No: 19-5161

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ANTONIO VERNON,

Petitioner

v.

CBS TELEVISION STUDIOS, et al.,

Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Petition for a Writ of Certiorari

Antonio Vernon, pro se
5300 South Shore Drive - #77
Chicago, Illinois 60615
312-401-8669
amvernon@gmail.com

Questions Presented for Review

Question 1: The 9th Circuit of the United States Court of Appeals (henceforth CoA9) has a long settled screenwriting case law regarding Desny claims or "idea submission implied contract" cases that the 2nd Circuit of the United States Court of Appeals (henceforth CoA2) has come to support based on an evaluation of industry standards and customs. Other circuits, including the 7th Circuit of the United States Court of Appeals (henceforth CoA7), do not place any weight on such industry standards and customs when evaluating these types of implied contracts. I.e., due to industry standards for screenwriting idea submissions some circuits feel that "an implied-in-fact contract may be created where the plaintiff submits an idea (the offer) that the defendant subsequently uses (the acceptance) without compensating the plaintiff (the breach)", while other circuits disregard industry customs for idea submissions and hold that an implied-in-fact contract is based upon whether "at the time the services were rendered, one party expected to receive payment and the other party intended to make payment." Thus, we have a circuit split regarding whether industry standards and customs should be considered as a factor during the analysis of perceived intent and duty of the implied contract parties of screenwriting idea submission cases. This split has adversely affected petitioner's intellectual property. It calls for the Supreme Court's attention.

Question 2: The Supreme Court of the United States (henceforth SCOTUS) has clearly distinguished Rule 60(b)(6) and 60(b)(1) motions. Can a court that has chosen to ignore this distinction declare that a party is unlikely to have the ability to cobble together a viable complaint and yet not exercise its discretion to be lenient on the timeliness of a Federal Rules of Civil Procedure (henceforth F.R.C.P.) rule 60(b) motion based on the consideration of the practical ability of the litigant. This disregard for the F.R.C.P. is a violation of petitioner's due process of law.

Parties to the case

Please be advised that aside from petitioner, Antonio Vernon, there are no respondent parties of record to the case. A full explanation of this can be found in CoA7 docket item #4 as the third item of clarification. In summary, petitioner served a superset of the parties below several times via United States Postal Service using Stamps.com (usually with e-tracking). None chose to enter by responding. The case has gone forth ex parte on sua sponte orders about the viability of my complaint.

CBS Television Studios
Legal Department
Administration Bldg. Ste. 410
4024 Radford Ave.
Studio City, CA 91604 -2101

Lawrence Tu, General Counsel
CBS Corporation
51 West 52nd Street
New York, NY 10019-6188

Anthony E. Zuiker
c/o Margaret Riley
Lighthouse Management & Media
9000 West Sunset Blvd. - Suite 1520
West Hollywood, CA 90069

Dare to Pass
1117 Olvera Way
Las Vegas, Nevada 89128-0557

Cinema Gypsy
4116 W Magnolia Blvd.
Burbank, CA 91505

Laurence Fishburne
Paradigm Talent Agency
360 North Crescent Dr.
North Bldg.
Beverly Hills, CA 90210-2500

Rose Catherine Pinkney
142 S Edinburgh Ave
Los Angeles, CA 90048-3606

Please note that while the above is a complete list of potential parties to the proceeding in this court, below you will find a list of potentially interested parties in an actionable claim for offenses committed during a bankruptcy proceeding (United States Bankruptcy Court Northern District of Illinois Case No. 09–46831) that was discharged on February 24, 2015. These parties were previously named during the October 17, 2016 (submitted) /October 21, 2016 (filed) Certification and Notice of Interested Parties (Form CV-30) filing as document 2 in the United States District Court for the Central District of California under local rule 7.1-1.

Portfolio Recovery Associates:	77,144.02 acquired credit (Citibank, U.S. Bank & Chase Bank)
East Bay Funding:	$61,580.68 acquired credit (Bank of America)
Capital One:	$20,942.05 credit
Becket & Lee:	$17,544.20 acquired credit (American Express)
Discover Financial Services:	$16,142.04 credit
First National Bank of Omaha:	$12,433.01 credit
Royal Bank of Scotland:	$11,887.84 credit
Internal Revenue Service:	$7,940.40 credit
Wells Fargo Bank:	$2,773.32 credit
Infibank:	$1,615.40 acquired credit (General Mills Federal Credit Union, now known as Mills City Credit Union)

These are parties of record in my bankruptcy. All sums above were settled without interest @ about 21%.

Corporate Disclosure Statement

According to Supreme Court Rules 14.1 (b), and 29.6, a corporate disclosure statement is required by all filing nongovernmental corporations. Petitioner, Antonio Vernon, is not a corporate entity and has no stockholders.

Table of Contents

Questions Presented for Review ii
Parties to the case iii
Corporate Disclosure Statement v
Table of Contents vi
Table of Authorities vii
Opinions Below ix
Appendix x
Citations of the official and unofficial reports of the opinions and orders 1
Statement of Jurisdiction in the Supreme Court 2
Constitutional provisions, treaties, statutes, ordinances, and regulations 3
Statement of Jurisdiction in the Federal Circuit Court of first instance 12
Reasons for Allowance of the Writ 13
Summary of the Argument 15
Conclusion 26

Table of Authorities

Cases

Alternative System Concepts v. Synopsys, Inc. 374 F.3d 23 (1st Cir. 2004)	28
Amtrust Bank v. Corrales Peters LLC No. 15-16754 (9th Cir. 2017)	25
Ashford v. Steuart, 657 F.2d 1053, 1055 (9th Cir. 1981)	24
Benay v. Warner Bros. Entertainment, Inc., 607 F.3d 620 (9th Cir. 2010)	8, 16, 22
Desny v. Wilder, 299 P.2d 257, 270 (1956)	16
Donald v. Cook County Sheriff Department 95 F.3d 548 (7th Cir. 1996)	26
Forest Park Pictures v. Universal Television Network, Inc., 683 F.3d 424 (2d Cir. 2012)	8, 17
Grosso v. Miramax, 383 F.3d 965 (9th Cir. 2004)	16
Hailey v. City of Camden, 631 F. Supp. 2d 528 (D.N.J. 2009).	25
Ingram v. Merrill Lynch, Pierce, Fenner & Smith, 371 F.3d 950 (7th Cir. 2004)	10, 24
Jordan-Benel v. Universal City Studios, Inc., 15-56045 (9th Cir. 2017)	17
Kagan v. Caterpillar, 795 F.2d 601 (7th Cir. 1986)	24
Leong, v. Railroad Transfer Service 302 F.2d 555 (7th Cir. 1962)	28
Limon v. Double Eagle Marine, LLC, 771 F. Supp. 2d 672 (S.D. Tex. 2011)	25
Marcatante v. City of Chicago, 657 F.3d 433, 440, 442 (7th Cir. 2011)	18
Montz v. Pilgrim Films & Television, Inc., 606 F.3d 1153 (9th Cir. 2010)	17
Montz v. Pilgrim Films & Television, Inc., 649 F.3d 975 (9th Cir. 2011)	8, 17, 22
Palmer v. City of Decatur, 814 F.2d 426, 428-29 (7th Cir. 1987)	26
Peters v. Kanye West, 11-1708 (7th Cir. 2012)	16
Pioneer Investment Services v. Brunswick Associates 507 U.S. 380 (1993)	23, 25
Ryder v. Lightstorm (Court of Appeal, 2nd Dist., Division 8, CA 2016)	6
Salazar v. DC, No. 08-7100 (D.C. Cir. 2011)	25
Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981)	28
Shakman and Lurie v. City of Chicago 396 F.3d 843 (7th Cir. 2005)	24

Shepard Claims Service, v. William Darrah, 796 F.2d 190 (6th Cir. 1986) 28

Stoller v. Pure Fishing Inc., 528 F.3d 478 (7th Cir. 2008) 10, 19, 20

Whitfield v. Lear, 751 F.2d 90, 93 (2d Cir. 1984) 17

Statutes

28 U.S. Code § 1254 2

28 U.S. Code § 1291 12

28 U.S. Code § 1331 12

28 U.S. Code § 1332 12

28 U.S. Code § 1338 12

28 U.S. Code § 1367 12

Other Authorities

Galavis, Arian, Note: "Reconciling The Second and Ninth Circuit Approaches to Copyright Preemption: A Universal System Is Paramount to the Protection of Idea Purveyors' Rights," Boston University Journal of Science & Technology Law 16

Rules

Federal Rules of Appellate Procedure Rule 4 12

Federal Rules of Appellate Procedure Rule. 32.1 1

Federal Rules of Civil Procedure Rule 60 (b) ..... passim

Federal Rules of Civil Procedure Rule 8 (a) 7

Supreme Court Rule 10 13

Supreme Court Rule 14.1 (b) v

Supreme Court Rule 29.6 v

United States Court of Appeals for the Seventh Circuit Rule 28 (a)(1) 12

United States Court of Appeals for the Seventh Circuit Rule 40 (e) 25

United States District Court for the Central District of California Rule 7.1-1 iv

Constitutional Provisions

Bill of Rights of the Constitution of Illinois 25
Fifth Amendment to the United States Constitution 25
Fourteenth Amendment to the United States Constitution 25

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

Opinions Below

The opinion of the United States court of appeals appears at Appendix A to the petition. The court's opinion is noted as affirmed, and it is unpublished.

The opinion of the United States district court appears at Appendix B to the petition. The court's opinion is noted as denied because proposed complaint was not deemed viable, and it is unpublished.

Appendix

1. Appendix A: United States Court of Appeals for the Seventh Circuit Order (No. 18-2795, Document 18, April 12, 2019) by Circuit Judges Amy C. Barrett, Michael B. Brennan and Michael Y. Scudder .....App 1

2. Appendix B: United States District Court for the Northern District of Illinois Opinion and Order (No. 17 C 568, Document 55, October 16, 2017) by United States District Judge Matthew F. Kennelly.....App 5

3. Appendix C: United States District Court for the Northern District of Illinois Docket Entry (No. 17 C 568, Document 59, July 18), 2018 by Kennelly.....App 9

4. Appendix D: United States District Court for the Northern District of Illinois Order (No. 17 C 568, Document 64, August 10, 2018) by Kennelly.....App 11

5. Appendix E: United States District Court for the Northern District of Illinois Order (No. 17 C 568, Document 50, September 20, 2017) by Senior United States District Judge Milton I. Shadur .....App 12

6. Appendix F: United States District Court for the Northern District of Illinois Order (No. 17 C 568, Document 45, August 28, 2017) by Shadur.....App 14

7. Appendix G: United States Court of Appeals for the Seventh Circuit Order (No. 18-2795, Document 14, October 23, 2018) by Circuit Judges Joel M. Flaum, Ilana Diamond Rovner and Michael Y. Scudder.....App 16

Citations of the official and unofficial reports of the opinions and orders

Order of CoA7, *Antonio Vernon v. CBS Television Studios*, No. 18-2795 (Document 18, April 12, 2019) was filed as a non-precedential disposition with instructions "To be cited only in accordance with Fed. R. App. P. 32.1". Fed. R. App. P. 32.1 requires that a copy of that unpublished citation be served with this citing document. Unofficial reports can be found at websites such as https://law.justia.com/cases/federal/appellate-courts/ca7/18-2795/18-2795-2019-04-12.html and https://www.courtlistener.com/opinion/4609891/antonio-vernon-v-cbs-television-studios/

Memorandum Opinion and Order of the United States District Court for the Northern District of Illinois (henceforth DCNDIL).L, *Antonio Vernon v. CBS Television Studios*, No. 17 C 568 (Document 55, October 16, 2017). Note that this was not part of the appeal but it provides context since it is referred to in the orders above and their underlying motions and briefs. At Justia.com https://law.justia.com/cases/federal/district-courts/illinois/ilndce/1:2017cv00568/335849/55/ is the only other order that has been unofficially published.

No other relevant orders for this case seem to be published anywhere but Pacer, including those listed below.

Order of CoA7, *Antonio Vernon v. CBS Television Studios*, No. 18-2795 (Document 14, October 23, 2018) responding to Jurisdictional Memorandum by limiting the appeal to only the July 18, 2018 and August 10, 2018 decisions

Order of DCNDIL, *Antonio Vernon v. CBS Television Studios*, No. 17 C 568 (Document 64, August 10, 2018)

Notification of Docket Entry of DCNDIL, *Antonio Vernon v. CBS Television Studios*, No. 17 C 568 (Document 59, July 18, 2018)

Statement of Jurisdiction in the Supreme Court

On October 23, 2018, CoA7 entered an order regarding its jurisdictional memorandum request and ruling, limiting the appeal to the July 18 and August 10, 2018 orders. On April 12, 2019, CoA7 entered its judgment affirming two ruliings by DCNDIL. No petition for rehearing was timely filed in my case. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1) .

Constitutional provisions, treaties, statutes, ordinances, and regulations

U.S. Const. Amend. **XIV.** Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state where they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

F. R. C. P.60 (b) (1) & (6)

Grounds for relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect;

⋮

(6) any other reason that justifies relief.

810 ILCS 5/1-301

(a) Except as otherwise provided in this Section, when a transaction bears a reasonable relation to this State and also to another state or nation the parties may agree that the law either of this State or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a), and except as provided in subsection (c), the Uniform Commercial Code applies to transactions bearing an appropriate relation to this State.

(c) If one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by

the law so specified: (1) Section 2-402; (2) Sections 2A-105 and 2A-106; (3) Section 4-102; (4) Section 4A-507; (5) Section 5-116; (6) Section 8-110; (7) Sections 9-301 through 9-307.

810 ILCS 5/2-201 (3) (c)

(1) Except as otherwise provided in this Section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a). . .(b). . .; or (c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2-606).

810 ILCS 5/2-722

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract (a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other; (b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract. (c) either party may with the consent of the other sue for the benefit of whom it may concern.

Statement of the Case and Relevant Facts

On October 6, 2000, *CSI: Crime Scene Investigation* (*CSI*), which was created and produced by Anthony Zuiker, premiered on CBS. On August 19, 2008, Laurence Fishburne signed to star in CBS' *CSI*. On December 16, 2008, Laurence Fishburne signed a first-look deal between CBS Paramount Network Television (now CBS Television Studios) and his Cinema Gypsy production company. Rose Catherine Pinkney was selected to oversee the television arm of Cinema Gypsy.

In an attempt to pay off his bankruptcy creditors, plaintiff-appellant-petitioner, Antonio Vernon, developed the concept and a synopsis for a dramatic television series called *Cyber Police*, featuring "a cybercrime fighting specialist unit of a crime fighting agency". He feels that no cybercrime fighting focused television series preceded his. Petitioner wrote and registered several *Cyber Police* scripts at the Writers Guild of America and the United States Copyright Office beginning in 2010.

On February 11, 2011, Pinkney and petitioner Vernon had a 17 minute phone call regarding his interest in getting his show produced commercially. She informed Vernon that a television series proposal submission to Cinema Gypsy would only be received and accepted for consideration and evaluation if sent under the cover of a lawyer. She also informed Vernon that scripts must be submitted with a two paragraph description of the ideas and concepts of the series.

On February 23, 2011, Roy Amatore sent my properly formatted submission via first class mail (N.B. cover letter is dated February 14). Amatore would sign an affidavit for the actual date and his secretary has indicated that this is the date. Phone records suggest that I confirmed Cinema Gypsy's receipt of my submission (last call to Pinkney's assistant Ben) on February 25, 2011.

Therefore, Vernon submitted script materials to Cinema Gypsy, Laurence Fishburne's production company, in 2011 while Fishburne was the lead character of CBS' *CSI* television series, which

was created and produced by Anthony Zuiker, and while Cinema Gypsy had a first look agreement with CBS Television Studios (CBSTS). Thus, at the time of Vernon's 2011 submission, Fishburne worked for both CBSTS and Zuiker, while Cinema Gypsy was under contract to relay the ideas and concepts it was considering producing to CBSTS.

Vernon alleges that beginning in 2012 CBSTS and Zuiker produced the cybercrime fighting television series *CSI:Cyber*, the cybercrime fighting television series *Intelligence* and the cybercrime fighting web series *Cybergeddon*, as well as the crime fighting television series *Criminal Minds: Beyond Borders* based on Vernon's ideas and concepts. Vernon began seeking legal counsel in 2013 and initiated legal proceedings in 2016.

N.B.,webseries were a newly prominent format in the 2010s. The first webseries nominations for high critical acclaim came when the 65th Primetime Emmy Award nominations were announced on July 18, 2013 for the September 15, 2013 and September 22, 2013 presentations, including series such as House of Cards. Webseries also received nominations during the December 12, 2013 announcement for the January 12, 2014 71st Golden Globe Awards presentation

Vernon alleged copyright infringement, idea submission implied contract breach, deceptive trade practices and third party interference with a contract. Vernon believes that the similarities between the ideas and concepts of two of Vernon's intellectual properties embodied in his copyrighted scripts of original authorship -- PAU 003-511-833 (December 31, 2010) and PAU 3-627-006 (July 31, 2012) for *Cyber Police* and *Rewind*, respectively -- and those of the web series and television shows, produced and broadcast by the defendants make this a colorable claim. Note that the level of similarity is akin to that considered in the prominent Ryder v. Lightstorm (Court of Appeal, 2nd District, Division 8, California 2016) case. After going unpaid for his ideas and concepts, Vernon was bankrupted in 2015.

Following unfavorable DCNDIL rulings, petitioner noticed his appeal in the CoA7 (18-2795) on August 17, 2018. On October 23, 2019, his appeal was limited to July 18, 2019 and August 10, 2019 rulings. He filed his appellant's brief on December 3, 2018 and received an April 12, 2019 order that the DCNDIL rulings were affirmed by CoA7 Circuit Judges Amy C. Barrett, Michael B. Brennan and Michael Y. Scudder. Although the CoA7 appeal was limited to the procedurally-focused issues of the July 18, 2019 and August 10, 2019 rulings, the April 12 order reevaluated the merit based issues of the October 16, 2017 ruling and affirmed them, including what amounts to a longstanding circuit split between the CoA9 & CoA2 and all other circuits that is presented as question 1 above.

The facts related to the questions presented are as follows:

Question 1: Vernon has consistently noted the industry standards used by CoA9 & CoA2 in his complaints: All of his proposed complaints in the Illinois Courts that have been denied have noted these standards:

February 9, 2017 proposed Second Amended Complaint (Document 36):

> "Regardless of whether I signed a formal non-disclosure agreement with Cinema Gypsy, paragraphs 46-54 above represent an idea submission implied in fact contract between me and Cinema Gypsy. I.e., the expectation was that they would either attempt to produce *Cyber Police* themselves or "pitch" it to their industry contacts on my behalf by some manner of presentation and should their efforts result in my idea being developed, there was reasonable belief for financial benefit to me in keeping with industry standard. This echoes recent case law: *Forest Park Pictures v. Universal Television Network, Inc.* (2012)) and *Montz v. Pilgrim Films & Television, Inc.* (2011) and similar to *Benay v. Warner Bros. Entertainment, Inc.* (2010). ,
>
> This recent case law is clear. In an idea submission implied in fact contract, a production company's acceptance of disclosure of an original work of authorship equates to accepting delivery of a right of use of the work's ideas and concepts with the understanding that if a benefit arises from that right of use, payment is expected in line with industry standards."

September 14, 2017 proposed Third Amended Complaint (Document 49, Shadur) and

October 11, 2017 proposed Third Amended Complaint (Document 53, Kennelly)

> "Paragraphs 61-69 above represent an idea submission implied in fact contract between Cinema Gypsy and plaintiff. See: *Forest Park Pictures v. Universal Television Network, Inc.* (2012) and *Benay v. Warner Bros. Entertainment, Inc.* (2010)."

June 21, 2018 proposed Fourth Amended Complaint (Document 56)

> "Paragraphs 50-58 above represent an idea submission implied in fact contract between Cinema Gypsy and plaintiff. See: *Forest Park Pictures v. Universal Television Network, Inc.* (2012) and *Benay v. Warner Bros. Entertainment, Inc.* (2010)."

By the time of his proposed Fourth Amended Complaint plaintiff-appellant-petitioner Vernon had become aware that the courts were ignoring the industry standards and customs elements of an idea submission implied in fact contract and expounded upon it in his Motion to File a Fourth Amended Complaint and Update Report. The motion delves into the circuit split in the differences between the way New York and California evaluate screenwriting intellectual property and the way Illinois does. He went on to include the following in the Motion:

> "Plaintiff has asserted an idea submission implied contract whose contract formation is based merely upon a producer having "received and accepted" his submission. E.G., in Forest Park, the United States Court of Appeals notes that in some states "an implied-in-fact contract may be created where the plaintiff submits an idea (the offer) that the defendant subsequently uses (the acceptance) without compensating the plaintiff (the breach)" (Docket No. 11-2011-cv, Document 84-01 pp 19-20). "

Question 2: According to the record, final appealable judgment was entered by DCNDIL on August 28, 2017. A post-judgement final judgement was entered on October 16, 2017 that designated Vernon's Proposed Third Amended Complaint as non-viable. At about the time of this judgement, Vernon's data drive for his laptop computer became dysfunctional and remained so until January 22, 2018 despite the efforts of four different system recovery services. By his own admission it was Vernon's` fault that he took another 5 months to make his next filing. On June 21, 2018 petitioner submitted a F.R.C.P. Rule 60 (b) motion for leave to file a proposed Fourth Amended Complaint. Plaintiff noted that he was at fault for "not formalizing his

complaint more expediently" (page 11 line 9) in that motion. On July 18, 2018, Judge Kennelly denied this motion based on the motion being untimely and the complaint lacking a viable claim. The order states "The motion arises, if at all, only under Rule 60(b)(6)", although Vernon contends that 60(b)(1) is the applicable rule due to his own fault.

In an earlier October 16, 2017 order, which was noted in the April 12, 2019 order, Kennelly stated that Vernon "has not submitted a viable third amended complaint, and there is no basis to believe he could do so if given another opportunity." Vernon is a 54-year old party who has only had one undergraduate law course (in "Contracts") decades ago. He does not have extensive academic, practical and professional training; has had no legal experience in his career, does not have extensive financial or legal resources, does not have support staff of associate counsel, paralegal, and other infrastructure support. Vernon's motion was deemed untimely, yet among the considerations for "reasonable time" is "the practical ability of the litigant to learn earlier of the grounds relied upon" per Ingram v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 371 F.3d 950, 952 (7th Cir. 2004).

Oddly, the April 12 order was silent regarding the focal point of my procedural appeal regarding the timeliness issue of the July 18 ruling and seemed to be a misapplication of case law regarding the propriety of my viability issues. The April 12, order states that by Stoller v. Pure Fishing a "Rule 60(b) motion is not a substitute for appeal." This seems to be a misapplication of case law. In Stoller, litigant had lost a CoA7 appeal and subsequently attempted to retry the issue via a 60(b) motion in the district court. After an adverse 60(b) ruling, the litigant brought the issue up in CoA7. Thus, CoA7 noted that one can not raise issues in a 60(b) motion that should have been raised during the first appearance in CoA7. In the case at issue here, the 60(b) motion properly preceded any attempt to present the issues in CoA7, making the ruling that "Rule 60(b) motion is not a substitute for appeal." irrelevant. Stoller is not lost on this case however. A more applicable CoA7 statement from Stoller to my appeal might have been "Once the reasons for the judgment

or order have been stated properly, as Rule 50 requires, it may be enough for a district court to signal its conclusion that no change is required with a very brief statement". The judges' clerks probably miswrote the case.

Vernon initiated legal proceedings on this matter in California as 2:16-cv-07019-AB (GJS), but Vernon never appeared before the court. Complaint was mailed on September 14, 2016, delivered on September 16, 2016, filed on September 19, 2016 and entered on September 23, 2016. The case was dismissed without prejudice on October 4, 2016.

A subsequent case was designated 2:16-cv-07857 AB (GJSx), 2:16-cv-07857 BRO (AFM) & 2:16-cv-07857 PSG (AFM). This case was mailed October 17, 2016, filed and entered October 21, 2016. This case was transferred to DCNDIL and became 1:17-cv-00568 on January 24, 2017. Then, Vernon made a handful of appearance before Judge Shadur. Once the case was transferred to Judge Kennelly, he administered the case without oral argument and without explanation for this approach.

Petitioner has received several rulings that his complaint is not viable in the DCNDIL and CoA7:

On February 16, 2017, Judge Shadur denied (document 41) petitioner's February 9 Motion to file proposed Second Amended Complaint referring to

On August 28, 2017 Judge Shadur entered final judgement regarding proposed Third Amended Complaint. On September 20, 2017, Shadur deferred judgement and requested reassignment (document 50) for consideration of petitioners September 14, 2017 Motion to file Third Amended Complaint (document 48).

Following September 22, 2017 reassignment Vernon made a revised Motion to file Third Amended Complaint on October 11, 2017 (document 52) that was denied on October 16, 2017 by Judge Kennelly (document 55) per F.R.C.P. Rule 8 (a)(2).

On July 18, 2018, Kennelly denied (document 59) petitioner's June 21, 2018 (document 57) and July 16, 2018 (document 58) motions to file Fourth Amended Complaint as an untimely per .F.R.C.P. Rule 60 (b)(6). and continuing to be non-viable [per F.R.C.P. Rule 8 (a)(2)].

Statement of Jurisdiction in the Federal Circuit Court of first instance

1. DCNDIL has subject matter jurisdiction under 28 U.S. Codes § 1331 (federal question) and § 1338 (copyrights). It has subject matter jurisdiction over supplemental state law claims under 28 U.S. Code § 1367.

2. Federal Circuit Courts also have diversity jurisdiction in this case of complete diversity with an Illinois plaintiff and non-Illinois defendants under 28 U.S.Code § 1332.

3. DCNDIL has personal jurisdiction over the defendant-appellees by virtue of their transacting, doing and soliciting business throughout the United States, and because the vast majority of the relevant events occurred in this district and the vast majority of the property at issue is situated here.

4. On July 18, 2018 Vernon's June 21, 2018 Motion to file a Fourth Amended Complaint was denied. On August 10, 2018 Vernon's August 6, 2018 Motion to Correct or Modify the Record was denied. On August 17, 2018, Vernon filed a Notice of Appeal and First Amended Docketing Statement regarding both the July 18 and August 10 rulings. CoA7 has jurisdiction to hear plaintiff's appeals as of right which were filed within 30 days of the judgements or orders appealed from in the DCNDIL per 28 U.S. Code § 1291 and Federal Rules of Appellate Procedure (henceforth F.R.A.P.) Rule 4.

5. On October 23, 2018 following consideration of plaintiff-appellant's Jurisdictional Memorandum, CoA7 scheduled briefing on the appeals of the July 18 and August 10 orders.

6. Per Circuit Rules of CoA7 Rule 28 (a)(1), which includes the following "...If any party is a corporation, the statement shall identify both the state of incorporation and the state in which the corporation has its principal place of business..." CBS Corporation is headquartered at 51 W. 52nd Street, New York, New York 10019 and is incorporated in Delaware, according to its SEC Form 10-Q filings.

Reasons for Allowance of the Writ

According to Supreme Court Rule 10's. indication of the character of the reasons the Court considers for granting a petition for a writ of certiorari, the above-stated questions may be considered compelling.

Question 1 Supreme Court Rule 10 (a) indicates that when "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter" a review of the question may be compelling. This case presents a recurring question of great economic importance that has divided the courts of appeals: The CoA7 has affirmed the DCNDIL's repeated assertion that no implied contract exists despite my repeated presentation of the industry standards and norms that I have met with my idea submission implied contract. CoA9 and CoA2 have consistently regarded such industry standards and norms as a compelling enough factor to assert an implied in fact contract. Namely, CoA9 and CoA2 feel that "opening and reviewing a submitted script" known to have been submitted for commercial production completes contract formation or even merely "receiving and accepting" a submission for commercial production does so. Petitioner met these industry standards for contract formation. CoA7 asserts that there is no contract, affirming the DCNDIL's disregard for industry standards, customs and norms in this specific instance. This case is an excellent vehicle for resolving a circuit split on a well-defined legal issue of exceptional importance to the national economy and the creative arts.

Question 2 Supreme Court Rule 10 (c) indicates that when "a United States court of appeals. . . has decided an important federal question in a way that conflicts with

relevant decisions of this Court." a review of the question may be compelling. The CoA7 silently affirmed the DCNDIL's decision to classify a 60(b) motion in which the litigant stated he was partly at fault as a 60(b)(6) motion when SCOTUS has clearly stated that such motions should be classified as 60 (b)(1) motions. After the misclassification, the DCNDIL then disregarded the discretionary factors to consider in terms of the timeliness of the motion despite having previously expressed an opinion on at least one relevant factor.

Summary of the Argument

During this case, Vernon has consistently been told that his claim was not viable and has been told at times that his submissions have been deemed untimely. The first instance in which he failed to respond in the timeframe expected by the court was attributed to miscommunication between Vernon and court representatives. However, Vernon contends that the second instance in which he was untimely (his 60(b) motion) was not properly handled by the courts. He asserts that both the viability of his complaint and timeliness of his motions should be reassessed with federal questions in mind.

In California Desny claims, courts can declare contract formation when the actions of the parties demonstrate that there was a clear intention to contract:

> "if the idea purveyor has clearly conditioned his offer to convey the idea upon an obligation to pay . . . and the offeree, knowing the condition before he knows the idea, voluntarily accepts its disclosure . . . and finds it valuable and uses it, the law will . . . imply a promise to compensate."

Subsequent rulings have expanded the promise to pay based upon industry norms, customs and standards. In the language of Grosso v. Miramax, 383 F.3d 965 (9th Cir. 2004), since "the idea was submitted by Plaintiff to Defendants with the understanding and expectation, fully and clearly understood by Defendants that Plaintiffs would be reasonably compensated for its use by Defendants." We have a valid (Desny) claim. This logic has been affirmed in CoA9 several times in precedential cases from the current decade including Benay v. Warner Bros. Entertainment, Inc., 607 F.3d 620 (9th Cir. 2010), which has been cited by CoA7 in Vincent Peters v. Kanye West, 11-1708 (7th Cir. 2012), Montz v. Pilgrim Films & Television, Inc., 606 F.3d 1153 (9th Cir. 2010), Montz v. Pilgrim Films & Television, Inc., 649 F.3d 975 (9th Cir. 2011), Douglas Jordan-Benel v. Universal City Studios, Inc., 15-56045 (9th Cir. 2017)

CoA2 refers to industry customs and standards when evaluating these types of cases. E.g., in Whitfield v. Lear, 751 F.2d 90, 93 (2d Cir. 1984) the court explained that "If . . . a studio or

producer is notified that a script is forthcoming and opens and reviews it when it arrives, the studio or producer has by custom implicitly promised to pay for the ideas if used." The Withfield court then determined "We conclude that the communications in question and the allegation of custom in the industry are sufficient to withstand a motion for summary judgment..." Forest Park Pictures v. Universal Television Network, Inc., 683 F.3d 424, 429–31, 433 (2d Cir. 2012) uses the terms "industry custom" 5 times, "industry standard(s)" 4 times and the phrase "standard in the entertainment industry" once. At one point Forest Park states "an implied-in-fact contract must have mutual assent, but that it can be inferred from 'the specific conduct of the parties, industry custom, and course of dealing'"

Although CoA9 and CoA2 had diverged on the application of implied in fact contracts for screenwriters, the Forest Park Pictures v. Universal Television Network, Inc., 683 F.3d 424, 429–31, 433 (2d Cir. 2012) brought them in line. Therein, CoA2 notes that in California "an implied-in-fact contract may be created where the plaintiff submits an idea (the offer) that the defendant subsequently uses (the acceptance) without compensating the plaintiff (the breach)" (Docket No. 11-2011-cv, Document 84-01 pp 19-20).

Meanwhile, CoA7 has an implied-in-fact contract standard that is based upon whether "at the time the services were rendered, one party expected to receive payment and the other party intended to make payment." and an implied-in-law contract regarding unjust enrichment standard that is based on a showing "(1) that they performed a service to benefit the defendant; (2) they performed the service non-gratuitously; (3) the defendant accepted their services; and (4) no contract existed to prescribe payment for this service" per *Marcatante v. City of Chicago*, 657 F.3d 433, 440, 442 (7th Cir. 2011). I.e., CoA7 standards for an implied-in-fact allows for the case where the idea submitter seeks commercial production of an idea, while an idea receiver understands this but at the time of delivery of the submission the receiver does not feel he/she has to be bound to share or pass along any benefit of production of the idea to the receiver. In fact, CoA7's implied-in-fact contract

standard condones a production company whose intent is to steal intellectual property from its idea submitters. CoA7 cited *Marcatante* when stating that:

> "Vernon's allegation of an "idea submission implied contract" with the production company was insufficient to plausibly suggest that the company intended to enter into an agreement and establish an implied-in-fact contract, or that the company was unjustly enriched after receiving his scripts such that we would find an implied-in-law contract."

The October 16, 2017 order on proposed Third Amended Complaint and the July 18, 2018 order on the proposed Fourth Amended Complaint both state that Vernon failed to state a viable claim. The latter states "plaintiff still has not asserted a viable claim". The former provides more ground for meaningful review because it has more extensive verbiage giving statement of opinion, finding of fact, conclusions of law, and/or statement of reasons. In my CoA7 appeal I described ten different elements of the reasoning. Three of these are examples of how the CoA7 ignores the industry standards that CoA2 and CoA9 stand by for contract formation.

1. Plaintiff's "submission of his materials to certain defendants—which is basically all he alleges—do not come close to giving rise to a contract implied in fact or law."
2. Plaintiff "alleges nothing suggesting any intention on the part of any of the defendants to be bound to him in any way"
3. Plaintiff's "allegations do not come close to stating a viable claim along these lines" (a duty is imposed to prevent unjust enrichment).

Thus, the October 16, 2017 ruling concluded that Vernon "has not submitted a viable third amended complaint, and there is no basis to believe he could do so if given another opportunity".

Based on Stoller v. Pure Fishing "Once the reasons for the judgment or order have been stated properly, as Rule 50 requires, it may be enough for a district court to signal its conclusion that no change is required with a very brief statement", the July 18, 2018 order's silence reaffirms the October 16, 2017 order's reasoning. Based on the aforementioned logic of Donald v. Cook

County and Palmer v. City of Decatur, it might be reasonable to allow a limited review of the underlying issues of the October 16 order.

Question 1: Throughout this action, Vernon has received consistent feedback since his case has been returned to Illinois that he has not presented a viable claim. Vernon has revised his complaint in many ways and all feedback including the order at issue from the CoA7 note that he has not presented a viable claim. Vernon continues to assert that he has submitted a script that was reviewed with the understanding that he was seeking commercial production. Through the lens of Illinois and CoA7 settled case law, this does not substantiate an implied contract. Thus, rulings continue to assess the complaint as non-viable. However, in California and CoA9 as well as CoA2, industry standards and customs are an element of the consideration of contract formation. Thus, there is a legacy of case law regarding Desny claims and "idea submission implied contracts" and plaintiff's assertion would amount to a valid implied contract in CoA9 and CoA2. In short, screenwriters who have been in my situation in CoA9 and CoA2 have had legal recourse because industry standards and customs that support their complaints make them viable claims. However, in other Circuits like CoA7, industry standards and customs are not relevant for screenwriting legal controversies over implied contract claims (or any implied contract claims for that matter). The July 18, 2018 order at issue before the CoA7 ruled that in the Vernon's June 21, 2018 Proposed Fourth Amended Complaint "plaintiff still has not asserted a viable claim". CoA7 affirmed that ruling when it ordered that by Stoller v. Pure Fishing the ruling is an confirmation of its October 16, 2017 explanation of shortcomings.

Petitioner notes that the DCNDIL and CoA7 decisions on the viability of the complaints are largely based on Illinois common law regarding implied contracts. The television/film production industry is different than it was years ago when there were three or four public networks and cable television subscriptions were a luxury. Now, most Americans have access to dozens of networks, on demand services and/or streaming services as well as DVDs. As a result,

there is broader demand for scripted content. Content is now being produced in greater quantities than before and production beyond Hollywood has expanded. In recent years, many television shows and pilots have been produced by major networks in Chicago and other cities outside of California and New York.

Petitioner feels the scales of justice must balance the issues of the day. In Illinois courts (DCNDIL and CoA7), it seems that general implied contract law is used to balance the scales of justice on an idea submission cases. However, in California courts and CoA9, the region that likely has the most idea submission case expertise/experience (by virtue of Hollywood being in that state), the courts have refined analysis of idea submission cases. In New York courts and CoA2, a region that likely produces an abundance of adapted screenplays (by virtue of Broadway Theatre and the nexus of publishing houses in New York City), the courts have adopted the CoA9 refinement as a matter of applying industry custom and standard to implied contract analysis. As production expands beyond Hollywood, it is incumbent on the courts to achieve justice on the related legal controversies. Other states and the circuit courts that serve them should build upon the expertise of California courts and apply case law from the state that has vast idea submission implied contract experience.

The purpose of having a legal system based on common law is to use precedent so that similar issues involving similar facts will be administered to yield similar predictable legal outcomes. As screenwriters from around the country attempt to seek production of their ideas and concepts, they should not have to worry about what state they develop, produce and market their intellectual properties in. Stare decesis encourages consistency so that similar situations are handled similarly. By forcing every round peg into the square hole of general implied contract law, it may seem that all legal situations falling under the auspices of implied contract law are given equitable treatment. However, some cases falling under the auspices of implied contracts are very different from others. In idea submissions cases, the legal framework in the state with

the most expertise implores specific tools of analysis that are industry specific for screenwriting. Having specialized tools is necessary for a specialized endeavor. Although one may be a great hunter for big game, one may need different tools and weapons to hunt snakes. I liken this idea submission case to a hunting expedition for snakes.

Petitioner has registered his intellectual property with both the Writer's Guild of America and the United States Copyright Office as works of sole authorship. Since the constitution protects citizens against being deprived of their property without due process and affords equal protection under the law, the circuit split regarding protecting intellectual property seems to be a violation of due process.

Petitioner reminds the court that Copyright laws protect specific expressions of ideas but not the ideas themselves. In the words of Montz v. Pilgrim Films: "Since an idea cannot be copyrighted, a concept for a film or television show cannot be protected by a copyright. 17 U.S.C. § 102. But the concept can still be stolen if the studio violates an implied contract to pay the writer for using it". As stated in Benay v. Warner,: "Contract law, whether through express or implied-in-fact contracts, is the most significant remaining state-law protection for literary or artistic ideas. Other previously important state-law protections, such as those against plagiarism, have been preempted by federal copyright law." The existing circuit split deprives creative artists of legal protection for their intellectual property.

Question 2: The July 18, 2018 order ruled that Vernon's June 21, 2018 Motion to file a Fourth Amended Complaint was an untimely F.R.C.P. Rule 60(b)(6) response to the October 16, 2017 ruling. In Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380 (1993), SCOTUS has distinguished 60(b)(6) and 60(b)(1) provisions as "mutually exclusive" based on the faultlessness of the actions by the proponent: "To justify relief under subsection (6), a party must show "extraordinary circumstances" suggesting that the party is faultless in the

delay" Vernon feels the motion should have been classified as a timely Rule 60(b)(1) response because he acknowledged the delay was in part his own fault. CoA7 has opined on the discretionary nature of the (b)(1) motions in terms of timeliness and has stated rule 60(b) factors of discretion, some of which the DCNDIL ignored and others it disregarded. Vernon feels that DCNDIL abused its discretion in terms of timeliness by ignoring and disregarding the factors of discretion.

In Pioneer,, SCOTUS makes it clear that a party may only appeal based on 60 (b)(1) or (b)(6). The former subsection is applicable to delays based on claims of "excusable neglect", which it describes as an "elastic concept" related to the party's own failings, while the latter subsection is applicable to delays based on claims of "extraordinary circumstances" beyond the party's control for which they are faultless. Although Vernon has stated that his computer problems began in October 2017 and continued until January 22, 2018 (for which he believes himself to be faultless), the remaining delay is due to his own short comings as a legal party. Vernon was somewhat, but not entirely, silent on this issue in his motion, but the order vacated the hearing date and unreasonably silenced Vernon's voice in this regard. In the motion, Vernon noted that he was at fault for "not formalizing his complaint more expediently" (page 11 line 9) and blamed technology for only the first 3 months of that fact. Thus, he claims to be faultless for the first three months and at fault for the latter five months. Overall, he does not claim to be faultless because he has acknowledged some fault: his own lack of expedience as the reason why his motion was not presented earlier. Claiming a lack of expedience is a form of statutory neglect. Thus, since Vernon was not faultless for the delay, the timeliness ruling should have been based upon the standards of 60 (b)(1).

Although a 60 (b)(1) motion gives the DCNDIL jurisdiction for a full year, Brandon v. Chicago Bd. of Educ., 143 F.3d 293, 296 (7th Cir. 1998), the one-year cutoff is an outer limit, not the sole dividing line separating timely from tardy motions under Rule 60(b)(1). Among the

considerations for "reasonable time" is "the practical ability of the litigant to learn earlier of the grounds relied upon" per Ingram v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 371 F.3d 950, 952 (7th Cir. 2004). In fact, CoA7 has considered this a stated factor since at least 1986 when it relied on CoA9.

> "with respect to purely private litigation, the litigants' knowledge of the grounds for relief is only one factor for the district court to weigh. Other factors include " 'the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and [the consideration of] prejudice [if any] to other parties.' " Kagan v. Caterpillar, 795 F.2d 601 (7th Cir. 1986) at 610 (quoting Ashford v. Steuart, 657 F.2d 1053, 1055 (9th Cir. 1981) (alteration in original))" - Shakman and Lurie v. City of Chicago 396 F.3d 843 (7th Cir. 2005)

I.e., for quite a while CoA7 has held as its stated factors for timeliness

1. knowledge of the grounds for relief
2. interest in finality
3. reason for the delay
4. practical ability of the litigant to learn earlier of the grounds relied upon
5. prejudice to other parties.

Again quoting this section of Kagan's reference to Ashford, "What constitutes 'reasonable time' [in Rule 60(b) cases] depends on the facts of the case" (clarification added) weighed against these factors. Vernon is unaware of any recent development of the law by the SCOTUS or recent circuit split of the CoA7 from CoA9 in regards to these factors, but CoA9recently restated its belief in the practical ability of the litigant as a factor for timeliness, Amtrust Bank v. Corrales Peters LLC No. 15-16754 (9th Cir. 2017). Kagan and Ashford continue to be cite in cases in far-reaching districts: Oscar Salazar v. DC, No. 08-7100 (D.C. Cir. 2011), Limon v. Double Eagle Marine, LLC, 771 F. Supp. 2d 672 (S.D. Tex. 2011), Hailey v. City of Camden, 631 F. Supp. 2d 528 (D.N.J. 2009).

In Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380 (1993), SCOTUS described factors it considered appropriate for evaluating the timeliness of

60(b)(1) submission that was filed within one year to include "the danger of prejudice. . ., the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith". In this case, we have a fairly untrained litigant attempting to interpret the legalese of 60(b)(1) who without understanding that 1 year was not a freely administered boundary felt it better to take the time to improve his proposed complaint than to put forth a hastily concocted submission. Note that the petitioner was working overtime regularly between January 22 and June 21 (over 40 hours every week except for the week he travelled to celebrate Mother's Day with his mother and attend a family graduation and over 50 hours the majority of those weeks). The litigant without training, was acting in good faith by attempting to put forth his best work rather than a rushed one.

Although Rule 60(b) motions are reviewed for abuse of discretion only, CoA7 has noted that "Of course, in determining whether the district court abused its discretion, we are usually required to make a limited review of the merits of the underlying issues in the case." Donald v. Cook County Sheriff Department 95 F.3d 548 (7th Cir. 1996). Furthermore, in Palmer v. City of Decatur, 814 F.2d 426, 428-29 (7th Cir. 1987), CoA7 has noted that it is the "well-established duty of the trial court to ensure that the claims of a pro se litigant are given a 'fair and meaningful consideration.'" In light of the Donald and Palmer cases, a limited review of DCNDIL's evaluation of the practical ability of the plaintiff to attack the legal issues of this case is appropriate in this regard.

In the October 16, 2017 order, DCNDIL stated that Vernon "has not submitted a viable third amended complaint, and there is no basis to believe he could do so if given another opportunity." On one hand, the latter part of that phrase may be a statement on DCNDIL's belief that Vernon might be too stupid, lazy or undisciplined to submit a viable complaint. Alternatively, DCNDIL may have assessed Vernon's aptitude, understanding and expertise in jurisprudence and

determined that his practical ability to expediently understand and confront the legal grounds at issue is far behind that of the typical litigant. The changes between the Third and Fourth Amended Complaint were extensive and challenging for a person of limited jurisprudence understanding and expertise. DCNDIL should have expected changes of that significance to have taken this litigant quite some time. Given that DCNDIL has discretion to consider a motion timely based on the litigant's ability, it would seem that litigants lacking this ability should be given closer to the outer limit of the allowable amount of time. Describing eight months (given that Vernon has accounted for three of them) as untimely when DCNDIL has discretion to allow up to a year seems unreasonable and an abuse of discretion.

The October 16, 2017 order seems to be the only place on the record where the DCNDIL has expressed that it has done its duty to assess this type of ability to understand "the grounds relied upon". The DCNDIL is otherwise silent on its expectation regarding Vernon's ability to cobble together a viable complaint. Although that order is not under full review for its merits, the contents of that order must be considered here in this limited evaluation of the court's attempt to give a "fair and meaningful consideration" of this pro se plaintiff's claims, per Donald.

Thus, we have a long-standing expression of factors to consider for timeliness when evaluating the facts of the case. Although DCNDIL has expressly considered the reason for the delay by noting that "Plaintiff has offered no viable explanation for his eight month delay", DCNDIL has not expressly considered any of the other factors that it has a duty to consider. Furthermore, although DCNDIL had stated on the record opinions regarding plaintiff's practical ability, it's ruling completely disregarded its own previously stated opinions in this regard.

Petitioner reminds court that this case involves both Federal issues and supplemental state law claims regarding protection of plaintiff's intellectual property. Thus, failure of the tribunal to rule on the motion in accordance with accepted interpretation of the Federal Rules of Criminal

Procedure constitutes a procedural due process that is both a violation of the Fifth Amendment to the United States Constitution, which protects persons from being "deprived of life, liberty, or property, without due process of law", and the Fourteenth Amendment to the United States Constitution, which protects citizens from acts by any state to "deprive any person of life, liberty, or property, without due process of law". Furthermore, this procedural due process failure violates Section 2 of the Bill of Rights of the most recently adopted Constitution of Illinois (Constitution of Illinois of 1970), which states "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

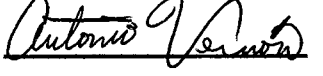
.

Vernon quotes CoA5 "where denial of relief [under rule 60(b)] precludes examination of the full merits of the cause, even a slight abuse of discretion may justify reversal." Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 402 (5th Cir. 1981). At times, CoA6 also feels a slight abuse of discretion can justify reversal when the "merits of a case" are not under review Shepard Claims Service, Inc. v. William Darrah & Associates, 796 F.2d 190 (6th Cir. 1986). CoA7 has cited other circuits in this regard in order to revert to a trial on the merits: Virginia Leong, v. Railroad Transfer Service 302 F.2d 555 (7th Cir. 1962). Note that there is a sentiment among Courts of Appeals that circuit splits should be handled delicately. In fact, "A court of appeals should always be reluctant to create a circuit split without a compelling reason" Alternative System Concepts v. Synopsys, Inc. 374 F.3d 23 (1st Cir. 2004). Circuit Rules of CoA7, point out the hesitance of going forward with the presentation of a circuit split in a published opinion. CoA7 Rule 40 (e) notes the special procedures necessary when there is an awareness of a circuit split.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

BY: 

Antonio Vernon

Pro se

5300 South Shore Drive - #77

Chicago, IL 60615

(312) 401-8669

amvernon@gmail.com

Dated: July 9, 2019