No. 21-_____

In The

Supreme Court of the United States

ROBERT CAMPO and FERISSA TALLEY,

Petitioners,

v.

UNITED STATES DEPARTMENT OF JUSTICE,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, in adjudications under the Freedom of Information Act ("FOIA"), federal judges are free to flout and knowingly violate FOIA, federal rules of procedure and evidence, the U.S. Constitution and this Court's precedent.

DIRECTLY RELATED PROCEEDINGS

U.S. Court of Appeals for the Eighth Circuit:

Robert Campo v. U.S. Dept. of Justice, No. 20-2430 (Jul. 30, 2021), petition for reh'g denied, Nov. 2, 2021

Ferissa Talley v. U.S. Dept. of Labor, No. 20-2439 (Jul. 30, 2021), petition for reh'g denied, Nov. 2, 2021

U.S. District Court for the Western District of Missouri

Robert Campo v. U.S. Dept. of Justice, No. 4:19-cv-00905 (Jul. 13, 2020)

Ferissa Talley v. U.S. Dept. of Labor, No. 4:19-cv-00493 (Jul. 13, 2020)

INDIRECTLY RELATED PROCEEDINGS

U.S. Supreme Court:

Jack Jordan v. U.S. Dept. of Labor, No. 21-1180, petition for certiorari docketed Feb. 25, 2022

U.S. Court of Appeals for the Eighth Circuit:

Ferissa Talley, Jack Jordan v. U.S. Dept. of Labor, No. 20-2494 (Nov. 2, 2021), motion for recon. denied, Nov. 17, 2021 (unidentified judges disbarred Petitioners' counsel, implying that they did so because Petitioners' counsel exposed lies and crimes of Judge Smith (Mo. W.D.) and Judges Gruender, Benton and Stras (Eighth Circuit) in the district court and circuit court proceedings, above.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Robert Campo and Ferissa Talley respectfully petition for a writ of certiorari to review circuit court judges' pretenses that they have the power to knowingly violate—and facilitate agency and district court employees' knowing violations of—Petitioners' rights under federal law and the Constitution.

DECISIONS BELOW

The opinion of the U.S. Court of Appeals for the Eighth Circuit purporting to justify judgments against Petitioners (App. 1-3) is captioned *Campo v. U.S. Dept. of Justice*, *Talley v. U.S. Dept. of Labor, Talley, and Jordan v. U.S. Dept. of Labor* (8th Cir. 2021) and is reported at 854 Fed. Appx. 768 and is available at 2021 U.S. App. LEXIS 22610, 2021 WL 3235867. An order denying reconsideration (App. 76) is unreported.

JURISDICTION

The Eighth Circuit's judgment was entered and opinion was issued on July 30, 2021. *See* App. 1-3. A timely-filed petition for rehearing was denied on November 2, 2021. *See* App. 76. A timely-filed application for extension of time to file this petition by April 1, 2022 was granted. *See* Order regarding Application 21A358. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The U.S. Constitution, Amendment I, provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The U.S. Constitution, Article III, Section 1, provides:

> The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

The U.S. Constitution, Article VI, clauses 2 and 3, provide:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

5 U.S.C. 3331 provides:

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law.

28 U.S.C. 453 provides:

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, _____ _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties

> incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."

STATEMENT OF THE CASE

Petitioners requested and sued to obtain records under the Freedom of Information Act, 5 U.S.C. 552 ("FOIA"). To conceal the content of records, employees of the U.S. Department of Labor ("DOL") and the U.S. Department of Justice ("DOJ") and Judge Smith (Mo. W.D.) knowingly misrepresented the contents of a particular email, and they knowingly violated FOIA and federal rules of procedure and evidence. The evidence that they purported to describe established some of the evidence and material facts they misrepresented and illegally concealed.

They purported to describe an email "sent by Darin Powers" on July 30, 2013 to at least five recipients who were named by Judge Smith ("Powers' email"). App. 71. *See also* App. 5, 34. DOL and DOJ employees and Judge Smith knowingly misrepresented that all text redacted from Powers' email was protected by the attorney-client privilege and FOIA Exemption 4. *See* App. 35, 70, 71.

In *Campo*, Judge Smith merely contended that he previously "determined the Powers email is exempt from disclosure pursuant to Exemption 4." App. 31 (merely citing his *Talley* opinion). But Judge Smith failed to make any such determination.

No evidence in *Campo* or *Talley* showed that any recipient of Powers' email on July 30, 2013 even was an attorney (*i.e.*, when or where admitted to practice before any court) or assisting any attorney. No evidence showed the purpose for which anyone received Powers' email. No declaration stated any fact to show any such purpose. For at least four recipients, no evidence showed any employer, employment status or location, job title or duty.

The only mere indications that Powers' email might be privileged were mere representations by DOL and DOJ employees and Judge Smith about two phrases purportedly included in Powers' email on July 30, 2013.

Agency employees and Judge Smith personally represented or implied that Powers marked Powers' email "Subject to Attorney Client Privilege." App. 71.

Agency employees also merely vaguely represented that some unidentified email "explicitly request[ed an unidentified] attorney's input and review of the information transmitted." *Id*. Neither agency stated when, by whom or for what purpose such "input and review" was requested. *Id*.

Judge Smith highlighted the agencies' ambiguity by using language that implied that, in fact, Powers' email (and other emails) were merely *subsequently* "sent by" (attached to) *another* "DynCorp email" to "explicitly request" an unidentified "attorney's input and review of the information transmitted." *Id*.

Then, Judge Smith, alone, asserted representations that were vastly different from the representations by agency employees in profoundly material respects. Judge Smith, alone, purported to specifically address Powers' email, Powers and a particular purpose. Initially, Judge Smith represented that *Powers' email* "seeks" some unidentified "counsel's *advice* and *input* on the information contained in the email." *Id*. (emphasis added). Next, Judge Smith more specifically represented that "*Powers* sought" some unidentified "counsel's *advice* about the information in *his* email." App. 72-73 (emphasis added).

Neither agency in *Talley* or *Campo* even contended that Powers requested (or sought) any advice from anyone. Each judge below knew that particular falsehood (that two emails, including Powers' email) "*expressly* sought *legal advice*") was first fabricated in 2016 by a DOL Administrative Law Judge (Larry Merck) to help DynCorp illegally conceal two emails (and defraud an employee injured in Iraq) in a DOL proceeding over which ALJ Merck presided. App. 8, 38 (emphasis added).

ALJ Merck, other DOL employees, DOJ attorneys and Judge Smith illegally concealed all admissible evidence of whether they all lied or deceived about the actions Powers purportedly took on July 30, 2013. *See* App. 69, n.17 (DOJ attorneys "provided the unredacted Powers email to" Judge Smith at least once "on June 8, 2020"). They all knowingly violated a particular FOIA requirement.

Each judge below knew that FOIA required that "[a]ny reasonably segregable portion of a record shall be provided" by each agency "to any person requesting such record after deletion of the portions which are exempt." App. 72 quoting 5 U.S.C. 552(b). Each judge below knew that Eighth Circuit precedent required that any "non-exempt portions" of Powers' email that are not "inextricably intertwined" with "exempt portions must be disclosed" to Petitioners. *Id*.

No evidence in *Talley* or *Campo* showed where or how Powers, himself, included any purported privilege notation or any express or explicit request for any advice, input or review in Powers' email. Any such request must include non-confidential, non-commercial words such as "please advise regarding" or "please review and provide input." No such request or privilege notation can be inextricably intertwined with anything. No such phrase could be confidential or commercial information.

Evidence of the existence and location of any privilege notation and any non-commercial words in any request for advice, input or review could be segregated and released to Petitioners within about five minutes. No agency ever asserted any fact or presented any evidence purporting to establish any fact showing that segregation and release of such evidence would require unreasonable (or any) time, effort or expense.

Each judge below knew that regarding each agency's summary judgment motion each judge "must view the evidence in the light most favorable to"

Petitioners "giving" Petitioners "the benefit of all inferences reasonably drawn from the evidence." App. 22, 56 quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588-89 (1986). Each judge knew Judge Smith repeatedly failed to do so.

Each judge below knew, for example, that the agencies' efforts to conceal "strong" evidence of the existence and location of the two non-confidential, non-commercial phrases above "can lead *only* to the conclusion that [such evidence] would have been adverse," *i.e.*, contrary to the agencies' representations about one or both phrases. *Interstate Circuit v. United States*, 306 U.S. 208, 226 (1939) (emphasis added).

After DOL and DOJ employees and Judge Smith asserted the existence of the two phrases above in Powers' email to justify summary judgment for the DOL and DOJ regarding the attorney-client privilege and FOIA Exemption 4, DOJ employees and Judge Smith lied even more clearly in *Campo*.

After they contended in *Talley* that all text redacted from Powers' email (including the two phrases above) was DynCorp's confidential commercial information, they represented in *Campo* that all the same information was the personal private information of Petitioners' counsel, Jack Jordan.

In *Campo*, three DOJ attorneys and Judge Smith pretended to support summary judgment with a DOJ attorney's declaration repeatedly declaring that all information redacted from Powers' email was Jordan's personal private information. *See* App. 79 ¶4 ("email

records of Darin Powers"). The DOJ pretended to withhold only "records pertaining to the third party [ ] Mr. Jordan. Plaintiff is seeking these files of Mr. Jordan." App. 82 ¶10. The DOJ attorneys pretended to protect only "the strong privacy interests of Mr. Jordan." App. 83 ¶11. They represented that the "requested material" constituted "files of" the "named third parties (Mr. Jordan)." App. 80 ¶6. The DOJ pretended it would have released Powers' email "with consent from Mr. Jordan" because only Jordan's "privacy interests" are being protected, *i.e*. "[Jordan's] personal privacy." App. 84 ¶14. "It is under these circumstances" that the DOJ "denied access to Mr. Jordan's [ ] records." *Id*.

Judge Smith flatly misrepresented that the "DOJ instructed Campo to provide an authorization executed by Jordan." App. 24. No evidence supported such falsehood, and copious evidence in the record contradicted such falsehood.

Next, Judge Smith pretended to believe the DOJ's arguments and declarations. *See* App. 27-28:

> According to DOJ's declaration, [the DOJ] invoked [FOIA] Exemption 7(C), [and] Exemption 6, "to withhold [only] any records pertaining to [ ] Mr. Jordan." . . . DOJ's declaration states [the DOJ invoked] Exemption 6, [and] Exemption 7(C), [only] because Jordan "has strong privacy interests" in the information [in Powers' email]. . . . Consequently, [the DOJ withheld the requested records only to protect] "[Jordan's] privacy interests . . . [because the DOJ] concluded "to release any

> requested information [to Jordan's client] would constitute a clearly unwarranted invasion of [Jordan's] privacy."

Judge Smith emphasized that the only reason he and the DOJ attorneys pretended that the requested records contained Jordan's personal private information was that the "documents maintained by DOJ" merely "pertained to the transmission of the Powers email to or from any DOJ employee in relation to Jordan's three FOIA lawsuits." App. 25. Judge Smith knowingly misrepresented that because of "Jordan's strong privacy interests" in such records the "DOJ properly withheld the requested documents pursuant to Exemptions 6 and 7(C)." App. 28.

Eighth Circuit judges then exposed Judge Smith's lie. They flaunted their affirmance of "summary judgment" to help the DOL and DOJ conceal "various emails" specifically because "Jack Jordan has been trying to get" them for "quite a while." App. 2. Eighth Circuit judges openly revealed that, in fact, the purpose of the so-called judgments against *Petitioners* was to prevent *Jordan* from obtaining Powers' email, not to protect Jordan's personal private information from Jordan's client.

Each judge below knew that FOIA "Exemption (b)(6)" could apply only to protect Jordan's "personal privacy" regarding only "information contained in" Jordan's "personnel, medical, and similar files." App. 26 quoting 5 U.S.C. 552(b)(6). They knew no evidence even indicated that any information in any requested record

was from Jordan's "personnel, medical, and similar files." *Id*.

Each judge below also knew that FOIA "Exemption (B)(7)(C)" could apply only to protect Jordan's "information" if "release" to Jordan's client would "constitute an unwarranted invasion of" Jordan's "personal privacy." *Id*. quoting 5 U.S.C. 552(b)(7)(C).

The DOJ and the judges below failed to (and could not) identify any evidence of (much less the absence of any genuine dispute about) any fact that could show that any invasion of Jordan's personal privacy from releasing Powers' email (unredacted) could be unwarranted. Each judge below knew that Jordan was helping multiple FOIA requesters obtain such information.

Eighth Circuit judges pretended to justify affirming summary judgment for two agencies in two appeals (*Campo* and *Talley*) by asserting mere conclusory contentions in only two sentences. *See* App. 3. In those two sentences, Judges Gruender, Benton and Stras lied repeatedly and knowingly violated or flouted FOIA, federal rules of procedure and evidence, the Constitution and this Court's well-known, emphatic precedent thereunder.

Each judge below knew (because Petitioners emphatically briefed) that the plain language of Rule 56 and very well-known, clear, emphatic Supreme Court precedent prohibited summary judgment for either agency "as a matter of law." FED.R.CIV.P. 56(a). Each judge knew neither agency "show[ed] that there is no

genuine dispute as to any" (or even one) "material fact." *Id*. Each judge knew each agency clearly failed to even assert that even one "fact cannot be" "genuinely disputed" and clearly failed to "support [any such] assertion by" "citing to particular parts of materials in the record." FED.R.CIV.P. 56(c)(1).

Each judge knew that in *Talley* DOL and DOJ employees and Judge Smith asserted contentions about two phrases purportedly in Powers' email that had been redacted from Powers' email, *i.e.*, clearly not "in the record." *Id*. *See* App. 71-72. Each knew the "unredacted" text was "provided" to Judge Smith in an *ex parte* communication by DOJ attorneys on behalf of the DOL. App. 69, n.17.

Each judge knew each agency clearly failed to make any "showing that" any "materials" in the record and "cited" by any agency did "establish the absence" of "a genuine dispute" regarding even one material fact. FED.R.CIV.P. 56(c)(1)(B).

Eighth Circuit judges knew of the foregoing requirements of law, so they knowingly misrepresented that "we agree with" Judge Smith "that no genuine issue of material fact" regarding any issue, above, "remained for trial." App. 3 (quoting Eighth Circuit precedent and erroneously using the word "issue" instead of quoting Rule 56, which was changed in 2010 to (repeatedly) use the word "dispute").

Judges Gruender, Benton and Stras knew they could not "agree" with Judge Smith, in part, because Judge Smith's contentions in *Talley* and *Campo* about

Powers' email clearly conflicted irreconcilably and they could not all be true.

Judges Gruender, Benton and Stras also knew they could not "agree" with Judge Smith, in part, because Judge Smith clearly never asserted any contention such as the Eighth Circuit judges asserted. They knew Judge Smith's failure to even assert any such conclusion was included in the third issue that Petitioners specifically listed for appeal. In such third issue, Petitioners highlighted Judge Smith's failure to even contend (much less ensure) that either agency "show[ed] that there is no genuine dispute as to any material fact." FED.R.CIV.P. 56(a).

Each judge below clearly knew that an agency could be "entitled to summary judgment on a claim only" by "showing" that "there is no genuine issue [dispute] as to any material fact." App. 22, 55.

Each judge below (and both agencies) failed to even contend that either agency showed the absence of genuine dispute (or genuine issue) regarding even one fact. Each judge below knew that each agency failed to show (or even assert) the absence of genuine dispute (or genuine issue) regarding many material facts.

Judge Smith emphasized (and every judge below knowingly violated) the law governing how each agency must show the absence of genuine dispute (regarding every material fact) when using declarations. Any agency "declaration used to support" summary judgment "must be made on" the declarant's "personal knowledge" and "set out facts that would be

admissible in evidence" including facts that "show that" such "declarant is competent to testify on the matters stated." App. 40, n.8 quoting FED.R.CIV.P. 56(c)(4). Judge Smith further emphasized that "[s]imply including an argument in a declaration does not render the argument a fact." *Id*.

Each judge below knew that each agency in both cases failed to even contend that anyone had personal knowledge of any material fact. Each knew that such failure applied especially to the content of the text redacted from Powers' email. No one in *Talley* or *Campo* (except Judge Smith, himself) ever even contended that he read Powers' email. *See* App. 71-72.

Each judge below knew that each agency failed to state facts showing how anyone could have personal knowledge of many material facts. They all knew that no agency or judge even contended that any agency declaration showed the absence of genuine dispute regarding even one fact material to establishing any declarant's personal knowledge of any material fact.

Each judge below knew Petitioners emphatically addressed the foregoing in their briefing, but in both cases Judge Smith vaguely purportedly summarily "overrules" the plain language of Rule 56 and clear, emphatic Supreme Court precedent. App. 73, n.20; App. 32, n.8.

Each judge knew that Judge Smith pretended that mere contentions by Eighth Circuit judges could justify directly, egregiously and knowingly violating

Petitioners' rights under Rule 56 (and FOIA and the First and Fifth Amendments). *Cf.* App. 24, 57.

REASONS FOR GRANTING THE WRIT

For many compelling reasons, this petition should be granted, including "because of the public importance of the issues presented and the need for their prompt resolution." *United States v. Nixon*, 418 U.S. 683, 687 (1974). In many obvious respects, Eighth Circuit judges did (and allowed Judge Smith to) so far, so deliberately and so egregiously depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

I. The Proceedings Below (and in Many FOIA Cases) Egregiously and Clearly Violated FOIA Requesters' Due Process of Law.

Pretending that summary judgment could be based on mere contentions by agency employees or Judge Smith about the two key phrases purportedly in Powers' email clearly violated Petitioners' due process of law. *Cf.* pages 4-6, 8-9, above. Copious federal law directly governs all relevant issues.

Except to the extent that "a federal statute" or "rules adopted by the Supreme Court provide otherwise," Petitioners had the right to "trial" at which all "witnesses' testimony must be taken in open court." FED.R.CIV.P. 43(a). The vital and indispensable

"function of trial is to sift the truth from a mass of contradictory evidence, and to do so" the court "must hear" competent "witnesses." *In re Michael*, 326 U.S. 224, 227-28 (1945). Presiding judges lying about evidence and concealing it (and helping agency employees lie about evidence and conceal it) clearly and emphatically "is at war with justice, since it may" (and it did repeatedly) "produce a judgment not resting on truth," which is "the sole ultimate objective of a trial." *Id*. at 227.

Testimony in open court "forces the witness to submit to cross-examination," which is the "greatest legal engine ever invented for the discovery of truth;" it "permits" everyone "to observe the demeanor of the witness in making" and explaining "his statement, thus aiding" in "assessing his credibility." *California v. Green*, 399 U.S. 149, 158 (1970).

Agencies can use federal rules to avoid trial (and cross-examination) only if they comply with such rules. Summary judgment for agencies is illegal and unconstitutional unless each agency "shows" it is "entitled to judgment as a matter of law." FED.R.CIV.P. 56(a). No agency can show entitlement to judgment as a matter of law by violating clear controlling law. DOJ attorneys and the judges below clearly violated many provisions of law and the Constitution in many respects, including all the following.

Agencies must show entitlement to summary judgment by complying with particular requirements of law. The agency must "state with

particularity" the "grounds" for summary judgment. FED.R.CIV.P. 7(b)(1). It must identify each "material fact," FED.R.CIV.P. 56(a), and "assert[] that" each "fact cannot" be "genuinely disputed," FED.R.CIV.P. 56(c)(1). Then, the agency's "showing" must "establish the absence" of any "genuine dispute" regarding each such "fact." FED.R.CIV.P. 56(c)(1)(B). It must show "that there is no genuine dispute as to any material fact." FED.R.CIV.P. 56(a). And "the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.' " *Norfolk Southern Ry. Co. v. Kirby*, 543 U.S. 14, 31-32 (2004).

The agency "must support" each "assertion," above, by "citing to particular parts of materials in the record." FED.R.CIV.P. 56(c)(1)(A). Evidence submitted to a judge *ex parte* and reviewed *in camera* irrefutably is not "in the record." *Id*. Judges "need consider" at least "the cited materials" (in the record) especially agency declarations. FED.R.CIV.P. 56(c)(3). Any such "declaration" irrefutably "must be made on personal knowledge," and "set out facts that would be admissible in evidence," including "facts" that "show that" the "declarant is competent to testify on the matters stated." FED.R.CIV.P. 56(c)(4).

Only a "witness" may testify to any fact and "only if evidence" is "introduced sufficient to" show he had "personal knowledge" of each fact about which he testified. FED.R.EVID. 602 (emphasis added). Hearsay (by anybody) "is not admissible unless" a "federal statute" or "rules prescribed by the Supreme Court" provide "otherwise." FED.R.EVID. 802.

Anyone's (especially a judge's) hearsay about the content of any record Petitioners requested is not admissible to show any fact adverse to Petitioners. *Cf*. FED.R.EVID. 803(8)(iii), 803(22), 803(23).

Any "presiding judge may not testify as a witness at the trial." FED.R.EVID. 605. He cannot judicially notice any fact that is not "generally known" and cannot "be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FED.R.EVID. 201(b). He cannot preclude trial and cross-examination of government witnesses by pretending any judge or agency showed the absence of any genuine dispute regarding every material fact with anyone's inadmissible hearsay.

Hearsay about any purported content of Powers' email is especially clearly inadmissible to prove its truth. "An original writing" is "required in order to prove its content unless these rules or a federal statute provides otherwise." FED.R.EVID. 1002. "A duplicate is admissible" only if no "genuine question is raised about the original's authenticity" and "the circumstances make it [not] unfair to admit the duplicate." FED.R.EVID. 1003. Any "other evidence of the content of a writing" is "admissible" only under certain irrelevant conditions. FED.R.EVID. 1004. Any "proponent" of any written record "must produce evidence sufficient to support a finding that the item is what the proponent claims it is." FED.R.EVID. 901(a).

Regarding Powers' email, DOJ attorneys and Judge Smith used their own hearsay to illegally

conceal the admissible evidence that precedent and federal law clearly required them to produce to substantiate assertions of the privilege. The privilege "applies only" to the extent "necessary to achieve its purpose," so the DOL and DOJ were required to show each fact material to showing that Powers' email was sent to each recipient to make "only those disclosures" that were "necessary to obtain informed legal advice." *Fisher v. United States*, 425 U.S. 391, 403 (1976). The agencies must show each element of the foregoing.

The foregoing precedent and federal law highlight a fatal flaw in every assertion of the privilege regarding Powers' email. The judges below and the agencies completely and willfully failed to address any purpose for which Powers' email was sent to at least four recipients. Each such recipient (whom nobody ever even contended were attorneys or helping any attorney provide legal advice) received Powers' email. *See* page 4, above. The agencies and judges below willfully failed to address why each such person received Powers' email. *See id*.

It is profoundly significant that any "documents which could have been obtained by court process from" any such recipient "may also be obtained" even "from the attorney" even if the attorney did receive them "in order" to permit anyone "to obtain more informed legal advice." *Fisher*, 425 U.S. at 403-04. At least on summary judgment, Judge Smith was required to infer that no such person received Powers' email for any privileged purpose.

II. District and Circuit Court Judges Lied and Knowingly Violated Petitioners' Rights under Federal Law, the Constitution and this Court's Precedent.

"In our judicial system," the "public has a right to every man's evidence" and "every man" includes even "the President of the United States." *Trump v. Vance*, 140 S. Ct. 2412, 2420 (2020). "Every man" necessarily includes every agency employee seeking to conceal evidence that ALJ Merck and other DOL and DOJ employees and Judge Smith lied or deceived about whether Powers included two non-confidential, non-commercial phrases in Powers' email on July 30, 2013. *Cf.* pages 5-6, above. Concealing (and helping agency employees and Judge Smith conceal) such evidence is irrefutably and emphatically antithetical to our systems of justice and government.

"The basic purpose of" FOIA is "to ensure an informed citizenry" because informed citizens are "vital to the functioning of a democratic society." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). They are "needed to check against corruption and to hold the governor accountable to the governed." *Id.* With FOIA, Congress sought to "make crystal clear" its "objective" to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976). FOIA's "basic purpose" emphasizes "a general philosophy of full agency disclosure" unless "clearly delineated statutory language" authorizes withholding. *Id.* at 360-61. Congress clearly "sought to assure that the

Government would not operate behind a veil of secrecy, and it narrowly tailored" FOIA "to the fundamental goal of disclosure." *CIA v. Sims*, 471 U.S. 159, 182 (1985).

FOIA is bolstered by multiple additional federal statutes. No person may knowingly alter or conceal, cover up, falsify, or make any "false entry in any record" or "document" "with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any" federal "department or agency" or "in relation to or contemplation of any such matter." 18 U.S.C. 1519.

No judge may "knowingly and willfully" **(1)** use any "trick, scheme, or device" to falsify, conceal or cover-up any "fact" that was "material" to any case or **(2)** use "any false writing or document" while "knowing the same to contain any materially false, fictitious, or fraudulent statement or entry." 18 U.S.C. 1001(a)(1), (3).

No judge or DOJ attorney may "conspire" with any other person to "injure" or "oppress" either Petitioner "in the free exercise or enjoyment of any right or privilege secured to" such Petitioner "by the Constitution" or federal "laws," or because such person "exercised" any such "right or privilege." 18 U.S.C. 241. No judge or DOJ attorney may act "under color of" any legal authority to "willfully" deprive either Petitioner "of any rights, privileges, or immunities" that are in any way "secured or protected by the Constitution" or any federal "laws." 18 U.S.C. 242.

"Even judges" can "be punished criminally" under Sections 241 or 242 "for willful deprivations of constitutional rights." *Imbler v. Pachtman*, 424 U.S. 409, 429 (1976). "Both" sections cover all "rights or privileges secured by the Constitution" or federal "laws." *United States v. Price*, 383 U.S. 787, 797 (1966). "The language" is "plain and unlimited" and it "embraces all of the rights and privileges secured to citizens by all of the Constitution and all of the laws of the United States." *Id*. at 800. The "qualification with respect to alienage, color and race" in Section 242 "refers only to differences in punishment and not to deprivations of any rights or privileges secured by the Constitution." *United States v. Classic*, 313 U.S. 299, 326 (1941).

Despite knowing all the foregoing, district and circuit court judges clearly lied and knowingly violated FOIA requesters' rights under many provisions of federal law (including Rule 56 and FOIA) and the Constitution. *Compare* pages 5-14, above, *with* pages 17-18, above. It is not possible that any judge below even believed that Judge Smith's contentions about the nature and content of Powers' email in both *Talley* and *Campo* were true. It is not possible that any judge below even believed that release of Powers' email to Jordan's client could constitute an unwarranted invasion of Jordan's privacy. Each judge knew Jordan was helping at least two clients obtain such record.

The legal authorities and issues are clear and compelling. Federal judges clearly and knowingly violated judges' duties and Petitioners' rights under many clear provisions of the Constitution and federal law. Such

judges pretended to have the power to thwart, flout, violate and undermine their own courts, this Court, the President, Congress, federal law and the Constitution. *Cf*. pages 17-18, 20-21, 24-25, 27-28, 32-35, herein. "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it." *Butz v. Economou*, 438 U.S. 478, 506 (1978).

III. This Petition Addresses Issues of Broad Significance to Americans Seeking to Fulfill Core Purposes of the Constitution and FOIA.

The conduct of the judges below provided especially extreme conduct for the purpose of undermining and thwarting Congress, FOIA and the Constitution. *Cf*. pages 20-21, 32-35, herein. But such conduct was founded on decades of egregious but common violations of Rule 56 and Amendments I and V in FOIA adjudications for the same purposes. Many district and circuit court judges and DOJ attorneys violate the plain language of Rule 56, the First and Fifth Amendments and this Court's precedent thereunder to defeat federal rules of procedure and evidence, FOIA and the Constitution and violate FOIA requesters' rights thereunder.

Many judges on multiple courts pretend they have the power to violate federal rules of procedure and evidence, specifically to justify violating FOIA and to

implicitly justify violating the Constitution. Such tactics were at issue in many adjudications under FOIA. In every or virtually every such adjudication, many, if not all, restraints on judicial power in Rule 56 and other rules of procedure and evidence were violated. *Cf*. pages 17-18, 32-33, herein.

Moreover, judges very often appear to know they are violating such rules, especially Rule 56. Many judges (like Judge Smith) state at least some of the restraints on summary judgment in Rule 56, then they knowingly violate them.

Far too many judges pretend that mandatory restrictions on judicial power in federal rules are irrelevant in adjudications under FOIA. They pretend that restrictions on judicial power in the Constitution are irrelevant. They pretend that FOIA somehow granted judges the power to violate FOIA requesters' rights under the Constitution.

Federal judges have no "powers" that were "not delegated to" federal courts under "the Constitution." U.S. Const. Amend. X. "No person" ever may "be deprived" by any judge of any "liberty" or "property, without due process of law." Amend. V. No federal judge was delegated the power of "abridging" the "right of the people" to "petition" courts to "redress" any "grievances" against any agency under FOIA. Amend. I.

FOIA expressly provides for suit in federal court, and courts must "order the production of any agency records improperly withheld." 5 U.S.C. 552(a)(4)(B). So federal rules expressly and irrefutably govern judicial conduct in FOIA adjudications. *See* FED.R.CIV.P. 1:

> These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

Nothing in Rule 81 or FOIA stated or indicated that any federal rule does not govern judicial conduct in FOIA adjudications. Moreover, Congress expressly emphasized that FOIA "does not authorize withholding of" any "information or limit the availability of records" "except as specifically stated in [FOIA]." 5 U.S.C. 552(d). So "FOIA exemptions" (and all justifications for withholding) "are to be narrowly construed." *FBI v. Abramson*, 456 U.S. 615, 630 (1982).

There is no basis in law or logic for assuming, implying or pretending that FOIA authorized violating any due process under federal rules of procedure or evidence. Without any rational justification for doing so, many judges on many courts do so. Some of the most obvious violations of federal law and the Constitution violate Rule 56. For no rational reason, many judges pretend that the plain language of Rule 56 and Amendments I and V and this Court's precedent are irrelevant in adjudications under FOIA. *See*, *e.g.*, App. 24, 57.

Many DOJ attorneys and federal judges misrepresent that, notwithstanding Rule 56, agencies are entitled to a "presumption of good faith" regarding any "explanation" included in any agency (or even third

party) declaration. App. 10, 39-40 quoting *Jordan v. U.S. Dep't of Labor*, 273 F. Supp. 3d 214, 232 (D.D.C. 2017).

Many courts routinely contend or imply that every conclusory contention in any agency declaration supporting summary judgment is entitled to or accorded "a presumption of good faith" that must "be rebutted" or "overcome" by evidence presented by FOIA requesters to avoid summary judgment. *See, e.g.*, *Sephton v. FBI*, 442 F.3d 27, 29 (1st Cir. 2006); *Carney v. United States Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994); *Manivannan v. DOE*, 843 F. App'x 481, 483 (4th Cir. 2021); *Jones v. FBI*, 41 F.3d 238, 242 (6th Cir. 1994); *Mace v. EEOC*, 197 F.3d 329, 330 (8th Cir. 1999); *Smart-Tek Servs. v. United States IRS*, 829 F. App'x 224, 225 (9th Cir. 2020); *Liverman v. Office of the Inspector Gen.*, 139 F. App'x 942, 945 (10th Cir. 2005); *Evans v. Fed. Bureau of Prisons*, 445 U.S. App. D.C. 361, 367, 951 F.3d 578, 584 (D.C. Cir. 2020).

The First, Third, Fifth and Eleventh Circuits have refrained from encouraging lower courts to assert such a presumption, and the Seventh Circuit appears to limit such presumption to declarations about searches. *See*, *e.g.*, *White v. United States DOJ*, 2021 U.S. App. LEXIS 31852 at *4 (7th Cir. 2021). Even so, district court judges in such circuits often assert sweeping presumptions to justify summary judgment for agencies in FOIA cases by invoking other circuits' (especially D.C. Circuit or Second Circuit) decisions.

Lower courts also commonly violate Rule 56 by contending that summary judgment can be granted based on mere purportedly "reasonably detailed explanations" in agency declarations. *Carney*, 19 F.3d at 812. Judges in the D.C. Circuit commonly contend that "[s]ummary judgment may be granted on the basis of agency affidavits if they contain [merely] reasonable specificity of detail" and "if they are not called into question by contradictory evidence in the record or by evidence of agency bad faith." *Evans*, 951 F.3d 584.

District and circuit court judges commonly use contentions such as the foregoing to conduct sham adjudications that are a mix of bench trial and summary judgment that deny FOIA requesters copious due process of both bench trials and summary judgment.

There is no basis in law or logic for any presumption or any other contention about the law, above, favoring an agency moving for summary judgment. Such contentions clearly violate the plain language of Rule 56, this Court's precedent and Amendments I and V. Agencies cannot show entitlement to summary judgment as a matter of law by violating the plain language of the law and flouting this Court's precedent.

Under Rule 56, courts cannot "presume" any "missing facts" (including those showing good faith) "because without them" the "affidavits would not establish" the specific facts required to comply with Rule 56. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990). The agency "seeking summary judgment always bears the initial responsibility" of "identifying

those portions of" the record that "demonstrate the absence of a genuine [dispute regarding every] material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

Rule 56 "by no means authorizes trial on affidavits" resulting in judgment for an agency based on even "determinations" (much less presumptions) of agency employee "[c]redibility" or "the weighing of the evidence" favoring the agency. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Each "judge must" address "whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented." *Id*. at 252. The agency's "submissions" must be "so one-sided that" they "foreclosed [even] the possibility of the existence of certain facts from which" it "would be open" to "infer" that the agency failed to fully comply with a material FOIA provision. *Id.* at 248. No judge below (or in many district and circuit court decisions under FOIA) even pretended to comply with any of the foregoing precedent of this Court.

IV. This Petition Presents a Clean Vehicle for Decision.

No material fact could be in dispute. No judge ever even attempted or pretended to show compliance with any provision of Rule 56, FOIA or the Constitution or any of this Court's controlling precedent presented to such judges. They simply pretended controlling legal authorities could be violated or contradicted by mere contentions by lower court judges.

The facts are especially clean and straightforward regarding Rule 56 and the segregation requirement in FOIA. There is no possibility that any judge below did not know that Rule 56 constituted controlling legal authority or that they did not know the standards stated in Rule 56. *Cf*. pages 7-8, 11-14, above.

The judges below (and in many district or circuit court decisions under FOIA) clearly failed to even purport to identify even one fact regarding which any agency showed (or any judge found) the absence of genuine dispute. The judges below (and in many district or circuit court decisions under FOIA) clearly failed to address any respect in which any agency showed that any agency witness had personal knowledge of any content of Powers' email.

V. Eighth Circuit Judges Clearly Violated the Constitution and Petitioners' Rights Thereunder.

Every judge below pretended to have the power to knowingly violate Petitioners' rights under the Constitution or federal law, and no judge should be able to pretend he has any such power. Multiple provisions of this country's most important founding documents, including the Constitution and Declaration of Independence, established and confirmed that no judge had any such power.

The Founders "pledge[d]" literally their "Lives," their "Fortunes" and their "sacred Honor" (Declaration of Independence of 1776 ¶32) to "secure" our "rights"

by ensuring judges "deriv[ed only] just powers" exclusively "from the consent of the governed" (*id*. ¶2). They emphasized that "whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government." *Id*.

The Founders emphasized their determination to preclude particular "abuses and usurpations" used to subject the people to "absolute Despotism." *Id*. ¶2. They emphasized their determination to preclude particular "injuries and usurpations" that establish "absolute Tyranny" over the people. *Id*. They emphasized that such abuses and usurpations gave "the governed" the "right" and the "duty, to throw off such Government, and to provide new Guards for their future security." *Id*. The abuses they listed foreshadowed the guardians they created in and with the Constitution.

They precluded judges with the "Character" of "a Tyrant" and "unfit to be" a "Ruler of a free People." *Id*. ¶30. They ensured "Judges" (judicial decisions) were not "dependent on" the mere "Will" of any person's tyrannical impulses. *Id*. ¶11. They precluded judges' powers "foreign to our Constitution, and unacknowledged by our Laws" giving "their Acts" some "pretended" power to illegally make law. *Id*. ¶15.

They precluded judges' effectively "abolishing our most valuable Laws, and altering fundamentally the Forms of our Government." *Id*. ¶23. They precluded judges' "suspending" laws "and declaring" (or implying) "themselves invested with Power to legislate." *Id*. ¶24.

They precluded creation of "arbitrary Government" by judges imposing "absolute Rule" over the people. *Id*. ¶22. They precluded "Officers" (including judges) from "harass[ing] our People." *Id*. ¶12. They precluded "protecting" public officials with mere "mock Trial." *Id*. ¶17. They precluded efforts "for the sole Purpose of fatiguing" the people "into Compliance with" abusive "Measures." *Id*. ¶6. They precluded prosecuting or persecuting people "for pretended Offences." *Id*. ¶21.

They ensured "the Administration of Justice" with "Laws" regulating "Judiciary Powers." *Id*. ¶10. They facilitated "Laws [] necessary for the public Good." *Id*. ¶3. They required "Laws" ensuring "the Right of Representation" which would be "formidable to Tyrants." *Id*. ¶5. They ensured representative government "for opposing" with "Firmness" any "Invasions on the Rights of the People." *Id*. ¶7. They ensured "the Benefits of Trial by Jury." *Id*. ¶20. They ensured the right of "Petition[ing] for Redress" and precluded "answer[ing]" such "Petitions" with more "injury." *Id*. ¶30.

To such ends, the Founders and their families risked literally everything they had or ever could have had to establish particular protections for the "people." As profoundly as any legislator possibly could, the Framers meant every word of the Constitution below.

Every exercise of federal judicial power must further the purposes of the Constitution, the federal government and this country, itself, *i.e*., to "establish Justice" to "secure the Blessings of Liberty" to "insure domestic Tranquility" to "form a more perfect Union"

to "provide for the common defense" against tyrants and usurpers to "promote the general Welfare" of "the people" as a whole, including "posterity." U.S. Const. Preamble. The foregoing is established in the text and structure of much of the Constitution.

Every branch of government was carefully crafted to operate with the advice and consent of the people as the ultimate sovereign. Every branch of government and even the people participate in creating, staffing and operating lower federal courts to support the foregoing purposes.

The "people" did "ordain and establish this Constitution," in significant part to "establish Justice" and "secure the Blessings of Liberty." Preamble. They did so to ensure all "Citizens" are afforded "all Privileges and Immunities of Citizens." Art. IV, §2. All "powers" relevant here that were "not delegated to the United States by the Constitution" were expressly "reserved" to "the people." Amend. X.

"No person" ever may "be deprived" by any judge "of life" or any "liberty" or any "property, without due process of law." Amend. V. Such law clearly includes the "Constitution" and federal "Laws," which "shall be the supreme Law of the Land," so all "Judges" (state and federal) "shall be bound thereby" in all official conduct. Art. VI. All federal "Judges, both of the supreme and inferior Courts," may "hold their Offices" only "during good Behaviour." Art. III, §1. Their "judicial Power" (good behavior) "shall extend" no further than

permitted "under this Constitution" and federal "Laws." *Id*., §2.

"The President" must always "to the best of" his "Ability, preserve, protect and defend the Constitution." Art. II, §1. "[H]e shall take care that the Laws be faithfully executed, and shall Commission all" executive and judicial "Officers" for such purposes. *Id*., §3. All "Senators and Representatives," all "members" of "state legislatures, and all [federal or state] executive and judicial Officers," in all official conduct, "shall be bound" to "support this Constitution." Art. VI.

Congress has broad power "[t]o make all Laws which shall be necessary and proper for" executing absolutely "all" the "Powers vested by this Constitution in the [federal] Government" or "any Department or Officer thereof." Art. I, §8. Congress may "constitute Tribunals inferior to the supreme Court." *Id*. "Congress" may "ordain and establish" federal "Courts" below the "one supreme Court." Art. III, §1.

In exercising any power, however, "Congress shall make no law" (and delegate no power) "abridging" the "right of the people peaceably to assemble" and "petition the government" to "redress" any "grievances" against agencies under FOIA. Amend. I. No judge in this country should be able to believe (or pretend) he has the power to make or enforce any court rule or ruling purporting to do the opposite of what the Constitution expressly forbids or compels.

As the Constitution and FOIA acknowledge, in America, the people are not merely the governed. They

are the sovereign. They are participants in their own government, as government employees sworn to support the Constitution and much more. Everything, above, in the Constitution, the Declaration of Independence, FOIA and this Court's precedent emphasizes such fact. Specifically for such purposes, "the freedom of speech" and "the right" to "assemble" and "petition the government" exist and permeate the Constitution. Amend. I.

The "Members" of the "House" are "chosen" by "the People." Art. I, §2. "Senators" are "elected by the people." Amend. XVII. Their "Speech or Debate in either House" (on behalf of the people) is so protected that it "shall not be questioned in any other Place." Art. I, §6.

To protect the people, Congress has the power to censure and remove judges. Congress arguably has the duty to do so if this Court fails to remedy judges' knowing violations of the Constitution. All federal "Judges, both of the supreme and inferior Courts," may "hold their Offices" only "during good Behaviour." Art. III, §1. "Judgment in Cases of Impeachment" may be used for "removal from Office" of any judge. Art. I, §3. "The House of Representatives" has the "Power of Impeachment." *Id*., §2. "The Senate" has the "Power to try all Impeachments." *Id*., §3.

The people equally clearly have direct power to censure judges and limit their powers. The people have the power of juries of various types in various contexts. *See* Art. III, §2; Amend. V, VI, VII. Trials must be public

and be conducted by and before the people most directly affected. *See* Art. III, §2; Art. IV, §2; Amend. VI. The people also have "the freedom of speech" to criticize judges and judicial conduct, and they have "the right" to "assemble" and "petition the government" for "redress of grievances" regarding judges and judicial conduct. Amend. I.

No judge has the power to knowingly violate federal rules of procedure and evidence to defeat or thwart all the foregoing. But many judges have cowed and conned many people into believing that federal judges have the power to knowingly violate federal law and the Constitution. They make themselves supreme above the "one supreme Court" (Art. III), "the supreme Law of the Land" (Art. VI) and "the [sovereign] people" (Preamble).

Judges inevitably lead by example. They lead either by supporting and defending the Constitution or by violating it. So a judge's knowing violation of the Constitution is "evil" that "spreads in" many "directions." *Allentown Mack Sales and Service, Inc. v. NLRB*, 522 U.S. 359, 375 (1998). It "is hard to imagine a more violent breach of" judges' constitutional duties "than" knowingly "applying [any purported] rule of primary conduct" that was "in fact different from the rule or standard formally announced" in the Constitution. *Id*. at 374. Each judge "must be required to apply in fact the clearly understood legal standards that" the Constitution "enunciates." *Id*. at 376.

All judges must "support and defend the Constitution" against "all enemies," including "domestic" enemies. 5 U.S.C. 3331. Any judge knowingly violating such oath is "worse than solemn mockery." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 180 (1803) (Marshall, C.J.). Any judge "usurp[ing]" any power "not given" in the Constitution commits "treason to the Constitution." *United States v. Will*, 449 U.S. 200, 216, n.19 (1980) (Burger, C.J.) quoting *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) (Marshall, C.J.).

"[I]n declaring what shall be the *supreme* law of the land, the *constitution* itself is first." *Marbury*, 5 U.S. at 180. The Constitution repeatedly emphasized that judges are bound by the Constitution and federal law. *See* pages 32-35, above. "Thus, the particular phraseology of the constitution" emphatically and repeatedly "confirms" that "*courts*" always "are bound by" the Constitution and any judicial contention or conduct "repugnant to the constitution is void." *Marbury* at 180. Irrefutably, "the constitution controls any" judicial "act repugnant to it." *Id*. at 177. Any act "repugnant to the constitution" is "void." *Id*. No "act repugnant to the constitution, can become the law of the land." *Id*. at 176. Many judges below pretended otherwise.

When any judge in any matter subject to this Court's jurisdiction acts in "opposition to the constitution," this Court must "decide" the case "conformably to the constitution." *Id.* at 178. "This is" the "very essence of judicial duty" under the Constitution. *Id*. "It is emphatically" judges' "duty" to "say what the law is." *Id*. at 177. When applying any "rule," judges "must"

expressly "expound and interpret that rule." *Id*. "Article III of the Constitution establishes" judges' "duty" to "say what the law is" in "particular cases and controversies." *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1322-23 (2016).

Clearly, "the constitution" must "rule" the "government of *courts*." *Marbury*, 5 U.S. at 179-80. Every litigant "has a right to resort to the laws of his country for a remedy." *Id*. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." *Id.* at 163. Judges "cannot" maliciously "sport away" litigants' "vested rights," as the judges below did. *Id.* at 166.

Allowing such judicial misconduct clearly "would subvert the very foundation of" the Constitution. *Id*. at 178. "It would declare, that" judges may "do what is expressly forbidden" by the Constitution, giving them "a practical and real omnipotence." *Id*. at 178. Such conduct "reduces to nothing" our "greatest improvement on political institutions—a written constitution." *Id*.

VI. The Constitution Compels this Court to Ensure Lower Courts Respect this Court's Precedent.

The Constitution expressly vested the ultimate "judicial Power of the United States" in this "one supreme Court," so no "inferior Courts" that "Congress"

may "ordain and establish" have the power to flout this Court's precedent. U.S. Const. Art. III, §1. No federal "judicial Power shall extend" any further than permitted "under [the] Constitution." *Id*., §2.

This Court repeatedly has emphasized that "if the same judgment would be rendered by" another "court after" this Court "corrected its views of" controlling legal authority, then this Court's "review could amount to nothing more than an advisory opinion." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). In fact, many times many judges (and many judges in many adjudications under FOIA) below treated many of this Court's decisions as "only advisory." *Gompers v. Buck's Stove & Range Co*., 221 U.S. 418, 450 (1911). Judges in and under the Eighth Circuit *sub silentio* made themselves "judge of the validity of orders which have been issued" by this Court, and each in an "act of" willful "disobedience set them aside," flaunting his pretense that this Court is "impotent" and the federal "judicial power" in "the Constitution" is "a mere mockery." *Id*. That has happened in every case or appeal involving Petitioners' counsel in or under the Eighth Circuit.

Some might think we "run no risk of returning to the days when a President" might say that this Court "has made [its] decision; now let [this Court] enforce it!" *Bush v. Gore*, 531 U.S. 98, 158 (2000) (Breyer, J., dissenting). But there can be no doubt that many lower court judges openly flaunt that very attitude. Eighth Circuit and district court judges openly flouted copious precedent of this Court.

Only three years ago this Court emphatically reminded Eighth Circuit judges (in a case under FOIA) that they must start with "a careful examination of the ordinary meaning and structure of the law itself" and when "that examination yields a clear answer" all "judges must stop." *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019). At the same time, this Court emphasized that each "court must apply all traditional methods of interpretation" to all controlling legal authorities, and then it "must enforce the plain meaning" that "those methods uncover." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2419 (2019). This Court emphatically reiterated that each court "must exhaust all the 'traditional tools' of construction" of controlling legal authorities. *Id.* at 2415 quoting *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843, n.9 (1984). And when "the law gives an answer—if there is only one reasonable construction of" the law "then a court has no business" choosing "any other reading, no matter how much" anyone "insists it would make more sense." *Id*.

CONCLUSION

Many judges and government attorneys believe or pretend they may misrepresent facts, evidence or the law and violate the law and the Constitution. That problem plagues adjudications under FOIA and other provisions of the Administrative Procedure Act ("APA").

Many restrictions or requirements in the Constitution, the law (including FOIA, the APA the other federal statutes quoted above and procedural and evidentiary rules) and this Court's precedent designed to protect the people from government abuse are openly and deliberately violated by many judges of district and circuit courts in adjudications under FOIA. That is exactly what happened here.

This country's laws, this Court's precedent and the Constitution will mean essentially nothing to very many (people and public officials) unless this Court enforces them. This petition should be granted for the foregoing reasons and purposes.

Respectfully submitted,

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