No. 20-6431

ORIGINAL

IN THE

# Supreme Court of the United States



IN THE MATTER OF: DONALD H. GRODSKY, DEBTOR

JOHN L. HOWELL, ET AL., PETITIONERS
v.
DAVID V. ADLER, ET AL., RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

## PETITION FOR A WRIT OF CERTIORARI

FILED ON BEHALF OF
JOHN HOWELL, *Petitioner*
5847 CATINA STREET
NEW ORLEANS, LOUISIANA 70124
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NOVEMBER 2020

## QUESTION PRESENTED

Petitioner filed two suits against "well-connected" Defendants who the bankruptcy court wished to "protect." The first was a "non-core" action for damages caused by Defendants' constitutional violations, torts, and crimes (including pendant state claims). The second was a "core-proceeding" seeking damages under 11 U.S.C. §362(k) for Defendants' willful violations of the automatic bankruptcy stay. The bankruptcy court dismissed both suits *with prejudice* (the "core-proceeding" was dismissed *sua sponte*) and enjoined Petitioner from raising his claims in a court of competent jurisdiction. On appeal, the suits were consolidated. Upholding dismissal, the 5th Circuit crafted an opinion that appears to conform to established law and legal precedent. However, if one scratches the surface, the ruling evidences just how far federal courts will depart from the accepted and usual course of judicial proceedings, or sanction such departures, to shield a particular set of *(preferred)* defendants from liability. The question presented is:

To deny a plaintiff's constitutional right to due process and prohibit suit against a particular set of defendants who it wishes to shield from liability, may the lower court:

a) confer Art. III powers of United States courts on an Art. I court of limited jurisdiction;

b) sanction "*Barton* injunctions" that prohibit plaintiffs from bringing "non-core" claims (including pendant state claims) in courts of competent jurisdiction and prohibit state courts from reviewing their own state-court interlocutory orders or entering any judgments related to those orders;

c) refuse to proceed on the assumption that factual allegations in a complaint are true;

d) extend *quasi*-judicial immunity to defendants who are not "government officials" nor agents of "government officials" entitled to "derivative" immunity;

e) extend "retroactive" "derivative" *quasi*-judicial immunity to defendants who, *after* engaging in a pattern of tortious and criminal misconduct for 3 years, were *subsequently* employed by their Co-Defendant/U.S. trustee so that, as "court-appointed" officers, they could assert his affirmative defense of qualified immunity;

f) hold that qualified immunity shields defendants from liability for blatant violations of clearly established law; and

g) refuse plaintiff an opportunity to amend his complaints before subjecting them to prejudicial (and *sua sponte*) dismissal?

## PARTIES TO THIS PROCEEDING

| | |
|---|---|
| *Plaintiffs/Petitioners:* | **John L. Howell**, *pro se*<br>**Elise LaMartina**, *pro se* |
| *Defendant/Respondent:*<br>*Adler's Counsel/Co-Defendants:* | **David V. Adler, U.S. Trustee**<br>David J. Messina, Fernand L. Laudumiey IV<br>Chaffe McCall, L.L.P.<br>Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis, & Eagan, LLC,<br>Leslie S. Bolner, Glen R. Galbraith,<br>Seale & Ross, PLC. |
| *Defendants/Respondents:* | **David J. Messina**, *pro se*<br>**Fernand L. Laudumiey IV**, *pro se*<br>**Glen R. Galbraith**, *pro se*<br>**Leslie S. Bolner**, *pro se* |
| *Defendant/Respondent:* | **Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis, & Eagan, LLC** |
| *Its Counsel:* | C. Peck Hayne Jr. |
| *Defendant/Respondent:*<br>*Its Counsel:* | **Chaffe McCall, L.L.P.**<br>David J. Messina, Fernand L. Laudumiey IV |
| *Defendant/Respondent:*<br>*Its Counsel:* | **Seale & Ross, PLC**<br>Glen R. Galbraith, Leslie S. Bolner |
| *Defendant/Respondent:* | **Lake Villas Number 2 Homeowners Association, Inc.** |
| *Its Counsel:* | Glen R. Galbraith, Lesli S. Bolner, Seal & Ross, PLC |
| *Defendant/Respondent:* | **Donald H. Grodsky**, *pro se* |
| *Defendant/Respondent:*<br>*Its Counsel:* | **Office of United States Trustee**<br>U.S. Attorney, Peter G. Strasser<br>Assistant U.S. Attorney, Glenn K. Schreiber |

## RELATED PROCEEDINGS

- *Howell v. Adler et al.*, No. 20-30417, U.S. Court of Appeals for the Fifth Circuit. Judgment entered August 4, 2020.
- *Howell v. Adler et al.*, No. 20-30223, U.S. Court of Appeals for the Fifth Circuit. Judgment entered June 1, 2020.

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# PETITION FOR WRIT OF CERTIORARI

Petitioner John Howell respectfully petitions for a writ of certiorari to review a judgment of the U.S. Court of Appeals for the 5th Circuit that *defies* U.S. Supreme Court precedent, the U.S. Constitution, and principles so basic to our judicial system by:

(1) affirming the bankruptcy court's dismissal of Petitioner's case for "lack of jurisdiction" while it *simultaneously* retained jurisdiction to dismiss his complaint *with prejudice* and fashioned a "*Barton* injunction" prohibiting Petitioner from bringing his claims (including pendant state claims) in a court of competent jurisdiction;

(2) conferring Article III powers of United States courts on a bankruptcy court;

(3) sanctioning a "*Barton* injunction" prohibiting a Louisiana court from reviewing its own state-court interlocutory order and preventing Petitioner from bringing his "non-core" and state-law claims in a court of competent jurisdiction;

(4) extending *quasi*-judicial immunity to defendants who are *neither* "government officials" *nor* agents of "government officials" entitled to "derivative" immunity;

(5) extending "*retroactive*" *quasi*-judicial immunity to defendants who, *after* engaging in tortious and criminal misconduct for a three-year period, were *subsequently* (and strategically) employed by their co-defendant/U.S. trustee as "court-appointed" counsel, now, presumably entitled to "derivative" *retroactive* immunity for their *prior* misconduct;

(6) holding that qualified immunity shields defendants from liability for blatant violations of clearly established law;

(7) demonstrating the court's outright refusal to proceed on the assumption that factual allegations contained in Petitioner's complaint are true; and

(8) inferring that Petitioner is "vexatious" (less likely because he is and more likely because he's a college kid who had the audacity to sue a U.S. trustee and a defendant who, despite being a disbarred bankruptcy attorney himself, is the brother of prominent bankruptcy attorney and president of the Louisiana State Bar Association).

This Court should grant review because what began as case for fraud has morphed into a "case study" on just how far federal courts will depart from the accepted and usual course of judicial proceedings, or sanction such departures, to shield a particular set of defendants (who the lower court prefers not be sued or embarrassed) from liability.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reprinted in Appendix A at 1a. The decision of the United States District Court for the Eastern District of Louisiana is reprinted in Appendix B at 4a. The order and injunction rendered by the United States Bankruptcy Court for the Eastern District of Louisiana is reprinted as Appendix C at 5a.

## JURISDICTION

The 5th Circuit Court of Appeals entered final judgment on April 1, 2020. Timely filed petitions for panel rehearing and rehearing *en banc* were denied on June 9, 2020. In accordance with this Court's March 19, 2020 order (providing the "deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing"), this petition is timely filed on or before Monday November 9, 2020. This Court has jurisdiction under 28 U.S.C. §1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Article I of the U.S. Constitution
- Article III of the U.S. Constitution
- 28 U.S.C. §157(b)(1)
- 28 U.S.C. §157(c)(1)
- 11 U.S.C.§362(a)
- 18 U.S.C.§201
- 18U.S.C.§1512
- 18U.S.C.§1341
- 18U.S.C.§1621
- 18U.S.C.§1622

See Appendix F for complete text.

## STATEMENT OF THE CASE

In 2007, Petitioner John Howell ("John") and his grandmother purchased, and were the recorded owners of, a mortgage note. Their note was managed and administered by Respondent Donald Grodsky ("Grodsky"). In 2013, Respondents devised a scheme to defraud John (then, a minor child) and his unrepresented 75-year-old grandmother by fraudulently obtaining a state-court interlocutory order awarding their mortgage note to Grodsky. Respondents intended to liquidate Petitioner's mortgage note and split its proceeds.[1] To that end, between 2013-2016, Respondents traversed state and federal bankruptcy court engaging in a pattern of tortious and criminal misconduct (characterized by the 5th Circuit as "*bribery, witness tampering, fraud, and extortion, among many other crimes, and defamation, breach of fiduciary duty, and abuse of process*")[2] causing your Petitioner's damages.

That said, the facts in this case are largely irrelevant to this Petition (*i.e.* this is not a "fact-bound" case) because allegations of the Respondents' constitutional violations, torts, and crimes contained in Petitioner's complaint have *never* been adjudicated.[3] In fact, Respondents have never even filed a substantive answer to the allegations against them.

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[1] The Respondents' scheme was successful. In 2019, Respondents liquidated Petitioner's mortgage note and split the entirety of its proceeds (approximately $120,000.00) as "fees and commissions" allegedly related to the administration of Grodsky's Chapter 7 case.

[2] A more detailed description of Respondents' unlawful activities can be found in the excerpt of factual allegations contained in Petitioner's original complaint reprinted in Appendix D at 7a.

[3] Except to the extent that the bankruptcy court (an Article I court of limited jurisdiction) suggested Petitioner's "non-core" claims (over which it lacked jurisdiction) "lacked merit" and were "not based in fact" before dismissing them *with prejudice*, on grounds that it lacked jurisdiction (thereby, effectively, adjudicating those claims), years of procedural wrangling have prevented John's claims from being considered or adjudicated in *any* court.

By 2016, the bankruptcy court had openly expressed its reluctance to entertain *any* claims of misconduct against these particular Respondents. More specifically, the bankruptcy court refused to consider *any* allegations against (trustee) David Adler ("Adler"); (his counsel) David Messina ("Messina") and Fernand Laudumiey ("Laudumiey") (referred to by that court as "Dave and Ferdi"); and (Debtor) Grodsky (a disbarred bankruptcy attorney and brother of Barry Grodsky, a prominent bankruptcy attorney and President of the Louisiana Bar Association).

So, in August 2016, John filed a "non-core" civil complaint against Respondents in U.S. District Court.[4] The district court dismissed his complaint without prejudice, holding that the *Barton* doctrine precluded John from filing his claims without first receiving permission from the bankruptcy court.

As a matter of judicial efficiency, instead of moving for leave to sue the Respondents (half of whom were *not* "court-appointed" officials entitled to "*Barton* protections" and *none* of whom were entitled to "*Barton* protections" for *ultra vires* misconduct, including constitutional violations, torts, and crimes committed while defrauding John), John refiled his "non-core" complaint as an adversary proceeding in the bankruptcy court and demanded a jury-trial. Additionally, in state court, John filed a petition to annul the fraudulently obtained interlocutory order awarding Petitioner's property to Grodsky.

Having refrained from expressly consenting to jurisdiction, John (erroneously) expected the bankruptcy court to transfer his "non-core" case to a court of competent jurisdiction.

But, it didn't.

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[4] See *Howell v. Adler*, No. 16-14141, 2017 WL 1064974 (E.D. La. Mar. 21, 2017).

Instead, the bankruptcy court dismissed John's complaint for "lack of jurisdiction" while retaining jurisdiction to (1) dismiss his claims *with prejudice* and (2) render a "*Barton* injunction" prohibiting John from bringing his claims in a court of competent jurisdiction.[5]

In turn, this also meant the Louisiana court was now prohibited from reviewing its own state-court interlocutory order and John's state-court petition for nullity was promptly dismissed.[6]

In a shocking affirmation of the bankruptcy court's dismissal, the 5th Circuit's ruling demonstrates an outlandish departure from normal judicial standards. This blatant disregard for U.S. Supreme Court precedent, the U.S. Constitution, and principles so basic to our judicial system has both confounded first-year law students (following the case in district court) and left seasoned attorneys shaking their heads in dismay, but, sadly, not in disbelief.

The 5th Circuit crafted an opinion that, on its face, appears to conform to clearly established law and legal precedent. But, if one scratches the surface even slightly, it's readily apparent that the lower court, among other suspect findings, sanctioned:

- an Article I court's dismissal of your Petitioner's "non-core" claims for *lack* of jurisdiction while it ***simultaneously*** exercised that ***same*** jurisdiction to dismiss those "non-core" claims *with prejudice* (thereby adjudicating them);
- an Article I court's "*Barton* injunction" prohibiting your Petitioner from raising "non-core" and pendant state claims (over which the bankruptcy court has *no* jurisdiction) against its "*preferred*" Defendants (even those who are *not* "court-appointed" officers over whom the bankruptcy court retains any special authority) in *any* court of competent jurisdiction;
- an Article I court's extension of qualified immunity to Defendants (like a condo association and a disbarred attorney) who are clearly *not* "government officials" or agents of "government officials" entitled to assert "derivative" immunity as a defense;

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[5] The bankruptcy court's order and injunction are reprinted in the Appendix at 5a.

[6] See *Lake Villas No. 2 Homeowners Assoc., Inc. v LaMartina*, 2018-0699 (La. App. 1st Cir. 9/17/18).

- an Article I court's finding that the defense of qualified immunity not only shields its "favored" Defendants from liability for knowing and willful violations of clearly established law but also shields these Defendants from liability for crimes committed *before* they were "court-appointed" officers; and

- an Article I court's refusal to accept the facts as alleged in your Petitioner's complaint and proceed on the assumption that they are true (despite the fact that over fifty (50) exhibits evidencing those claims - all in the form of written authentic documents, bank records, and public records - were attached to that complaint).

This case has become a tangled mess as the courts engage in the absurd legal contortions necessary to achieve their desired result: immunizing these particular Respondents from suit for their knowing and willful violations of both state and federal law. The lower court's decision is not merely erroneous, it is outlandishly and egregiously so – making this a matter of sufficient importance to merit review.

While facially innocuous, the lower court's decision is an affront to basic principles of our system of adjudication. This Court *should* put a stop to this by exercising its supervisory powers and restoring judicial integrity. It should grant this Writ and summarily reverse the 5th Circuit's ruling, thereby ensuring that Petitioner is not denied due process and can simply pursue the jury-trial to which he is entitled.[7]

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[7] **Note:** Petitioner filed two suits: a "non-core" proceeding for damages sustained as a result of the Respondents' constitutional violations, torts, and crimes and a "core-proceeding" for damages to which Petitioner is entitled under 11 U.S.C. §362(k) for Respondents' knowing and willful violations of 11 U.S.C. §362(a) (providing for an automatic stay in bankruptcy cases). For the purposes of appeal, the 5th Circuit consolidated these two cases. This Petition addresses questions raised by the 5th Circuit's ruling in the first "non-core" case. However, **the contents of the Petition for Writ of Certiorari filed by Petitioner, Elise LaMartina, addressing additional questions presented by the 5th Circuit's suspect findings in both the "non-core" case as well as the "core-proceeding" are incorporated herein by reference.**

## REASONS FOR GRANTING THE WRIT

### I.

### The lower court conferred Article III powers of United States courts on a court of limited jurisdiction created by Congress under Article I of the U.S. Constitution.

Created by Congress under Article I of the U.S. Constitution, bankruptcy courts are courts of limited jurisdiction. Thus, Article III powers of United States courts are not vested in bankruptcy judges. A bankruptcy court is only permitted to adjudicate cases involving "public rights" ("core-proceedings") and may not render final judgments or orders in "private rights" ("non-core") cases. See *Northern Pipeline Construction, Co. v. Marathon Pipeline, Co.*, 458 U.S. 50, 102 S.Ct. 2858,73 L.Ed. 2d 598 (1982); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 191 L.Ed.2d 911, 83 USLW 4337 (2015); *Howell Hydrocarbons, Inc. v. Adams*, 897 F.2d 183 (5th Cir. 1990).

"Bankruptcy courts are courts of limited jurisdiction whose scope is statutorily defined." *In re Majestic Energy Corp.*, 835 F.2d 87, 89 (5th Cir. 1988). Under 28 U.S.C. §157, bankruptcy judges may only "hear and determine" cases under Title 11 and all "core-proceedings" arising, or arising in a case, under Title 11. See 28 U.S.C. §157(b)(1).

A "non-core" proceeding has a "life of its own in either state or federal common law or statute independent of the federal bankruptcy laws." *Salomon v. Kaiser (In re Kaiser)*, 722 F.2d 1574, 1582 (2d Cir. 1983); *Scotland Guard Servs. v. Autoridad de Energia Electrica (In re Scotland Guard Servs., Inc.)*, 179 B.R. 764 (Bankr. D.P.R. 1993) (non-core proceedings, where the action "would survive outside of bankruptcy," include causes of action based on non-bankruptcy law); *Houbigant, Inc. v. ACB Mercantile, Inc. (In re Houbigant, Inc.)*, 185 B.R. 680 (S.D.N.Y. 1995) (proceeding is "core" if it invokes a substantive right provided by the Bankruptcy Code or by nature could arise only in the context of a bankruptcy case).

In a "non-core" adversary proceeding, the complaint must state whether a party consents to entry of final order by bankruptcy judge. Absent a party's ***express*** consent, a bankruptcy court may ***not*** determine (or, conversely, prohibit courts of competent jurisdiction from determining) a plaintiff's "non-core" claims. See 28 U.S.C. §157(c)(1).

> "In an adversary proceeding before a bankruptcy court, the complaint... ***shall*** contain a statement that the pleader... consent(s) to entry of final orders or judgment by the bankruptcy court... Failure to include the statement of consent does ***not*** constitute consent. Only ***express*** consent in the pleadings... is effective to authorize entry of a final order or judgment by the bankruptcy judge in a non-core proceeding." See FRBP 7008.

"Notably, a dismissal with prejudice is an adjudication on the merits operating as a final judgment." *Yesh Music v. Lakewood Church*, 727 F.3d 356 (5th Cir. 2013). "'[W]ith prejudice' is an acceptable form of shorthand for 'an adjudication upon the merits.' See also Goddard, 14 Cal. 2d, at 54, 92 P.2d, at 808 (stating that a dismissal "with prejudice" evinces "[t]he intention of the court to make [the dismissal] on the merits")." *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 149 L.Ed.2d 32 (2001). "Where a federal court lacks jurisdiction, its decisions, opinions, and orders are void." *Matter of Querner*, 7 F.3d 1199, 1202 (5th Cir. 1993).

**The court of first instance lacked jurisdiction to (1) adjudicate John's "non-core" claims; (2) enjoin John from bringing "non-core" claims in a court of competent jurisdiction; and (3) prohibit a state court from reviewing its *own* interlocutory order.**

John's suit for damages caused by the Respondents' constitutional violations, torts, and crimes is a "non-core" matter involving "private rights." It invokes no substantive rights provided in Title 11 and cannot arise only in the context of a bankruptcy case. John's "non-core" proceeding has a "life of its own in either state or federal common law or statute independent of the federal bankruptcy laws" and "would survive outside of bankruptcy." *Express* consent to entry of final orders or judgment by the bankruptcy court in this case (as required by statute and the federal rules) was specifically withheld and/or excluded from John's complaint.

The bankruptcy court acknowledged its lack of jurisdiction to adjudicate Petitioner's "non-core" claims. However, citing "lack of jurisdiction" as a basis for dismissal, the bankruptcy court dismissed John's case ***with prejudice*** (thereby adjudicating claims over which it, admittedly, had *no* jurisdiction).

Further, while dismissing Petitioner's "non-core" claims for lack of jurisdiction, the bankruptcy court ***simultaneously*** exercised that ***same*** jurisdiction to fashion its "*Barton* injunction."[8] This permanent injunction prohibits Petitioner's "non-core" claims from being heard in a court of competent jurisdiction and enjoins Louisiana's court from reviewing its own state-court interlocutory orders or entering any judgment related to the validity of that orders.

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[8] Generally, to obtain permanent injunctive relief, a party "must demonstrate: "(1) that it has suffered an irreparable injury; (2) that remedies available at law are inadequate to compensate for that injury; (3) that, considering the balance of hardships between plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *ITT Educ. Servs., Inc. v. Acre*, 533 F.3d 342, 347 (5th Cir. 2008) (quoting *eBay, Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S.Ct. 1837, 164 L.Ed.2d 641 (2006))." *Merritt Hawkins & Assocs., L.L.C. v. Gresham*, 861 F.3d 143 (5th Cir. 2017). Because Respondents could not show any of the requisite elements necessary for a permanent injunction to issue, the bankruptcy court *waived* those requisites and created its "*Barton* injunction" allegedly pursuant to its authority under *Barton v. Barbour*, 104 U.S. 126, 26 L.Ed. 672 (1881) (requiring leave from the bankruptcy court before initiating suit against its "court-appointed" officers). However, in bankruptcy cases, injunctive relief is also only appropriate upon a showing that the enjoined action would "impede, impair, or irreparably interfere with the administration of the estate." *Baptist Medical Center of New York v Singh*, 80 BR. 637, 644 (Bankr. EDNY 1987). As the only secured creditor in Grodsky's estate, John had no interest in impeding, impairing, or interfering (much less irreparably) with this estate's administration. On the contrary, John had begged the Trustee to satisfy his claim for years! Pursuant to the Promissory Note and Security Agreement attached to John's proof-of-claim, Grodsky's estate had **no**, ***zero***, equity in John's mortgage note. The Trustee should have abandoned it for lack of sufficient equity to justify its administration. He didn't - because Grodsky's bankruptcy case was **not** reopened to maximize distributions to creditors. It was merely a pretense for 6 unscrupulous attorneys to steal John's property and split its proceeds (which they did). This Chapter 7 case closed and **NO** creditor, John included, received anything. (For more on this, please see John's Petition for Writ in related 5th Circuit case #20-30417.) Further, this "*Barton* injunction" shields ALL named Defendants from liability, including Respondents who are not, and cannot be, "court-appointed" officers.

As in *Stern*, "the bankruptcy court in this case exercised the judicial power of the United States by entering final judgment on a common law tort claim, even though the judges of such courts enjoy neither tenure during good behavior nor salary protection." *Stern v. Marshall*, 131 S.Ct. 2594, 180 L. Ed.2d 475, 564 US 462 (2011).

However, in this case, the bankruptcy court went further. It not only entered final judgment on claims over which it had *no* jurisdiction, it prohibited Petitioner from bringing those claims (or any issue related to the "nucleus of operative facts" in this case that may embarrass or expose its *preferred* Defendants/Respondents to liability) in a court of competent jurisdiction.

In fact, the bankruptcy court's overly-broad "*Barton* injunction" prohibits *ALL* would-be plaintiffs (even those who are not parties to this action) from bringing suit against these Respondents for <u>any</u> claim related to the facts outlined in John's complaint. That is, this Article I court of limited jurisdiction (with *no* jurisdiction in the instant case), effectively, enjoined competent courts (whose jurisdiction is <u>without</u> statutory limits) from hearing Petitioner's, and *any other person's*, claims against these particular Respondents.

Further, ""[r]educed to its essence, the *Rooker–Feldman* doctrine holds that inferior federal courts do not have the power to modify or reverse state court judgments" except when authorized by Congress. *Union Planters Bank Nat'l Ass'n v. Salih*, 369 F.3d 457, 462 (5th Cir.2004)" *Truong v. Bank of Am., N.A.*, 717 F.3d 377 (5th Cir. 2013). Thus, while even Article III courts lack jurisdiction to review or reverse state-court judgments, this Article I court of limited jurisdiction not only prohibited the state-court from reviewing or reversing its own orders but prohibited it from rendering any judgment related to its own state-court order.

In upholding the bankruptcy court's order dismissing Petitioner's "non-core" complaint *with prejudice* and sanctioning its "*Barton* injunction," the 5th Circuit conferred Article III powers of United States courts, and even jurisdiction that *exceeds* that of an Article III court, on an Article I court of limited jurisdiction. The 5th Circuit reasoned that the bankruptcy court's jurisdiction over "non-core," "private rights," claims is ***not*** governed by statute, federal rules, or even the U.S. Constitution, but by what it perceived as "extensive litigation" in this matter. (This, incidentally, is particularly odd given that Respondents have *never* presented a substantive response or answer to any of the allegations in John's complaint and this case never reached the discovery phase).

This Writ should be granted to examine whether the subjective nature or "extensivity" of litigation forms a basis for an Article I court of limited jurisdiction to exercise Article III judicial powers of United States courts (and even exercise jurisdiction that *exceeds* that of Article III courts). Alternatively, even if this Court was to determine that an Article I court's jurisdiction is *not* governed by statute, federal rules, or the U.S. Constitution but by the "extensivity" of litigation in a matter, this Writ should be granted to examine whether the mere filing of a lawsuit constitutes the requisite "extensivity" necessary for a bankruptcy court to exercise jurisdiction to dismiss a plaintiff's "non-core" claims *with prejudice* and execute a "*Barton* injunction" denying a plaintiff his constitutional right to due process to bring "non-core" claims in a court of competent jurisdiction and prohibiting a state court from reviewing, reversing, or rendering any judgment related to its own interlocutory orders.

If not, the bankruptcy court's order dismissing Petitioner's case is void, its "*Barton* injunction" is void, the 5th Circuit's ruling must be reversed, and Petitioner's case must be remanded to district court so that he may pursue the jury-trial to which he is lawfully entitled.

## II.

**The lower court granted *quasi*-judicial immunity to Respondents who are <u>not</u> entitled to raise qualified immunity as an affirmative defense to liability.**

The lower court ignored John's contention that qualified or "good faith" immunity is an affirmative defense, not properly raised in a defendant's motion to dismiss, that must be pleaded by a defendant official. *Gomez v. Toledo*, 446 U.S. 635, 100 S.Ct. 1920, 64 L.Ed.2d 572 (1980). Further, the 5th Circuit ignored the fact that Petitioner's complaint includes allegations negating the substance of a qualified immunity defense pled under FRCP 8(c). Respondents have yet to deny those allegations and they have the burden of proving that they are entitled to assert qualified immunity as a defense to liability for the damages caused by their misconduct. Alternatively, even if *quasi*-judicial immunity was appropriately considered in their motion to dismiss, *no* Respondent herein can show that he is entitled to assert this affirmative defense.

In *Harlow v. Fitzgerald*, 457 U.S. 800, 815, 73 L.Ed.2d 396, 102 S.Ct. 2727 (1982), this Court held that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." The Court found a Chapter 7 trustee to be a "government official" who could enjoy these protections as long as he did not act contrary to clearly established law. By virtue of being "court-appointed" employees of a Chapter 7 trustee, a trustee's counsel is typically entitled to "derivative" immunity. When properly applied, qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986); *Phoenician Mediterranean Villa v. Swope (In re J&S Properties)*, 872 B.R. 138, 142 (3rd Cir. 2017).

**Respondents who are <u>not</u> "government officials,"**
**<u>nor</u> "court-appointed" agents or employees of "government officials,"**
**may <u>not</u> assert *quasi*-judicial immunity as an affirmative defense to liability.**

To assert *quasi*-judicial immunity as an affirmative defense to liability, one must actually ***BE*** a "government official" or "court-appointed" counsel, agent, or representative employed by a "government official." See *Harlow*, at 815.

Respondent Grodsky is a disbarred bankruptcy attorney and debtor in this bankruptcy case. At no time relevant to these proceedings was Grodsky "court-appointed" counsel, or in any way employed by, his Co-Defendant/Respondent Trustee Adler.[9]

Respondent Lake Villas No.2 Homeowners Association ("LV2") is a condo association that offered Grodsky $10,000.00 to defraud John by committing perjury in both state and federal courts. This condo association was never employed by, or "court-appointed" counsel for, it's Co-Defendant/Trustee Adler.

Obviously, LV2 and Grodsky are *not* "government officials." Thus, they are not entitled to assert qualified, or any *quasi*-judicial immunity, as a defense to liability in this case. Further, it's a farce to suggest that this disbarred attorney and condo association, who are *not*, and *cannot be*, "court-appointed" counsel employed by their Co-Defendant/Trustee, are entitled to assert "derivative" immunity as an affirmative defense to liability (nor are they entitled to the bankruptcy court's "*Barton* protections").

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[9] Without any discovery, Petitioner cannot know the exact nature or extent of Grodsky's relationship with his Co-Defendants, Adler; Messina, Laudumiey, and the law firm of Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis, & Eagan, LLC; or the bankruptcy court prior to events forming the basis for this lawsuit.

Remarkably, the 5th Circuit found that qualified immunity shielded both Grodsky and LV2 from liability because, while engaging in violations of clearly established law, the court suggested they were, somehow, "acting in the course and scope" of their employment. Because Grodsky and LV2 aren't "government officials" and were never "court-appointed" counsel or agents employed by their Co-Defendant/Trustee, the 5th Circuit's finding that these Respondents "acted within the scope of [the trustee's] duties during the events described in the complaint," is clearly erroneous.

After an exhaustive search, Petitioner can find no authority suggesting that Grodsky and LV2 are entitled to any "piggy-back" *quasi*-judicial immunity from suit by virtue of the fact that their Co-Defendants subsequently opened a bankruptcy case or received judicial-appointments.

This Writ should be granted to examine whether this disbarred attorney and a condo association are entitled to assert qualified immunity as an affirmative defense to liability for violations of clearly established law because (a) they are "government officials," (b) they are "court-appointed" counsel entitled to "derivative" immunity, or (c) their partners-in-crime were "government officials" or their "court-appointed" counsel. If not, the 5th Circuit's ruling must be reversed, and Petitioner's case against these Defendants/Respondents must be remanded to district court so that he may pursue the jury-trial to which he is lawfully entitled.

**"Derivative" qualified immunity does not shield Defendants from liability (*retroactively*) for torts and crimes committed during a three (3) year period prior to their (*subsequent* and *strategic*) employment by their Co-Defendant as his "court-appointed" counsel.**

Again, to assert *quasi*-judicial immunity as an affirmative defense, one must actually ***BE*** a trustee or his "court-appointed" counsel. See *Harlow*, at 815. The Respondents' scheme to defraud John is easily traced back to February 2013. As part of the scheme, Grodsky's Chapter 7 case was re-opened on September 5, 2013. At no time prior to October 2013 was any Respondent employed as counsel, "court-appointed" or otherwise, for their Co-Defendant/Trustee Adler.

As outlined in Petitioner's complaint, it is clear that the Respondents' illegal enterprise was initially hatched by collection attorneys, Glen Galbraith ("Galbraith") and Lesli Bolner ("Bolner"), in, at latest, February 2013.[10] Between February 2013 and August 2013, these Respondents expanded their illegal enterprise to include Defendants, LV2, Grodsky, David Messina ("Messina"), Fernand Laudumiey ("Laudumiey"), and Adler.[11] By August 27, 2013, court documents evidence that these Respondents suborned Grodsky's first perjured testimony. Approximately a week later, they moved to re-open Grodsky's bankruptcy case.

That is, the Respondents' fraudulent scheme and pattern of misconduct began at least eight (8) months (in February 2013) before they moved to re-open Grodsky's Chapter 7 case (in September 2013).

Adler wasn't appointed trustee of Grodsky's estate until September 10, 2013, eight (8) months after the Respondents' criminal enterprise began. Laudumiey, Messina, and Gordon Arata, weren't Adler's court-appointed counsel until October 9, 2013, nine (9) months after the Respondents' scheme began. Galbraith, Bolner, and Seale & Ross, PLC weren't Adler's court-appointed counsel until March 23, **2016**, more than **three (3) years after** the Respondents entered into their scheme to defraud your Petitioner.

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[10] Without any discovery, Petitioner cannot determine precisely when the Respondents entered into their illegal enterprise to defraud John and his grandmother.

[11] Again, with no discovery Petitioner cannot know the exact date, but state-court documents suggest their participation in this scheme began, at latest, in June 2013.

After an exhaustive search, Petitioner finds no authority entitling Respondents to "retroactive" immunity for intentional torts and crimes committed, in their individual capacities, eight (8) months to more than **three (3) years** before there was any estate to administer and before their subsequent appointment as judicial officers. On the contrary, this Court found that trustees and their attorneys are *not* entitled to immunity for intentional torts committed before the institution of a bankruptcy case. See *Stern v. Marshall*, 131 S.Ct. 2594, 180 L.Ed. 2d 475, 564 U.S. 462 (2011).

Therefore, these Respondents cannot claim any immunity, absolute or qualified, retroactive or otherwise, for illegal activities in which they engaged before there was any bankruptcy estate to administer, before there were any court orders, and/or before they were court-appointed officers.

And, of course, Grodsky and LV2 are not entitled to claim any immunity at all, much less "piggy-back"/"retroactive" immunity based on their criminal association, or any relationship, with the trustee and/or his court-appointed counsel.

The 5th Circuit's holding sets a dangerous precedent encouraging all unscrupulous attorneys to subsequently secure judicial appointments after committing torts and crimes. Further, it encourages every non-attorney ne're-do-well to claim he is an employee of one of these unscrupulous attorneys or trustees so that he may assert qualified immunity to escape liability.

This Writ should be granted to examine whether qualified immunity can be applied *retroactively* to shield Chapter 7 trustees and their "court-appointed" counsel from liability for violations of clearly established law during a 3-year period ***prior*** to their judicial appointments. If not, the 5th Circuit's ruling must be reversed, and Petitioner's case against Respondents must be remanded to district court so that he may pursue the jury-trial to which he is lawfully entitled.

**Qualified immunity does not shield defendants from liability for conduct violating clearly established law.**

Alternatively, even if this Court finds Respondents are entitled to "retroactive," and/or "piggy-back, retroactive" immunity based on their, or their Co-Defendants', subsequent appointments, qualified immunity does not shield Respondents from liability for tortious and criminal acts.

Again, in *Harlow v. Fitzgerald*, this Court stated that "government officials (including trustees and, by extension, his court-appointed counsel) performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Immunity is preserved only where trustees and their counsel act within their statutory duties and don't violate clearly established laws. *Id.*

> "Decisions of this Court have established that the "good faith" defense has both an "objective" and a "subjective" aspect. The objective element involves a presumptive knowledge of and respect for "basic, unquestioned constitutional rights." *Wood v. Strickland*, 420 U.S. 308, 322, 95 S.Ct. 992 1001, 43 L.Ed.2d 214 (1975). The subjective component refers to "permissible intentions..." Referring both to objective and subjective elements, we have held that qualified immunity would be defeated if an official "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury..." *Ibid. Harlow v. Fitzgerald*, 457 U.S. 800, 73 L.Ed.2d 396, 102 S.Ct. 2727 (1982).

Citing *In Re: Ondova Ltd. Co.*, 941 F.3d 990, 993 (5th Cir. 2019) (in which the "trustee was entitled... to qualified immunity for... acts within the scope of his trustee duties"), the 5th Circuit suggests Respondents "acted within the scope of their duties" and are "immune from liability." However, *Ondova* continues, "*ultra vires* actions - actions that fall outside the scope of their duties as trustees - are **not** entitled to immunity." *Id.*

The 5th Circuit acknowledges that Petitioner's complaint alleges the Respondents engaged in illegal activities. The criminal and tortious misconduct in which they engaged is summarized by the panel as, ***"bribery, witness tampering, fraud, and extortion, among many other crimes, and defamation, breach of fiduciary duty, and abuse of process."***

"Clearly established law" of which a reasonable person knows that defeats, both objectively and subjectively, a "good faith" defense, includes:

- bribery. See 18 U.S.C. §201(b)(3);
- witness tampering. See 18 U.S.C. §1512(b)(d);
- frauds and swindles. See 18 U.S.C. §1341;
- perjury. See 18 U.S.C. §1621;
- suborning perjury. See 18 U.S.C. §1622; and

"...many other crimes, and defamation, breach of fiduciary duty, and abuse of process" as alleged in Petitioner's complaint and identified by the 5th Circuit.

Qualified immunity "protects all <u>but</u> the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986); *Phoenician Mediterranean Villa v. Swope (In re J&S Properties)*, 872 B.R. 138, 142 (3rd Cir. 2017).

So, with regard to the Respondents' tortious and criminal misconduct <u>after</u> they re-opened Grodsky's bankruptcy case (i.e. allegations after September 5, 2013):

**First**, as established, Grodsky and LV2, were **never** court-appointed officers entitled to any immunity no matter when Grodsky's bankruptcy case was re-opened.

**Second**, Galbraith, Bolner, and Seale & Ross, were **not** court-appointed counsel until **2016**. Between February 2013-March 2016. they weren't acting "within the scope of [the] trustee's duties" simply because, they were <u>not</u> Adler's agents, employees, or court-appointed counsel.

Thus, Galbraith, Bolner, and Seale & Ross, aren't entitled to any immunity for torts and crimes they committed during that **three-year** period (i.e. actions taken prior to March 23, 2016) regardless of when Grodsky's bankruptcy case was re-opened. Of course, the bulk of your Petitioners' claims occurred during this period.

**Third**, Laudumiey, Messina, and Gordon Arata, weren't their Co-Defendant's "court-appointed" counsel until October 9, 2013. These Respondents are not entitled to any immunity for torts and crimes committed in the nine (9) month period before they reopened Grodsky's bankruptcy case.

**Finally**, as for "bribery, witness tampering, fraud, and extortion, among many other crimes..." and tortious actions committed by:

- Seale & Ross, Galbraith, and Bolner after March 23, 2016;
- Adler, after September 10, 2013;
- Laudumiey, Messina, and Gordon Arata, after October 9, 2013; and
- Chaffe McCall, after February 21, 2017,

these are *ultra vires* acts *outside* the course and scope of a trustee's employment, before, during, and after the administration of a bankruptcy estate.

Unless one is suggesting that judicial officers regularly engage in unlawful and criminal misconduct, constitutional violations, torts and crimes are <u>not</u> activities customarily associated with the administration of a bankruptcy estate. Qualified immunity does not extend to such *ultra vires* acts and/or violations of clearly established law of which reasonable people are aware.

Reasonable people, particularly a group of six (6) barred and disbarred attorneys, know that bribery is a crime (See 18 U.S.C. §201(b)(3)); witness tampering isn't legal (See 18 U.S.C. §1512(b)(d)); frauds and swindles violate established law (See 18 U.S.C. §1341); perjury isn't lawful (See 18 U.S.C. §1621); and suborning perjury is illegal (See 18 U.S.C. §1621); etc...

Reasonable people know that the Respondents' actions violate established law and are *ultra vires* acts for which they are not entitled to qualified immunity.

Contrast this case with *Phoenician Mediterranean Villa v. Swope*, 872 B.R. 138 (3d Cir. 2017) in which the court held the trustee's conduct was immune from suit because she exercised reasonable care under the circumstances and didn't clearly violate established laws. The *Swope* trustee is exactly the judicial-appointee qualified immunity is intended to protect. The Respondents herein are not. Unlike this case, Trustee Swope didn't knowingly engage in crimes. Upholding precedent, the 3rd Circuit explained, when properly applied, qualified immunity "protects all but the plainly incompetent or those who knowingly violate the law." *Swope*, at 142.

The Respondents aren't incompetent. They're unethical attorneys who knowingly violated the law while abusing their status as officers of the court and defrauding the courts themselves (both state and federal). Your Petitioner's complaint establishes that the Respondents violated statutory and constitutional rights, which were "clearly established" at the time of their conduct. Violations of "clearly established" laws aren't subject to the defense of qualified immunity.

Qualified immunity shielding Adler and/or his Co-Defendants from liability extends only to acts within the scope of his trustee duties. Respondents aren't being sued for those acts. As alleged in the complaint, Adler and his court-appointed counsel committed *ultra vires* acts that fall outside the scope of a trustee's duties which form the basis for this lawsuit. Thus, Adler, his subsequently-appointed attorneys, and his non-appointed cohorts, are not entitled to immunity limiting their liability for damages caused by their torts and crimes.

To the extent Respondents' crimes were committed while administering Grodsky's estate, it's long-established that plaintiffs may bring suit against trustees and attorneys for *ultra vires* acts.

> "But if, by mistake or wrongfully, the receiver takes possession of property belonging to another, such person may bring suit therefor against him personally as a matter of right; for in such case the receiver would be acting *ultra vires. Parker v. Browning*, 8 Paige (N.Y.), 388; *Paige v. Smith*, 99 Mass. 395; *Hills v. Parker*, 111 *id.* 508." *Barton v. Barbour*, 104 U.S. 126, 26 L.Ed. 672 (1881).

Interestingly, while it's not a significant part of Petitioner's claims, the record reflects that Trustee, quite literally, wrongfully took possession of the property of another. (The turnover order was rendered in 2015, a year before, as the 5th Circuit acknowledged, the order awarding the note to Grodsky in 2016. (*Lake Villas, Inc. v LaMartina*, 189 So.3d 1070(Mem.) (La. 2016).)

Nonetheless, the 5th Circuit summarized John's allegations against the Respondents as, "*bribery, witness tampering, fraud, and extortion, among many other crimes, and defamation, breach of fiduciary duty, and abuse of process.*" Upholding the dismissal of John's suit for damages caused by this misconduct, the 5th Circuit reasoned that these are not *ultra vires* acts and Respondents are "immune from liability because they acted within the scope of their duties..." while committing these crimes.

This Writ should be granted to examine whether "*bribery, witness tampering, fraud, and extortion, among many other crimes, and defamation, breach of fiduciary duty, and abuse of process*" constitute *ultra vires* violations of clearly established law or whether, and under what circumstances, these acts fall within the "scope of a trustee's duties." Further this Court should examine whether Chapter 7 trustees, their "court-appointed" counsel, and their Co-Defendants, who are ***neither*** "government officials" ***nor*** "court-appointed" agents or employees of a trustee entitled to "derivative immunity," are entitled to *quasi*-judicial immunity from civil liability for such acts during a 9-month to 3-year period ***prior*** to their judicial appointments. If not, the 5th Circuit's ruling must be reversed, and Petitioner's case against these Defendants must be remanded to district court so that he may pursue the jury-trial to which he is lawfully entitled.

## III.

## The lower court refused to proceed on the assumption that the facts alleged in Petitioner's complaint were true.

This Court has repeatedly found that lower courts must proceed on the assumption that the allegations contained in a complaint are true. In *Ashcroft v. Iqbal*, this Court explained, yet again,

> "We made it clear... that a court must take the allegations as true, no matter how skeptical the court may be. See *Twombly*, 550 U.S. 544, at 555, 127 S.Ct. 1955 (a court must proceed "on the assumption that all the allegations in the complaint are true (even if doubtful in fact)"); *id.*, at 556, 127 S.Ct. 1955 ("[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of the facts alleged is improbable"); see also *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed. 2d 338 (1989) ("Rule 12(b)(6) does not countenance ... dismissals based on a judge's disbelief of a complaint's factual allegations"). The sole exception to this rule lies with allegations that are sufficiently fantastic to defy reality as we know it: claims about little green men, or the plaintiff's recent trip to Pluto, or experiences in time travel." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 173 L.Ed 2d 868, 556 U.S. 662, 77 USLW 4387 (2009).

Petitioner's case does not fall within the *sole* exception to this rule. His complaints contain no "claims about little green men," his "recent trips to Pluto," or "experiences in time travel."

John's "non-core" complaint alleges, with great specificity and in great detail, that in February 2013, Respondents embarked on a scheme to defraud him. With more than fifty (50) exhibits (including written authentic documents, bank records, and public records) evidencing his claims, John alleges that Respondents traversed state and federal bankruptcy courts making a mockery of our judicial system while breaking state and federal laws and abusing their (or their Co-Defendants') positions as officers of the court (whether "court-appointed" or not).

His second, "core," complaint contains allegations that to defraud him, not only as the true owner of property but as a secured creditor in Grodsky's bankruptcy estate, the Respondents acted in knowing and willful violation of 11 U.S.C. §362(a). Thus, he is entitled to damages under 11 U.S.C. §362(k). Allegations in John's "core" complaint are ***all*** evidenced in the public record.

Nothing is "far-fetched" about allegations that 6 unscrupulous lawyers (2 collection attorneys, 2 bankruptcy attorneys, a disbarred bankruptcy attorney, and a trustee) engaged in a pattern of unlawful misconduct to defraud John. There is nothing novel about lawyers scheming to steal property. John's claims don't "defy reality as we know it." Given the girth of (pre-discovery) evidence, including court, bank, and public records, (all attached to John's original complaint) it's certainly plausible that Respondents set out to, and did, defraud Petitioner. Nonetheless, the 5th Circuit dismissed John's complaint holding that his "allegations are not based in fact."

This Writ should be granted to examine whether the lower court may ignore precedent and curtail John's constitutional right to due process by refusing to proceed on the assumption that his allegations against its "*preferred*" Defendants are true - despite the fact that he made *no* claims that defy reality. If not, the 5th Circuit's ruling must be reversed and this case must be remanded to district court so that John may pursue the jury-trial to which he is entitled.

## IV.

## Abandoning the principle of party presentation, the lower court reduced Petitioner's complaint to a single, moot, claim which it found objectionable, and dismissed his suit without affording Petitioner an opportunity to amend.

"The Federal Rules reject the approach that pleading is a game of skill in which one misstep... may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v. Gibson*, 355 U.S. 41, 48, 78 S.Ct. 99, 103, 2L.Ed.2d 80. Refusal to afford plaintiffs an opportunity to amend their complaint "is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules." *Foman v. Davis,* 371 U.S. 178, 83 S.Ct. 227, 9L.Ed. 2d 222 (1962). "Generally, a... court errs in dismissing a *pro se* complaint... without giving plaintiff an opportunity to amend." *Bazrowx v. Scott,* 136 F.3d 1053 (5th Cir. 1998) (quoting *Moawad v. Childs*, 673 F.2d 850 (5th Cir. 1982)).

Further, this Court has consistently found,

> "In our adversarial system of adjudication, we follow the principle of party presentation. As this Court stated in *Greenlaw v. United States*, 554 U. S. 237 (2008), "in both civil and criminal cases, in the first instance and on appeal..., we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Id.*, at 243. In criminal cases, departures from the party presentation principle have usually occurred "to protect a *pro se* litigant's rights." *Id.*, at 244; see, e.g., *Castro v. United States*, 540 U. S. 375, 381-383 (2003) (affirming courts' authority to recast *pro se* litigants' motions to "avoid an unnecessary dismissal" or "inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a *pro se* motion's claim and its underlying legal basis"). But as a general rule, our system "is designed around the premise that [parties represented by competent counsel] know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." *Id.*, at 386... In short: "[C]ourts are essentially passive instruments of government." *United States v. Samuels*, 808 F. 2d 1298, 1301 (CA8 1987). They "do not, or should not, sally forth each day looking for wrongs to right. [They] wait for cases to come to [them], and when [cases arise, courts] normally decide only questions presented by the parties." *Ibid. United States v. Sineneng-Smith* (2020).

Pursuant to FRCP 9(b) (providing "a party must state with particularity the circumstances constituting fraud or mistake..."), John stated, with great specificity and in great detail, the circumstances constituting his case against Respondents for fraud. The "laundry list" of criminal misconduct causing his damages is summarized by the 5th Circuit as, "*bribery, witness tampering, fraud, and extortion, among many other crimes, and defamation, breach of fiduciary duty, and abuse of process.*" In addition to claims for damages resulting from Respondents' repeated violations of federal laws, John's complaint contains multiple pendant state-law claims, including those under Louisiana's Unfair Trade Practices Act.

Effectively making *sua sponte* alterations to Petitioner's complaint, the lower courts abandoned the principle of party presentation and discounted or *eliminated* all, but one, of John's claims. *Not* in an effort "to protect a *pro se* litigant's rights" but, rather, laboring to justify or rationalize the unnecessary and erroneous dismissal of John's suit, the lower court suggests, "as relief, [Petitioners] sought "the return of [the] promissory note.""

Intentionally reducing John's complaint to a single claim it found objectionable, the 5th Circuit devotes a significant portion of its opinion to mischaracterizing Petitioner's suit as an "attempt to undo the turnover order in these separate proceedings [that] is barred by... *res judicata.*"

Now, of course, "a *res judicata* contention cannot be brought in a motion to dismiss; it must be pleaded as an affirmative defense." See *Test Masters Educ. Servs. V. Singh*, 428 F.3d 559, 570 (5th Cir. 2005); *Snow Ingredients Inc. et al. v. SnoWizzard, Inc. et al*, 2015-30393 (5th Cir. 2016) ("A *res judicata* argument (claim preclusion) is an affirmative defense that should not be the basis for a 12(b)(6) dismissal."); *Norris v. Hearst Trust*, 500 F.3d 454, 461 n9 (5th Cir. 2007). However, even if the 5th Circuit properly discarded its own precedent, "a judgment in a core proceeding is without *res judicata* effect on a subsequent, non-core proceeding in the bankruptcy court and again in the district court." See *Kroner, Matter of*, 953 F.2d 317 (7th Cir. 1992); *Barnett v. Stern*, 909 F.2d 973 (7th Cir. 1978); *Howell Hydrocarbons, Inc. v. Adams*, 897 F.2d 183 (5th Cir. 1990).

Nonetheless, any suggestion that Petitioner is attempting to overturn a turnover order (or even the state-court order) is a *red herring.* John's suit is for damages caused by torts and crimes committed by the Respondents while fraudulently obtaining those orders. Whether the turnover order is a "final order," whether it's "not subject to collateral attack," and *res judicata* are all *red herrings* created by the Respondents to send the courts on wild goose chases. Such *red herrings* are part and parcel of the whirlwind of convolution Respondents generate while attempting to mask their unlawful misconduct and are waste of this Court's time. Petitioner's case is ***not*** about overturning state-court or bankruptcy court orders. [12]

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[12] However, whether the turnover order or the state-court order *were* subject to attack will forever remain in question because *both* were obtained while the Respondents perpetrated multiple frauds upon the courts.

As the 5th Circuit found, no appeal was taken from the turnover order.[13] Oddly, after acknowledging that John *didn't* seek to "undo the turnover order" by appealing it, the lower court suggests he is "attempt[ing] to undo [it] in these separate proceedings..." Again abandoning the principle of party presentation, the 5th Circuit *added* relief not sought by your Petitioner. John is not seeking to "undo the turnover order..." For that matter, he is not seeking to overturn the state-court order. Whether attempts "undo the turnover order" are "barred by the principle of *res judicata* is **inconsequential** because Petitioner is seeking **no** such relief.

Overturning *either* order is **moot**. Any claim for the "return of the promissory note" is **moot**. Using the fraudulently obtained orders, Respondents **liquidated John's note** and, as expected, **to the detriment of *all* estate claimants, John included, distributed *all* of its proceeds to themselves - as commissions, legal fees, etc...**

John's suit is not merely for "the return of [the] promissory note." Petitioner's case is a "non-core" proceeding alleging damages caused by the constitutional violations, torts, and crimes committed by the Respondents while fraudulently obtaining state-court and bankruptcy court orders entitling them to wrongfully convert John's property.

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[13] John didn't appeal the turnover order because, even if one concedes Grodsky "owned" the note (Petitioner can prove he never did), Grodsky's "ownership" was subject to John's purchase money security interest. (The promissory note and security agreement evidencing this PMSI is attached to John's complaint as exhibit "G.") In other words, Grodsky had only a titled interest. John's timely filed proof of claim (complaint exhibit "KK") evidences that John was a secured creditor who retained an undivided, 100%, equitable interest in the mortgage note. Grodsky and/or his estate, had **no**, zero (0), equity in the mortgage note. **If** the Respondents hadn't been engaging in a scheme to defraud John, Trustee Adler would have abandoned the note for lack of sufficient equity to justify its administration and returned John's property. But, he *didn't*. Why? Because, the Respondents ***were*** engaging in an unlawful scheme to defraud John.

In other words, con-men can use lies, threats, intimidation, bribery, etc... to cheat and defraud Granny out of the car she drives to church on Sunday and intends to give to her grandson. They can outright steal Granny's car while she is down for her afternoon nap. Once the car is in their possession, they can sell it, bring it to a chop-shop to be dismantled and sold for parts, or even toss it into Lake Pontchartrain to collect insurance proceeds. The con-men can divvy-up their ill-gotten gains however they choose. Granny will never see her car again. But, this doesn't mean that once Granny discovers she's been swindled, she has no legal recourse. When caught, the con-artists can be held criminally and civilly liable for the damages she and her grandson sustained.

The Respondents herein are just con-men with law licenses and their two non-attorney side-kicks. They didn't steal Granny's car. They abused their (or their cohorts') status as attorneys and judicial officers, as well as the legal system and judicial process, to steal her mortgage note – a note that she owned with her grandson and was intended to pay his college tuition. John will never see that note again. But, that doesn't mean the Respondents should not be held liable for damages caused by the crimes they committed while swindling him and his grandma.

Petitioner could not predict that the lower court would abandon the principle of party presentation or *sua sponte* reduce his suit to a single claim which it found objectionable and/or subject to the principles of *res judicata*. Without affording Petitioner the opportunity to amend his complaint to exclude the *sole* measure of relief it found objectionable (or which appears to have confused the court), the 5th Circuit dismissed his ***entire*** action *with prejudice.*

This Writ should be granted to examine whether an *entire* action may be dismissed because plaintiff asked for too much, too little, or the wrong relief and/or because his complaint included a *sole* measure of relief to which he may not be entitled. (I.e., should one objectionable measure of relief requested be dispositive in any case?)

Further, where a complaint states cognizable claims entitling plaintiff to his day in court to prove his allegations and it is clear that relief can be granted under the alleged facts, this Court should grant this Writ to examine whether it is inconsistent with the spirit of the Federal Rules and merely an abuse of discretion for a lower court to refuse to afford plaintiffs an opportunity to amend their complaints to exclude a *single* (moot) measure of relief to which they may or may not be entitled *before* dismissing all remaining claims *with prejudice.* If not, the 5th Circuit's ruling must be reversed and this case must be remanded to district court so that John may pursue the jury-trial to which he is entitled.

## CONCLUSION

The blatant disregard for precedent and the erosion of principles fundamental to our judicial system evidenced in this case *is* a matter of national importance. This remains true and, perhaps, if certiorari is denied, it becomes even *more* true because the general public (i.e. "regular" people, not trustees or presidents of bar associations or their brothers) deserve to know whether their judicial system is working for them. If this case is any indication, it *isn't.* To the extent this case evidences a departure from the accepted and usual course of judicial proceedings, it warrants an exercise of this Court's supervisory powers. In fact, because *every* question presented herein was created by the lower courts' failure to abide by this Court's precedents, clearly established law, and federal rules, this case is ripe for summary reversal. If statute, precedent, and the U.S. Constitution is to be adhered to at all, the following must be true:

(1) A bankruptcy court does not possess, and cannot bestow on itself nor can the 5th Circuit grant it, Article III powers of United States courts.

(2) A bankruptcy court cannot dismiss a case for lack of jurisdiction *with prejudice* thereby adjudicating claims over which it, admittedly, lacks authority.

(3) A bankruptcy court cannot render "*Barton* injunctions" prohibiting suit against defendants for constitutional violations, torts, and crimes – whether or not they are "court-appointed" officers - and prohibiting state courts from reviewing their own orders and judgments.

(4) Qualified immunity does not shield government officials or judicial appointees from liability for knowing violations of clearly established law.

(5) To be entitled to assert *quasi*-judicial immunity as an affirmative defense to liability, one must actually ***be*** a "government official" or in the employ of a "government official."

(6) "Non-appointed," "non-employed," friends, relatives, neighbors, acquaintances, and co-defendants of a U.S. trustee are not entitled to assert "derivative" *quasi*-judicial immunity.

(7) There is no such animal as "retroactive derivative qualified immunity." A U.S. trustee cannot *strategically* "employ" his co-defendants for the purposes of providing such immunity for crimes they committed in the three-year period *prior* to their employment.

The 5th Circuit's decision is not merely erroneous, it is outlandishly so. John's claims do not "defy reality as we know it." **No** Respondent is entitled to assert *quasi*-judicial immunity as an affirmative defense because qualified immunity doesn't shield defendants from liability for torts and crimes. Petitioner is entitled to damages caused by the Respondents' tortious and criminal misconduct in furtherance of their scheme to defraud him - whether those acts occurred before or during the administration of a bankruptcy case. To hold otherwise is inconsistent with precedent in this Court and all U.S. Courts of Appeal, including the 5th Circuit.

This Court should grant this Petition, summarily vacate the dismissal of John's suits, and remand this consolidated action to the district court for jury trial on the merits.

Respectfully Submitted,

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