not just cases filed under FCA or SOX. The instant case is an important example of how **dispositive** motions are used to exploit this uncertainty, but this is not an isolated incident. The Reversable Error(s) at issue is not unique, and in fact

creates a procedural tool that had/have significant adverse impacts on Knight.

Moreover, because there is no clear standard of review applicable to cases such as {Knight's}, {See APPENDIES} . . . the appellate courts utilize differing standards, creating at least a four-circuit split in the approach to this issue. While some courts follow the Sixth Circuit's standard of re- view, others take their lead from the Third, and many more do not specify an explicit standard at all. It is clear that the circuits are in conflict, and district courts

As illuminated by this WRIT at Footnotes 1, 2, & 3, many opposing litigants have attempted to use this ambiguity to end-run the Federal Rules of Civil Procedure over unsuspecting pro se parties. Additionally, even the Fourth Circuit appears uncertain how to correctly address this issue with consistency. *See*, e.g., U.S. v. Ross, 206 F.3d 896 (9th Cir. 2000) (noting, in a criminal case, that while a "district court's ruling on a motion in limine** [is generally reviewed] only for an abuse of discretion," it will be reviewed "*de novo* if the order precludes presentation of a defense"). Qui Tam is both a crime and civil offense.

. . . in the Second, Fourth, Fifth, Eighth, and DC Circuits are also in need of this Court's guidance in order to avoid even greater fracturing. Considering the morass of district and circuit court opinions on this issue, it is paramount that this Court clarify the proper standard of review for the transformation of evidentiary motions into summary judgment motions.

The Supreme Court should therefore grant this petition for writ of certiorari in order to articulate a uniform standard and eliminate the discrepancies among the circuits. Further, the approach adopted by the Ninth Circuit in Stroh should be specifically rejected. Clarifying the proper standard of review would also assist district courts in reviewing cloaked motions for summary judgment. We urge the Court to reject the Fourth Circuit's opinion and adopt the standard articulated by the Sixth Circuit. Adoption of this standard would prevent the future exploitation of motions in limine {*emphasis: motion to dismiss when the evidence is not presented to a jury at trial by devious Case Management processes*} for dispositive means and divert such procedural concerns before irreparable harm occurs.

Additionally, misuse is possible in the circuits that have yet to set a definitive standard. As such, a uniform standard would also prevent forum shopping.

II. The Fourth Circuit Applied the Incorrect Standard of Review When Evaluating the District Court's Denial of Knight's Motion in Limine Dismissing Evidence of FCA-Protected Activity.

The **ignored evidences issue** – was a contributing factor in Knight's appeal. For this Petitioner, it was his undisputed three items of undisputable evidence issues that were ignored by the Courts below.

Knight "reasonably believed" and "showed" that the State Defendants influenced and proposed plan to destroy his SCLLR Contractors Licensure. *See* SOX at 18 U.S.C. §1514A(a)(1)(C). *See* FCA 31U.S.C. § 3730(h) & (h)(1); 42 U.S.C. §1983 et seq.

Yet, the district court did not simply exclude a piece of evidence through grant of Defendant's motion(s). Rather, it effectively dismissed an entire cause of action (i.e., Knight's FCA retaliation claim predicated on undisputable

material facts and evidences), preventing the jury from reviewing facts pertinent to Knight's claim.

By allowing all the Defendants to dispose of issues that should rightly have been decided by the jury, the district court "deprived Knight of an opportunity to present all pertinent material to defend against the dismissal of" his retaliation claim – including evidence relating to Knight's status as a whistleblower under FCA. See Meyer Intellectual Props. Ltd., 690 F.3d at 1378.

This effectively dismissed Stroh's SOX cause of action. Accordingly, the district court improperly granted Saturna's motion as, by excluding all evidence of a contributing factor, the court made a final dispositive decision on a non-dispositive motion. See, e.g., Givaudan Fragrances Corp. v. Krivda, 639 F. App'x 840 (3d Cir. 2016) (finding motion in limine decision with "**dispositive effect**" was sua sponte entry of summary judgment); Osunde v. Lewis, 281 F.R.D. 250 (D. Md. 2012) The trial court, and subsequently the appeals court, were made aware by Petitioner that excluding the undisputable evidence issue would mean Knight could not demonstrate a key FCA claim. Knight made this clear to the trial judge, noting that

without the evidence in the Complaint and Memorandum and Amended Complaint issue, "there's really not much left for [Knight]." The court never spoke or wrote of the evidences presented by Knight.

However, the means by which litigants may attempt to dismiss all or part of a case is a summary judgment motion, not an in limine motion. See, e.g., Louzon, 718 F.3d at 561 ("[A] mechanism already exists in civil actions to resolve non-evidentiary matters prior to trial – the summary judgment motion."); Gold Cross Ems, Inc. v. Children's Hospital of Alabama, 309 F.R.D. 699, 702 (S.D. Ga. 2015) ("[T]he Federal Rules of Civil Procedure contain multiple rules allowing parties to dismiss claims; there is no need to disguise a motion for summary judgment in the clothing of a motion in limine.") {*emphasis: or as a motion to dismiss when Knight had undisputed material facts into evidence*}. To the contrary, in limine motions are designed only to facilitate case management. See, e.g., Louzon, 718 F.3d at 561. Such motions {*emphasis: like one to dismiss*} "are not proper procedural devices for the wholesale disposition of theories or defenses." Id. at 562 (internal citations omitted).

Nevertheless, the Fourth Circuit reviewed the erroneous holding for "harmless error" and determined that the preclusion of all evidence relating to Knight, the Petitioner, most important protected disclosure, including his status as a whistleblower, was not prejudicial. Because the District Court's rulings essentially converted Defendant's motion into a de facto summary Judgment unjustly.

District Court judgment motions to dismiss excluding a recognizing and a valuation of all evidence related to Knight's distinct claim, the Fourth Circuit erred in applying the harmless error standard vice granting the Petitioner Knight a judgment for **Reversable Error**(s).

Analysis under the harmless error standard {*emphasis: same can be found for the Reversable Error standard*} is utilized when courts review a trial court decision for abuse of discretion and "conclude evidence has been improperly admitted." {*emphasis*} "*or as Knights was improperly ignored*"... Estate of Barabin v. AstenJohnson, Inc., 740 F.3d 457, 464 (9th Cir. 2014); see also Haddad v. Lockheed California Corp., 720 F.2d 1454, 1458-59 (9th Cir. 1983) ("The purpose of a harmless error standard is to

enable an appellate court to gauge the probability that the trier of fact was affected by the error.") (internal citations omitted). This standard allows appeals courts to affirm unless they find the error prejudiced a party by substantially influencing the verdict or affecting a party's substantial rights. See id.; Fed. R. Civ. P. 61; Fed. R. Evid. 103(e). Knight's Substantive Rights were prejudiced unjustly. However, courts cannot conduct a harmless error inquiry in reviewing blanket dismissal of claims, such as on summary judgment. *See*, e.g., Kyle Railways, Inc. v. Pac. Admin. Servs., Inc., 990 F.2d 513, 517 (9th Cir. 1993) ("We review de novo grants of partial summary judgment and motions to dismiss."). The court must apply to the appealed issue either the same standard as the district court should have, or simply reverse and remand.

III. The Fourth Circuit Should Have Reviewed the District Court's De Facto Grant of Judgment Under One of Several Less Severe Standards.

Outside of the Fourth Circuit, Courts of Appeals that have addressed this issue apply three separate standards to review motions in limine that dismiss entire claims. Under any of these alternative approaches, the district court's

action in this matter would have been reversed and remanded. Same truth holds for marred motions to dismiss.

The majority of circuits reject the dismissal of claims by motions in limine. Louzon, 718 F.3d at 562- 63; Mid-Am. Tablewares, Inc. v. Mogi Trading Co., Ltd., 100 F.3d 1353 (7th Cir. 1996); Meyer Intellectual Properties Ltd., 690 F.3d at 1378. Once it was established that such "non-evidentiary matters were raised and resolved in limine," these courts would have reversed and remanded for further proceedings, without any further substantive review. Louzon, 718 F.3d at 562-63. The District Court wrote great lengths with much 'inject a erroneous history of Knight' and never responded to his motions to correct this misgivings in favor of these Defendants. The courts pro se attorney goofed the truth and Knight was tainted unjustly.

Alternatively, a minority of circuits reverse and remand claims dismissed through flawed dismiss motions where the nonmoving party, a pro se litigant, was not given Roseboro notice and the opportunity to marshal evidence and to object. See, e.g., Bradley, 913 F.2d at 1070-71 (3d Cir. 1990) ("Most importantly, in the absence of a formal motion for summary judgment, plaintiff was under no formal

compulsion to marshall [sic] all of the evidence in support of his claims."); Brobst v. Columbus Servs. Int'l, 761 F.2d 148 (3d Cir. 1985), cert. denied, 484 U.S. 1043 (1988); Massey v. Congress Life Ins. Co., 116 F.3d 1414 (11th Cir. 1997). The District Court performed a 'bait and switch' placing the second motion of Chenega and Thorpe Roseboro notice upon the first motion of Chenega and Thorpe that originally did not have such a notice issued by the Magistrate.

Further, the deadline for filing the Roseboro Order for Chenega and Thorpe by the Magistrate Judge falsely supported the District Judge to grant its dispositive motions was long past about 6 months past, and the request for granting procedurally was therefore untimely.; see also Peterson v. Corrections Corpora- tion of America, 2015 WL 5672026 (N.D. Fla. 2015); Gold Cross Ems, Inc., 309 F.R.D. at 701 (finding that party could not have been "on notice that the Court would sua sponte convert Plaintiff's motions in limine into a motion for summary-judgment even though Plaintiff filed its motions 503 days after the summary judgment deadline"). Upon consideration of the lack of these procedural safeguards, the Fourth Circuit should have reversed and remanded for further proceedings this

Defendants first Motion to Dismiss after the Report and Recommendation was noticed and in the District Judges Chamber with no Roseboro Order issued.

Dispositive motions in this case having been granted at the District Court were layered in the same misuse and mechanizations schemes as are these references in these Motion to Dismiss misuse arguments used by these Federal Districts patterns of rulings – not as harmless errors -- but being Reversable Errors. See FN 1. These are the parallels.

Finally, some courts review in limine motions disguised as summary judgment granting {wrongfully} motions {to dismiss} de novo. See, e.g., Berkovitz, 89 F.3d at 30-31; Givaudan Fragrances Corp., 639 F. App'x at 843 n.6; Zokari v. Gates, 561 F.3d 1076 (10th Cir. 2009). Wholesale dismissal of claims via an evidentiary mechanism flaunts the process the Court has put in place to promote justice and fairness. Compare Fed. R. Civ. P. 56(a); Adickes v. S. H. Kress & Co., 398 U.S. 144, 157 (1970) with Fed. R. Evid. 103(d), 104(a), (c).

Here, a de novo review of what was effectively a summary judgment motion should have viewed the evidence in the light most favorable to the nonmoving party (Knight), and

would only have been appropriate if the movant to dismiss (all defendants) {failed} to show that there was no genuine issue of material fact and it was therefore entitled to judgment as a matter of law. See, e.g., Covey v. Hollydale Mobilehome Estates, 116 F.3d 830, 834 (9th Cir. 1997) (reviewing district court's grant of summary judgment de novo).

Unquestionably, Disputed contract and Retaliation issues of fact remained unresolved, and the district court's determination that the evidence ignored issues could not be introduced was an erroneous legal conclusion. Accordingly, the Fourth Circuit relied on several facts to find harmless error and not reversable errors. However, none of these arguments justify throwing out Knight's issue claim at the district court, nor do they justify affirming that ruling on appeal. In fact, these matters show both why the district court's grant of the Defendants motions was improper, and why exclusion of the FLETC and Writ of Mandamus and Privity of Contract issues and had the Fourth Circuit reviewed the district court's ruling under the *de novo* standard, it would have reversed and remanded for further proceedings. Instead, the court improperly applied the

harmless error standard, but combing of the record for any evidence that would have clearly supported a potential jury verdict in favor of this Petitioner. The Reversable Error Standard should have attached.

Substantially being procedurally prejudiced, Knight, likewise, these facts demonstrate why the Fourth Circuit should have reversed upon a de novo review of the district court's de facto judgment ruling.

Additionally, there is absolutely no requirement, and no adverse inference can be implied, if a whistleblower does not continuously repeat his protected activity. Knight did supply the record with clear proof of protected activity and of retaliations.

The Supreme Court should therefore grant this petition for writ of certiorari in order to clarify the standard of appellate review for all dispositive-dismissal motions that effectively dismissed completely all cause of actions, and to correct the Fourth Circuit's erroneous holding in this case.

The Fourth Circuit further relied upon after-acquired irrelevant evidence in denying the Petitioner's Motion for Judgement by Default against Legrande Richardson

individually same as Jr. Legrande, as the person who was living and served his three Summons. He did not appear either as an owner of Atlantic Electric nor as Individual. He was illegally afforded attorney representation at the expense and cost of the South Carolina State Insurance Fund hired law firm. However, Circuit and Supreme Court precedent make clear that such evidence cannot be used in deciding liability under retaliation protection statutes such as SOX {or FCA}. [*emphasis: But, a Default Judgment for this Defendant's failure to legally appear is fatal of its own right.*] See, e.g., O'Day v. McDonnell Douglas Helicopter Co., 79 F.3d 756, 759 (9th Cir. 1996). The District Court created this Reversable Error and the Fourth Circuit did not act properly to remand the matter for a Trial of the Facts and Judgment for Knight.

In this Petitioner's rear view mirror arguments, the FLETC Investigation Report containing the confession of the copper theft by Atlantic and the obstruction to prevent the arrest of Officer Lt. Davis are synonymous parallel with the FBI computer issuer of Stroh's. The District Court gave nothing for the theft confession obtained by FLETC and the photos of the misuses of military personnel and equipment

for a private profit and a prohibited activity. Too, later was compounded the COTR testimony that was withheld INTENTIONALLY by the government causing further with the FLETC withheld by the government gave cause to grant this Petitioner his cause of action for a Writ of Mandamus in the USDC Gergel Court. Silence is a 5th Amendment Right only of a citizen's choosing, but it not a right of the United States as a party in litigation. The U.S. Solicitor General has a policy published that was a silence once a district case was Noticed to the United States Courts of Appeals. Again, this is a Justice Department Policy as a **General Rule**, and is not a Law authorized by Congress. *See* FN 2. There are exceptions to be applied to this case.

CONCLUSION

The results upon this Petitioner for the denial of his motions and the granting of the Defendants Motion to Dismiss – matters not the kinds of motions** (in limine, a summary or a dismissal) if they were ultimately dispositive and results and procedures were not complied with, then justice was not perfected and Petitioner Knight was denied his fair chance at justice.

For the foregoing reasons, the Court should grant a writ of certiorari.

Respectfully submitted

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