21-1407 ORIGINAL

No. 21-___

IN THE

Supreme Court of the United States

Symon Mandawala.,

Petitioner,

v.

TENET et al.,

Respondents.

On Petition for a Writ of Certiorari to
the U.S Fifth Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Symon Mandawala
P.O. Box 5512
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Petitioner Pro-se

QUESTIONS PRESENTED

The Petitioner was a student at the school owned by the Baptist churches in San Antonio named Baptist School of Health Professions run by TENET and was studying Diagnostic Medical Sonography. As a matter of fact, the U.S. district judge who presided over this case is also a senior youth leader of the Baptist churches in San Antonio which in itself is a conflict of interest and thereby bias cannot be ruled out. Furthermore, the Tenet also runs hospitals owned by Baptist churches which presents a basis for making a favorable ruling for them. In addition, due process was flouted, and the rights of the petitioner were grossly violated as outlined in the following point. The district court ordered petiton not to reference materials in original complaint when making Amended complaint but striking ameded complaint by using materials in original complaint. After the dismissal of the claims in amended complaint and when the notice of appeal was filed, the District Judge appointed an attorney on behalf of the petitioner without request or prior consultation. In turn, the district court prohibited the petitioner from filing anything with the court's clerk without that attorny's approval and simply because petitioner suggested to the Baptist Counsel to move the case to a neutral venue.

1. Whether, in light to Dennis v. Sparks et al, 100 S. Ct....(1980) #79-1186, does conspiracy involves a judge in section 1983 and 1985(2) applies to unrepresented conspirator only, not apply when a private lawyer engage in a conspiracy on behalf of a client ex-pertly in judge's chamber to obtain out-of-time motion to dismiss and serving the out of time motion to dismiss to plaintiff after the case already dismissed, then fraudulently entered document "Plaintiff dismissed the case" and removed it upon Plaintiff request the court's CD record is consistent with due process? Is the private lawyer not liable as well?

2. Whether in light of 28 U.S.C. 1654 and1915 (d) a U.S. judge who is a leader of the church that its institution is being sued can preside its case. In reaction to the suggestion of moving the case to a neutral venue, prohibit the plaintiff from contacting the court. Immediately

without consulting or requesting the party appointing an attorney to police party's court filings is not enough a of conflict of interest and violate the party's Sixth Amendment right?

3. Whether amended complaint that includes parental company's name after the original complaint was served to head of subsidiary requires separate services of the process to parental company under Fed.R.Cv.P 4(h) in light of this court's opinion of "mistake of proper party identity" in Krupski v. Costa Crociere 130 S. Ct. ...(2010)?

A CORPORATE DISCLOSURE

Mr. Symon Mandawala (Petitioner) is not a corporation

PARTIES

Mr. Symon Mandawala (Petitioner)

v.

TENET, Baptist School of Health Professions, North East Baptist Hospital, Blaine Holbrook, Nick Elgies (Respondents)

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following preceedings in Texas State court and US district court for the western district of Texas:

Mandawala v. Baptist School of health Professions NO. 2018CI19490 Judge Norma Gonzalezi(Tx.Bx, Oct 8,2019)

Mandawala v. Baptist School of health Professions et al No. SA-19-CV-01415-JKP-ESC (W.D Tx Nov 23, 2020)

In re Mandawala #21-50023 (USCA5. Feb 9, 2021)

Mandawala v. Northeast Baptist Hospital., et al #50981(USCA5. Nov 23. 2021)

In line with Rule 14.1(b)(iii); Because No. SA-19-CV-01415-JKP-ESC (W.D Tx Nov 23, 2020) was partial final judgement. The district court mandatory mediation preceedings (Appx.*infra*51a-53a) proceed after USCA5 denied request for a **stay**, in judgement #21-50023 (USCA5. Feb 9, 2021) are for the remaining two claims not part of the USCA5 determination.

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The opinions is a published one. The opinions respecting Symon Mandawala v. NE Baptist Hospital, et al, No.20-50981. and the district court No. 5:19-Cv-01415

JURISDICTION

The U.S. Court of Appeals entered the Affirming Judgement on October 26, 2021 and denied En Banc on November 23, 2021. The Court has jurisdiction under 28 U.S.C. §1254(1) and or providing binding instructions §1254(2).

STATEMENT

On or around September 4, 2016, Mr Mandawala attended clinical classes at Missiontrail Baptist hospital. One of the three hospitals they considered eastside on Baptist Health System. (Appx.,*infra*90a-92a) The hospital department was understaffed, and Mr Mandawala was denied access to scan patients by staff members, in particular the primary technicians. (Appx.,*infra*72a-73a &88a) However, this was contrary to the course requirements since the course manual requires the student to scan and send images to Mrs Palmer (Class instructor) at school for the student's work to be recorded and evaluated.(see Appx.,*infra*81a-83a) However, Mr Mandawala had a good student and teacher relationship with Mrs Palmer, who, at all times was careful evaluating and following his progress. Every week Mr Mandawala was reporting to her that he was being denied access to scan the patients as required by the course module. (Appx.,*infra*72a-73a) At the time, the clinical practice was being held on Mondays, Wednesdays, and Fridays; on Tuesdays and Thursdays, Mrs Palmer was teaching Sonography topics and ultrasound physics topics. Mrs Palmer allowed students to use electronic devices for instruction purposes and constantly gave electronic files in PDF and PowerPoint.

Mrs Palmer instructed students that if the clinical site is slow (few patients or not busy), students can use that

time to read their course work. See complaint in 5:19-cv-01415-JKP-ESC Document 1 Filed 12/05/19 Page 9 of 74.

The staff shortage was the real issue that affected Mr Mandawala, who repeatedly informed the faculty and Mr Palmer of this development. seeAppx.,*infra* 88a It reached a point where Mr Mandawala was asked to conduct scans for use in the recruiting process of new staff. This was a staff duty, but it was done by a student(Petitioner). Nevertheless, Mr Mandawala provided that help in 3 candidates' scans.

To avoid taking responsibility or liability for staff issues and refunding the tuition and fees to Mr Mandawala, Dr Dree, the dean/President said using electronic devices in the clinical arena violates clinical policy. (Appx.,*infra*68a) even though no school written policy prohibiting electronic device uses from accessing notes were provided at the time Mr. Palmer was giving power point and PDF notes especially Ultrasound physics class, a hard book can not open PDF.

Eventually, the clinical coordinator moved Mr Mandawala to a non-hospital imaging centre (Baptist M&N imagine), citing the reason for staff issues to finish the remaining time. (Appx.,*infra*88a) At the end of the fourth semester, the school said the number of scans conducted by Mr Mandawala we insufficient for him to proceed to the fifth semester. This was despite the fact that the deficiencies were beyond Mr Mandalawala's responsibility as a student (staff shortages at the clinical site). He paid the school again for the love of ultrasound and desire to finish the program and retook the fourth semester, (Appx.,*infra*72a-73a) which he passed with 83% overrall. This contradicts the President's sworn his own statement in (Appx.,*infra*67a-68a) that Mr Mandawala was given a chance and failed. The statement was ex-pertly given to state judge Gonzalez in her chamber by Mr Holbrook (attorney for Baptist) and as an affidavit (Appx.,*infra*67a-68a) to state court Baptist motion to dismiss (Appx.,*infra*61a-66a) that was served after the state court already dismissed the case. (Appx.,*infra*69a-71a) also,

Case 5:19-cv-01415-JKP-ESC Document 1 Filed 12/05/19 Page 10 of 74 motion to strike to and dismiss.

Contrary to the fifth circuit opinion that Mr Mandawala fluked, avoiding graduation to sue the school. Mr Mandawala filed a small claims case to recover $9,540.00, the fees he paid for school with semester affected by staff shortage. (Appx.,*infra*88a) It was around January of 2018, which was nine months, and was two semesters before the graduation date of September 6, 2018. Mr Mandawala then moved the case to state district court roughly three months before the date of graduation. This was after a small claims judge (judge Vasquez) denied Baptist summary judgment saying the issue of shortage of staff at school is not educational malpractice but a breach of contract. Later, judge Vasquez dismissed the case for lack of jurisdiction as the calculation of damage relief was far much higher than the requested $9540.00 or general limit of $10,000.00. Case 5:19-cv-01415-JKP-ESC Document 1 Filed 12/05/19 Page 11 of 74. Judge Vasquez dismissed the case with advice to file it in the court of general jurisdiction in Bexar County District Court.

While the case was pending in state district court, On or about 30th April 2018 simultaneously, after completing the retaking class affected by staff issues at Mission trail hospital, Mr Mandawala was allocated to Northeast Baptist Hospital. The clinical site had two clinical instructors, Mr Virji Pascle and Debra Femines AKA DJ,(Appx.,*infra*93a-94a) with other technicians' non-instructors. Mr Pascle was starting work at 6 am -2 pm, Mr Mandawala's clinical class was 8 am- 4 pm, Ms Frominos was starting at 2 pm up to the late night. Mr Mandawala spent 75% of instruction time with Mr Pascle, and they built a good relationship between teacher and student. On or around 14th May, about the 3rd week of his clinical practicum at Northeast Baptist hospita Mr Pascle requested vacation time to attend his family member's wedding.

Issues started after Ms Freminos scanned the patient whose gallbladder expanded beyond recognition and she had told to have sugery 2 years earler. Mr Mandawala was

scanning last as a student. He used the technique he learned from Mrs Gjuajado, another instructor where Mr Mandawala scored 83%, to identify the Gollbladder, which Mrs Frominos's report suggested the patient scanned with MRI.

As a student, Mr Mandawala differentiated his images with Mrs Frominos by putting his initials, and the word inconclusive "possible GB extended" (GB, abbreviation of gallbladder). Since Ms Freminos couldn't identify the organ, it was huge beyond the recognizable size. Upon patient scanned with MRI, images confirmed it was gall bladder, and the surgeon used Mr. Mandawala's images on the night of patient surgery as they were detailed of organ boundaries.

The following day was the procedure to remove fluid collection made by the liver due to removing the gallbladder. This was when Mr Virjl informed Mr. Mandawala that the doctors would wait for Mandawala to be present on the procedure and call the patient "student's patient. Before the procedure, Mr Pascle congratulated Mr. Mandawala for his excellent images, and the patient herself did say thank you to Mr. Mandawala by herself. Since this point, the technicians' behaviour towards Mr. Mandawala changed.

Later, Mr Pascle left for a day; a technician named Ms. Stacy told Mr Mandawala to prepare the patient room and equipment; at that time, the patient was in the Emergency patient Room. Mr Mandawala took the ultrasound equipment to ER where the patient was and was prepared as instructed. Case 5:19-cv-01415-JKP-ESC Document 1 Filed 12/05/19 Page 13 of 74. Ms. Stacy did not come until Mr Mandawala called her using the hospital phone when the patient was difficult to scan because she was in much pain. Ms. Stacy herself even failed to produce usable images because of his reason. The patient was later assigned to MRI. On or about May 16th, after Mr Mandawala arrived at the hospital, which was also the day Mr Pascle left for vacation, Mr Pascle informed Mr. Mandawala that the faculty team requested for him to present himself at the school. During the meeting with the program director, Mrs Wanat (program director) charged him with misconduct

stating that he took the equipment to ER without informing the technician Ms. Stacy. According to the email she received from Ms Debora (Appx.,*infra*85a) The email presented Mr Mandawala's alleged misconduct to the coordinators detailing that Ms. Stacy instructed Mr Mandawala to prepare the Ultrasound room and equipment, and not the patient room in the ER where the patient was, (Appx.,*infra*85a). In his defence, Mr Mandawala provided (Appx.,*infra*93a-94a) to demonstrate that Mrs Frominos treats non-white students differently proving racial bias. She had portrayed non-white students as incompetent compared to white students. As pointed out by privious student in (Appx.,*infra*93a-94) there is sufficient evidence from non-white students proving her discrimination towards them. That not excluding Mr. Mandawala. In Appendix *infra*85a, Mrs Frominos bias towards non-white students charging them with incompetence and misconduct is presented towards Mr. Mandawala.(contrast to narative of Appx.,*infra*5a-6a with 85a)

After this incident, Ms Frominos immediately went on to E-value (online grade filing) to score Mr Mandawala a 33% even though Mr Pascle has been the one who instructed Mr. Mandawala for a much longer period compared to Mrs Frominos. See Case 5:19-cv-01415-JKP-ESC Document 1 Filed on 12/05/19 Page 14 of 74. The clinical policy for the shcool also gives students a choice of an instructor to score scannings, contrast Mrs Frominos took advantage of Mr Pascle's vacation without being chosen by Mr Mandawala to give the score. At the time, there was no proof given to Mr. Mandawala nor to wait for Mr Pascle's input on his assessment of Mr. Mandawala's scanning skills and performance.

On school record, the report had some allegations that Mr Mandawala further committed healthcare violation to the extent that there is a patient complaint received. (Appx.,*infra*89a under 'issues' second box) Although the texas dept Health and Human Service and office of Attorney General requires a patient complaint to be filed either one of their offices not with the healthcare providers. Furthermore, Mr Mandawala never saw any patient

complaint or was he ever interviewed by law enforcement, as required whenever the hospital received a patient complaint from investigative government agencies, or the person perpetrated such misconduct. Such misconduct can result in a permanent ban from any certification of healthcare occupation. Therefore, this false alleged patient complaint is being used to justify **reputation damage** to the school with the intention to remove Mr Mandawala from the program and is in his student records as of this petition is filed.

Mr Mandawala was then moved to North Central Baptist Hospital where he finished his remaining clinicals and there was no issue reported to the school and he had a 79% score. However, the 33% awarded by Mrs Frominos guaranteed that he does not get an overall pass. Mrs Frominos also suggested that Mr Mandawala is in a female favored program and he should consider doing Echocardiosonogray. Mrs Frominos references female patients denying Mr Parscle to scan them to justify her views. Although Mr Mandawala witnessed male patients denying female sonographers to scan them prostate and testicular ultrasound, therefore Mrs Frominos intentions were just aimed at prejudicing Mr. Mandawala.

At the end of the semester, the Program coordinator gave Mr Mandawala an email she received from Mrs Frominos (Appx.,*infra* 85a). The email requested that their schedule be overlap so that they cannot accommodate Mr. Mandawala because the newly hired staff want to give training. This was sorely inconsistent with the reason they provided to Mr Mandawala on May 16, 2018, about his misconduct. The email school provided to Mr Mandawala as a reason for removing him from the graduation list on the last day of the school suggested that the site has been accommodated up to three students in times of need (Appx.,*infra*85a, paragraph 3). it continued, but if the school cannot find another place to move the plaintiff who did not give them joy, they can bring Ms. Ashton back (the white female student). in which Mrs. Frominos belives overlaping of employees' schedule is caused by being black male student

The email further indicated that Ms Frominos was willing to take Ashton while training a newly hired technician contradicting to the reason for Mr. Mandawala being removed. Around early July 2018, the same semester after successfully finishing the clinical at North Central Baptist without any reports, Mr Mandawala was sent to Resoulet Hospital in New Brawsfal, Texas (eastside of Baptist Health System). However, the amended complaint did not say anything the day before Mrs Jackson ordered Mandawala to scan a patient under the carotid ultrasound of student elective topic. (Appx.,*infra*81a-83a) Mrs Jackson reported that Mr Mandawala forgot to report a phone message regarding Mrs Jackson's son's school teacher's who phoned on the hospital phone looking for her. Mr Mandawala forgot this message (Appx.,*infra*89a under 'remediation' second box, last sentence) because it was not for hospital patients and outside student clinical work scope. Since out of hospital nonpatient care-related messages are pure, **not academic issues,** this was Personal responsibility for Mrs Jackson that requires her to use her personal phone and does not require the school to get involved. But as noted on Appx.,*infra*89a the school punished Mr Mandawala as an academic issue to Mr Mandawala "notify the instructor of unscheduled department departures and phones." (Appx.,*infra*89a) under remediation column 2nd box)

Here is the incident, Mandawala answered a phone call on the hospital phone from Mrs Jackson's son's teacher, who was looking for Mrs Jackson. Mrs Jackson left the examination room while Mr Mandawala was scanning the patient. (if someone doesn't scan to the level of competent, why leaving such person alone to scan a patient if Appx., *infra* 84a, 85a, & 89a claimes of incompetant are true?) She did not announce where she went to Mr Mandawala. Mr Mandawala then forgot the phone message (see Appx.,*infra* 89aunder 'remediation' second box, last sentence) he received from Mrs Jackson's son's school until 1hour 30 mins later. Because the caller did not mention that she is a teacher but just said, "**tell Mr Jackson to call the school.**" neither saying the child was sick. After Mrs Jackson told

Mandawala that the teacher reported her child felt sick, Mandawala apologized for not remembering immediately after Mrs Jackson returned.

On or around July 30, 2018, Mrs Jackson retaliated by telling Mr Mandawala to scan images of carotid arteries ultrasound for the patient. (Appx.,*infra*84a palagraph 2) Although Carotid artery ultrasound is out of the curriculum of the Associated degree Program Mr. Mandawala was doing, it is a **student's elective topic** (Appx.,*infra*82a,). It is only mandated in other advanced programs like an advanced vascular certificate. Advanced Certificate of vascular Ultrasound in which the topic is mandated requires a student to graduate in Associated Degree the enrol in that. Because Mr Mandawala did not elect Carotid ultrasound as shown on Appx.,*infra*82a, he never learned in class with Mr Palmer, and he lacked knowledge of the topic, the images were not good. Then Mrs Jackson demanded Mr Mandawala research the topic,(Appx.,*infra*84a palagraph2) despite not part of Mr Mandawala's clinical work. (Appx.,*infra*82a)

Mr. Mandawala was unable to accommodate out-of-curriculum topics.(Appx.,*infra*82a paragraph 2 sentence2) This was because he was busy at the time as he was preparing for the final exams. (Appx.,*infra*89a, under 'issues' column 1ft box), Mr. Mandawala responded to Mrs Jackson "I don't have much time to do extra stuff outside my course work."(Appx.,*infra*82a paragraph 2) the instructor reported that as misconduct and failed him. Mr. Mandawala feels that his **academic freedom of expression** was violated when the school punished him (Appx., *infra* 89a under 'remediation' second box) over not to do non mandatory, student elective topic that as a matter of fact school itself give him a choice as Appx., *infra*82a shows. And he feels his statement *"I don't have much time to do extra stuff outside my course work,"* as astatement **expression of feelings** that is protected by his first Amendment right. For the same reason of given a choice to choose the topic the school was lacking power to uphold the punishement suggested by Mrs. Jackson because the topic is not Mandatory. The school gave both

emails(Appx.,*infra*85a,85a,88a) to Mr Mandawala on the last day of the classroom, just five days from the graduation ceremony, and removed Mr Mandawala's name from the graduating list contrary to 5th circuts fact story.

Mr Mandawala has never failed any class offered in a class by Mrs Palmer neither clinical practicals at any of the Baptist Imaging Centers nor site in westside hospitals of Baptist Health System are. All these incidents are happening to hospitals classfied to be eastside. Hospitals in eastside exchange stuff or cover each other when they are shorthanded similer to westside. This was the reason why there was no issue or misconduct reported to eaither Westside hospitals or Baptist M&S imaging centers.

At State District court

Mr Mandawala filed a petition in state district court case #2018C119490 on October 9, 2018, as Appx.,*infra*76a shows. He alleged the contractual misrepresentation, misleading, and falsifying misconduct alleged in small claims. After Mr Mandawala amended the complaint (Appx.,*infra*78a sequence P00018) filed and served to Baptist through TENET lawyers on May 10, 2019, Baptist was run out -of-time to file a response" 21-day period as required by Texas Rule Civil Procedures or motion after 60 days as required by Texas Rule of civil procedure 91(a)(3)*. The Rule requires any out-of -time-motion must be filed with leave of the court to file an out-of-time response or motion as it specifies in Texas Rules of civil procedures 63 and 166. Because Baptist ran out -of -time to either file response or a motion to dismiss, Mr Mandawala filed the plaintiff's summary judgment (Appx.,*infra*78a, sequence P00020 on account, including Civil rights Title VII and XI, on July 16, 2019. Mr Mandawala rescheduled the hearing to October 8,

* Rule 91a - Dismissal of Baseless Causes of Action, Tex. R. Civ. P. 91a ("91a.3 Time for Motion and Ruling. A motion to dismiss must be:(a) filed within 60 days after the first pleading containing the challenged cause of action is served on the movant;(b) filed at least 21 days before the motion is heard, and (c) granted or denied within 45 days after the

motion is filed.91a.4 Time for Response. Any response to the motion must be filed no later than 7 days before the date of the hearing.")

2019, after Mr Holbrook's request to reschedule the hearing of Mr Mandawala's summary judgment.

On October 1, 2019, (Appx.,*infra*77a sequence P00027) about 124 days from May 10, 2019 (Appx.,*infra*78a sequence P00018), **without leave of the court** as Texas Rules of Civil procedures 63 and 166 requires, Baptist filed the response for amended complaint and motion to dismiss Appx.,*infra*61a-68. (see Appx.,*infra*77a, sequence P00026, -27) with the president of the school's sworn statement an Affidavit (Appx.,*infra*67a-68a). Baptist served both response, motion, and school president's sworn statement after the case was dismissed to Mr Mandawala.(Appx.,*infra*69a-71a)

The October 8, 2019, hearing was scheduled (Appx.,*infra*78a, sequence T00023) for Mr Mandawala's summary judgment (Appx.,*infra*78a, sequence P00020). on the day of before the hearing begans, Mr Holbrook left the courtroom and went to the judge's chamber, where he provided judge Gonzalez with a copy of the motion to dismiss (Appx.,*infra*61a-68a) with the school's president's sworn statement (Appx.,*infra*67a-68a). The judge knew that Mr Mandawala was not served as the timeline shows (Appx.,*infra*69a -71a againt the date in *infra*74a) as well as Mr. Mandawala told Judge Gonzalez that Mr. Holbrook did not serve (Appx.,*infra*61a-68) filed on Appx.,*infra*74a) as required in local rules Appx.,*infra*79a-80a). the hearing was switched, Immediately the hearing of the Baptist motion to dismiss that was filed **6 days** before hearing, no service of process was completed (Appx.,*infra*69a-71a) as started substituting Mr Mandawala **84 days**, long waited hearing, well completed service of process of the summary judgment

The court proceeded and dismissed the lawsuit regardless of whether Mr Mandawala had no idea what was in the motion or the content of the sworn statement. See Appx.,*infra*75a

At the hearing, as of matter of fact Mr Holbrook and Mrs Elgie did not even consider hand service to Mr Mandawala the *infra*61a-68a just for caurtous purpose.

Judge Gonzalez said that if Mr Mandawala is not convinced with her ruling, he can appeal. This is the statement that has been used by the district court (Appx.,*infra* 32a)and the 5th circuit court to deny (Appx.,*infra*11a-13a) Mr Mandawala conspiracy claims. Although Petitioner was surprised with state court record having a document (Appx., *infra*77a sequence P00031) say " case dismissed byPlantiff" (Mr Mandawala). The document disappeared upon request the record CD. See Appx.,*infra*77a sequence P00032)

A day after hearing and the case was dismissed, that was when the service of process on response, motion, and a sworn statement (Appx.,*infra*61a-68a) was available to pick up at the post office as it shows on Appx., *infra* 70a respectively. Mr Mandawala learned that the ex-pert meeting was to influence the judge to hold a hearing of the out-of-time motion to dismiss despite the Baptist not serving Mr Mandawala. (Appx.,*infra*75a) **simply corruptly bypass** Tex. R. Civ. P. 63** & 91a.3, Mr Mandawala learned that the ex-pert meeting was to influence the judge to hold a hearing despite the Baptist not serving Mr Mandawala. it was also when Mr Mandawala learned that on 10/03/2019 either judge Gonzalez or Mr Holbrook filed with the clerk adocument that Mr Mandawala dismissed the case (See Appx., *infra* 77a sequence P00031). it was why judge Gonzalez challenged Mr Mandawala that he could appeal her ruling while She knowing appeals court will deny appeal as **manufacturing jurisdiction***** because of the fraudulent document of the voluntary case dismissed by the plaintiff.This is the reason made Mr Mandawala filed a complaint in federal district court 5:19-cv-01415-JKP.

**63"Parties may amend their pleadings, respond to pleadings on the file of other parties, file suggestions of death and make representative parties, and file such other pleas as they may desire by filing such pleas with the clerk at such time as not to operate as a surprise to the opposite party; provided, that any pleadings, responses or pleas offered for filing within seven days of the date of trial or thereafter, or after such time as may be ordered by the judge under Rule 166, shall be filed only after the leave of the judge is obtained, which leave shall be granted by the judge unless there is a showing that such filing will operate as a surprise to the opposite party."

*** see voluntary dismissing a case to manufacturing appallete court jurisdiction -Microsoft Corp. V. Baker 582 U.S. 457 (2017)

It was containing claims of sections 1983, 1985(2),1985(3) & 1986 in fear that if he appeals at state court of appeals. The court will deny the appeal as manufacturing appellate jurisdiction(lack of jurisdiction). Mr Mandawala's original complaint was accompanied by a state district court transcript of the hearing, the state district court's record sheet Appx.,*infra*75a-83a school's president's swornstatement (Appx.,*infra*67a-68a) supporting the state motionto dismiss and copy of services a day after the case was dismissed (Appx.,*infra*69a-71), and other exhibits (Appx.,*infra*74a,75a) to support the original complaints with its pleadings.

The district court order dated April 30th, 2020, (Appx.,*infra*49a) the court ordered that Mandawala not reference any material in the original complaint when he makes an amended complaint (*infra* 49a at palagraph 2).

Mr Mandawala did follow (comply) the order as the district instructed in its order. He served the amended complaint with additional Names, including Mr Holbrook, who initiated an ex-pert out-of-time motion to dismiss as shown on Appx.,*infra* 75a in state court with state judge Gonzalez.

Surprisingly, the district court uses the same material reference in its order (Appx.,*infra* 32a) though ordered Mr Mandawala not to reference in (Appx.,*infra* 49a) to strike out claims of conspiracy section 1983, 1985(3), 1985(3), and 1986. (Appx.,*infra*20a-37)

This was the first alert that the presiding judge had personal issues related to this case. Because the district court referenced the transcript of the state hearing that was in original complaint not in amended complaint (Appx.,*infra*49a)

After permission to appeal the dismissed claims, immediately the district court called for the conference for mandatory mediation after Mr Mandawala suggested moving the case to a neutral venue to Mrs Elgies as it shows Appx., *infra* 59a. Later Mrs Elgies filed an advisory to the

court Appx.,*infra*54a-60a), including a copy of the email suggesting a **move to a neutral venue** see *infra*59a).

Thus, immediately without consulting or being requested, the district court Judge Pulliam issued an order (Appx., *infra* 51a-53a) for mediation appointing an attorney Mr Mark Sanchez (Appx.,*infra*52a) to represent Mr Mandawala **only for Mediation** not the entire case as it says 28 U.S.C 1915(d) despite Mandawala represent himself (pro-se) at the time of order (Appx.,*infra*40a-53a) was issued. In which this was the point where the district judge could see the need for the lawyer to assist Mandawala before dismissing the claims.

The judge further ordered Mr Mandawala "*not to contact or file anything with the district court clerk without the signature*" of Mr Sanchezi.(Appx.,*infra*52a last palagraph).

Mr Mandawala discovered that District Court judge Pulliam is a Baptist Church senior leader of youth in baptist churches in San Antonio during this period. (see US senate public judicial nominee Q and A for Pulliam 2019)

The same group of Baptist Churches that owns the school and subject hospital facilities. See Appx.,*infra*90a-92a, as referred Baptist Foundation *infra*90a) Mr Mandawala also learned that Judge Pullium was a former coworker to Judge Gonzalez in the same court of Bexar County court of Texas. (see on US senate public judicial nominee questioner) Judge Pullium was a former associate attorney to the law firm owned by a Friend of Mr Holbrook's counsel for Baptist. (see on US senate public judicial nominee questioner) That brought a suggestion by followers of this case(Appx.,*infra*59a) to move the case to a neutral venue and was communicated to the defence attorney. (Appx.,*infra*59a)

Mr Mandawala requested the judge to recuse himself (see Dist.dkt76), and Judge Pulliam denied the recusal (see Dist.dkt77) and the 5th Circuit panel denied to order the district judge to step aside confirmed Upon appeal and requesting the 5th circuit order to remove the judge from the case, the 5th circuit denied.(Appx.,*infra*18a) saying Mr

Mandawala regarding Judge Pulliam is a frivolous position.see Appx.,*infra*15a palagraph 2&17a

Thus, this petition arises and was presented to this court for review of the claims because the 5th circuit just copy and paste judge Pulliams order Appx., *infra*20a-37a. The 5th circuit also created a new pleading requirement for federal courts in Texa "federal deformation pleading." in an effort to avoid **Texas defarmation per-se** type which does not requires publication when the statement itself is for reputation damage (as exactly as Appx., *infra*89a "patient complaints received regarding his rough treatment.") this is splitting itself from other circuits and this court which analyse deformation pleading based on Fed. R.Cv.P 8 and individual state requirement.

The 5th circuit Panel said said a private attorney who corruptly conspired with a state judge on behalf of the client is immune from claims of section 1983, as because they are not state actors. It does contradict and somehow overrule this court precedent in Dennis v. Sparks et al, 100 S. Ct.....(1980). The Panel also overrule the 5th Circuit's precedent that holds private attorneys liable to conspiracy under section 1985(3) that involves fraudulent activities and crimes (seeDussouy v. Gulf Coast Investment Corp.,660 F.2d 594, 603 (5th Cir. 1981)

REASONS FOR GRANTING THE WRIT

This is as straightforward a certiorari candidate as a civil rights case that has significance to the U.S constitution can be. It presents a new crisis of civil rights law. This court has repeatedly been saying that being a member of a particular religion or congregation is not enough reason for the judge to recuse. That is not what the petition asks or asks the 5th circuit court. There is a host of questionable orders raising a question about Judge Pulliam having a personal interest in the case and, for instance, appointing a counsel to police a party's court filing in reaction to just a suggestion of moving the case to another venue? It takes a neutral judge to read the party's reasons for moving the case to another court, not only mere suggestion without court filing.

I. THE 5TH CIRCUIT COURT BY SAYING CONSPARANCY TO INFLUENCING A STATE JUDGE TO HOLD HEARING OF UNSERVED MOTION TO DISMISS IS A NORMAL JOB FOR PRIVATE LAWYER AND NON STATE ACTORS NOT TO BE LIABILITY OF SECTION 1983 CONFLICTS WITH THIS COURT'S PRECEDENT IN DENNIS V. SPARKS ET AL, 100 S. Ct.....(1980) #79-1186 AND ITS OWN PRECEDENT OF DUSSOUY V. GULF COAST INVESTMENT CORP 660 F.2d 594, 603 (5th Cir. 1981) HOLDING THAT PRIVATE ATTORNEY ENGANGED IN CONSPERANCE INVOLVES FRAUDULENT OR CRIME IS LIABLE TO CLAIMS OF SECTION 1985(3)

Petitioner is asking this court for clarification of Dennis v. Sparks et al, 100 S. Ct ... (1980) if a conspiracy to deprive one individual right involving a judge are only unrepresented conspirators are liable under Dennis *ld* interpretation. Although the 5th circuit was a champion of Dennis *ld* opinion at the time. This time it holds a different suggestion that if the conspiracy activities are engaged by a private litigation lawyer are both the lawyer and client are not liable because the lawyer is deemed doing his representing job and non state actor.

This case has come with the defendant going into the state judge chamber to corruptly influence the judge to replace(Appx.,*infra*75a) the court clerk's scheduled hearing of Mr Mandawala's motion for summary with a motion to dismiss (Appx.,*infra*61a-66a) that has an unserved affidavit to support it (Appx., *infra*67a-68a). The judge saw the Affidavit (Appx.,*infra*67a-68a), but Mr Mandawala did not see it until after the case was dismissed as it shows on Appx., *infra*70a. As corrupt as it sounds, upon granting a motion to dismiss(Appx.,*infra*75a), the judge challenged Mr Mandawala to appeal her decision, knowingly relied on filing a fraudulent document as it shows on Appx.,*infra*77a sequence #P00031 that blocks the appeals court's jurisdiction. This document raised the impression that Mr Mandawala decided to dismiss the case voluntarily as a stated sequence P00031 description shows "case closed by the plaintiff".see *infra*77a creating the impression of manufacturing appalled jurisdiction. see Microsoft Corp. V.

Baker 582 U.S. 457 (2017) That is what the 5th circuit Panel calls regular court proceedings.

The district court, petitioner's original complaint in district court had dismissed claims of Section 1983, 1985(2),1985(3) with supporting documents as stated above proving that state court judge and Baptist attorneys corruptly conducted hearing of the out-of-time motion to dismiss that was not served to the petitioner at the time of the hearing. The district judge ordered the petitioner not to use the pleadings in the original complaint (Appx.,*infra*49a) that contains those supporting materials but struck Section 1983, 1985(2),1985(3) with the same materials in the original complaint(Appx.,*infra*32a) despite the petitioner compliance with the order not to use the material.

The Dennis *Id* 5th circuit court panel rejected that a party ex-partly and corruptly obtained injunction is not liable for section 1983 because the other party involved was a judge enjoying the judicial immunity. This time the panel is holding the same view in similer situation (Appx., *infra*12a). At that time, the Dennis *Id* 5th Circuit en-banc court overruled the panel the dismissal of a conspiracy involving a private party and judge; *held that a private party who corruptly conspires with a state judge in formal proceedings is acting under the color of that state law liable to section 1983.* see Sparks v. Duval County Ranch Corp Inc. 604 F.2d 976 (5th Cir. 1979) upon granting certiorari, this court Affirmed Dennis *Id* 5th Circuit en banc overruling the panel and the district judge and went further by saying, "*the action against private parties accused of conspiring with the judge is not subject to dismissal. A private person, jointly* [(engaged) not only contractors and employees of the state] *with state officials in a challenged action, are acting "under color" of the state law for the purpose of section 1983"* Dennis v. Sparks 449 U.S. 24 (1980)

The 5th Circuit panel of #20-50981 and the district court are reversing the Dennis *Id* rulling and conflict this co when they Mr Holbrook corruptly initiated out of time motion to dismiss that was not served yet during its hearing is a normal duty of the lawyer representation and are not state actors.see Appx.,*infra*12a. Does such representation

normal by fraudulently filling documents to make Mr Mandawala appeal impossible as it raise an impression of Manufacturing appallet court jurisdiction? The 5th Circuit panel conflicted itself to its own precedent that put private lawyers liable to any fraudulent conspiracy activities. see Dussouy v. Gulf Coast Investment Corp.,660 F.2d 594, 603 (5th Cir. 1981). *Held that private attorneys are liable to section1985(3) when participating in a conspiracy involving fraud and crimes.* The 5th Circuit panel reversed this hold precedent when it simply says private attornies are not liable to represent and participate in the fraudulent conspiracy with the state judge "normal duty of private attorney."(Appx., *infra* 12a) This is where this court needs to address if whether to uphold the 5th Circuit panel in this case #20-50981 as an overrule of *Dussouy v. Gulf Coast Investment Corp.,Id* and Dennis *Id* or overrule the 5th circuit court panel.(Appx., *infra*1a-19a)

Because of reasoning that private attorney engages in fraudulent court activities is his duty as the district put on and affirmed by 5th circuit panel denying en-banc.(Appx., *infra*19a) This court has the discretion to clarify so that the public should know that conspiracy to deprive ones right to the fair judicial process is exempted as long as conspirator has a lawyer with state bar number, Rules will not apply court clerks can file any fraudulant documents no questions ask.

II. IN LIGHT OF 28 U.S.C. 1654 AND 1915(D), A U.S. DISTRICT JUDGE WHO IS A LEADER OF THE CHURCH THAT ITS INSTITUTION IS A DEFENDANT CAN HE PRESIDE ITS CASE? IN REACTION TO THE SUGGESTION OF MOVING THE CASE TO A NEUTRAL VENUE, IMMEDIATELY WITHOUT CONSULTING OR REQUESTING THE PARTY APPOINTING AN ATTORNEY TO POLICE PARTY'S COURT FILLINGS, IS NOT ENOUGH SIGN OF CONFLICT OF INTEREST AND VIOLATE THAT PARTIE'S SIXTH AMENDMENT, RIGHT?

The district court Judge Pulliam has the discretion to appoint an attorney in two scenarios 1, upon the party request, or 2, upon proven the party is incapacity situation to continue representing himself. This case is not in a

situation where Judge Pullium can claim that Mr Mandawala is reportedly unable to represent himself for things like long run illness or mental incapacity. Judge Pulliam tried his best to say he was appointing Mr Sanchezi in good faith, but taking that as true, why furthering by prohibiting Mr. Mandawala to not file anything without Mr Sanchezi's signature?see Appx., *infra*52a. The only available 2 reasons are the fact that he is trying to help his church's institution to minimize the relief from the damages of this case. Another reason is he is *using the court to benefit his friends* against §455. it is very clear *infra*52a, no reason to appoint a counsel only for mediation so that he can charge the expense. Never the less, it could have been **appropriate** for Judge Pulliam **requires** Mr Mandawala to **respond directly to an inquiry concerning what effort** he has made to secure private counsel.

Exercising his judicial discretion, Judge Pullium should then determine whether this is **an exceptional case** in which the appointment of counsel is appropriate. It has shown that it was not an exception case considering that Judge Pulliam allowed Mr Mandawala to proceed as pro-se when he issued orders Appx., *infra*20a-37a and dismiss claims in his amended complaint with *infra*40a-50a. before Mandawala did first stages of the case as saying in section 1915(d)). Likewise 28U.S.C.1915(d), the criminal code18U.S.C§3006A(c.) holds the same language "...counsel appointed shall be represented at every stage of the preceedings.." words omitted. The Appx., *infra* 52a) is undeniable main reason for appointing Mr. Sanchezi.

Scenarios 1. Although "[n]o comprehensive definition of exceptional circumstances is practical," *Branch v. Cole, supra*, 686 F.2d at 266 (5th Cir.1982) several factors should be considered to a **request** for appointed counsel (the Dist dkt doesn't show petitioner requested a counse). These include: (1) the type and complexity of the case, *Branch v. Cole, supra*, 686 F.2d at 266; *Maclin v. Freake*, 650 F.2d 885, 888 (7th Cir. 1981); (2) whether the indigent is **capable of adequately presenting his case**, *Branch v. Cole, supra*, 686 F.2d at 266; *Maclin v. Freake, supra*, 650 F.2d at 888; *Drone v. Hutto*, 565 F.2d 543, 544 (8th Cir. 1977); (Mr

Mandawala already did it by himself) (3) whether the indigent is **in a position to investigate the case adequately**, *Maclin v. Freake, supra*, 650 F.2d at 888; *White v. Walsh*, 649 F.2d 560, 563 (8th Cir. 1981); *Shields v. Jackson*, 570 F.2d 284, 285-86 (8th Cir. 1978) (per curiam); *Peterson v. Nadler*, 452 F.2d 754 (5th Cir. 1971); it is questionable that Judge Pulliam new that Mr Mandawala or the case requires an attorney but going further allow the case to be dismissed in other claims then upon realizing Mr Mandawala is confident to appeal then it wss time to push the case to mandetory mediation and find an attorney to prohibit Mr Mandawala from filling any motion to move the case? and (4) whether **the evidence will consist in large part of conflicting testimony to require skill in the presentation of evidence and cross examination**, *Maclin v. Freake, supra*, 650 F.2d at 888; *Manning v. Lockhart*, 623 F.2d 536 540 (8th Cir. 1980). This requirement is specifically supported by "**the officer shall...perform all duties in such case**" section 1915(d), which is not consistent with appointing an attorney for mediation only. Thus, where judge Pulliam's get cought and as the timing of appointed Mr Sanchezi to represent Mr Mandawala with mediation as in good faith doesn't add up with this requirement.

Scenarios 2. Judge Pulliam should have considered **whether the appointment of counsel would be a service** to Mandawala and, perhaps, the court and defendant as well by sharpening the **issues in the case**, shaping **the examination of witnesses**, and thus shortening **the trial** and assisting in a just determination. *See Knighton v. Watkins*, 616 F.2d 795, 799 (5th Cir. 1980). This requires Judge Pulliam to demontrate that Mr. Mandawala is incapacity to represent himself (eg. critical illness) and the court has no otherway than appointing Mr Sanchezi to assist with the case.

Otherwise, Its just brightly appears that judge Pulliam has decided to advocate and initiate the defence of his church's institution and friends that he can not fairly judge the case. But Mr Mandawala deserves "[o]ne of the fundamental rights of a litigant under our judicial system is

that he is entitled to a fair trial in a fair tribunal and that fairness requires an absence of actual bias or prejudice in the trial of the case." *United States v. Wade*, 931 F.2d 300, 304 (5th Cir.1991) (quoting *United States v. Brown*, 539 F.2d 467, 469 (5th Cir. 1976)), *cert. denied*, 502 U.S. 888, 112 S.Ct. 247, 116 L.Ed.2d 202 (1991);

Section 1985 jurisdiction can not go mediation under district court mandatory mediation process because it has specified to be in formal district court jurisdiction 28 U.S.C. 1343 (a)(1)&(2). The judge dismiss section 1985 claims as explain below so he can order for mediation to help his church. However, we question the district judges integrity on this mediation order at that juncture because as noted on Appx., *infra*61a-68a & 72a-73a. The president of the school denied Mr. Mandawala's efforts having resolution without legal course before Mr. Mandawala goes to small claims court. See *infra*72a-73a

Thus, Prohibiting Mr Mandawala from appearing without Mr Sanchezi's signature comes to make sure he does not recieve a fair preceeding against the judge's church institution and contradicts the 28 U.S.C. 1654. It as well violates Mr Mandawala's constitutional right under the Sixth Amendment that allows a citizen of this country to appear in court with or without an attorney. Leaving the case to proceed with judge Pulliam whose church's school as a defendant with his appearance of bias is a denial of justice to Mr Mandawala. Dismissing claims then push to mediation own its own is a prove or appearence of unfair view. He was suppose to send the case to mediation before treming the case so that if the mediation fails he has to look at it. The court should quash any thing from that mediation is a fruit of bias to reduce the relief petitioner fully deserved.

A. The District Court Ordered (Appx., *infra* 49a) Petitioner Not Use The Anything In Original Complaint when he makes amendments of Pleadings, But The District Court (Appx., *infra* 32a) And 5th Circuit Affirmed By Reference Pleadings And Material In Original Complaint To Strike, Dismissing Claims

When a complaint is filed with affidavits and supporting material, all becomes one complaint. The district court has

the discretion to highlight what the Federal Rules of civil procedures require to litigants, especially unrepresented parties. It is **not** the court's discretion to determine which facts or materials should be used to support the complaint or response to the complaint. That is **beyond the court's discretion, it's an initiation of defences or allegations**. Judge Pulliam order Mr. Mandawala not to reference any material or pleadings in the original complaint (Appx., *infra*49a). But as noted in the following order (Appx., *infra*32a first palagraph) Judge Pulliam is pointing out the pleadings in the original complaint(Dist.dkt 1), especially the transcript of the state hearing of the out-of-time motion to dismiss. The transcrit was entirely pleaded in the original complaint and left out in amended complaint (Dist.dkt22) because Judge Pullium ordered Mr Mandawala not to reference the materials of the original complaint.

Thus,undeniably the district court waiving its discreation to deny petitioners amended complaint (Dist.dkt 22). The district court order Appx., *infra* 49a is not talking about cour rules it talks about pleading which is not a responsibility of the judge which fact he loves to put in the complaint.

At first, this was not recognized that Judge Pulliam is initiating the defence until he reacted to the suggestion of moving the case to a neutral venue. It confirmes that these two objectives he demonstrated he could not give a fair judgment other than providing his bias to church's institution with a railway to survival in this case.

If judge Pulliam willful to appoint an attorney in a violation of 28 U.S.C 1915(d) and prohibit Mr Mandawala from contacting the court violating 28 U.S.C 1654, ordering Petitioner not to reference anything in the original complaint was a tactic game to help valuable defence. Thus, he cannot proceed with the case as he demonstrates his undisputed clearery appeared bias towards his churches school and making Mr. Sanchezi to benefit on this case. Where was Mr. Sanchezi needs before *infra* 40a-50a?

III. THE 5TH CIRCUIT COURT IS SPRITING ITSELF FROM OTHER CIRCUIT AND THIS COURT ON PARENTAL COOPERATION NEED SEPARATE SERVICE OF PROCESS WHEN ORIGINAL COMPLAINT SERVED DIRECT TO SENIOR OFFICER AT SUBSIDIARY PURSUING TO FEDERAL RULES OF PROCEDURES 4 (H)(1)(B), & 15. TENET IMPROPERLY DISMISSED UNDER 'MISTAKE OF PROPER PARTY IDENTITY IN LIGHT OF KRUPSKI V. COSTA CROCIERE 130 S. Ct …. (2010)

The original complaint was served to the school president, who manages the school as a senior officer of Tenet (Appx., *infra*91a) accordingly under Fed.R.Cv.P 4 (h)(1)(b) not although the 5th Circuit Appx., *infra*14a is trying to contradicts *infra*91a. The district court record entered that defendant is represented by Mr Blain Holbrook and Mrs Nick Elgie. An amended complaint (Dist.dkt22) was served to the counsel representing all respondents, including her name written on the envelope "attention to Mrs. Elgies". Despite that, the counsel has denied that the Baptist school of health is not a Tenet business (see *infra*20a-37a&68a) which is contradicted by *infra90a-92a* says the opposite to those claims. Furthermore, the school's president in (Appx.,*infra* 68a) he denied that Mrs Frominos and Mrs Jackson are not part of Baptist school or agent but as shown *infra*90a&91a respectively contradict this statement because Mrs Frominos is an employee of Tenet at Northeast Baptist Hospital and Mrs Jackson is a Tenet employee at Resolute Hospital. The President himself is an employee of Tenet at the school. seeAppx.,*infra*91a

For that reason on its own, it makes Tenet a defendant and improperly dismissed contradicts Fed.R.Cv.P 4 (h)(1)(B) "by delivering a copy of the summons and of the complaint to an officer, a managing ....." Therefore; 1, the school president is a right officer to recieve the process for Tenet. 2, because the complaint was an amended complaint and was served to the counsel on record, there is no need to show the cause. We see the district court order (Appx.,*infra*36a&39a) to show the cause as unnecessary and just harassing Mr Mandawala to find the reason for removing parties.

So many cases are going on have a parental corporation becoming a defendant for the action of its subsidiary, partners or association.

The good relevant senario is the ongoing 2nd Circuit court case of the Republic of Ecuador v. Chevron Corporation, Texaco Petroleum 638 F.3d 384 (2011); When Texaco (defendant) suit assurance happened in 1993, Chevron was not a parental corporation of Texaco. Years later, Texaco did not fulfil its obligation based on the arbitration agreement. Later, Texaco was acquired by Chevron Corporation, which is currently arguing that bribing court officials were involved during the settlement. Neither Chevron nor the district court did not ask the Republic of Ecuador to show the cause why Chevron is a defendant. Immediately upon acquisition of Texaco, Chevron became liable and different as a parental corporation facing foreign judgment enforcement in US district court. Similarly, in this Mr Mandawala's case, Tenet is a parental corporation of both Baptist School of health professions (Appx.,*infra*90a-92a), become automatically liable to relevant claims without the need to show cause to why Tenet is a defendant.

Another primary reason the court should grant this petition for the purpose of uniform ruling. The lower courts opinion on dismissing Tenet is the "**mistake of proper party identity.**" the reasoning that parental corporation dismmissed for mistakenly unnamed in or served at the leading officer of associated business place was rejected already unanimously.

*Infra*20a-37a reasoning and objections set forth by district court raised by Tenet counsel in pretrial conference questioning Tenet as a defendant, affirmed by 5th Circuit panel conflict with this court's opinion. This court unanimously rejected mistake of proper identity does not mean the party did not mean to sue the party and should not be subject of dismissal in Krupski v. Costa Crociere 130 S. Ct. (2010) the court said;

> **"That a plaintiff knows of a party's existence does not preclude her from making a mistake concerning that party's identity. A plaintiff may know that a**

prospective defendant—call him party A—exists, while erroneously believing him to have the status of party B. Similarly, a plaintiff may know generally what party A does while misunderstanding the roles that party A and party B played in the "conduct, transaction, or occurrence" giving rise to her claim. If the plaintiff sues party B instead of party A under these circumstances, she has made a "mistake concerning the proper party's identity" notwithstanding her knowledge of the existence of both parties." by Justice Sotomayo (2010)

Because this court rejected what the Tenet objected, and the district court raised it suo ponty. Both the Panel and the district court conflicted themselves Krupski v. Costa Crociere 130 S. Ct. (2010) it is an act of harassing Mr Mandawala to show any cause by the lower courts subjected to this court reversal that judgement.

(a) Wheather Defendant's Rule 12(b) motion to dismiss amended complaint tolls/stays a time for responsive pleading or replaces it?

For the **Purpose of binding instruction** 28 U.S.C §1254(2) granting this petition will reduce time and court expenses and speed termination of this case.

The District court's Docket shows 2 motion to dismiss (Dist. Dkt6 and23) original complaint Dist. Dkt1 and one for Amended complaint Dist.dkt22. Either motion did not raised person jurisdiction objections but subsquently raised in pretrial scheduling (Dist.dkt 27) Is this consistence with Fed.R.Cv.P. 12(g)(2)&(h)(2),(3)? as well as if motion(Dist.dkt23) under rule 12(b)(6) to dismiss amended complaint (Dist.dkt22) doe it tolls timeline (14 days) of filing responsive pleading (Answer) in [Dist.dkt39]? Petitioner believe the motion to dismiss amended complaint is not an answer to his pleadings. 10th Circuit (motion to dismiss not responsive pleading for the purpose of Fed.R.Cv. R. 15) see Hanraty v Ostertag, 470 F.2d 1096 (10th Cir. 1973). 11th circuit on chilivis v. SEC, 673 F.2d 1205, 1209 (11th cir. 1982)(All Circuit stand to this view in similer circumstance-all cases will be referenced in Briefing the court) Because, the motion to dismiss

(Dist.dkt23) unwarrantedly delayed an answer (Dist. Dkt39). This makes an answer Dist.dkt39 untimely require leave of the court. Since there was no court leave in the docket to file out-of-time responsive pleading (an answer) Dist.dkt39. The case is proceeding with late response without a leave of the court, thus prejudice to the petioner. Therefore, this court should instruct the district court to conduct damage discovery trial only.

Futhermore, The court should clarify if Fed. R. Cv.P 8 and individual state defamation pleading requirement without generalize the types has been replaced with so called "**Federal defamation pleading.**" (Appx.,*infra* 10a first paragraph) The **Texas defarmation** type **Per-se** in Bentley v. Bunton, 94 S.W.3d 561 (Tex 2002). The Texas defamatory law "*...presumes certain categories of statements are defamatory* ***Per se,*** *including statement that (1) unambiguously charge a crime* (Appx.,*infra*89a "patient complaint recieved.."**healthcare offence** all time recieved through Tex DHHS or Tx. AG offices), *dishonesty* (as Miss Moorman reports *infra*87a contradicts *infra*88a why Mandawala was moved from Mission trail hospital) *Fraud, rascality, or general depravity or (2) that are falsehoods that injure one in his office, business, profession* (as shown *infra*89a non existence patient complaint) or *occupation.*" See Main v. Royall, 348 S.W.3d 318, 390 (Tex. App-Dallas 2011, no pet.)

The 5th Circuit court of appeals overruled Texas Supreme's court Bently*Id* with generalizing the Texas defamation law to avoid its type per-se. 1. this court should clarify why the federal courts in Texas should not recognize the requirements of Per-se? 2. since the 5th circuit court uphold that Mrs Frominos was not agent of the school or employee.see *infra*68 Thus, an employee of the Northeast Baptist hosptal sharing to Mrs. Moorman employee of the school third party. Makes Baptist Northeast Hospital liable for defamation claim per 5th circuit analysis on Appx., *infra*9a-10a Even incase of Mrs Frominos being an employee or agent of the school, the school record and reports (Appx.,*infra*89a) are considered publications in academic standing point, other student can see as well why

one is not graduate (see US senate public judicial norminee testmony of Justice Brett Kavanaugh). Similer to the defamation claims found in patient medical records and history where.

CONCLUSION

This Court should grant the petition for certiorari to review if the lower courts did not overrule this court precedents of Dennis v. Sparks et al, 100 S. Ct..... (1980) and Krupski v. Costa Crociere 130 S. Ct. 2485 (2010). Granting this petition is significant in uniforming precedence. Reviewing judges conduct and testing their impartiality when adjudicating over matters of individuals versus large church organisations. It is therefore the petitioner's prayer to this court to review and rescind the lower court's decision and reassign the case to an impartial judge in the interest of justice.

Respectfully submitted,

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