No: 21-1365

Supreme Court, U.S.
FILED
MAR 14 2022
OFFICE OF THE CLERK

In The Supreme Court of the United States

Dr. Moulay Tidriri, Petitioner,

vs.

The Board of Regents et al., Respondents.

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

PETITION FOR WRIT OF CERTIORARI

Dr. Moulay Tidriri
P.O. Box 222
Gilbert, IA 50105
Phone: (515) 240-6236

QUESTION PRESENTED

The Board of Regents' decision to terminate Petitioner's tenured professorship relied substantially on a 2012 Post-Tenure Review Report ("PTR") of Petitioner supposedly written and signed by the six members of the 2012 Dept Tenured Faculty Review Committee ("Committee"). Did the federal circuit err by sanctioning the lower court ruling dismissing Petitioner's complaints under FRCP 12(b)(6) for failure to state a claim based on the Board of Regents' decision despite:

1. During the hearing before ALJ Greta, Prof. Irv Hentzel a member of the Committee testified under Oath that he never saw this 2012 PTR before the hearing, he never participated, voted on, or signed any review of Petitioner in 2012 and that the Committee did not conduct, prepare, write, vote on, or sign that PTR or any other review of Petitioner in 2012.

2. After the hearing, Petitioner met with other members of the Committee including Profs. Yiu Tung Poon and Zhijun Wu. They stated to him in recorded conversations that the 2012 Committee did not conduct, prepare, write, vote on, or sign any Post-Tenure Review report of Petitioner in 2012.

3. The federal circuit did not conduct any de novo review of the issues in Petitioner's appeals as required by the standard of review of motions to dismiss including under Rule 12(b)(6) for failure to state a claim by this Supreme Court's authorities.

Parties to the proceeding

The petitioner is Dr. Moulay Tidriri. Respondents in Case 19-cv-321 are: The Board of Regents, Iowa State University, Mary Vermeer Andringa, Rochelle Athey, Tony Atilano, Sherry Bates, Clifford Bergman, Dawn Bratsch-Prince, Susan Carlson, Joel Congdon, Patty Cownie, Joan Cunnick, Bob Donley, Milt Dakovitch, Jennifer Davidson, Domenico D'Allesandro, Veronica Dark, Maureen DeArmond, Eugene Deisinger, Aaron DeLashmutt, Derek Doebel, Dorothy Fowles, Steven Freeman, Nicholas Grossman, Dermot Hayes, Elizabeth Hoffman, Leslie Hogben, Carrie Jacobs, Rachael Jonhson, Elgin Johnston, Wolfgang Kliemann, Steven Leath, Howard Levine, Glenn Luecke, Larry McKibben, Roger Maddux, Michael Martin, Mark Miller, Katie Mulholand, Kathryn Overberg, Justin Peters, Yiu Tung Poon, Bruce Rastetter, Dale Ruigh, Paul Sacks, Subhash Sahai, Beate Schmittmann, Paul Tanaka, Anne VanderZanden, Dennis Vigil, Michael Whiteford, Jonathan Wickert, Zhijun Wu.

Respondents in Case 20-cv-85 are Respondents in Case 19-cv-321 in addition to: George Carroll, Jordan Esbrook, Dale Ruigh, Diane Tott.

Tidriri v. The Board of Regents et al., Nos. 19-cv-321 and 20-cv-85, U. S. District Court for the southern District of Iowa. Judgment entered Sept. 25, 2020.

Tidriri v. The Board of Regents et al., Nos. 20-3240 and 20-3265, U. S. Court of Appeals for the Eight Circuit. Judgment entered Sept. 22, 2021.

Table of Contents

Table of authorities

Cases:

Statutes:

Opinions below

The opinion of the court of appeals (App. 28) is unpublished. The orders of the district court (App. 28, 32) are not reported.

Jurisdiction

The judgment of the court of appeals was entered on Sept. 22, 2021. A petition for rehearing en banc and by the panel was denied on Dec. 13, 2021 (App. 41). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Statutes

42 U.S.C. §1981, 42 U.S.C. §1983, and 42 U.S.C. §1985 are reproduced in App. 41-44

I. STATEMENT

1. Background. During 1989-1992, Petitioner worked for ESA (the European Space Agency) and the French Dept of Defense. He initiated and developed the first successful multi-scale and multi-models methods and algorithms and applied them successfully to re-entry problems for space vehicles.

In 1992, he accepted a faculty position at Yale University. He also worked at NASA Langley Research Center. He had security clearance from all federal intelligence agencies of this country. He received the green card (permanent residency status) in the category: Extraordinary Ability. He later became a US Citizen. While at Yale university and NASA Langley, he collaborated with the IBM research center and obtained the first successful parallel computations on their experimental parallel machine SP1. He also collaborated on research projects with United Technology Research Center in Hartford, Connecticut, which built engines for fighter jets used by the Air Force and the Department of Defense.

In 1996, Prof. Max Gunzburger, the then chair of the mathematics dept at ISU (Iowa State University) met with Petitioner at Langley and offered to hire Petitioner to build a program in multi-scale research. Petitioner later accepted the offer. At the time Petitioner had an offer from the highly prestigious C.N.R.S (National Science Research Center) of France. Other universities that were interested in hiring him included Stanford university, M.I.T., Princeton, Harvard, Oxford University (England), and E.T.H. (Zurich, Switzerland).

At ISU, Petitioner had held continuously prestigious research awards from federal agencies including the Air Force Office of Research and the Department of Defense and the National Science Foundation, until the dept and the university administrations illegally terminated these awards in 2005 and 2011. Petitioner's ideas and methods have since been used by many researchers and engineers around the world. In this country, several research projects funded every year by the National Science Foundation, the Dept of Defense, and the Dept of Energy implement and use these ideas and methods.

Because of animus and resistance from several Mathematics Dept faculty towards Gunzburger and the new faculty hired by him, Gunzburger and Petitioner's plans were never implemented and Gunzburger resigned and left ISU in approximately 2002.

Defendants' wrongful conduct began in 2002 when Peters became chair. It continued through three different administrations at the dept, college, and provost level. During each of these, the wrongful conduct intensified. This explains why the list included more than 20 university defendants, in addition to the members of the Board of Regents and state lawyers.

In 2004, the 2004 Dept Tenured Faculty Review Committee, which did not include any of the faculty with known animus towards Petitioner, recommended Petitioner be considered for promotion from tenured associate to tenured full pro-

fessor. Soon after, several individual faculty with known animus towards Petitioner, began illegally interfering with the promotion process, leading to its obstruction and impeding. In 2005 resp. 2006 and 2007, Petitioner filed a complaint with Dept chair Peters resp. LAS Dean Michael Whiteford, the Faculty Senate Appeals Committee ("FSCA"), Provost Hoffman, ISU President, and the Board of Regents. In 2008, Petitioner filed a complaint with EEOC and Iowa Civil Rights Commission ("ICRC") based on national origin (he is Caucasian). Petitioner became subject to more harassment and retaliation including suspension of expenditures from his National Science Foundation ("NSF") Award and blocking of his summer salary from his NSF Award. In 2009, he filed again a complaint with EEOC and ICRC based on national origin and protected activities.

In 2011, Petitioner filed a suit against the university and these individuals, including the then Dept Chair Kliemann. The trial was held in May 2014, with judgment for the defendants. Judge Ruigh did not rule on Petitioner's June 2014 post-trial motions requesting a new trial until March 9, 2018, about four years delay. Evidence uncovered later showed Defendants relied heavily on frauds throughout the state court proceedings (16-20 below).

In Fall 2012 following his lawsuit, the university through then Dept Chair Kliemann retaliated against Petitioner by initiating disciplinary process for "unacceptable performance". The university complaint was substantially based on Kliemann's 2012 Post-Tenure Review report of Petitioner ("PTR"). Kliemann and the university claimed such a PTR was conducted, written, voted on, and signed by the 2012 Dept Tenured Faculty Review Committee ("Committee"), that consisted of D'Alessandro, Hentzel, Hogben, Maddux, Poon, and Wu.

During August 2014 hearing before ALJ Greta, the 2012 PTR was unequivocally proven to be fabricated by the unre-

butted under Oath testimony of Prof. Irv Hentzel, a member of the Committee (Petitioner's Brief in Appeal 20-3240 ("Br. 1") §1.4.1). Also, during the hearing, three witnesses with first-hand knowledge of Petitioner's performance, testified that during the review period Petitioner laid the groundwork for solving the Navier-Stokes Millennium Problem (Petitioner's Brief in Appeal 20-3265 ("Br. 2"): 1-8). Moreover, ALJ Greta participated in the corrupt activities to suppress the truth concerning Kliemann' fabricated 2012 PTR (10-11, 16-17 below). After the hearing, Petitioner met individually with other members of the Committee. They confirmed to him the Committee did not conduct, write, vote on, or sign any review of Petitioner in 2012 (Br. 1: 5-6, 8-9). Based on this fabricated PTR, the university wrongfully terminated Petitioner's tenured professorship in June 2015.

In March 2016, Petitioner filed a complaint with the EEOC and ICRC on the wrongful termination and related issues based on discriminatory and retaliatory animus due to his protected activities and national origin. EEOC resp. ICRC administratively closed his complaint on June 12 resp. June 23, 2017, and ultimately issued right-to-sue letters. In February 2017, Petitioner filed a lawsuit based on §§1983, 1985 with the federal district court. He later voluntarily dismissed it without prejudice against himself because: (1) the law firm that was interested to take the case contingent fee decided not to due to Defendants' published defamation; and (2) at that time the EEOC and ICRC were still investigating Petitioner's complaints. On October 7, 2019, Petitioner filed a lawsuit with the federal district court based on the right-to-sue letter issued to him by the ICRC on July 10, 2019 and contract violations under §1981 within 90 days from the letter issue date: Case 4:19-cv321 ("Case 1"). Thus, he filed his ICRA counts within the statute of limitations. He later amended his complaint to include §§1983,1985

claims. On March 9, 2020, he filed a second suit to include four additional defendants: Case 4:20-cv85 ("Case 2"). Greta and Ruigh were sued for prospective declaratory relief. The other defendants were sued in their official and individual capacities and for wrongful conduct that was beyond the scope of their employment and for their own benefit and personal reasons (Br. 2 §§I, III.4-8, Br. 1 §I). These are ongoing violations of federal laws. In view of the legal authorities quoted in §3 of ECF 19, the defendants can be sued in their official capacities under §1983, for injunctive, declaratory, prospective, and other equitable relief (Br. 2 §III.8). In their individual capacities, they are sued for equitable relief and legal relief.

Petitioner documented in the complaints the wrongful conduct committed by each listed defendant.[1] Defendants' wrongful conduct continued beyond June 2015. For example, Defendants used the fraudulent 2012 PTR to interfere with Petitioner's contract and prevent him from enforcing his contract rights (§1981) and obstruct and defeat the administrative and judicial proceedings, and induce and procure favorable decisions: (1) In April 2017, Petitioner learnt through communication with the federal investigator who was overseeing the EEOC investigation, Defendants relied on documents Petitioner knew were falsified including the fabricated 2012 PTR; (2) On June 23, 2017, based on Defendants supplied (fraudulent) documents, the EEOC decided to not take Petitioner's case on his behalf. Instead, it issued a right-to-sue letter; and (3) Judge Ruigh ruling on March 9, 2018 on Petitioner's June 2014 post-trial motions (about four years delay) also procured by fraud inflicted further injuries on Petitioner (Br. 2: 11-12, §§III.6.1-3, Reply associated with Brief 2 ("Reply 2"): 23-24). March 9, 2018, which

[1] The district court had original jurisdiction of these cases pursuant to 28 U.S.C. §1331 and §1367.

is within two years from the April and June 2017 overt acts above, is a date that restarted the statute of limitations for all counts based on §§1983, 1985. Since Petitioner filed his lawsuit on March 9, 2020 (March 8 was a Sunday), his filing was within the two years statute of limitations as prescribed by Iowa Code. Thus, all his counts in Cases 1 and 2 were filed timely.

On January 6, 2020, Petitioner served Defendants in Case 1 ("Defendants A") with the summons and original complaint properly under FRCP 4. On May 18, 2020 he served the amended complaint for Case 1 together with the summons and Complaint for Case 2 properly under FRCP 4 on all Defendants (Br. 1 §III.7, Reply associated with Appeal 20-3240 ("Reply 1") §§7-8, Br. 2 §III.9). The defendants in Case 2 included Defendants A and four additional defendants that are referred to "Defendants B". Defendants A did not respond timely under FRCP 15(a)(3) in Case 1 and did not respond in Case 2. On June 17, 18, and July 15 of 2020, Petitioner filed two motions for default judgment and affidavits (Br. 1 §III.8, Br. 2 §III.10). On June 5, 2020 Defendants A filed a motion to dismiss based on insufficient service well beyond the required 14 days deadlines and in Case 1 only. Only four Defendants responded in Case 2 by filing a motion to dismiss on June 22, 2020 under FRCP 12(b)(6) based primarily on ALJ Greta's proposed decision. On Sept. 25, 2020 the district court dismissed Petitioner's claims under FRCP 12(b)(6) for failure to state a claim against all defendants.

Petitioner filed timely Appeal 20-3240 resp. 20-3265 in Case 1 resp. 2. These appeals were later consolidated. In Br. 1: 12-17 and Reply 2: 13-15, and his complaints and filings with the district court, Petitioner presented a detailed testimony of Prof. Irv Hentzel, a member of the 2012 Dept Tenured Faculty Review Committee, that he gave under Oath in the administrative hearing. Hentzel's testimony showed that the 2012

Post-Tenure Review was never conducted, written, voted on, or signed by the Committee. His testimony was also unrebutted. In Br. 1: 5-6, 8-9 and Reply 2: 13, and his complaints and filings with the district court, Petitioner also documented that after the hearing, he met individually with other members of the Committee. They confirmed to him the committee did not conduct, write, vote on, or sign any review of Petitioner in 2012. In these documents, Petitioner also documented the corrupt activities by the defendants, including four state lawyers and ALJ Greta, to suppress the truth concerning the 2012 fabricated PTR and other damaging evidence and to induce and procure the administrative and judicial decisions including the district court decisions. The district court *intentionally disregarded* this direct evidence of fraud and corrupt activities: "Moreover, Petitioner's claims fail for the reasons stated in Defendants' Motion to Dismiss." (App. 30). The Appeals Court also *intentionally disregarded* this direct evidence of fraud and corrupt activities. On September 22, 2021 the Appeals Court issued its decision to affirm, without any de novo review of any issue in the appeals conflicting with this Supreme Court authorities. Thus, Defendants' fraudulent scheme has so far succeeded, and their egregious violations of federal laws continue. It is now in the hand of this Court to prevent Defendants from completing their fraudulent scheme and hence, correct the District and Circuit Courts' extreme departure from the accepted and usual judicial proceedings that do not condone the procurement of favorable judgments by fraud.

2. The University complaint was based substantially on the 2012 Post-Tenure Review Report that was unequivocally proven to be a fabricated document by the unrebutted testimony of Prof. Irv Hentzel (Br. 1: 12-17). It is indisputable that the University complaint was based substantially on Kliemann's 2012 purported Post-Tenure Review report ("PTR"). As reflected in

§5.3.4 of the Faculty Handbook, the important purpose of post-tenure review is to provide regular peer review of the tenured faculty member's "performance in accordance with all position responsibility statements in effect during the period of the review in the areas of teaching, Research/creative activities, extension/professional practice and institutional service." For these reasons, the College and the University rely heavily on the perceived importance of the 2012 Post-Tenure Review. Thus, if legitimate, it would be the most recent post-tenure review report and it would be viewed as providing some of the best evidence of Petitioner then-current performance. In the final series of questions asked to LAS Dean Schmittmann by University counsel during August 2014 hearing before ALJ Greta, Schmittmann was asked in detail about the purported findings and votes of Petitioner's peers as reported in the 2012 PTR. Emphasis was placed on the multiple unanimous 6-0 committee votes in report concluding Petitioner performed "below expectations" and special attention was given to the portion of the report stating that Prof. Irv Hentzel had found Petitioner to be deficient. (Tr. 77-80) Significantly, in his testimony Kliemann characterized the 2012 PTR as "the peer review that triggered all this." (Tr. 354, emphasis supplied) (See, also, Kliemann's confirmation that he was referring to the 2012 PTR, at Tr. 356) Kliemann emphasized the significance of the 2012 PTR as reflecting the "voice of the peers" of Petitioner stating:

> "[t]he idea is that whatever comes out of the peer review process in the department does not get translated through the Chair's voice, but gets directly to the dean." (Tr. 354)

Here, Tr. refers to the transcript of the hearing. As in the testimony of Schmittmann, Kliemann also emphasized the purported fact, reported in the 2012 PTR, of three separate unanimous 6-0 votes by the committee finding Petitioner to be performing "below expectations". (Tr. 356-357)

Of course, the main problem with the University's heavy reliance on the 2012 PTR is the record evidence shows, without contradiction, that the report is falsified, that no post-tenure review of Petitioner was conducted in 2012, and the unanimous "votes" reported in the 2012 Post-Tenure review never happened. The 2012 PTR reflects the names of the six members of the Math Dept's Tenured Faculty Review Committee in 2012. The only member of that committee who testified at the hearing in this matter was Prof. Irv Hentzel. At the hearing, Hentzel testified emphatically and repeatedly that with respect to Petitioner, the only decision reached by the post-tenure review committee in 2012, was that the committee was not in a position to conduct a review in light of the ongoing litigation and Petitioner's unwillingness to cooperate with the review while the litigation was pending (Tr. 523-524, 531, 540-541). More important, as bearing upon the reliability and credibility of Kliemann's 2012 PTR, Hentzel testified repeatedly that he had never seen the 2012 PTR (even though it purports to be authored by him along with the other members of that committee) (Tr. 521-522, 531, 536, 538, 540). Hentzel also testified, again repeatedly, that he did not cast votes as represented in the 2012 PTR, and that the matters purportedly put to a vote were not in fact voted upon by the committee (Tr. 524, 531-532, 567, 540-541). He testified, for example:

> At that time of at least the last most fresh meeting I've been with these people, he was suing the department, and we were not sure whether we were supposed to do anything before the court trial came up or not, and I - the way I remember it, they said he has not submitted anything, and we have nothing to go on. And in fact, it says that - something like that here. The teaching review does not include any teaching observations because Tidriri said I will not accept anyone to come and disrupt my teaching in my class. And we

sort of felt it was on hold until the court case was over." (Tr. 523-524)

And

"The only vote I would have voted on was that we don't do anything because of the court case coming. I - or something to that effect, that we don't know anything. How can we give an opinion?" (Tr. 524)

And

"The committee I was on, which I presume was 2012, they did not have anything to say about Tidriri because he had not submitted any - any - he didn't have a vitae. We didn't have anything." (Tr. 531)

Particularly significant in light of purported report's heavy reliance upon the discussion of student comments, Hentzel stated that he was always the committee member responsible for drafting the teaching evaluation in post-tenure review reports (Tr. 522-523) and he did not have a role in preparing the purported 2012 PTR (Tr. 523) nor did he prepare the discussion of Petitioner's teaching set forth in that document (Tr. 541). He testified the discussion of teaching in the 2012 PTR was "not written up the way I usually write them up" (Tr. 522), noting, for instance, that he did not label student comments separately as was done in the 2012 PTR (Tr. 523).

In a remarkably unwarranted disservice to a longstanding member of ISU community, ALJ Greta entered a specific finding that Prof. Hentzel's testimony was not credible. (Proposed Decision 19). In support for her opinion, she noted: "Dr Hentzel was visibly uncomfortable and fidgety, but more importantly, his testimony was inconsistent with other testimony that is accepted by this tribunal as credible." (Proposed Decision 19)

Greta added "more importantly" her observation that Hentzel's testimony is inconsistent with other testimony she accepts. The difficulty with this proposition is that *there was no other testimony* in the entire proceeding on the subject of whether the 2012 PTR was authentic, whether it was factual, whether the votes reflected were taken or whether its issuance was in fact authorized by any or all of its purported authors. Thus, if a reliability issue is presented on this issue, it rests not with Hentzel's testimony but with the patently erroneous finding of Greta, who intentionally impugned a witness' credibility based on nonexistent testimony of other witnesses.

The hearing continued into the following afternoon and no other member of the 2012 tenured faculty review committee, and no other witness of any stripe, was ever brought forward to rebut in any respect, or even to address, any aspect of Hentzel's testimony. This showed the university counsel (Carroll and DeArmond) conceded the PTR was fabricated. It also showed Carroll and DeArmond knew prior to the hearing, the 2012 PTR was fabricated. More than that, *they suppressed the truth concerning the 2012 fabricated PTR in all the administrative and judicial proceedings that followed.*

3. New evidence uncovered after the hearing showed unequivocally the 2012 Post-Tenure Review of Petitioner was never conducted. After the hearing, Petitioner met individually with other members of the 2012 Dept Tenured Faculty Review Committee and asked them in recorded conversations whether they have ever conducted any review of Petitioner in 2012. They told him they have never conducted, written, voted on, or signed any review of Petitioner in 2012 (Br. 1: 5-6, 8-9; Reply 2: 13). Thus, they confirmed Hentzel's testimony above. The transcript of parts of recorded recordings of Petitioner with two members of the Committee: Zhijun Wu and Yiu-Tung Poon, follows.

The CD containing this conversation was submitted to the federal circuit along with the other appeals documents. Hentzel's testimony and the transcript proves beyond any reasonable doubt the University's 2012 post-tenure review of Petitioner was fabricated. *The 2012 PTR was never conducted.*

"Petitioner: What I know from 2000, was it 2012, you were on the PTR Committee?

Wu: Who?

Petitioner: You.

Wu: For who?

Petitioner: No, No, No. Just the post-tenure review committee. You were, right?

Wu: Yes.

Petitioner: But you were not involved in my case.

Wu: No.

Petitioner: You were never involved in it.

Wu: No.

Petitioner: Yeah. Ok. So, so, I think what what I heard from some people there, is that you vote not to do anything because of the legal procedures, legal proceedings.

Wu: I didn't involve anything.

Petitioner: You didn't ever vote on anything?

Wu: No.

Petitioner: So, none of the committee members has ever been involved involved in that?

Wu: No.

Petitioner: Ok. Yeah. Because I thought that they just talked about the fact that there is this legal thing and therefore you can't do anything because of the legal case. So, basically that is what happened. You never actually, that post tenure review committee never actually looked at my case.

Wu: No.

Wu: But we never we were not involved. The whole committee, I don't remember actually get involved in this, or voting or something like that.

Petitioner: But you were never involved?

Wu: No.

Petitioner: Yes, yeah, OK. So, yeah, OK.

Wu: At that time, it seems like a critical. People just don't

Petitioner: don't want to touch it.

Wu: Yes.

Petitioner: That's, that is what I know. I know that. You and Hentzel and Hogben, D'Allessandro.

Wu: Yeah, yeah.

Petitioner: None of these people was involved?

Wu: No.

Petitioner: And Poon too. Poon was not involved?

Wu: No."

The following is a portion of the pertinent conversation with Y.-T. Poon.

"Petitioner: Did you vote on my case?

Poon: No. We mentioned your name but we realized that we don't have information on you, that we can't do anything. I mean.

Petitioner: Yeah. So that is what what I know from others they already, I know that your committee did not do anything because because first of all there are legal issues

Poon: and also because we don't have any information.

Petitioner: And then there, second, I refused to provide any information.

Poon: Yeah, yeah.

Petitioner: Therefore you can't evaluate somebody when they did not provide any information.

Poon: Yeah, yeah."

Prof. Hentzel's testimony in August 2014 hearing and Profs. Poon and Wu above prove that the university 2012 Post-Tenure review report was fabricated: (1) they have never signed this "report"; (2) they have never seen the "report"; (3) the purported votes recited in the report did not occur; (4) the committee did not make the decisions reflected in the report; (5) the committee actually decided it could not conduct a post-tenure review because of the pending litigation and Petitioner related refusal to participate during the pendency of the litigation.

4. The hearing testimonies of witnesses with first-hand knowledge of Petitioner performance showed the University 2012 Post-Tenure Review Report was fabricated. During the review period, Petitioner had a NSF award from the National Science Foundation with funding of up to two PhD students, he was serving as an associate editor for SIAM J. Numerical Analysis, the premier journal in the world in its field, he was a member of a panel review in Washington, D.C. for the federal Dept of Energy, and he was working on several research projects some of which were completed. Also, Petitioner's performance was judged good in all aspects of his employment by the faculty senate committee on appeals ("FSCA") in 2009 after he complained to them about Defendants retaliation and discrimination, particularly with respect to annual salary raises and Defendants blocking of Petitioner expenditures and his summer salary from his NSF award (Br. 2, §I.3).

In August 2014 hearing, the only witnesses who testified and had first-hand knowledge of Petitioner's performance were: Professors Kliemann, Hentzel, Steve Hou, and Eric Carlen (Br. 2: 1-8). Kliemann, the only university witness with first-hand knowledge, based his entire testimony on his 2012 PTR that was shown to be fabricated (§§2-3 above).

Profs. Hentzel and Hou testified that Petitioner's performance in teaching was good. Hou also testified that Petitioner's service was good. On the question of research, Hou testified that during the relevant period, Petitioner has been engaged in *very important* research that was at the time under review by a peer-reviewed journal. (Tr. 678-679) He testified that the research involved a *long-standing problem in mathematics*. (Tr. 680-681) Dr. Eric Carlen, Distinguished Prof of Mathematics at Rutgers University and editor of the Journal of Statistical Physics (Tr. 835-861), provided detailed testimony about the important research Petitioner has been conducting in the relevant period and about a paper Petitioner has submitted for publication, during the relevant period, to the Journal of Statistical Physics, a highly regarded peer-reviewed journal. (Tr. 843-851) Carlen characterized the paper as substantial and one that *laid the groundwork for solving an important problem in hydrodynamics*. (Tr. 843) He described the paper as involving a *very novel geometric method* for solving a significant *open problem* in mathematics (Tr. 848). Petitioner's work in Carlen and Hou testimonies included a paper that was published online in 2015 and in paper form in 2016 in the Journal of Statistical Physics and a second, whose publication was delayed due to Defendants' wrongful conduct and defamation, and was finally published on December 17, 2021 in the peer-reviewed international journal, the Australian Journal of Mathematical Analysis and Applications. Carlen and Hou referred to *significant open problem* because in these papers, Petitioner solved one of the seven millennium problems: the *Navier-Stokes Millennium problem*. See the book by Stanford University Prof K. Devlin: "The Millennium Problems: The Seven Greatest Unsolved Mathematical Puzzles of Our Time" published in 2002 by Basic Books. If after two years from publication in a peer reviewed journal of a solution to a Millennium problem, there is no mistake in the paper that cannot

be fixed, the solution will be officially recognized as correct by the mathematical community. Carlen, Hentzel, Hou, and Petitioner's testimonies proved again that the 2012 PTR was fraudulent. *No witness or document has been presented or produced that even calls into question these four witnesses undisputed testimonies including, three disinterested scholars. Yet, ALJ Greta completely disregarded them as not credible* (Br. 2: 1-8).

5. Defendants used the fabricated 2012 Post-Tenure Review Report to induce and procure favorable administrative decisions and courts' judgments.

Admission by Kliemann the PTR was prepared in retaliation for Petitioner lawsuit on the 2004 promotion case and his legal counsel participated in the preparation of the PTR. Kliemann admitted in his testimony in the hearing that the "Performance Summary" (which included 2012 PTR as a substantial part) *was prepared at the suggestion and direction of his legal counsel Carroll, Esbrook, and Overberg for the purposes of litigation in which he was a named defendant being sued by Petitioner* (Tr. 324, 389) In fact, Kliemann went so far as to volunteer that the "Performance Summary" was prepared because "Dr. Tidriri had decided to take ... many members of the university to court, including myself..." (Tr. 324) He further acknowledged that a "probably very strong motivation" for preparing the report was that he had been sued by Prof. Tidriri (Tr. 389) (Br. 2: 1-2; 35-36).

Defendants', including Carroll, Esbrook, and Overberg, impeding and obstruction of the university proceedings to suppress the truth concerning the fabricated PTR. In Fall 2012, Kliemann placed in Petitioner's mailbox the 2012 PTR and a so-called action plan based on this PTR. Pursuant to Faculty Handbook, Petitioner filed a timely appeal with the FSCA about the fraudulent content of Kliemann's 2012 PTR. At that time, Petitioner did

not know the 2012 Dept Tenured Faculty Review Committee did not prepare or sign this PTR. Initially, the FSCA planned to review the appeal. University documents Petitioner obtained in 2014 showed that after, *interference from Provost Wickert, Associate Provost Bratsch-Prince, and the university legal counsel, the FSCA decided to not review Petitioner's appeal* in violation of Faculty Handbook Rules and Procedures (Br. 1: 4). In October 2012 resp. November 2012, December 2012, and January 2013 Petitioner filed a timely appeal with LAS Dean resp. Provost Wickert, ISU president Leath, and the Regents. *They all refused to review the appeal* in violation of Faculty Handbook Rules and Procedures. (Br. 1: 4). This denial confirms the administration and legal counsel knowledge of the fraudulent nature of Kliemann's 2012 PTR. Based on Kliemann's fabricated 2012 PTR, LAS Dean Schmittmann filed a complaint of "unacceptable performance" against Petitioner.

Judicial interference. On May 1, 2014 ALJ Laura Lockard, who was initially assigned to oversee August 2014 hearing, sent to both counsels a notice of hearing with related scheduling order. The filing deadline of any dispositive motion was July 4, 2014. On August 12, 2014 a few days before the hearing, Lockard ruled against ISU in a partial summary judgement filed by ISU seeking to prevent Petitioner from using retaliation and discrimination for his defense (Br. 2: 8-12, Reply 2: 16-21). On the morning of August 13, 2014, Lockard was replaced by Carol Greta. Soon after, Defendants refiled the denied motion (more than a month after the deadline has past) with Greta. Greta granted it and overruled Lockard. (Br. 2: 36-37, Reply 2: 5-6) Also, ALJ Greta participated in Defendants' corrupt activities to suppress the truth concerning Kliemann's fabricated 2012 PTR and undisputed evidence and testimonies supplied by Petitioner and three disinterested scholars testifying on his behalf (10-11, 16 above).

A few months before the May 2014 trial on the 2004 promotion case, Carroll and Esbrook representing the Defendants in Petitioner's April 2011 suit, proposed to Petitioner's counsel to have Judge Ruigh replace Judge Finn to oversee the trial. Petitioner's counsel objected to this proposal. Despite this objection, Judge Finn was replaced by Judge Ruigh. A replacement of a judge at the request of Defendants and over Petitioner's objection, and only months before the trial, could not have been done appropriately without a motion and a hearing on the matter. No such motion had been advanced, nor a hearing happened in this matter. Br. 2: 31-32, 33 and Reply 2: 24 show the almost four years delay of Judge Ruigh and the Clerk of Court to act on Petitioner's June 2014 post-trial motions caused Petitioner substantial harm.

Defendants' defamation of Petitioner to suppress the truth about the PTR. Immediately after Greta issued her proposed decision induced and procured by Defendants' fabricated 2012 PTR, Counsel Carroll passed it to the Des Moines Register and the Chronicle of Higher Education, while Counsel Esbrook passed it to her local newspaper in Grinnell. Additionally, the University published it and other defamatory material on its websites in order to defame Petitioner and undermine his ability to hire competent lawyers, search for an academic position, and influence judges who may handle his lawsuits. (Br. 2: 11, 34, 38).

Defendants' use of the fabricated PTR. The above paragraphs and p. 11 above show the university legal counsel Carroll, DeArmond, Esbrook, and Overberg participated in the fabrication of the 2012 PTR, its use, and the corrupt activities to suppress the truth concerning this PTR. The defendants, including these lawyers, used this fraud to induce and procure: (1) favorable judgment in Iowa court on Petitioner's promotion case during the May 2014 trial; (2) favorable intermediate and final decisions in the university proceedings terminating Petitioner tenured professorship in June

2015, and in the EEOC/ICRC proceedings in April 2017 and on June 23, 2017; (3) favorable decision on Petitioner's June 2014 post-trial motions on March 9, 2018; and (4) District Court Sept. 25, 2020 judgment, Federal Circuit judgment on Sept. 22, 2021, and December 13, 2021 decision denying the rehearing.

Defendants' extensive use of fraud in the administrative hearing also included a fabricated second 2006 Post-Tenure review of Petitioner, a fabricated second set of annual evaluations of Petitioner for 2008-2012 by Kliemann written in July 2013, and a falsified 2009 PostTenure review of Petitioner by Kliemann. The university documents Petitioner received in 2014 show: (1) The existence of a Kliemann's 2009 Post-Tenure review of Petitioner despite the fact that Petitioner never received any Post-Tenure review in 2009 from the university administration and he was not aware of such review. Petitioner showed in Complaint in Case 2 §80 such a Post-Tenure review was falsified document; (2) There are two completely different versions of the 2006 Post-Tenure review of Petitioner. One that was given to him in Fall 2006 and a second completely different that was certainly fabricated years later after Petitioner filed complaints with the EEOC and ICRC; and (3) There were two completely different versions of each of the five so-called annual reviews for 2008-2012 of Petitioner by Kliemann when he was a dept chair. The ones Kliemann included in the University complaint and used in the administrative hearing were completely fabricated after he was no longer a chair in July 2013.

6. The District and Circuit Courts rulings are incorrect. Defendants B filed a motion to dismiss under Rule 12(b)(6) based on the Regents decision to terminate Petitioner's tenured professorship. The district court rulings (App. 28, 32) show it dismissed Petitioner's complaints against all defendants under FRCP 12(b)(6). Once

it made this erroneous decision, it was impossible for it to grant Petitioner default judgment against Defendants A or rule on any other issue in his favor. What it wrote after was only pretexts.

(1) In Br. 2: 23, 25-27 and Reply 2: 3-6, 13-21, Petitioner proved neither claim nor issue preclusion could apply to his claims; See also §II.4 below. (2) On pages 5-6, Petitioner showed he filed his lawsuits within the statute of limitations (Br. 2: 30-33, Reply 2: 2324). (3) On page 5, Petitioner showed all defendants are sued properly in their official and individual and personal capacities (Br. 2: 40, Reply 2: 24) (4) By joining Defendants B brief, Defendants A effectively claimed a defense of absolute immunity. However, except for DeArmond, Defendants A could only make a claim of qualified immunity defense. They did not do so. Moreover, the Defendants acted outside the scope of their employment and for their own benefits and personal reasons. The Defendants committed illegal acts, including but not limited to, fraud and publication of defamatory material. Thus, they are neither entitled to absolute nor qualified immunity. (Br. 2: 35-39) Also, judicial immunity does not bar Petitioner's suit for prospective declaratory relief against ALJ Greta and Judge Ruigh. (Br. 2: 39-40). (5) The only wrongful conduct related to state court proceedings in the complaints consisted of illegal acts such as fabrication and falsification of documents and their use to procure the judgment, and corrupt activities to suppress the truth about these documents; See Complaint in Case 2 §§37-41, 44-45, 51, 60-61, 66, 70-73, 80. These illegal acts are independent claims arising from conduct in underlying state court proceedings and hence cannot be barred by Rooker-Feldman; See Hageman v. Barton, 817 F. 3d 611 (8th Cir. 2016): "The doctrine is limited in scope and does not bar jurisdiction over actions alleging independent claims arising from conduct in underlying state proceedings. ... ("The doctrine does not apply to cases that raise independent issues."):" and MSK EyEs Ltd. v. Wells Fargo Bank,

Nat'l Ass'n, 546 F.3d 533, 539 (8th Cir.2008): "We have distinguished claims attacking the decision of a state court from those attacking an adverse party's actions in obtaining and enforcing that decision: If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, Rooker-Feldman does not bar jurisdiction."

On page 6 above, Petitioner showed he served the summons and complaints on all defendants properly under FRCP 4. (Br. 1 §III.7, Reply 1 §§7-8, Br. 2 §III.9). Since Defendants A did not respond in Case 2 and responded late in Case 1 at the district level, Petitioner filed a motion for default judgment in both cases. Defendants A did not file any brief in Case 2 responding to Petitioner's Brief 2 regarding default. More than 40 days after their brief was due, Defendants A filed a motion to join Defendants B brief on the basis that the District Court dismissed the complaints under FRCP 12(b)(6) for failure to state a claim against all defendants because of the Board of Regents decision. This failure to respond or respond timely, alone required the circuit to grant default against Defendants A. This proves again the circuit *intentionally disregarded the facts* and sided with Defendants.

Since Defendants B brief was not about default, Defendants A did not defend against Petitioner's Br. 2 regarding default. Therefore, by FRCP 8(b)(1) and 8(b)(6), Defendants A admitted they were served properly under FRCP 4 with the complaint in Case 2. Since they were served with the amended complaint in Case 1 and the complaint in Case 2 by the same person and at the same time, they also admitted they were served properly under FRCP 4 with the complaint in Case 1. Thus, they defaulted. The federal circuit should have ruled that Defendants A defaulted in Cases 1 and 2.

At the district level, Petitioner showed in his complaints and filings the university fabricated the 2012 PTR and used it to terminate Petitioner tenured professorship. He provided direct evidence of fabrication uncovered during the hearing and

new direct evidence uncovered after the hearing. He showed all Defendants' filings were based on fraud, fraudulent misrepresentations, and deception. (16-19 above) The district court *intentionally disregarded all* Petitioner's filings and arguments. It assumed *contrary to the evidence* that all the statements in Defendants' filings were true. It took statements from Defendants filings and used them as conclusions and stated that the reasons for such conclusions can be found in Defendants motion to dismiss: "Moreover, Petitioner's claims fail for the reasons stated in Defendants' Motion to Dismiss." (App. 30). This *extreme departure* of the district court from the accepted and usual judicial proceedings was also *sanctioned* by the appeals court (App. 28).

II. Reasons for granting the petition

1. Defendants', including state lawyers Carroll, DeArmond, Esbrook, and Overberg, use of fraud to procure the federal district and circuit courts' judgments require the Supreme Court to reverse those decisions. The University, including former Dept Chair Kliemann and their legal counsel Carroll, DeArmond, Esbrook, and Overberg, in collusion with Defendants A, developed a scheme to defraud Petitioner, the state court, administrative proceedings, EEOC, ICRC, federal district and circuit courts by relying substantially upon a 2012 Post-Tenure Review report supposedly written and signed by members of the 2012 Dept Tenured Faculty Review Committee, but actually *written by the university administration, including Kliemann and their legal counsel* (§§1.2-5 above).

Defendants' fraudulent scheme is like that in this Court landmark case quoted below. In Hazel, the case commenced by Hazel's petition for leave to file a bill of review in the District Court, that the judgment against it was obtained by fraud. See *Hazel-Atlas Co. v. Hartford Co.*, 322 US 238 (Supreme Court 1944):

"Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." ...

"No fraud is more odious than an attempt to subvert the administration of justice."

This proves that Defendants' fraud goes against the Supreme Court as well as the judicial system, and thus against the public. Therefore, Petitioner respectfully requests this Court reverse the Appeals Court judgment and grant default judgment against Defendants A and any other equitable relief the Court deems appropriate.

2. Exercise of the Supreme Court's supervisory power is necessary to correct the extreme departure of the federal circuit from the accepted and usual course of judicial proceedings. §§I.6 and II.1 above show the federal circuit erred in its rulings on every issue before it. It erred in dismissing Petitioner's complaints under FRCP 12(b)(6) for failure to state a claim.

On pages 7-11, Petitioner presented the testimony of Prof. Irv Hentzel, a member of the 2012 Dept Tenured Faculty Review Committee, that he gave under Oath in the administrative hearing showing that the 2012 Post-Tenure Review was never conducted, written, voted on, or signed by the 2012 Committee. His testimony was unrebutted. On pages 11-14, Petitioner documented that after the hearing, he met individually with other members of the 2012 Committee. They confirmed to him in recorded conversations, the 2012 Committee did not conduct, write, vote on, or sign any review of Petitioner in 2012. The transcript of pertinent parts of Petitioner's recorded conversations with Prof. Y.-T. Poon and Z. Wu, two members of the 2012 Committee, and the CD containing the corresponding audio were provided to the appeals

court. On pages 16-19, Petitioner documented the corrupt activities by the defendants, including four state lawyers and ALJ Greta, to suppress the truth concerning the 2012 fabricated PTR and other damaging evidence and to induce and procure the administrative and judicial decisions, including the district court decisions. The federal circuit *intentionally disregarded* this direct evidence of fraud and corrupt activities. It *intentionally disregarded* Defendants' egregious violations of federal laws. The federal circuit *intentionally sanctioned* the district court decision procured by fraud. Therefore, the federal circuit *departed so far* from the accepted and usual course of judicial proceedings, as to call for an *exercise of this Court's supervisory power*.

3. The federal circuit did not conduct any de novo review of any issue before it. The Supreme Court standard of review of motions to dismiss including under FRCP 12(b)(6) require the federal circuit to conduct a de novo review of each of the issues stated in Petitioner's appeals, including dismissal under FRCP 12(b)(6). See *Erickson v. Pardus*, 551 US 89 (2007): "In addition, when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint."

Estelle v. Gamble, 429 US 97 (1976): "As the Court unanimously held in *Haines v. Kerner*, 404 U. S. 519 (1972), a pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears" 'beyond doubt that the Petitioner can prove no set of facts in support of his claim which would entitle him to relief.'" Id., at 520-521, quoting *Conley v. Gibson*, 355 U. S. 41, 45-46 (1957)."

The federal circuit did not do so and its opinion conflicts with these Supreme Court authorities. §§I.6 and II.1-2 above show *it intentionally did not do so*.

4. The court of appeals decision is incorrect. On pages 11-14, Petitioner showed that after August 2014 hearing before ALJ Greta, he uncovered new direct evidence that proved again the university 2012 PTR was fabricated. Hence: (1) the issue of fraud related to Kliemann fabricated 2012 PTR was not resolved properly before ALJ Greta. Thus, the unreviewed Regents' decision should not have precluded Petitioner's §§1983, 1985. See *of Tenn. v. Elliott*, 478 US 788 (1986): "Accordingly, we hold that when a state agency "acting in a judicial capacity ... resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate," ... federal courts must give the agency's factfinding the same preclusive effect to which it would be entitled in the State's courts."

(2) Petitioner could not have raised the new evidence of fraud (obtained after the hearing) in the hearing before ALJ Greta. Thus, at least the requirements (1)-(3) of Penn v. Iowa State Bd. of Regents are not satisfied (Br. 2: 26). Hence, the unreviewed Regents' decision based on ALJ's proposed decision should not have precluded Petitioner's §§1983, 1985.

(3) In *Smith v. Updegraff*, 744 F.2d 1354 (8th Cir.1984), the 8th circuit reversed a court reviewed administrative decision based on new evidence that was not considered in the administrative proceedings. Therefore, pursuant to *Smith v. Updegraff*, the Regents' decision should not have precluded Petitioner's §§1983, 1985.

According to Okruhlik v. u. Ark (8th cir. 2005): "Where the tenure decision was following the chain of appeal, each decision along the way is not actionable. Only the final decision is the ultimate act." Howze v. Virg. (W.D. VA 1995). A candidate may only challenge the entire process once she has utilized the prescribed process of tenure review and obtained a final university decision." Okruhlik shows that

Petitioner can challenge the entire process since he has followed the prescribed process of Faculty Handbook and obtained a final decision by the Board of Regents. Okruhlik also shows that Petitioner's wrongful termination does not accrue until at least the Regents' notification of Petitioner by a letter stamp-dated June 26, 2015. (Br. 2: 19). Thus, none of the issues that were raised during this process could have been challenged in a court before June 2015. Certainly, they could not have been challenged in Petitioner's state court case on the obstruction and impeding of his 2004 promotion whose trial took place in May 2014. Thus, *Pavone v. Kirke*, 807 N.W.2d 828 (Iowa 2011) cannot be used to preclude Petitioner's claims.

Petitioner showed that ALJ Greta denied him the right to use the retaliation and discrimination that he was subjected to and directly related to the university complaint against him for his defense (17 above). It is because of retaliation and discrimination that the Defendants fabricated the 2012 PTR and used it to terminate Petitioner's tenured professorship and thereafter used it to induce and procure the administrative decisions and courts' judgments (16 above).

Because ALJ Greta denied Petitioner his right to litigate these issues of retaliation and discrimination, he could not have raised them in the hearing before her (Reply 2: 16-21). Therefore, the arguments and conclusions in (1)-(3) above also apply here with the issues of retaliation and discrimination. Hence, the unreviewed Regents' decision should not have precluded Petitioner's §§1983, 1985.

Finally, Defendants' corrupt activities (16-19 above) Particularly those beyond June 2015 could not have been raised in the August 2014 hearing or state court May 2014 trial. This proves Petitioner did not have a full and fair opportunity to litigate his case. The above, §§I.6 and II.1-3 above show the federal circuit erred in its rulings on every issue before it. It

erred in dismissing Petitioner's complaints under FRCP 12(b)(6) for failure to state a claim.

III. Conclusion

For the forgoing reasons, Petitioner respectfully requests this Court to grant a Writ of Certiorari for plenary review of his case. Alternatively, Petitioner requests this Court to grant a Writ of Certiorari for summary reversal.

Respectfully Submitted, Moulay Tidriri

APPENDIX A

U. S. Court of Appeals for the Eight Circuit

Tidriri v. The Board of Regents et al., Consolidated appeals 20-3240 and 20-3265

Judgment entered Sept. 22, 2021.

Judges: ERICKSON, GRASZ, and STRAS, Circuit Judges.

PER CURIAM.

Before this court are two appeals by Moulay Tidriri from the district courts[2] dismissals of his employment actions. After careful review of the record and the parties arguments on appeal in each case, we find no basis for reversal. See Hales v. Caseys Mktg. Co., 886 F.3d 730, 734 (8th Cir. 2018) (standard of review). Accordingly, we affirm. See 8th Cir. R. 47B. We also deny Tidriris pending motion in No. 20-3265.

APPENDIX B

U. S. District Court for the Southern District of Iowa

Tidriri v. The Board of Regents et al., No. 20-cv-85

Judgment entered Sept. 25, 2020

ORDER

The parties each have motions pending before the Court. On June 17, Plaintiff filed a Motion for Default

---

[2] The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

Judgment, ECF No. 11; Defendants responded on July I, ECF No. 17; and Plaintiff replied on July 13, ECF No. 19. On June 22, Defendants Diane L, Tott, George Carroll, Jordan Esbrook, and the Honorable Dale Ruigh filed a Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(l) and 12(b)(6), ECF No. 14; Plaintiff responded on July 9, ECF No. 18; Defendants Ruigh, Tott, Carroll, and Es brook replied on July 15, ECF No. 20; and Plaintiff filed a surreply without leave of the Court on July 22, ECF No. 22. Plaintiff filed a second Motion for Default Entry on July 17. ECF No. 21. The matters are fully submitted.

Plaintiff filed his Complaint on March 9, 2020. ECFNo. 1. In it, Plaintiff alleges Defendants discriminated and retaliated against him and conspired to discriminate against him based on his ethnicity and national origin in violation of his constitutional rights and 42 U.S.C. §§1983 and 1985. This is Plaintiff's third lawsuit filed in this Court stemming from the denial of his application for promotion from tenured assistant professor to tenured full professor at Iowa State University in 2004 and the termination of his employment in 2015. See Tidriri v. Vermeer Andringa et al., No. 4:17-cv00066 (S.D. Iowa Feb. 22, 2017); Tidriri v. Bd. of Regents et al., No. 4:19-cv-00321 (S.D. Iowa Oct. 7, 2019). Prior to bringing suit in federal.court, Plaintiff raised his claims to the University, the Board of Regents, the Iowa Civil Rights Commission, the Equal Employment Opportunity Commission, and the Iowa courts. This latest lawsuit alleges a far-reaching conspiracy involving anyone who has played even a minor role in Plaintiff's saga and adds claims against four Defendants: two lawyers who acted as counsel for Defendant University (Carroll and Esbrook), the Iowa District Court judge who presided over Tidrlri's 2014 trial (Judge Ruigh), and the Story County Clerk of Court (Tott). See generally ECF No. I.

In their Motion to Dismiss, Defendants raise numerous arguments for why Plaintiffs Complaint must fail. First, Defendants argue Plaintiff's claims are barred by res judicata. Second, Defendants contend this Court lacks subject-matter jurisdiction to enter judgment in this case under the Rooker-Feldman doctrine. Third, Defendants assert Plaintiffs claims are barred by the applicable statute of limitations. Fourth, Defendants contend Eleventh Amendment sovereign immunity applies to prevent Defendants from being sued in federal court without their consent. Finally, Defendants argue Defendants Tott, Carroll, Esbrook, and Judge Ruigh are immune from suit in this case.

This Court has wasted precious time and judicial resources on Plaintiff's cases. Although pro se plaintiffs are afforded leniency and their complaints must be construed liberally, Erickson v. Pardus, 551 U.S. 89, 94 (2007), Plaintiff's claims in this case are clearly frivolous and are therefore dismissed under Rule 12(b)(6) against all Defendants for failure to state a claim upon which relief can be granted.

Moreover, Plaintiff's claims fail for the reasons stated in Defendants' Motion to Dismiss. Plaintiff's claims relating to the denial of a promotion in 2004 and the termination of his employment in 2015 are barred by resjudicata. Pavone v. Kirke, 807 N.W.2d 828, 835 (Iowa 2011); Penn v. Iowa State Bd. of Regents, 577 N.W.2d 393, 398 (Iowa 1998). His claims relating the denial of a promotion also fail because this Court lacks subject-matter jurisdiction under the Rooker-Feldman doctrine. Rooker v. Ftd. Tr. Co., 263 U.S. 413 (1923); D.C. Court of Appeals v. Feldman, 460 U.S. 462 1983); Dodson v. Univ. of Ark.Jo, Med. Scis., 601 F.3d 750, 755 (8th Cir. 2010); Prince v. Ark. Bel. Exam 'rs in Psychol., 380 F.3d 337, 340 (8th Cir. 2004). All of his claims are barred by the applicable statute of limitations, too. See Penn v. Iowa State Bd. of Regents, 999 F.2d 305,307 (8th Cir. 1993). And Defendants Iowa State University and the

Iowa Board of Regents and by extension the individual Defendants, all of whom are being sued for actions taken in their official capacities as employees of these two state public entities-cannot be sued for monetary damages under §1983. See Will v. Mich. Dep 't of State Police, 491 U.S. 58, 71 (1989); Hafer v. Melo, 502 U.S. 21, 27 (1991) (holding that state officers sued in their official capacities assume the identity of the government that employs them).

Additionally, Plaintiff's claims against Judge Ruigh and Administrative Law Judge Greta are barred by judicial immunity. See Mireles v. Waco, 502 U.S. 9, 11-12 (1991); Pierson v. Ray, 386 U.S. 547, 554-55 (1967). Plaintiff's claims against Story County Clerk. of Court Tott are barred by absolute quasi-judicial immunity. See Hamilton v. City of Hayti, 948 F.3d 921, 928 (8th Cir. 2020). And Plaintiff's claims against Assistant Attorneys General Carroll and Esbrook are barred by absolute and prosecutorial immunity. See McConnell v. King, 42 F.3d 471,472 (8th Cir. 1994) (per curiam); Zar v. S.D. Bd. of Exam 'rs, 976 F.2d 459, 466 (8th Ch-. 1992).

Accordingly. Plaintiff's pending motions for entry of default under Rule 55(a)[3] are denied. Moreover, they fail for insufficient service of process under Rule 4. Plaintiff did not personally serve Defendant Board of Regent's Chief Executive Officer or Defendant Iowa State University's President or ensure that the individuals with whom the documents were left were authorized to accept service on either's behalf. See Fed. R. Civ. P. 40)(2); Iowa R. Civ. P. 1.305(10), (13). Nor did he attempt to serve any of the individual Defendants named in his motions for entry of default personally. See Fed. R. Civ. P. 4(e); Iowa R. Civ. P. 1.305(1).

---

[3] Plaintiff has two pending motions for entry of default under Rule 55(a). ECF Nos. 11, 21. The first he filed against all Defendants except Carroll, Bsbrook, Judge Rulgh, Tott, Carol Greta (the Administrative Law Judge who presided over Plaintiff's administrative appeals), and

Further, Plaintiff neglected to even serve Defendants with a copy of the Complaint in this case. See ECF No. 19 at 2 (acknowledging he "only included pages listing the [new] defendants and Count 30 and referred to the whole amended complaint" in Case No. 4:19-cv 00321).

For the foregoing reasons, Defendants' Motion to Dismiss (ECF No. 14) is GRANTED; Plaintiff's motions for entry of default (ECF Nos. 11, 21) are DENIED; and Plaintiff's Complaint is DISMISSED.

IT IS SO ORDERED.

Dated this 24th day of September, 2020.

s/ ROBERT W. PRATT. Judge U.S. DISTRICT COURT

U. S. District Court for the Southern District of Iowa

Tidriri v. The Board of Regents et al., No. 19-cv-321

Judgment entered on Sept. 25, 2020

ORDER

Several motions are pending before the Court. On June 5, 2020, Defendants filed their Motion to Dismiss Amended Complaint seeking dismissal pursuant to Federal Rule of Civil Procedure 12(b)(5). ECF No. 16. On June 18, Plaintiff filed a

---

Kathryn Overberg (former University counsel). ECF No. 11. In his second Motion, Plaintiff seeks an entry of default against all Defendants except Carroll, Esbrook, Tott, Judge Ruigh, and Greta, whom Defendants agree were served properly under Rule 4. ECF No. 21. In both Motions he asserts all Defendants, except for those listed above, were served on May 18 and failed to answer or otherwise respond to his Complaint, thus the Clerk of Court must enter a default. ECF Nos. 11; 21.

motion for Default Judgment, ECF No. 17, and a Motion to grant the Supplemental Pleading seeking to add claims for retaliation and conspiracy under the Iowa Whistleblower Act and the Iowa. Civil Rights Act, BCF No. 18. On June 19, Plaintiff filed his response to Defendants' Motion to Dismiss, ECFNo. 19, and Defendants replied on June 26, ECF No. 21. Defendants responded to Plaintiff's Motion for Default Judgment on July 2, ECF No. 22; Plaintiff filed a Reply on July 13, ECF No. 25, and amended his Reply on July 16, ECF No. 27. On July 17, Plaintiff filed a Motion for Default Entry. ECF No. 28. The matters are fully submitted.

I. PROCEDURAL BACKGROUND

Plaintiff filed his Complaint on October 7, 2019. ECF No. 1. This is Plaintiff's second lawsuit filed in this Court stemming from the denial of his application for promotion from tenured assistant professor to tenured full professor at Iowa State University in 2004 and the termination of his employment in 2015. See Tidriri v. Vermeer Andringa et al., No. 4:17-cv-00066 (S.D. Iowa Feb. 22, 2017). He has filed a third lawsuit adding another claim and four more defendants: See Tidrlri v. Bd. of Regents et al., No. 4:19-cv-00085 S.D. Iowa Mar. 9, 2020). Prior to bringing suit in federal court, Plaintiff raised his claims to the University, the Board of Regents, the Iowa Civil Rights Commission, the Equal Employment Opportunity Commission, and the Iowa courts. In each suit, he has alleged discrimination, retaliation, wrongful termination, and conspiracy at nearly every level, each time wrapping in more and more people who were allegedly involved in the conspiracy.

On January 27, 2020, Defendants filed a Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(5). ECF No. 5. On the last day he was able to file an amended

pleading as of right, Plaintiff filed an Amended Complaint on February 18. ECF No. 9. Defendants resisted the filing of the Amended Complaint. ECF No. 10.

On April 21, the Court entered an Order denying Defendants' Motion to Dismiss. ECF No. 12. In the Order, the C01.1rt did not, as Plaintiff asserts, approve of Plaintiff's method of service of the original Complaint. Rather, the Court simply held Plaintiff was entitled to file an Amended Complaint under Rule 15(a)(l) and restarted his deadline for serving Defendants properly in compliance with Rule 4. Id. at 2. The Court did not reach the merits of Defendants' Motion to Dismiss.

This Court has wasted precious time and judicial resources on Plaintiff's cases. Although pro se plaintiffs are afforded leniency and their complaints must be construed liberally, Erickson v. Pardus, 551 U.S. 89, 94 (2007), Plaintiffs claims in this case are clearly frivolous and are therefore dismissed under Rule 12(b)(6) against all Defendants for failure to state a claim upon which relief can be granted. Moreover, the Court grants Defendant's Motion to Dismiss the Amended Complaint for insufficient service of process and denies Plaintiff's Motion to Grant the Supplemental Pleading and motions for entry of default for the reasons stated below.

II. ANALYSIS

A. Plaintiff's Motion to Grant the Supplemental Pleading

On June 1, Plaintiff filed a Supplemental Pleading seeking to add five new counts relating to the underlying alleged wrongful conduct to his Amended Complaint. ECF No. 15. Plaintiff's new counts allege Defendants violated and conspired to violate the Iowa Whistleblower Retaliation Act and conspired to violate the Iowa Civil Rights Act. Id. On June 18,

Plaintiff filed a Motion to Grant Supplement Pleading. ECF No. 18.

Plaintiff already took advantage of his right to file one amended pleading without permission of the Court pursuant to Rule 15(a)(l) when he filed his Amended Complaint on February 18. Thus, Plaintiff needed permission of the Court or the written consent of Defendants before filing an additional amendment. See Fed. R. Civ. P. 15(a)(2). Plaintiff had neither. Although Rule l 5(a)(2) instructs courts to "freely give leave when justice so requires," Plaintiff has not even attempted to show why justice requires another amendment here.

Accordingly the Court strikes Plaintiffs Supplemental Pleading (ECF No. 15) and denies Plaintiff's Motion to Grant the Supplemental Pleading (ECF No. I 8).

B. Defendants' Motion to Dismiss

A defendant may move to dismiss a complaint for insufficient service of process under Rule 12(b)(5). "The standard of review for a 12(6)(5) motion to dismiss is the same as that used for a 12(b)(2) motion to dismiss for lack of personal jurisdiction." Disability Support All. v. Billman, No. 15-cv-3649 (JRT/SER), 2016 WL 755620, at *2 (D. Minn. Feb. 25, 2016) (citing Kammona v. Onteco Corp., 587 F. App'x 575, 577-78 (11th Cir. 2014)). "Ifa defendant is improperly served. a federal court lacks jurisdiction over the defendant." Printed Media Servs. Inc. v. Solna Web, Inc., 11 F.3d 838, 843 (8th Cir. 1993). To prevail on a motion to dismiss for insufficient service, "a plaintiff must plead 'sufficient facts to support a reasonable inference that the defendant[]'" was served properly. Creative Calling Sols; Inc. v. LF Beauty Ltd., 799 F .3d 975, 979 (8th Cir. 2015) (alteration in original) (citation omitted). When, "as here, the parties submit affidavits [and evidence] to bolster their positions on the motion, . the motion is

in substance one for summary judgment." Id. "At the motion stage, the action should not be dismissed for lack of [proper service] if the evidence. viewed in the light most favorable to [the plaintiff], is sufficient to support a conclusion that" service was proper. Id. When a case involves a prose party, the court interprets the rules concerning service of process liberally. See Haines v. Kerner, 404 U.S. 519,520 *(1972).*

Defendants argue Plaintiff's attempts at service of the Amended Complaint were insufficient as to all Defendants *and his Amended Complaint should therefore be dismissed.* Specifically, Defendants complain Plaintiff attempted to serve Defendant Iowa State University by leaving a packet of materials at the University's General Counsel's office with someone who was unauthorized to accept service instead of serving the President of the University. Defendants further contend Plaintiff insufficiently served Defendant Iowa Board of Regents by leaving a packet of materials at the Board's office rather than individually serving Its Chief Executive Officer. And, Defendants contend, Plaintiff failed to properly serve any individual Defendants by not personally serving them. Furthermore, Defendants argue Plaintiff's service of the Amended Complaint was insufficient because he did not serve a full copy of the Amended Complaint to any Defendant; instead, he served only a partial copy, which omitted pages two through sixty-six.

On May 26, Plaintiff filed a Certificate of Service dated May 21 that he asserts is proof he properly served Defendants with his Amended Complaint pursuant to Rule 4G)(2)(B) and (e)(2)(C). ECF No. 14. Plaintiff contends he served copies of the summons and Amended Complaint in this case as well as a copy of the summons and Complaint for the suit he filed on March 9, 2020, Case No. 4:20-cv-00085, on the Board of Regents and its members, in both their individual and official capacities, by delivering copies to the Board's office and

leaving them with a clerk. ECF No. 19-1, r I 7-18; see also ECF No. 14 (stating Virginia Geary "personally served the amended complaints concerning Case No. 4:19-cv00321-RP HCA ... on the Board of Regents and its members through a clerk at their office in Urbandale on May 18, 2020"). Plaintiff further contends he served Defendant University and the other University Defendants in their individual and official capacities by delivering copies of the summons and the Amended Complaint to a secretary in the office of the University's General Counsel. ECF No. 19 'If 19; see also ECF No. 14 (stating Geary "personally served the amended complaints on all of the other defendants through the university counsel by leaving them with a clerk at the university counsel's office on May 18, 2020"). Plaintiff further contends Defendants were not prejudiced by any alleged failure to serve them a full copy of the Amended Complaint because, as made clear by Defendants' filings, Defendants clearly had access to the full document. ECF No. 25 at 3.

Rule 4 provides two methods for serving a state-created governmental organization: delivering a copy of the complaint and summons to the chief executive officer or serving the complaint and summons in the manner prescribed by state law. Fed. R. Civ. P. 40)(2). Under Iowa law, service can be made "[u]pon a governmental board ... by serving its presiding officer, clerk or secretary." Iowa R. Civ. P. 1.305(13). Service can be made "[u]pon any school ... by serving its president or secretary." Id. 1.30S(10). For serving individuals, Rule 4 requires the individual be served either in accordance with state law or by "delivering a copy of the summons and of the complaint to the person individually," to an authorized agent, or to the individual's home and leaving it with an adult. Fed. R. Civ. P. 4 e). In Iowa, service upon an individual can be made

similarly "by serving the individual personally; or by serving, at the individual's [home], any person residing therein who is at least [eighteen] years old ... ; or upon the individual's spouse." Iowa R. Civ. P. 1.305(1).

The requirements for service of Defendants in this case are clear, but Plaintiff failed to follow them. It is true "the requirements of the rules of procedure should be liberally construed and that 'mere technicalities' should not stand in the way of consideration of a case on its merits." See Torres v. Oakland Scavenger Co., 487 U.S. 312,316 (1988). But Plaintiff's failures here are more than "mere technicalities." Id He did not personally serve Defendant Board of Regent's Chief Executive Officer or Defendant Iowa State University's President or ensure that the individuals with whom the documents were left were authorized to accept service on elther's behalf. And he did not even attempt to serve any of the individual Defendants personally. Plaintiff is a pro se litigant and is entitled to leniency in the prosecution of his case. But Plaintiff has not presented any evidence, or pleaded any facts, that would support the conclusion that leaving a partial copy of the Amended Complaint with two individuals who have not been shown to be authorized agents for the intended recipients is proper service under the federal or state rules. The Supreme Court has "never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." McNeil v. United States, 508 U.S. 106, 113 (1993).

Furthermore, Plaintiff's claim of actual notice does not save his case. "Actual notice does not equate to sufficient service of process. even under the liberal construction of the rules applicable to a prose plaintiff." Scott v. Md State Dep't of Labor, 673 F. App'x 299,305 (4th Cir. 2016); Adams v. AlliedSignal Gen. Aviation Avionics, 74 F.3d 882, 885 (8th Cir. 1996) ("[I]f [the defendant] was

improperly served, the district court lacked jurisdiction over that defendant whether or not it had actual notice of the lawsuit."); Wright v. City of Las Vegas, 395 F. Supp. 2d 789 800 (S.D. Iowa 2005) ("Knowledge of the lawsuit, alone, is insufficient,"). Simply put, Plaintiff has failed to meet his burden to show that Defendants were properly served.

Plaintiff's Amended Complaint must be dismissed for failure to properly serve Defendants. Accordingly, the Court grants Defendants' Motion to Dismiss.

C. Plaintiff's Motions for Entry of Default

On June 18. Plaintiff filed a Motion to Enter a Default Against the Defendants Under Rule 55(a). ECF No. 17. In this Motion, Plaintiff states he served Defendants with a copy of the Amended Complaint on May 18, but Defendants failed to timely respond under Rule 15(a)(3); therefore, they are in default. Id. On July 17, Plaintiff filed another motion for entry of default pursuant to Rule 55(a). ECF No. 28. In this Motion, Plaintiff seeks an entry of default against all Defendants in this case as to his Supplemental Pleading alleging violations of the Iowa Whistleblower and Civil Rights Acts (stricken above) and as to his Amended Complaint.[4] Id.

Federal Rule of Civil Procedure 55(a) provides the clerk of court must enter a default when a plaintiff"show[s] by affidavit or otherwise" that a defendant "has failed to plead or otherwise defend" in the lawsuit. To consider a motion for default under Rule 55(a), the clerk requires an

[4] In the same Motion, Plaintiff also asserts a default should be entered against all Defendants except for five in Case No. 4:20-cv OOOSS. ECF No. 28. The Court addresses Plaintiffs claim for entry of default in Case No. 4:20-cv-00085 in an Order filed separately in that case.

affidavit or affirmation setting forth proof of service, including the date thereof; a statement that no responsive pleading has been received within the time limit set by the Federal Rules of Civil Procedure or as fixed by the court; and a statement that the defendant against whom default is sought is not a minor, incompetent, or in military service as required by 50 u.s.c. §3931.

As determined above, Plaintiff has failed to properly serve Defendants with a copy of his Amended Complaint. Thus, he does not satisfy the requirements for entry of default under Rule 55(a), and the Court denies his motions for entry of default.

III. CONCLUSION

For the foregoing reasons, Plaintiffs Motion to Grant Supplement Pleading (ECF No. 18) and motions for entry of default (ECF Nos. 17, 28) are DENIED. Defendants' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(5) (ECF No. 5) is GRANTED. Plaintiff's Amended Complaint (ECFNo. 1) is DISMISSED.

IT IS SO ORDERED.

Dated this 24th day of September, 2020.

s/ ROBERT W. PRATT. Judge U.S. DISTRICT COURT

APPENDIX C

U. S. Court of Appeals for the Eight Circuit

Tidriri v. The Board of Regents et al., Consolidated appeals Nos. 20-3240 and 20-3265

Order denying rehearing en banc and by the panel entered on Dec. 13, 2021.

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 13, 2021

Order Entered at the Direction of the Court: Clerk, U.S. Court of Appeals, Eighth Circuit.
s/ Michael E. Gans

Appendix D

§1983

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

Columbia shall be considered to be a statute of the District of Columbia.

§1985

(2) **Obstructing justice; intimidating parties, witness, or juror**

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) **Depriving persons of rights or privileges**

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal

manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators. (R.S. 1980.)

§1981

(a) **Statement of equal rights**

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) **"Make and enforce contracts" defined**

For purposes of this section, the term make and enforce contracts includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) **Protection against impairment**

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.