No. 20-1404

SUPREME COURT OF THE UNITED STATES

Kenyon Garrett,

Petitioner,

vs.

United States of America,

Respondent

On Petition for a Writ of Certiorari to

the United States Court of Appeals

for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Kenyon J Garrett

Petitioner, Pro Se

P.O. Box 132826

Tyler, TX 75713

(903) 574-0783

Kentyler88@gmail.com

I. Question Presented

1. Whether the Respondent/Defendant can use direct evidence of threats, intimidation, coercion, fraud, and witness tampering to deprive a petitioner of his 5th and 14th Amendments rights of due process and the fundamental fairness to present my case fully and fairly. The Fifth Circuit's opinion in this legal matter conflicts with another circuit's opinion regarding the allowance of fraud and misconduct (obstruction, coercion) in a civil proceeding that requires this Court's intervention. Does direct, clear and convincing evidence of the Respondent/Defendant egregious misconduct requires relief under F.R.C.P 60 (b) (3) (6)?
2. Whether a Pro Se Petitioner Seventh Amendment right to a jury trial can be denied by the lower Courts in a civil proceeding, when the disputed amount is greater than twenty dollars ($20.00), and the jury trial was requested by the petitioner in writing in the Original Complaint under F.R.C.P 38?
3. Whether the lower Courts committed reversible error and violation of petitioner's Constitutional rights to present relevant, non-cumulative, evidence under F.R.C.P 60 (b) (2) (6); were the Respondents/Defendant's clients has admitted to guilt and guilt of a third party?
4. Whether cumulative-error doctrine applies to Civil Proceeding. There is circuit split regarding cumulative error applicability in civil cases which requires this Court supervisory power. Do cumulative-errors that deprive a petitioner of their Constitutional rights of fundamental fairness to present my case fully and fairly in Civil Proceeding require relief under F.R.C.P 60 (b)?

PARTIES TO PROCEEDING AND RELATED CASES

Solicitor General of the United States

Room 5616

Department of Justice

950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530-001

*Garrett v. United States, No. 5:17-cv-00784 District Court for The Western District of Louisiana: Judgements entered November 21, 2019 – December 12, 2019

*Garrett v. United States, No, 19-30994 Fifth Circuit Court of Appeals:

Judgements entered July 24, 2020 and October 09, 2020

II. Table of Contents

Table of Authorities

Statutes, Rules, and Laws

Constitutional Provisions

III. Petition for Writ of Certiorari

Petitioner Pro Se Kenyon J Garrett respectfully petitions this court for a writ of certiorari to review the judgement of the Fifth Circuit Court of Appeals.

IV. Opinions Below

The decision by the Fifth Circuit Court of Appeals denying my appeal is reported as Garrett v. United States of America, No. 19-30994 (5th Cir. 2020) is attached at Appendix ("App") at 1-5. The Fifth Circuit Court of Appeals denied my petition for rehearing en-banc on October 09, 2020 is attached at Appendix ("App") at 6.

V. Jurisdiction

The judgement of the court of appeals for the Fifth Circuit was entered on July 24, 2020. A petition for rehearing en banc was denied on October 09, 2020. This court issued an order on March 19, 2020 (Order List: 589 U.S.) granting an extension of 150 days until March 08, 2021 to enter a Writ of Certiorari. Writ of Certiorari was filed before March 08, 2021 deadline. The jurisdiction of this Court is invoked under 28.US.C. § 1254.

VI. Constitutional Provisions Involved

United States Constitution, **Amendment V:**

"The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty, or property without due process of law." Due process clause promises that before depriving a citizen of life, liberty, or property government must follow fair procedures. Citizens may also be entitled to have the government observe or offer fair procedures, whether or not those procedures have been provided for in the law on the basis of which it is acting. Action denying the process that is "due": would be unconstitutional.

Amendment VII:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment XIV:

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 wherein 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 the law, *www.law.cornell.edu."*

Statement of the Case

My administrative claim was filed on July 18, 2016 with the Department of Veterans Affairs informing them that the medical negligence created by Overton Brooks VA Medical Center (OBVAMC) healthcare providers caused my father's premature death. I filed suit on June 16, 2017, for my deceased father (Clarence Garrett) against the United States "USA" for medical negligence, informed consent, fraud, elderly abuse, negligent restraint, loss chance of survival, failure to transfer, and multiple cause of actions on the part of the Physicians, and Non-medical staff (nurses, nurse aids, dietitians, therapist, and hospital administrations) at Overton Brooks VA Medical Center (OBVAMC) in Shreveport, Louisiana. The Department of Veterans Affairs was also named in this legal matter as my claims were filed pursuant to the *Federal Tort Claims Act, 28 U.S.C §1346(b), 28 U.S.C §2674*, and 28 U.S.C §2671,et seq. Under the *Federal Tort Claims Act (FTCA), 28 U.S.C. §2674, et seq,* liability is decided under "the law of the place where the act or omissions occurred see, *Hatahley v. United States, 351 U.S. 173 (1956).* Moreover, this legal matter originated in Louisiana; consequently the laws of that state govern this case

which included the following laws: *LA Civ Code 2315, LA Civ Code 1953, LA. RS. 9:5628, L A. RS 40: 1157.1*, as these are only a few of the State laws that were involved in this case. Additionally non-, I served as the plaintiff, witness, and medical expert (against nurses and medical employees) in this official legal proceeding.

All undisputed material photographs of my father's medical negligence in this case was submitted before I received any letters containing threats, coercion, witness tampering, and intimidation from the Government attorney to stop submitting evidence to support my case. On December 20, 2017 the court issued a Report and Recommendation from Magistrate Judge Hayes which she recommended that the "USA" motions be granted in part and denied in part. Then, on May 18, 2018 I submitted a Motion to Amend my original complaint to add negligent credentialing, and privileging claim as well as a negligent hiring claim. The lower court denied my equitable tolling request, and stated that I had to file a new lawsuit for that matter. During the discovery phase of this legal matter I informed the Government attorney on record that the requested documents that I was receiving from the Department of Veterans Affairs may not be accurate, and will she be signing for these requested documents to make sure that they are accurate.

The record reflects that the Government informed me via electronic-mail on July 27, 2018 that if I continue to inform them that the documents I requested were inaccurate, they would indeed file sanctions against me for questioning the documents I needed to prove my case. Most important, on or about October 3, 2018 the Government attorney informed me via a signed dated letter that if I moved forward with my allegations/evidence to prove my case against "OBVAMC" she would seek sanctions against me for submitting this evidence, and if I keep trying to make this matter criminal against her clients (Department of Veterans Affairs) she would of course get the court involved. Being a Black Pro Se filer I became terrified of these threats from an Assistant United States Attorney to the point that I only submitted limited selected evidence to prove my case because I was afraid of sanctions and jail time from a Department of Justice's Government attorney. Most important, I went to the Courts for help with this matter on several occasions, and the record reflects that I briefed the Court on November, 13 2018; December 17, 2018; February 05, 2019; February 07, 2019 (informed Magistrate Judge during scheduling conference). Yet, the District Court failed to hold a hearing or even address the Government egregious misconduct before they dismissed my case. Furthermore, if I wasn't threaten and coercion by the "USA" to stop submitting evidence, I would have presented my case totally different by submitting material evidence that I was clearly told by the Government attorney not to submit.

Reasonable jurist would concur that a Black Pro Se filer who was threaten by a Government attorney to stop submitting evidence to support their claims would definitely be afraid to submit evidence, especially since the District Court (5:17-cv-00784) and Fifth Circuit (19-30994) allowed this outrageous Government misconduct to happen. This neglect by the lower courts led to an unfair legal process, deprived me of my guaranteed Constitutional rights of due process and fundamental fairness. Moreover, reasonable jurist would concur that I demonstrated due diligence by informing the lower Courts on several occasions that the Government misconduct stop me from entering material evidence to support my claims. Also, the record will reflect and reasonable jurist would concur that the Government intentional sent threatening, intimidating, and coercing letters with criminal intent to suppress my ability to enter material evidence to support my claims against their clients. The lower court records (19-30994) (5:17-cv-00784) reflects that the Government didn't deny their criminal intent to obstruct this official proceeding.

On November 13, 2018 I filed for summary judgment on the claims of informed consent and fraud, and then I informed the District Court that the rest of my claims contained material evidence that I couldn't move forward with because of the Government's coercion and threats. Then, on December 27, 2018 I informed the lower Courts that the Government failed to make important witnesses available for depositions as well as failing to make their medical experts available for depositions before the original court mandated deadline. The Government then filed a Motion to Stay the Proceeding on December 31, 2018, and this Motion to Stay was lifted on January 31, 2019. On February 05, 2019 (5:17-cv-00784) I filed an Opposition Brief to the Government summary judgment request, and again wrote in detail in this brief that I was afraid to advance my claims because the attorney for the Department of Justice threaten and coerced me not to. Moreover, the record reflects on February 06, 2019 the Government sent another threatening electronic mail informing me that if I submitted a manual attachment without informing them first "there is a problem."

During the Scheduling Conference on February 07, 2019, the District Court extended the medical expert depositions due to the Government refusal to make their medical experts available during the original Court scheduled deposition due date as the record will reflect. Most important, I again informed the District Court during this conference about the Government misconduct that prevented me from presenting my case fully and fairly, the District Court Magistrate Judge responded by informing me that I couldn't have a jury trial because of the rules and laws that are in place; even though the record reflects that I request a jury trial in my original complaint under *FRCP 38*. On February 19, 2019 the District Court dismissed all of my claims, without warning and granted the "USA" summary judgment. The record will reflect that both lower Courts failed to take in account the Government shutdown, the Government misconduct that prevented me from fully and fairly presenting my case, Government and the District Court refusal to allow me a

chance to depose the Government purported medical experts as requested during the discovery process, Discovery abuse, District Court refusal to allow my requested jury trial, District Court and the Fifth Circuit use of uncertified, hearsay purported Government medical expert reports that was submitted without an affidavit that is required under *Louisiana Law CCP 966 A (4) 2015* to grant the Government summary judgement, as these are only a few reversible harmful errors both lower courts refused to address.

With the District Court dismissing all of my claims against the "USA" I filed an appeal on February 22, 2019. Lower court (Fifth Circuit) affirmed the District Court ruling for summary judgment in favor of the "USA" on September 12, 2019, by stating I couldn't opine a Physician's informed consent as a Registered Nurse. Lower Court (District) then denied my motion for rehearing on November 12, 2019. I Motion the District Court on November 19, 2019 to vacate and amend their February 19, 2019 judgment under *FRCP 59(e)* and *FRCP 60(b)*. Moreover, the record reflects that the District Court wouldn't address the Government outrageous misconduct conduct on record until November 21, 2019. Furthermore, it would be a miscarriage of justice, and set a dangerous precedent if the U.S Supreme Court allows this clear and convincing outrageous misconduct to go ungoverned.

Additionally, the District Court failed to grant relief under *FRCP 60(b) (3)* regarding this judgment that was obtained by fraud and misconduct, which both lower Courts were well aware of but refused to address the Government misconduct. Also, the District Court refused to follow local, state, and federal rules and laws to make this legal process fundamentally fair. The precedent has been set forth by the Louisiana Supreme Court, and the Louisiana Office of Disciplinary Counsel that clearly establishes what attorney misconduct is in Louisiana. As the Government attorney on record misconduct falls exactly into misconduct that is prohibited in the state of Louisiana. Reasonable jurist would concur that the District Court displayed bias by allowing the Government to obstruct justice at will, which resulted in an unfair legal proceeding and a denial of my due process. The Government misconduct rises to the level of coercion of testimony because I was told by the Government what material evidence I could and couldn't enter to support my case; which this coercion stop me from fully and fairly presenting material evidence that would have supported my claims.

On December 02, 2019 I filed a Motion 62.1 and a Motion to Amend Doc.127 for (New Evidence) that I recovered in late November 2019. My new material evidence would have altered the District Court summary judgment because it offers genuine issues of material fact for trial. The new relevant evidence includes the confessions of the Government's clients who provided negligent medical care to my father during the said time of this legal matter. It would be a manifest injustice and a deprivation of 5th and 14th Amendment rights if I'm not allowed to enter my new material evidence to prove my case. The District Court refused to vacate and amend their summary judgment order, and grant a new trial under *FRCP 59* and

FRCP 60(b) that includes misconduct, mistake, extra ordinary circumstances, and new evidence. On or about December 12, 2019 I filed a Motion to Appeal of the District Court denial of my FRCP 59 and 60 (b) motions. Fifth Circuit (19-30994) upheld the District Court ruling in its unpublished opinion (Appendix 1-5) dated July 24, 2020, and then denied my request for a rehearing en-banc on October 09, 2020 (Appendix 6-9).

REASONS FOR GRANTING THE WRIT

1. **Whether the Respondent/Defendant can use direct evidence of threats, intimidation, coercion, fraud, and witness tampering to deprive a petitioner of his 5th and 14th Amendments rights of due process and the fundamental fairness to present my case fully and fairly. The Fifth Circuit's opinion in this legal matter conflicts with another circuit's opinion regarding the allowance of fraud and misconduct (obstruction, coercion) in a civil proceeding that requires this Court's intervention. Does direct, clear and convincing evidence of the Respondent/Defendant egregious misconduct requires relief under F.R.C.P 60 (b) (3) (6)?**

Writ of Certiorari is warranted in this legal proceeding because the Fifth Circuit's decision conflicts with one or more Federal Court of Appeals decision see, *Rembrandt Vision Technologies, L.P., v. Johnson &Johnson Vision Care, Inc., 2015-1079 (11th Cir. 2016)*; were the 11th Cir. reverse because of misconduct and fraud. This Court should also review this case to determine whether direct clear and convincing evidence of fraud, coercion, intimidation, threats, and witness tampering on part of the Government that prevents a petitioner from fully and fairly presenting their case requires relief under *FRCP 60 (b) (3) (6)*. Specifically, this Court should allow writ to determine whether it's constitutional for Circuit Court of Appeals to allow Government attorneys to commit fraud and outrageous misconduct at will during official legal proceeding that deprives petitioners of their due process and fundamental fairness to present their case. Also, I respectfully request this Court to grant a Writ of Certiorari because the lower Courts (19-30994) failed to answer questions of constitutionality, lower Court decided upon federal questions that this Court should answer, and the lower Court decision (Appendix 1-5) conflicts with this Court's prior ruling regarding the same legal matters.

The record (19-30994) reflects that I provided the Fifth Circuit with four statements that the Government sent me in letter form via electronic mail with criminal intent to obstruct and prevent me from moving forwarded with my claims to prove my case. Moreover, the record reflects that the Government never stated

on record that they didn't have criminal intent to obstruct this official proceeding. Listed below are the obstructed statements sent to me by the Government, as these letters are located within the record for this Court to view:

(1) "However, if you go forward with anymore baseless accusations I will file sanctions."

(2) "I can of course, get the court involved if you keep trying to make this matter into something criminal

(3) If I can't locate the exhibits despite an exhaustive search, there is a problem."

(4) "If you have proof, bring it forward in the same manner that an attorney would be required to do so

As seen in the Fifth Circuit's opinion (Appendix 1-5) the lower court (19-30994) would only address certain Governments statements two (2) through four (4) and neglected the main obstructed statement by the Government which was number one(1). This neglect by the Fifth Circuit to address the main clear and convincing evidence of egregious misconduct/obstruction by the Government shows bias, and has deprived me of my 5th and 14th Amendment rights of fundamental fairness. The record reflects that I only submitted (6) six entries into the record after I was threaten not to move forward with my material evidence; of my six entries (5) five of them were informing the District Court about the Government misconduct. Even though I made several pleas to the District Court for help with this misconduct, the lower Court wouldn't address the Government misconduct on record until November 21, 2019; after I motion the Court to amend its judgement. The District Court (5:17-cv-00784) stated that the electronic mails from the Government "are what they are."

The Fifth Circuit's opinion in this matter brings questions of federal law that requires this Court to answer. *18 U.S.C §1503* defines in pertinent parts that Obstruction of Justice "is an act the corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice." I'm also a witness in this legal matter so 18 U.S. C §1512 "Tampering with a witness, victim, or an informant" (b) Whoever knowingly use intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to (2) cause or induce any person to (A) withhold testimony, or withhold a record, document, or other object from an official proceeding. These federal laws applied to this civil case because of the Government egregious misconduct. Government violated the above federal laws in bad faith as 18 U.S.C §1503 applies to federal cases see, *Roberts v. United, 239 F.2d 467, 470 (9th Cir. 1956).*

This Court precedent states that there must be a nexus between the criminal intent to obstruct and the knowing of an official proceeding, which the Court records in this case, proves that the Government had criminal intent to obstruct this legal

proceeding they knew of. As the Government main objected was to stop me from entering material evidence such as (medical-expert report against the nurses/ non-medical employees, evidence of violation of Hospital Bylaws, proof of perjury and elderly abuse) against their clients. Also, the record reflects (19-30994) that I have proved the three elements of Obstruction of Justice under 18 U.S.C § 1503 "(1) a judicial proceeding was pending (2) the defendant knew of the judicial proceeding (3) the defendant acted corruptly with specific intent to influence, obstruct or impede that due administration of justice," see *United States v. Sharpe, 193 F.3d 852, 864 (5th Cir. 1999)*; *United States v. Scaife, 749 F. 2d 338, 348 (6th Cir. 1984)* for violation of *U.S.C.§ 1512.* As the record (19-30994) will reflect that the Government didn't deny their criminal intent to obstruct this official proceeding to protect their clients. Moreover, this FTCA case originated in Louisiana and *Louisiana Legal Ethic Rules 8.4* states attorney misconduct is (d) Engage in conduct that is prejudicial to the administration of justice (g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter. Other Louisiana states laws that the Government violated that were related to this legal matter is La. R.S. 14:130.1 (A) (1) (4) (a), and La. R.S. 14:27 (A). Violation of these federal and state laws by the Government violated my constitutional rights of due process to present my case fully and fairly.

Furthermore, the Fifth Circuit in it opinion stated that I didn't present expert testimony, which was an error and a clear manifest injustice. In my original complaint (5:17-cv-00784) Physicians and nurses/non-medical employees were listed in this case as defendants, and therefore could require an expert report for these medical professions if needed under Louisiana law. I provided an Physician medical expert report that stated that the Department of Veterans Affairs physicians breeched the standard of care that cause my father loss of chance for survival, and eventual death. However, due to the Government coercion, intimidation, and witness tampering I was afraid to submit my medical expert against the Physicians, but the Government submitted into the court record my expert report with their own interpretation of my Physician medical expert report.

I was limited on how I could brief my own Physician medical expert report, because I was afraid of sanctions and jail time from the Government attorney. Most important, the Fifth Circuit (19-30994) and District Court (5:17-cv-00784) records will prove that the lower Courts were briefed about the material evidence I couldn't submit because of Government threats and coercion. One main material evidence that I couldn't submit to support my claims was my medical expert report affivadit against the nurses/non-medical that was allowed in this FTCA case please see, *Adams v. Home Health Care of Louisiana, et al 775 So. 2d 1064 (La. Supreme Court 2000).* Were nurses can be medical experts in the State of Louisiana, and are held to the same medical standards as Physicians when they are listed as defendants. For the lower Court to state that the District Court was right in dismissing my case because I didn't have expert reports was a reversible harmful error when the records reflects that I had a Physician medical expert report, and the Government

wouldn't allow me an opportunity to submit my medical nurse expert report to support my case.

As a black, minority, pro se filer I was very afraid once the Government threaten me with sanctions and court involvement (jail) if I move forward with my claims to prove my case; especially when I realized as the lower Court record reflects that both lower Courts was turning a blind eye to this misconduct. In both the Western District of Louisiana Court record (5:17-cv-00784) and the Fifth Circuit record (19-30994) I informed the Courts that the Government threats, intimidation and coercion has caused me undue stress and depression. Even though this is a civil case I rely on the following cases to support my stance in this case, *Arizona v. Fulminante 499 U.S. 279 (1991), United States Supreme Court; Payne v. Arkansas 356. U.S. 560 (1958) Supreme Court of the United States quoting Watts v. Indian 338 U.S. 49, 52, 53* "[t]here is torture of mind as well as body, this will is as much affected by fear as by force," *Armstrong v. Manzo ET UX. 380 U.S. 545 (1965) Supreme Court of the United States quoting Grannis v. Ordean, 234 U.S. 385, 394* "A fundamental requirement of due process is the opportunity to be heard." The lower Courts allowed the Government to use egregious misconduct to take my opportunity to be heard, which has prejudiced and deprived me of my due process.

Another reason why this Court should grant writ in this case is because material evidence in both lower Courts records proves that the Government was allowed to use fraudulent evidence to gain summary judgement in this case. The Government main medical expert report was false evidence, and this is why their experts wasn't made available for my requested depositions. Their expert reports wasn't sworn to or in affidavit form as required under Louisiana summary judgment law, and was inadmissible hearsay, see *LA Code Civ. Pro 966 (2015) (A)* (3) After an opportunity for adequate discovery (4) The only document that may be filed in support of or in opposition to the motion are pleading, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations and admissions. Most important, District Court record (5:17-cv-00784) and Fifth Circuit record (19-30994) shows that I briefed both lower Courts about this fraudulent evidence, provided evidence of such, made Motions to Strike and Motion in Limine which the lower Courts prejudice me by refusing to address my Motion in Limine. District Court record (5:17-cv-00784) shows that the court only gave an opinion on one of Government purported medical experts. They refused to give an opinion on the main Government purported expert witness, then used the this same purported Government hearsay expert report that they refused to give an Motion in Limine/Stike opinion on to craft their summary judgement in favor of the Government. Moreover, the record shows that the Fifth Circuit prejudice me when they wouldn't follow their own precedent regarding submitting expert reports that wasn't in sworn affidavits form, to uphold the District Court opinion see, *Nissho-Iwai American Corp. v. Kline, 845 F.2d 1300, 1306 (5th Cir.1988); Larry v. White, 929 F.2d 206, 211 N.12 (5thCir. 1991)* "It is well settled rule in this circuit that an unsworn affidavit is incompetent to raise a fact issue precluding summary judgment."

Government use of fraudulent evidence with the lower Courts being aware of this fraud violates due process and the fundamental fairness of this proceeding. Furthermore, the record reflects that the Government didn't provide any material evidence to dispute this fraud on the Court that would have been found if the lower Courts would have addressed Motion to Strike/Motion in Limine request. Also, with the Government knowingly submitting fraudulent expert reports violated *La. C.C.P 1953. La. C.C.P. art.2004* provides that [a] "final judgement obtained by fraud or ill practices may be annulled." *Napuev v. Illinois, 360 U.S. 264, 269 (1959)* can be applied to this case because the Government was granted summary judgement with the aid of false evidence that the Government knew or should have known was false. This denied me my due process because there is a reasonable likelihood that the outcome of this case would be different if this falsified evidence wouldn't have been used by both lower Courts. Also, see *Chambers v. Nasco, Inc; 501 U.S. 32, 44 (1991)* who stated that the Courts should grant relief for fraud on the Court to protect the *"integrity of the Courts."* Lower Courts displayed bias and prejudice by allowing the Government to commit fraud on the Court freely, and in doing so violated my due process. Due process guarentees *"an absence of actual bias," In re Murchison, 349 U.S. 133, 136, 75 S.Ct.623, 99 L.Ed. 942 (1955), also see Klapprott v. United States, 355 U.S. 601, 69 S. Ct. 384, 93 L. Ed. 266 (1949).* This Court should grant writ because it would be a miscarriage of justice and set a dangerous precedent if the Government is allowed to openly obstruct an official proceeding, openly use psychological coercion on a petitioner, use fraud on the Courts, deprive petitioners of their due process; while the lower Courts stay silence and allow this manifest injustice to happen. Moreover, the Government has not provided any evidence to contradict the evidence that they didn't have criminal intent to obstruct this official proceeding to protect their clients. This case will show if the integrity of the judicial system is still intact, which I believe it is; as this Court should grant writ and relief under *FRCP 60 (b) (3) (6).*

2. **Whether a Pro Se Petitioner Seventh Amendment right to a jury trial can be denied by the lower Courts in a civil proceeding, when the disputed amount is greater than twenty dollars ($20.00), and the jury trial was requested by the petitioner in writing in the Original Complaint under F.R.C.P 38?**

This Court should grant writ in this case to determine whether the lower Courts can inform a petitioner that he or she doesn't have the Seventh Amendment right to a jury trial, and they must have a bench trial regardless of their timely written demand for a jury trial. I filed my initial complaint on June 16, 2017, with the Western District of Louisiana District Court, and within this complaint I

requested a jury trial under *FRCP 38.* According to *FRCP 38* a party may serve a written demand for a jury trial within their pleading which I completed. However, in bad faith on December 13, 2018 the Government made a Motion to Strike my jury trial demand a year in a half after my request as the record reflects this date, which this Motion should have been rule untimely.

On February 07, 2019 the District Court held a status/scheduling conference where the Magistrate Judge for the District Court (5:17-cv-00784) informed me that it was rules and laws in place stating that I'm not allowed a jury trial in this case. My *Seventh Amendment* right, and fundamental fairness that is guaranteed under the *5th and 14th Amendments* was violated when the District Court Magistrate judge wouldn't allow me to have my jury trial that I requested in writing. Moreover the Government knew that the Court informed me of this reversible error, and that's why the lower Courts records reflect that neither the District Court nor the Government has denied this prejudice against me. Furthermore, the record reflects that I was denied a jury trial because a bench trial gave the District Court Judge authority that he wouldn't have in a jury trial.

Additionally, the record reflects (District Court 5:17-cv-00784) (Fifth Circuit 19-30994) that I briefed the District Court and the Fifth Circuit regarding these constitutional violations, but the lower Courts again stood silence on these constitutional issues. This is an FTCA case, so the laws of the State this case originated in govern this case; *L.R. 38.1* recognizes the *Seventh Amendment* right to jury trial, *LA Code Civ Pro 1733* (B) " A motion to withdraw a demand for a trial by jury shall be in writing." The record in this case reflects that I never made a demand in writing to withdraw my trial by jury request. *FRCP 38 (d)* states when it comes to a jury trial "a proper demand may be withdrawn only if a party consent." I never consented; the District Court informed me that I couldn't have my *Seventh Amendment* right to a jury trial. I rely on the following cases to support my stance that I have Constitutional rights to a jury trial in this civil matter, see *United States v. Regan, 232 U.S. 37, 47 (1914), Hepner v. United States, 213 U.S. 103, 115 (1909), Tull v. United States, 418 U.S.412 (1987).*

3. **Whether the lower Courts committed reversible error and violation of petitioner's Constitutional rights to present relevant, non-cumulative, evidence under F.R.C.P 60 (b) (2) (6); were the Respondents/Defendant's clients has admitted to guilt and guilt of a third party?**

Due to the national importance of this issue the Supreme Court should grant writs to determine if the lower Courts can deny constitutional rights to present new evidence that is relevant, admissible, technical adequate, and raises genuine issues of material facts for trial. Moreover, the lower Courts denial of my *FRCP 60 (b) (2)*

(6) motion has seriously affected my substantial rights, and the guaranteed fairness of the judicial process. Especially, when evidence from the record shows that the Government was granted summary judgement using outrageous misconduct and false evidence. On December 02, 2019 I informed the District Court that I had new evidence that would raise genuine issues of material facts that warrants a new trial. Moreover, this evidence includes confessions from the Government's clients who provided direct medical care to my father during the said time of the legal matter in question (April 11, 2015-July 1, 2015).

The Government's clients confessed to the negligent medical care and the use of fraudulent practices of other staff members that resulted in my father loss of chance of survival and untimely death. Likewise, this evidence would have resulted in a different judgment regardless of the Government fraudulent expert reports, if I was able to submit this evidence before their summary judgment ruling. Even though this is a civil case the following criminal case statement can be applied to this legal action, see *Arizona v. Fulminate, 499 U.S. 279, Supreme Court of the United States (1991)* which stated "A confession is like no other evidence. In deed the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him." I rely on *Washington v. Texas, 388 U.S. 14 (1967) Supreme Court of the United States;* "The right to offer the testimony of witness and to compel their attendance if necessary is in plain term the right to present a defense;" which my new evidence is my defense against the Government's clients. Also, my new relevant material evidence is admissible under Louisiana one-party consent state law, see *La. Rev. STAT 15:1303(c)(4) and 18U.S.C. 2511(2)(d).* However, both Courts refused to allow me an opportunity to submit this evidence to prove my case, and in doing so the District Court and the Fifth Circuit has displayed judicial bias and prejudice in this civil matter. Moreover, my new evidence want cause any prejudice to the Government, and is completely different from my prior evidence that I was able to submit in this case.

Due to several debilitating medical conditions that affected my health to include memory issues I didn't remember that I had this relevant evidence, and couldn't remember where it was located. I informed the District Court and the Fifth Circuit about my medical issues that caused my memory problems which became so debilitating that I had to resign from my employment. The District Court stated that my medical issues were hearsay. I presented my medical conditions in layman terms to both lower Courts which are chronic migraines, early dementia, stroke, removal of prostate for cancer, and spread of cancer from prostate. Then, I provided both lower Courts with my medical records to prove my illness. The medical evidence I submitted to the Court that displays my medical conditions has been kept in normal business at Christus Trinity Mother Francis Hospital, and at the Social Security Administration is admissible under the *Louisiana business-exception rule "La. Code of Evidence Rule 803."* It is a medical fact that any individual with my medical issues would have severe problems with memory, and thanks to ongoing treatments and medications I'm now doing better. Also, the District Court and the

Fifth Circuit erred, displayed bias, and deprived me of my constitutional right to present evidence by stating that my medical condition wasn't an extraordinary circumstance that requires a reversal under *FRCP 60(b) (2) or (6)* to enter new relevant critical evidence. Additionally, there wasn't a need to request the District Court for a continuation to find my new material evidence because I didn't remember that I had it or its location.

Furthermore, when I remembered that I had my relevant evidence, I did my due diligence to locate it, and requested both lower Courts to submit my evidence within the one year required guideline to submit new evidence. Reasonable jurist would conclude that I in fact pursued my claims diligently once I remembered that I had my evidence that will provide genuine issues of material fact for trial. The Sixth Circuit Court found in the following case that the petitioner medical condition qualified as extraordinary circumstances, and he in fact diligently pursued his claims, see *Stiltner v. Hart, 657 F. App'x 513 (6th Cir. 2016).* Also, as stated in *Ripley v. Chater, 67 F.3d 552 (5th Cir. 1995):* "When new evidence becomes available after the Secretary's decision and there is a reasonable probability that the new evidence would change the outcome of the decision, a remand is appropriate so that this new evidence can be considered," also see *United States v. Murray, 736 F.3d 652 (2nd Cir. 2013), Unites States v. Carmen, 697 F.3d 964 (9th Cir 2012), United States v. Turning Bear, 357 F. 3d 730 (8th Cir. 2004).* Moreover, my new evidence will dilute the record to such an extent that the District Court's decision to grant the Government summary judgment becomes insufficiently supported. As the Western District of Louisiana District Court record (5:17-cv-00784) reflects the Government never prohibited my request to enter new evidence, and the Fifth Circuit record (19-30994) reflects that the Government only used the defense that the District Court provided for them to deny my request to enter new relevant material evidence. This display of bias and prejudice used to prevent me from entering new evidence, and has deprived me of my due process; which requires relief under FRCP 60 (b) (2) (6).

4. **Whether cumulative-error doctrine applies to Civil Proceeding. There is circuit split regarding cumulative error applicability in civil cases which requires this Court supervisory power. Do cumulative-errors that deprive a petitioner of their Constitutional rights of fundamental fairness to present my case fully and fairly in Civil Proceeding require relief under F.R.C.P 60 (b)?**

Another important reason for this Court to grant writs of certiorari in this case is because there is a circuit split regarding cumulative error applicability in civil cases. The First, Second, Sixth, Seventh, Eight Circuits applies the cumulative-error doctrine to civil cases, see *Hendler v. United States, 952 F.2d 1364, 1383 (Fed. Cir 1991), Malek v. Fed. Ins 994 F.2d 49, 55 (2nd Cir. 1993), Williams v. Drake, 146 F.3d 44, 46 (1st Cir. 1998), Nichols v. Am. Nat'l Ins., 154 F3.d 875, 889-90 (8th Cir. 1998), Thompson v. City of Chicago, 772 F. 3d 963, 979 (7th Cir. 2013).* However,

the Third Circuit hasn't accepted applicability of cumulative errors, *SEC v. Infinity Grp. Co., 212 F. 3d 180, 196 (3rd Cir. 2000).* Moreover the cumulative-error doctrine requires that the lower Courts judgments be set aside if these courts errors even if individually harmless, "so fatally infect the trial when aggregated that they violate the trials fundamental fairness," *United States v. Basham, 561 F. 3d 302, 330 (4th Cir. 2009) (quoting United States v. Bell, 367 F. 3d 452, 471 (5th Cir. 2004)).* Even though my constitutional rights to a jury trial was taken away from me, the lower Courts cumulative errors affected this legal proceeding to the point that they deprived me of my constitutional rights of due process, and the guaranteed fundamental fairness of the legal process.

Fifth Circuit record (19-30994) reflects that the lower Court ignored the cumulative errors of the District Court in this case, even when I provided evidence of this prejudice that violated my due process. The following are cumulative errors that the Fifth Circuit wouldn't address that rendered this legal process unfair:

The District Court committed harmful procedural error, and deprived me of fundamental fairness by refusing to have an evidentiary hearing to address my Motion to Strike, Motion in Limine, and Daubert Challenge of the Government medical experts. The record reflects that the Court didn't do its gatekeeping duties as required by this Court, see *Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579; 113 S.Ct. 2786 (1993); Kumho Tire Co. v. Carmichael 526 U.S. 137 (1999).* Moreover, the Fifth Circuit affirmed this harmful error, by refusing to address it in their opinion (Appendix 1-5); their refusal to address this matter has deprived me of my due process. Both lower Courts misapplied and neglected to abide by the following Louisiana Laws regarding my objections to the Government experts *Louisiana Code Civil Procedure 966 A(4); La. Code of Civ. Pro. Art. 964, Louisiana R.S. 9:2794 (D) (1) (b), and Louisiana Law: CCP 1425 F (2).*

Government unsworn hearsay medical expert reports were immaterial, impertinent, false and should have been stricken from the record; as this was a harmful reversible error that both lower Courts ignored. It was fundamentally unfair for the lower Courts to allow the Government to submit unsworn expert reports, and then use these inadmissible hearsay reports to construct their ruling to grant the Government summary judgment. Unauthenticated documents can't be used to oppose summary judgment, see *Nissho-Iwai American Corp. v. Kline, 845 F.2d 1300, 1306 (5th Cir.1988), Larry v. White, 929 F.2d 206, 211 N.12 (5thCir. 1991)* "It is well settled rule in this circuit that an unsworn affidavit is incompetent to raise a fact issue precluding summary judgment." Most important with the lower Court going against its own precedent to uphold a ruling for the Government shows how I have been prejudice in this legal matter, and deprived of my due process.

On February 12, 2019 the District Court committed harmful reversible err by agreeing to keep the record open so I can enter evidence before trial, but closed the record a few days later without warning on February 19, 2019. This was a harmful reversible err see, *Smith v. Elmwood Medical Center, 720 So. 2d 122, 1224 (La. 5th Cir. 1998),* "Once the record is left open for evidence, the trial court abuses his discretion in rendering judgment a few days later without notice to the parties of his intent to do so."

The Court committed direct, obvious, observable, and reversible error by allowing the Government to deny me of my right to a fair discovery by failing to make their experts and physicians available for requested depositions according to the scheduling order, see *G-K Properties v. Redevelopment Agency 577 F.2d 645 (9th Cir. 1978*). Moreover, the record reflects that I informed and submitted material evidence displaying the Government refusal to comply with the Court mandated orders to have their experts and physicians readily available for depositions. Also, the records (District Court 5:17-cv-00784) (Fifth Circuit 19-30994) displays that the District Court help the Government out by extending the depositions on February 09, 2019 until March 15, 2019, but dismissed my case without allowing me a chance to a fair Discovery 10(ten) days later on February 19, 2019.

Actually bias and error was displayed by the Courts when my medical issues prevented me from entering my new material evidence that's in question now. The lower Courts stated that my illness and medical records to prove my illness was hearsay. However, when the Government attorney only explained her illness the Court said it was okay to deny my discovery based on the explanation. Moreover, the Government attorney only informed the Courts that she had an illness when I requested sanctions for the Government intentionally violating the discovery rules (District Court 5:17-cv-00784). The records reflects that the Government attorney never provided the lower Courts with any certified medical records or Physician letter that stated there was really an illness, it's a question that the Government used this as an excuse to get out of sanctions for their actions. On the other hand, as stated above I submitted certified medical records to prove my illness, but I didn't get relief from the lower Courts like the Government did with no medical records to prove illness. I was denied relief and told that my serious illness and medical records to prove my illness was hearsay. This bias by the lower Courts deprived me of my due process and fundamental fairness to present my case fully. A likelihood or appearance of bias can disqualify a judge, see *Taylor v. Hayes 418 U.S. 488, 501, 94 S. Ct. 2697, 41 L. Ed. 2d 897 (1974)*

My FRCP *59* and FRCP *60(b)* motions were unopposed by the Government contained questions of constitutionality that affects public interest, new evidence, Government misconduct, and fraud which all required answers from the Government not the District Court. I have been prejudiced in this case because the District Court gave the Government an unfair advantage by issuing an opinion without requesting a response from the Government. It was the Government's job to prove that I haven't been prejudiced, my constitutional rights haven't been

violated, they didn't commit misconduct, and my new evidence isn't relevant in this legal proceeding. However, the District Court provided a defense for the Government hence making this case fundamentally unfair. It's a clear abuse of discretion and harmful reversible procedural error for the District Court to become counsel for the Government which requires a reverse of both Courts "Ruling." The record reflects that the Government brief to the Fifth Circuit was a rewrite of the defense provided for them by the District Court.

I have to state again that the prejudice from the cumulative errors has undermined the fundamental fairness that supposed to be guaranteed in this case, and the denial of my constitution rights to due process requires relief under *FRCP 60 (b).* I rely of *Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988)* because the impartiality of the District Court judge can be called into question in this case. Also, see *Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 1464, 43 L. Ed. 2d 712 (1975) (citations omitted)* "not only is a biased decision maker constitutionally unacceptable but our system of law has always endeavored to prevent even the probability of unfairness;" also see *Tumey v. Ohio, 273 U.S. 510.* Moreover, I rely on one of the lower court cases which is *United State v. Sipe, 388 F.3d 471(5th Cir. 2004)* "A miscarriage of justice harms the substantial rights of a defendant, and it consist of errors and omissions considered for their cumulative effect on the trial proceeding."

CONCLUSION

Given all of the above this, Court should grant certiorari, to answer the questions presented, and consider this case on the merits. As the highest Court in the nation this Court should determine if Government attorneys can use coercion, witness tampering, intimidation, and threats to deprived petitioners of their Fifth and Fourteenth Amendment rights to present their case fully and fairly. Also, this Court should determine if the cumulative errors apply to civil cases, and can the lower Courts deny a petitioner their Seventh Amendment Right to a timely requested jury trial. Finally, I'm respectfully requesting the highest Court to issue a writ of certiorari to review the judgement of the Court of Appeals for the Fifth Circuit

Kenyon J Garrett

Petitioner/Appellant Pro Se

P.O. Box 132826

Tyler, TX 75713

(903) 574-0783

Kentyler88@gmail.com