No. _____

In The Supreme Court of the United States

MARY LOUISE SERAFINE,

Petitioner,

v.

KARIN CRUMP, In her Individual and Official Capacities as Presiding Judge of the 250th/200th Civil District Court of Travis County, Texas; LORA J. LIVINGSTON, In her Official Capacity as Presiding Judge of the 261st/200th Civil District Court of Travis County, Texas; DAVID PURYEAR, In his Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas; MELISSA GOODWIN, In her Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas; BOB PEMBERTON, In his Individual and Official Capacities as Justice of the Third Court of Appeals at Austin, Texas,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 1983 of Title 42 applies to state actors who are judges. Although damages are barred by judicial immunity, *prospective* relief against state judges is available for acts taken in their "judicial capacity." 42 U.S.C. § 1983. Awarding such relief requires a future state court proceeding in which the relief would take effect.

Petitioner sustained rife, intentional, and bad faith denials of due process in a civil case in Texas state court. To stop continuation of the harm, Petitioner sought prospective relief in federal court, intended to take effect in future proceedings of the same state case.

The Fifth Circuit dismissed. It reasoned that Petitioner lacked Article III standing under its expansive interpretation of *City of Los Angeles v. Lyons,* 461 U.S. 95 (1983). In *Lyons*, plaintiff suffered an unprovoked police choke hold during a traffic stop. Later Mr. Lyons unsuccessfully sought an injunction to ban the choke hold practice. The Court held that he failed to show he would again be choked in a future traffic stop. Extending *Lyons* to Petitioner's case, the Fifth Circuit held that Petitioner lacked standing regardless of whether her state case was still in progress. The question presented is:

Whether *City of Los Angeles v. Lyons* may be expanded to bar Article III standing under Section 1983 in a suit for prospective relief against state judges, when the case in question is still in progress.

PARTIES AND CORPORATE DISCLOSURE

The parties are named in the caption.[1] Pursuant to Rule 29.6, Petitioner states that none is a corporate entity.

RELATED PROCEEDINGS

Pursuant to Rule 14.1(b)(iii), there are no proceedings in state or federal courts that are directly related to this case or that arise from the same trial court as does this case.

[1] There has been no adjudication of whether Respondents were to be named in their individual or official capacities, and cases are not uniform on the question. Therefore they have been named in both capacities since the inception of the case. For only a recent part of the case in Texas state court, Judge Lora J. Livingston has succeeded Judge Karin Crump; thus, in compliance with Supreme Court Rule 35-3, Judge Livingston is named here in official capacity. Rule 35-3 ("any successor in office is automatically substituted as a party").

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In 1996 Congress amended 42 U.S.C. § 1983 to add language that placed conditions on a federal court's grant of injunctions against state judges; nevertheless the new language acknowledged the availability of both declaratory and injunctive relief against those state actors, for violations of constitutional rights. The language added at the end of the first sentence reads:

> [I]n any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. § 1983 (1996).

More than 35 years have passed since the Court first clarified that judicial immunity—the doctrine that bars damages against judges—does not bar *prospective* relief against state actors who are judges. *Pulliam v. Allen*, 466 U.S. 522, 541-42 (1984) (superceded in part). This leaves open a critical protection of constitutional rights: a citizen need not succumb to persistent, continuing violations of rights under the hand of a state judge. Nevertheless, prospective relief against state judges remains misunderstood and rarely permitted.

This case is the paradigmatic case for clarifying Article III standing under Section 1983 for relief against state judges. Today, nearly three years after filing suit for prospective relief in federal court,

Petitioner's state case where relief is needed is still in progress. Meeting this condition should have been sufficient to achieve standing. But the Fifth Circuit extended *City of Los Angeles v. Lyons,* 461 U.S. 95 (1983) to require that Petitioner initially plead facts showing that—in future proceedings in the same case but on different issues—Petitioner would somehow be subjected to the "same results" under circumstances "sufficiently similar" to the prior ones. App. 1-10. Moreover, the Fifth Circuit held that Petitioner could not possibly meet such a test because of the existence of purported facts—proffered by the Fifth Circuit panel itself, but outside the record and largely erroneous—that gave the appearance that *Lyons* applied.

On this basis the panel reasoned that it was irrelevant whether Petitioner's state case was still in progress. The panel therefore declined to consider Petitioner's request for leave to amend the complaint to show that the case still warranted relief. That request had been moved in the district court, appealed, and re-briefed on rehearing, but the panel did not mention the issue.[2]

No case can overcome the Fifth Circuit's expansion of *Lyons*. If left to stand, the Fifth Circuit's interpretation nullifies Section 1983's plain language allowing relief against state violators of constitutional rights who are judges. Given the vicissitudes of court proceedings, obtaining the "same results" under

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[2] The then-proposed amended complaint, App. 41-68, is now two years old at the time this Petition is filed.

"sufficiently similar" circumstances can always be found lacking. That is particularly so where, as here, a panel relies on selected facts outside the record.

The Fifth Circuit's opinion is the most detailed roadmap to dismissal via *Lyons* that has yet appeared on this question. The Court should grant the writ and restore the law as Congress provided.

OPINIONS BELOW

The opinion of the court of appeals, App. 1-10, appears at 800 Fed. Appx. 234 (5th Cir. 2020). The court of appeals' order denying rehearing is at App. 19-20. The decisions of the district court are at App. 11-16 (Order on Report & Recommendation) and App. 17-18 (Final Judgment) and are not reported.

JURISDICTIONAL STATEMENT

The court of appeals issued its decision on February 6, 2020. App. 1-10. Petitioner's timely-filed petition for rehearing was denied on March 17, 2020. App. 19-20. This petition is timely because, under the Court's order of March 19, 2020, the deadline to file any petition for a writ of certiorari that is due on or after that date has been extended to 150 days from the date of the order denying a timely petition for rehearing. The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The provisions involved are Section 1983 of Title 42 of the U. S. Code, the U. S. Constitution's Article III, and the Fourteenth Amendment of the U. S. Constitution.

* * *

Section 1983 of Title 42, as amended in 1996, provides in relevant part:

> § 1983. Civil action for deprivation of rights
>
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. [ ]

* * *

Article III, section 2 of the U. S. Constitution states:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same state claiming Lands under Grants of different states and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

* * *

The Fourteenth Amendment in relevant part provides:

> 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 laws.

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

In the underlying suit in state court, Petitioner was largely represented by experienced counsel, until lead counsel's untimely passing during the state court appeal.[3]

While part of the state case was before the Texas Supreme Court, Petitioner filed suit in federal district court in December, 2017, seeking prospective relief to protect her due process rights in the remaining parts of the underlying case. App. 23, ¶ 5; App. 24-25, ¶¶ 10-11. That complaint filed in December, 2017—without leave to amend for three years—is still the operative complaint.[4] App. 21-40.

The complaint sought relief against a Texas trial judge and three appellate judges. Suit was based on 42 U.S.C. § 1983.

Litigation in federal district court took more than a year. The district court ultimately dismissed the complaint without prejudice on the sole ground of lack of subject matter jurisdiction under the *Rooker-Feldman*

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[3] Petitioner was represented in state-court pre-trial matters by an experienced boutique firm, and at trial by counsel with 44 years of Texas trial experience. He passed away untimely during the second appeal. Petitioner acted as "second chair" to these attorneys until after lead counsel's passing, when she was self-represented, but advised by paid consulting counsel.

[4] Petitioner filed suit against only Judge Crump on November 28, 2017 and amended as of right to add the state appellate judges on December 21, 2017.

doctrine.[5] App. 11-16 (Order); App. 17-18 (Final Judgment). The district court also denied Petitioner leave to amend the complaint.

The district court declined to adopt any of defendant-respondents' other dismissal theories—various immunities, abstention, and lack of standing. Lack of standing was briefly suggested by only three defendants' motion to dismiss, without the detailed findings under *Lyons* that the Fifth Circuit later employed.[6]

Thus, the Fifth Circuit's detailed reasoning under *Lyons* was largely *sua sponte*, not previously briefed by the parties. Petitioner's first chance to address the Fifth Circuit's conclusions about Texas court operations that, in the court's view, precluded standing, was on rehearing.[7] Rehearing was denied without opinion.

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[5] That doctrine provides, in brief, that review of a state court judgment cannot be had in a federal district court. Instead, review of a state judgment proceeds under 28 U.S.C. § 1257 only in the Supreme Court. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005).

[6] In addition, Respondent judges' appellee briefs had cited *Lyons* only for the general proposition that "[t]he remote possibility that a future injury may happen is not sufficient to satisfy the 'actual controversy' requirement for declaratory judgments." *See Brief of Defendant-Appellee Hon. Karin Crump* at 43 and *Appellees Goodwin, Puryear and Pemberton's Brief* at 47, both filed May 28, 2019 in Case No. 18-50719.

[7] Current counsel appeared in the Fifth Circuit on rehearing; however the appellate court denied Petitioner's unopposed motion to re-brief at that stage.

Neither the court's opinion nor its denial of rehearing addressed Petitioner's issue seeking to amend the complaint.

In addition to *Lyons* the Fifth Circuit also relied on its prior decisions in *Adams v. McIlhany*, 764 F.2d 294 (5th Cir. 1985) (dismissing suit against judge because plaintiff, as mother of defendants appearing before the judge, was unlikely ever to appear before the same judge again) and *Soc'y of Separationists, Inc. v. Herman*, 959 F.2d 1283 (5th Cir. 1992) (en banc) (dismissing suit against judge because plaintiff, as a potential juror appearing for *voir dire*, was unlikely ever to appear before the same judge again).

The court of appeals issued its denial of rehearing on March 17, 2020. App. 19-20. At that point the operative complaint was more than two years old. App. 21-40. Even Petitioner's proposed amended complaint, placed in the record in August, 2018, was about 19 months old. App. 41-68.

In sum, the operative complaint at the time of this filing is almost three years old. It necessarily omits evidence later obtained about the extensive collaboration and communication among the county's civil judges caused by the "central docket" system under which they share the cases before them. This sharing of cases defeats the Fifth Circuit's presumption that a change of judges eliminates the chance for the same wrongs to be repeated; indeed even where a specially-assigned judge replaced the original one, the same due process denials were repeated. Some of these facts were

generally alleged in Petitioner's proposed amended complaint for which leave to file was denied. App. 65, ¶¶ 60-61; App. 66, ¶¶ 63-64.

B. FACTUAL BACKGROUND

In the underlying case, the state judges acted, or affirmed acts, that deprived Petitioner of notice, hearing, and the opportunity to present evidence, before depriving Petitioner of money and land. App. 22, ¶¶ 2-4; App. 23-24, ¶¶ 6-7; App. 28-38. The trial court held a sham trial in which only opponents were allowed to present unlimited exhibits, while virtually all of Petitioner's exhibits were excluded on pretextual grounds, pre-trial, before they were even offered. App. 24, 29, 33, 35. The court of appeals thereafter approved eliminating most of the excluded exhibits entirely from the appellate record (as the trial court ordered the court reporter to do), thereby preventing appeal of the issue. App. 33-35.

The state judges concealed much of their disregard of Texas-mandated procedures by falsely reporting in their opinions and orders that the procedures had, in fact, taken place. Instead, when the opinion or order reported that a "motion" was noticed or "hearing" conducted, in reality the motion and hearing dealt only with completely different topics—leaving Petitioner in the dark, without opportunity to defend. App. 28-33.

Using only old-fashioned tools, such falsehoods would be hard to prove as such because it is hard to prove non-existence and non-occurrence. But ordinary

computer programming today allows false statements in judicial documents to be detected through word-searching and phrase-searching capabilities. These are available in most document-creating programs. They allow searches of every motion, every transcript, and the entire record in seconds or minutes. Petitioner's operative complaint, App. 28-35, and proposed amended complaint, App. 44, ¶¶ 3-4; App. 51-56, describe the results of such research. They show that Respondents not only denied the foundational components of due process, but fabricated events and documents to conceal those denials.

REASONS FOR GRANTING THE WRIT

I. The Fifth Circuit's erroneous application of *Lyons* effectively nullifies what Congress intended—protection against continued violations of due process by state judges.

Section 1983 was amended by the Federal Courts Improvement Act of 1996. The Act added 38 words to the end of the first sentence of the statute, shown in bold:

> Every person who . . . [under color of state law] . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights . . . shall be liable to the party injured . . . ***except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a***

> ***declaratory decree was violated or declaratory relief was unavailable.***

42 U.S.C. § 1983 (1996) (emphasis added).

The amendment unequivocally shows Congress' intent to allow declaratory relief against state judges and to allow injunctive relief under two conditions.[8] Few courts have undertaken to analyze what we call the "38 words," but one district court has done so:[9]

> Defendants [Louisiana Supreme Court justices] can make no colorable argument that the FCIA did anything to alter the landscape with respect to declaratory relief. Declaratory relief against judges acting in their judicial capacities was well-established before the FCIA. The FCIA amendments continue to contemplate declaratory relief by making express reference to it as a first step before injunctive relief is permissible.

Leclerc v. Webb, 270 F.Supp.2d 779, 793 (E.D. La. 2003) (Zainey, J.) (but denying relief on other grounds), *aff'd*

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[8] At the time of the amendment the Senate reported that "[L]itigants may still seek declaratory relief." *See* Senate Report 104-366, p. 37, Federal Courts Improvement Act of 1996, 104th Congress, Second Session, analysis at § 311, S. 1887, Sept. 9, 1996.

[9] The same court reaffirmed that "in the wake of *Consumers Union* and *Pulliam*, judicial immunity . . . was not a bar to declaratory and injunctive relief for acts taken in the judge's *judicial* capacity." *Leclerc v. Webb*, 270 F.Supp.2d 779, 792 (E.D. La. 2003) (emphasis original).

on other grounds, *LeClerc v. Webb*, 419 F.3d 405 (5th Cir. 2005).

To address standing to seek both declaratory and injunctive relief, the Fifth Circuit's opinion extended *City of Los Angeles v. Lyons* into the domain of the "38 words."

In *Lyons* the Court held that a police choke hold victim lacked Article III standing to seek prospective relief. Mr. Lyons sought to prohibit the use of the choke hold by the municipal police department. The Court reasoned that Mr. Lyons lacked and would always lack standing because he could never show a likelihood that, in the future, he would undergo a traffic stop in which he would again, without provocation, be severely choked.

The Court held that Mr. Lyons did have standing, however, to seek damages for his injury. This is different from the instant case against judges. Here, the judges are absolutely immune to damages; thus, without prospective relief, a plaintiff in this situation would be eligible for no relief at all.

Other circuits have used *City of Los Angeles v. Lyons* as a ground for dismissing cases against state judges.[10] But the Fifth Circuit's reasoning appears to

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[10] *Andrews v. Hens-Greco*, 641 Fed. Appx. 176 (3d Cir. 2016) (citing *Lyons* for denying both declaratory and injunctive relief); *Coleman v. Watt*, 40 F.3d 255 (8th Cir. 1994) (citing *Lyons* to hold that a second, future impoundment of vehicle is too speculative); *Collins v. Daniels*, 916 F.3d 1302, 1315 (10th Cir. 2019) (citing

be the most specific and detailed. It is therefore likely to be influential, even though technically unpublished. It sets out a roadmap for arriving at dismissal using extra-record facts and assumptions that seem plausible on their face, even facile, but they are erroneous here and will likely lead to error in other circuits.

For example, the opinion's principal conclusion could easily apply to any case—that the court need not know "the current state of the case." App. 9. This sets the stage for purported "facts" about why the future of the underlying litigation will not permit standing. In other words, a court need not learn what the future proceedings will be because "even if [the underlying case] has not been resolved," the court can determine that the remaining proceedings, "do[ ] not provide an opportunity to treat [Petitioner] as she alleges [Respondents] previously did." App. 9-10.

But any court proceeding can be infected by due process denials. Yet the Fifth Circuit's opinion gives no further explanation of its conclusion. It simply announces that, in the future, "awarding [to Petitioner] sanctions and attorney's fees," App. 9-10, could not somehow be infected with the same denials of due process that sullied the trial and appeal. Indeed, in the proceedings that so far have taken place, the same denials of due process have recurred.

Also readily applicable to virtually any case that might come before a court is the Fifth Circuit's second

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Lyons' requirement of "another encounter with the police" in denial of injunction against judicial officers).

conclusion: that "because there are multiple trial judges in Travis County, Texas, there is little chance [Petitioner] will appear, again, as a similarly situated party before Judge Crump." App. 9. For this proposition the panel cited the Fifth Circuit's 1992 *Herman* decision that there are "twenty" judges in Travis County. *Id.*; App. 7. This statement is fraught with error. First, it assumes without any basis that if Petitioner's case were before a different judge, that judge would be uninfluenced by Judge Crump. This problem has been recognized in recusal cases, where a recused judge nevertheless seeks to influence a case, or even unwittingly did so prior to its re-assignment.[11] Especially in Travis County, this is almost certainly the case, as explained below.

Second, there are not "twenty" or more judges to whom Petitioner's case might be assigned. Travis County judges are divided between civil and criminal; only ten were hearing civil cases during much of the underlying case. For several months at a time four of those were assigned to family and custody cases, leaving only six. Three of the six conferred with Judge Crump about the case, as the judge herself confirmed on the record.[12]

The Fifth Circuit's opinion also fails to take account of local idiosyncrasies in how the state courts

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[11] *See* S. Matthew Cook, Extending the Due Process Clause to Prevent a Previously Recused Judge from Later Attempting to Affect the Case from Which He Was Recused, 1997 B.Y.U. L. Rev. 423 (1997).

[12] *See* Proposed Amended Complaint at App. 65, ¶ 60.

operate. Such facts are highly variable and likely to be outside the knowledge of most federal courts. For example, the Texas Constitution authorizes state district judges to "exchange districts, or hold courts for each other." Tex. Const. art. V, § 11. In any county with "multiple civil district courts, judges may exchange benches. . . ." Tex. R. Civ. P. 330(e). Also they "may determine any case pending in another court or sit as judge in other courts." *Ibid.* And judges may sit for one another whenever they choose. *In re Schmitz*, 285 S.W.3d 451, 454 (Tex. 2009) (orig. proceeding).

In Petitioner's county (and elsewhere in Texas), these rules have given rise to the use of a "central-docket" system. In that system, cases constantly rotate through different judges. Thus "different judges hear[] various motions and sign[] orders throughout the proceeding. . . ." *Republic Capital Group, LLC v. Roberts*, No. 03-17-00481-CV, *¶ 3, n.4 (Tex. App.—Austin Oct. 25, 2018) (mem. op.); *Walker v. Jenkins*, No. 03-18-00235-CV, * ¶¶ 5-6 (Tex. App.—Austin June 21, 2018) (same). Thus, a motion will go before a judge who likely has not adjudicated anything in the case before; the trial judge may never have had those parties before him or her.

The local rules of the county explicitly reflect this system. *See* Travis Cty. Dist. Ct. Loc. R. 1.2 (all civil cases other than those on specialized dockets are set on Central Docket), 1.3 (any district judge may conduct hearing). The Fifth Circuit's opinion took account of none of these facts.

The central docket system requires and generates an extraordinary amount of collaboration and conference among the civil judges and all of their staffs. An individual judge does not have a caseload belonging only to him or her. Instead, on any day, he or she might hear any motion or trial from the entire bank of cases heard by all ten civil judges. In order for this to work, the judges communicate extensively about their shared cases. At a recent CLE event the judges announced they met weekly to discuss cases. They might "instant message" one another during hearings, or might call recess to speak to another judge. The civil judges keep separate docket notes that are read only by other judges and their staffs, not disclosed to the public or the parties. Judges' staffs speak not only with their own judge but with other judges.

In other words, the judges do not operate as though they are independent and isolated from other judges, as the Fifth Circuit's opinion assumes. Thus, it is erroneous for a federal court to conclude—without adversarial fact-finding[13]—that a citizen in Petitioner's

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[13] A court may certainly go outside the pleadings to make "factual determinations decisive of a motion to dismiss for lack of jurisdiction," and "no right to a jury trial exists with regard to such issues."

> But still the district court must give the plaintiff an opportunity for discovery and for a hearing that is appropriate to the nature of the motion to dismiss.

Williamson v. Tucker, 645 F.2d 404, 414 (5th Cir. 1981). *See also Oaxaca v. Roscoe*, 641 F.2d 386, 391 (5th Cir. 1981). Nevertheless, the district court denied Petitioner's motion for this relief. App. 15-16.

position will not be subject to the "same" wrongs by the "same judge" as before. Indeed the culture of colleagueship in central docket systems impedes error correction and reconsideration, because judges are loath to overrule decisions by their colleagues.

In a similar way, the Fifth Circuit's opinion errs in asserting that "appellate panels are rotated, minimizing the chance [Petitioner] will appear before [Respondent Goodwin]." App. 9. In reality, that state court of appeals has only six members. They serve in panels of three but routinely share their opinions across the court. They also do not use traditional law clerks who change each year, but instead retain permanent staff attorneys who remain in service despite changes in judicial personnel.

Petitioner's case was at times on the central docket, at times specially assigned to the Honorable Karin Crump, and in part recently assigned to the Honorable Lora J. Livingston. Petitioner's proposed amended complaint generally alleged the presence of this inter-judge collaboration but, as discussed above, it was not permitted to be filed.

In sum, the Fifth Circuit's detailed opinion is likely to be influential in other circuits, causing the same errors to proliferate. The Court should stem the tide of what is likely to be a growing nullification of the protections that Congress intended.

II. Public perception of state courts can ill afford the erosion of Section 1983 protections.

There is considerable commentary about whether Americans' perceptions of the courts are more or less favorable than those perceptions have been at an earlier time. The question is likely to remain undecided as long as the tools for measuring those perceptions—surveys, questionnaires, focus groups—remain unreliable or lack validity. Nevertheless, in the internet age, it is unmistakable that citizen websites that are critical of the courts—or that offer help in avoiding losses in the courts without resort to lawyers—are proliferating. Many of these go so far as to offer advice about suing judges. For example, "Fix Family Courts" discusses pros and cons of suing jurists,[14] as does "The Pro Se Way."[15] "WikiHow" now offers a guide on suing a judge, although it properly discusses judicial immunity and discourages needless suits.[16]

The citizen website "Laws in Texas" extensively compiles criticism of courts, cases, judges, and lawyers, noting that, "We are citizens of the State of Texas who have spent a decade in the court system. . . ."[17]

As this Petition is being drafted, Reuters has published its own study—not involving a private or governmental organization—of judicial misconduct

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[14] *See* https://www.fixfamilycourts.com/how-do-you-sue-your-judge.

[15] *See* http://caught.net/prose/badjudge.htm.

[16] *See* https://www.wikihow.com/Sue-a-Judge.

[17] *See* https://lawsintexas.com/we-are-lit/.

and the effectiveness of state judicial conduct commissions.[18] Setting aside suits under Section 1983, and criminal prosecutions of judges, judicial conduct commissions are the public's principal recourse against judicial malfeasance. Reuters claimed to have conducted "the first comprehensive accounting of judicial misconduct nationally," in which they reviewed some five thousand cases of misconduct in only the last twelve years. In those cases the judges were disciplined, or resigned or retired after accusations. The study concludes that, "[i]n the past dozen years, state and local judges have repeatedly escaped public accountability for misdeeds that have victimized thousands."[19] But "[n]ine of 10 kept their jobs . . . ," the study claimed.[20]

It is impossible to tell whether the study is true or accurate. It may well be that 9 out of 10 accused or disciplined judges rightly deserved to "keep their jobs." But the publication of such material undoubtedly erodes the public's confidence in their courts even further. Indeed, in the current environment, *Lyons* continues to be criticized in the popular press, more than 35 years after the decision issued.[21]

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[18] M. Berens and J. Shiffman, Thousands of U.S. judges who broke laws or oaths remained on the bench, June 30, 2020. *See* https://www.reuters.com/investigates/special-report/usa-judges-misconduct/.

[19] *Ibid.*

[20] *Id.*

[21] Ian Millhiser, How the Supreme Court enabled police to use deadly choke holds: When the Supreme Court turns its back on injustice, there are consequences, *Vox*, May 30, 2020,

Against this backdrop, it is important to maintain the availability of the modest protection against constitutional violation by state judges that Congress provided.

III. If certiorari is not granted outright, the decision below should summarily be vacated and remanded so Petitioner can update the complaint and prove standing.

The foregoing has explained why, under the current view of Article III standing, dismissal of the entire case turned on disallowing Petitioner's amendment of the complaint. The amendment would have shown that the Fifth Circuit's presumptions outside the record were in error and that, in fact, Petitioner was entitled to the relief Congress provided.

The Court is respectfully asked to summarily vacate and remand for the purpose of allowing Petitioner to amend, if the Court does not grant review outright.

CONCLUSION

This Petition asks the Court to determine whether the Fifth Circuit's analysis of standing erroneously nullifies, in effect, the right of a plaintiff to seek the relief against state judges that Congress long ago provided. That relief is narrow, but it is necessary "[i]n

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https://www.vox.com/2020/5/30/21274697/supreme-court-police-choke hold-george-floyd-derek-chauvin-lyons-los-angeles

our system of government . . . " where, "as this Court has often stated, no one is above the law." *Trump v. Vance*, No. 19-635, slip op. at 28, 591 U.S. ___ (July 9, 2020) (Kavanaugh, J. concurring). Federal courts have a "virtually unflagging obligation" to exercise the jurisdiction that Congress conferred upon them. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

For all of the foregoing reasons, the Court should grant the petition for certiorari.

Respectfully submitted,

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