

21-5018
No.:

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

In Re.: Zoe Ajjahnon, Petitioner

Supreme Court, U.S.
FILED

JUL - 1 2021

OFFICE OF THE CLERK

On Petition for Extraordinary Writ of Mandamus for Summary/Default Judgment to the District Court for the District of New Jersey, Trial Court Judge, The Honorable, Brian R. Martinotti, U.S. District Court Judge, (Trial Court Case No.: 2:19-cv-16990 BRM-JAD), or, Petition for Extraordinary Writ for Summary Judgment

PETITION FOR WRIT OF MANDAMUS TO THE New Jersey DISTRICT COURT, TRIAL COURT IN CASE, *Zoe Ajjahnon, Plaintiff - Petitioner v. St. Josephs Medical Center, & RWJ Barnabas Health, Defendants-Respondents*, CASE No.:2:19-CV-16990 BRM-JAD FOR SUMMARY/DEFAULT JUDGMENT OR, PETITION FOR EXTRAORDINARY WRIT FOR SUMMARY JUDGMENT

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SUPREME COURT, U.S.

QUESTION PRESENTED

This question arises from the district court's failure to act on/decide/ respond to a motion for summary judgment filed in this matter, March 20, 2020. Petitioner seeks this extraordinary relief from the court's subsequent order / option, dated June 29, 2020 that dismissed the case. Petitioner's motion for summary judgment relied on Federal Rules in civil procedures, specifically *F.R.Civ.P. Rules 56 and 12* and on precedent set in *Nolte v. Nannino*, 107 N.J.L. 462 154 A. 831(1931).

Where, as of the date the motion for summary judgment, neither defendant contested the claims in prescribed procedural allowances, that is, serve an answer to the complaint within 21 days of the summons served, neither defendant answered the complaint. Defendant, RWJ Barnabas filed no answer, and defendant, St. Joseph's served no answer on plaintiff, federal rules of civil procedure conclude summary/default judgment for plaintiff. Court regulation expressly given in the Summons perfected on both defendants on 2/7/20 reads, "*Within 21 days after service of this summons on you ... you must serve on the plaintiff an answer or a motion under Rule 12 of the F.R.Civ.P. The answer or motion must be served on plaintiff ...if you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.*"

The order /opinion relies on an argument disallowing plaintiff's pursuit of damages sustained by the U.S. Government in the False Claims Act claims of the complaint and puts that plaintiff, a *pro se* litigant, may not pursue third party (the U.S. government here) damages. It must be stressed to the Court that *nowhere* in the complaint does this argument find footing, and pointedly, the motion for summary judgment had NOTHING whatsoever to do with any damages sustained by the U.S. government. *The judgment demand of the complaint motioned for summary decision vis a vis the uncontested claims is all of it, that is 100% of it, calculated for damages sustained by plaintiff. The matter is now before the Court on a petition for rehear of a petition for certiorari to the Third Circuit Court of Appeals requesting Court teaching on allowance in the FCA statutes, 31 U.S.C. §§ 3729-3733 for the other-than-the government pursuit of damages sustained by the other-than-the-government of the FCA claims. Congress' 2009 reforms of the False Claims Act in the Fraud Enforcement and Recovery Act (FERA) Pub. 111-21, 123 Stat. 1617 (2009) broadened the FCA claim to include defendant liability to "[an]other recipient of the fraudulent demand for money to the government FERA § 4(b)(2)(A)(ii) and 31 USC § 3729(2)(A)(ii).*

WHEREFORE, since the trial court did not respond to / failed to adjudicate / did not act on / did not decide petitioner's summary motion resting on the fact that the complaint is one of FCA claims against defendants,

the question presented on petition for writ of mandamus for summary judgment is,

Do the False Claims Act statutes - 31 USC §§ 3729-3799 - preclude established standards of Federal Rules for Civil Procedure Rule 56 in a default/summary judgment conclusion ?

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PARTIES TO PROCEEDINGS

1. Defendants-Respondents are St. Joseph University Medical Centre and RWJ Barnabas Health Inc. of the case originated in NJ district court (case no.: 2:19-CV-16990 BRM-JAD) and the caption of the Writ of Certiorari before the Court on Petition for Rehear, Case No.: 20-7606
2. The Honorable Brian R. Martinotti, U.S. District Court Judge, issued the order/opinion from which this extraordinary relief is sought / the Writ of Mandamus is petitioned.

RELATED CONSOLIDATED/VIDED ARGUMENTS OF PETITION FOR REHEAR OF THE PETITION FOR CERTIORARI

This Petition for Writ of Mandamus to the NJ district court for Summary/Default Judgment or for Extraordinary Writ for Summary Judgment was first presented in the form of a motion for Extraordinary Writ for summary judgment incorporated in petitioner's Petition for Rehear [With Accompanying Motion for Extraordinary Writ of Summary/Default Judgment] which was stamped Received by the Court, June 17, 2021 but returned dated, June 21, 2021 for "failure to comply with Rule 44 of the Rules of the Court" and gives specific certifying statements that must be included in the Rehear petition to cure the deficiency.

Petitioner was also verbally directed to 'separate the Motion for Extraordinary Writ from the Petition for Rehear'; wherefore this separate filing for a Writ of Mandamus to the Trial Court for Summary/Default Judgment, invoking the Court's 'appellate' jurisdiction or, otherwise an Extraordinary Writ for Summary Judgment more in keeping with the Court's "original" jurisdiction in this matter currently before it.

No.: _____

In The Supreme Court of The United States

IN RE.: Zoe Ajjahnon, Petitioner

On Petition for Writ of Mandamus to the United States District Court for the District of New Jersey or for Extraordinary Writ of Summary Judgment

Petition for Extraordinary Writ of Mandamus for Summary/Default Judgment to the District Court for the District of New Jersey Trial Court Judge, The Honorable, Brian R. Martinotti, U.S. District Court Judge, (Trial Court Case No.: 2:19-cv-16990 BRM-JAD), or for Extraordinary Writ of Summary Judgment

Pursuant Rule 20 of the U.S. Supreme Court and under Federal Rules of Appellate Procedure Rule 21(a) petitioner respectfully petitions the Court for a Writ of Mandamus to the District court for the District of New Jersey, or for Extraordinary Writ of Summary Judgment

OPINION

Petitioner appeals from the trial court's June 29, 2020 order dismissing the case and the opinion upon which the order is based. (The order simultaneously dismissed co-defendants cross-claim motions (ECFs 10 and 14) against each other.) The argument for dismissing the complaint in sum is, plaintiff's case of False Claims liabilities against defendants is in pursuit of the government damages and therefore may not proceed by *pro se* 'representation'. The government needs to pursue its own damages or where there is allowance for private citizens to bring an FCA case, redress for government damages must have attorney representation. This argument runs contrary to the case. The complaint is indeed of False Claims Act claims but the action nowhere is in pursuit of government damages or a percentage of government recovery that a *qui tam* suit gives.

The order and opinion are appended at App. A and App. B respectively.

JURISDICTION

The Court's jurisdiction for Extraordinary Writ of Mandamus or for Extraordinary Writ for Summary Judgment is invoked under *Article III of the U.S. Constitution* and 28 U.S.C. § 1651(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III sec.2 where judicial powers enshrined therein were abused under guise of application of the False Claims Act statutes, 31 U.S.C. §§ 3729 -3733 and 28 U.S.C. § 1654 provisions that allows for this action to proceed *pro se* put as basis for dismissal of the complaint.

STATEMENT AND PROCEDURAL HISTORY OF CASE

This matter originating in the U.S. district court for the district of New Jersey August 20, 2019 is a False Claims Act (FCA) claims case alleging defendants liability for, gross medical malpractice, false diagnoses for the purpose of forced medication, subsequent forced medication, false imprisonment of plaintiff, due process rights violations, that include but not limited to, denial of informed consent to involuntary commitment / involuntary commitment to treatment, denial of appearing in court on a scheduled appearance, among other claims of FCA conduct by defendant, St. Joseph's a screening centre established by the State of NJ and defendant, RWJ Barnabas, a short term care facility or outreach program for the screening centre, also funded by the State of New Jersey.

Where this is a FCA matter, plaintiff under 31 U.S.C. § 3730(b)(1) giving: "A person may bring a civil action for a violation under § 3729 *for the person* (italics mine) and for the United States Government", plaintiff concurrently copied the US government on the complaint. The communication to the government was Not done "under seal" since the complaint is of damages sustained by plaintiff. The US government was copied as a courtesy. At NO point in these proceeding did plaintiff seek government intervention.

The docket shows a document of 'U.S. Notice to Decline and Suggestion of Dismissal of False Claims Act Claims', dated January 2, 2020. It's states, to sum, plaintiff is a *pro se* litigant and may not therefore represent the US government in a FCA suit. Plaintiff responded to this "Suggestion to dismiss" in a January 30, 2020 filing (the Response is

dated and mailed January 18, 2020) with the obvious from even a cursory reading of the complaint: expressly, the action is not in pursuit of government damages / percentage of recovery of government damages and plaintiff may pursue individual damages under 28 U.S.C. § 1654 provisions. The Response is at (App. C)

Under IFP provisions, the summons was perfected by US marshal on both defendants on Feb. 7, 2020. (App. D)

On Feb. 26, 2020 plaintiff received correspondence from defendant, St. Joseph naming their representation and including a certification of service for a Answer sent to ‘all counsel of record’ (App. E) The certification of service was completely bogus. The correspondence did not include this “Answer”, wherefore plaintiff contacted these attorneys. Plaintiff” telephone calls went unanswered and messages left, not responded to. Wherefore Plaintiff contacted the court and was told that there was indeed a filing by defendant, St. Joseph. Plaintiff paid for a copy of this filing on March 09 2020, a copy of the receipt of this transaction is appended at, (App. F). Plaintiff responded to this filing and the fact that co-defendant, RWJ Barnabas did not answer or otherwise respond to the complaint in a Motion for Summary Judgment filed March 20, 2020. (App. G)

On June 29, 2020 the trial court dismissed the complaint - stating almost verbatim the statements of the Jan. 2, 2020 U.S. “Suggestion”. The court at no point acted on the summary motion. A timely Appeal from the dismissal was submitted to the Third circuit court of appeals. Upon the appeals court’ affirmation of the trial court’ dismissal, petitioner sought writ of certiorari (case no.: 20-7606) to instruct on this evident arbitrary

application of FCA provisions.

The Court entered a discretionary denial of the petition for writ of certiorari on June 1 2021 the current petition for rehear that this petition for writ of mandamus for summary/default judgment or extraordinary writ of summary judgment is in aid of the court's appellate jurisdiction to restrain, as evinced in this case, lower courts arbitrary application of statutes and mistreatment of federal regulatory guides in the judicial process and abuse of judicial powers. Additionally this petition provide "substantial grounds for rehear not previously presented" in the petition for writ of certiorari. This notwithstanding, the petition for extraordinary writ for summary judgment is inherently substantial for grant whereas petitioner has no other adequate means at law for the relief sought in the summary/default judgment. It is presented to the Court in good faith and not done for delay or to circumvent or substitute for regular appellate procedure.

ARGUMENT FOR ISSUANCE

In accordance with US Supreme Ct. *Rule 20* and *Fed. R. of App. P. Rule 21(a)* guides, petitioner enters this petition for extraordinary writ of mandamus or extraordinary writ for summary judgment. It is valid for meeting the requirement of having 'no other adequate means for the relief sought' in the trial court motion for summary (/default) judgment. Petitioner invokes comprehensively the Court's All Writs jurisdiction of *Article III codified at 28 USC sec. 1651 (a)* meaning, instant petition stands on both the Court's 'appellate' and 'original' jurisdiction to grant the extraordinary writ for summary judgment.

On the Writ of Mandamus the Court teaches in *Richard B. Cheney, Vice President of the U.S., et al, Petitioner v. U.S. District Court for the District of Columbia, et al*, 542 U.S. (2004) writes: “The common-law writ of mandamus against a lower court is codified at 28 U. S. C. §1651(a): ‘The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.’” “This is a ‘drastic and extraordinary’ remedy ‘reserved for [] extraordinary causes.’ *Ex parte Fahey*, 332 U. S. 258, 259-260 (1947). The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine [the court against which mandamus is sought] to a lawful exercise of its prescribed jurisdiction. *Roche v. Evaporated Milk Assn.*, 319 U. S. 21, 26 (1943).”

i) As to the Court’ ‘appellate’ jurisdiction, the Court has invariably held to the application of the writ of mandamus in the context of ‘extreme cause’ Congress intended. The petitioned writ substantiates aid in the Court’ appellate jurisdiction founded in the need for the Court’s exercise of this extreme measure where the trial court clearly defied federal regulatory laws in court proceedings and abused congressional powers invested in the judicial office.

The case brought under the False Claims Act provisions of 31 U.S.C. §§3729-3733 in district court for the district of New Jersey in August 20, 2019 claimed defendants liability for FCA claims violations of:

I. FALSE CLAIMS ACTS OF INTENTIONAL SIGNIFICANT INCOMPETENCE OF MALICIOUS MEDICAL MALPRACTICE CONSTITUTES SUBSTANTIAL VIOLATIONS OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS LAWS AT ST. JOSEPH’S MEDICAL CENTER, THE SCREENING FACILITY. THIS LED TO THE FALSE INCARCERATION OF PLAINTIFF AT AN INVOLUNTARY

COMMITMENT FACILITY AND GROUNDS PLAINTIFF'S LIABILITY CLAIMS UNDER THE FEDERAL FALSE CLAIMS ACT PROVISIONS OF 31 U.S.C. § §3729-3733 AND CONSTITUTIONALLY PROTECTED CIVIL RIGHTS OF 42 U.S.C. §§ 1981 and 1983 (Complaint, appended at APP. H, 61a)

AND

II. DEFENDANT RWJ BARNABAS HEALTH CONTINUES THE HEALTH CARE PROVIDER'S PRACTICE OF FRAUDULENTLY OBTAINING MONEY FROM GOVERNMENT FUNDED PROGRAMS AT ITS SHORT TERM CARE FACILITY OF THIS COMPLAINT, CLARA MAASS. DEFENDANT'S FALSE CLAIMS CONDUCT IS SUBSTANTIAL FOR THE SERVICE' VIOLATIONS OF CIVIL RIGHTS, DISMISSAL OF DUE PROCESS, PERPETRATION OF INTENTIONAL MALICIOUS MEDICAL MALPRACTICE OF A FALSE DIAGNOSIS FOR THE PURPOSE OF FORCING MEDICATION, SUBSEQUENTLY FORCED MEDICATION, FALSE IMPRISONMENT, AND VIOLATED OTHER LAWS SUCH AS DELIBERATELY PREVENTING PLAINTIFF FROM SPEAKING TO THE COURT. DEFENDANT MADE BILLING CLAIMS TO PLAINTIFF AND GOVERNMENT FUNDED PROGRAMS FOR THESE FRAUDS PER SE AND FOR THE TIME OR DURATION OF THE FRAUDS , I.E. EACH DAY PLAINTIFF WAS SUBJECT TO THESE FALSE CLAIMS ACTIONS AT THE FACILITY (Complaint, App. H, 76a)

In this FCA matter, the Government was copied on the action. Plaintiff, under 31 U.S.C. § 3730(b)(1) that states, "A person may bring a civil action for a violation under § 3729 for *the person* (italics mine) and for the United States Government", concurrently sent via email and regular mail a courtesy copy of the complaint to the US Attorney General office. See, "cover letter" to the Office of the Attorney General (OAG) at App. H, 109a . The letter states the sum of plaintiff' damage demand, at No point requesting government intervention to pursue these individual damages, and significantly, the copy of the complaint to the government was Not done under seal.

Petitioner' IFP status provided for US Marshall service of the summons on defendants. This service was perfected on both defendants on Feb. 7, 2020. (App.D, 10a-14a). Court regulations expressly given in the Summons states: "*Within 21 days after service of this summons on you ... you must serve on the plaintiff an answer or a motion under Rule 12 of the F.R.Civ.P. The answer or motion must be served on plaintiff ...if you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.*"

On Feb. 26, 2020 plaintiff received correspondence from defendant, St. Joseph Univ. Medical Center naming their representation and including a certification of service of an 'Answer' sent to 'all counsel off record' (App. E) The correspondence did not include this "Answer", wherefore plaintiff contacted these attorneys. Plaintiff's telephone calls went unanswered and messages left, not responded to. Wherefore on March 09, 2020 Plaintiff contacted the district court and was told that there was indeed a filing by defendant, St. Joseph. Plaintiff paid for a copy of this filing from the court. The receipt of this transaction is appended at, (App. F). In response to this petitioner motioned for summary judgment, arguing that defendant, St. Joseph's filing not served on plaintiff is not valid for a legitimate answer to the complaint, and the fact that co-defendant, RWJ Barnabas did not answer the complaint or otherwise response to it, concludes summary/default judgment as matter of law. The motion for summary judgment filed March 20, 2020 is appended at (App. G).

The trial court's dismissal of the complaint on June 29, 2020 completely negated, that

is, falsified the expressly given judgment demand of the complaint motioned for in summary judgment. The court executed this both passively and actively. The motion before it was never acknowledged / addressed/ decided. Filed 3/20/20 the argument for dismissal on 6/29/20 significantly did not mention the motion based as it is in a complete falsification of it. The dismissal states that plaintiff is pursuing the US government damages of the FCA claims. The summary judgment motion, in the entirety of damages demand, is for the damages sustained by plaintiff. The court' (passive) inaction - failure to decide the motion was expedient. For all the 'passivity' of inaction, it was a violent usurp of power over governing federal laws in judicial practice. The court' failure to adjudicate the summary motion prevented what would have been fatal to its argument for dismissing the complaint in clear abuse of judicial discretionary powers. *Bankers Life & Casualty Co. v. Holland*, 346 U. S. 379, 383 (1953). Actively, the court willfully falsified the case - stating an action (in pursuit of third party damages) it clear is not. However, the inaction of the court in disregard of established federal statutes in court proceedings was pivotal to the outcome of the case /court' decision to dismiss the complaint.

Petitioner' move at trial court for summary judgment is under provisions of *F.R.Civ. P Rule56(a)* providing : "*The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law .*" The claims were uncontested - by both defendants. Where defendant RWJ Barnabas filed no pleading disputing the claims (this defendant defaulted in not answering or otherwise responding to the summons), the summary (/default) judgment is

its entirety from defendant is concluded as a matter of law and where co-defendant, St. Joseph defied procedure and did not serve an answer on plaintiff, summary/default judgment is given/prescribed. Court regulations expressly given in the Summons perfected on 2/7/20: *"Within 21 days after service of this summons on you ... you must serve on the plaintiff an answer or a motion under Rule 12 of the F.R.Civ.P. The answer or motion must be served on plaintiff ...if you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint."* (App.D, Summons served on Defendants).

Additionally, the motion for summary judgment found grounds in *Nolte v. Nannino* 107 N.J. L. 462 154 A. 831 (1931) teachings. Applied to this case the motion argued, "the frivolous answer of defendant, St. Joseph's may be stricken - this defendant did not serve an answer on plaintiff. Defendant, St. Joseph Medical Center False Certification of Service of filing put as answer invalidates it as legitimate response / answer to plaintiff" claims in the complaint.

"WHEREFORE, plaintiff moved for summary judgement of the damage total of \$3,442,978.40 in its entirety from defendant, St. Joseph University Medical Center.

And *WHEREFORE*, plaintiff moved for summary judgment of the damage total of \$4,695,190, in its entirety from defendant, RWJ Barnabas Health Inc." (App. G,19a)

This is the complaint' damage demand in its entirety of \$8,138,168.40. None of this total is of government or a percentage of government damages that a *qui tam* suit in pursuit of a % of government recovery grants.

Defendant, RWJ Barnabas did not answer the complaint and co-defendant, St. Joseph Medical Centre never served an answer on plaintiff. Both defendants defaulted, yet prevailed at trial, the court's option giving that plaintiff's FCA claims complaint is a *qui tam* matter on behalf of the government and may not proceed *pro se*. A false construe of the case where the substantiation prima facie in the Mar. 20, 2020 motion for summary judgment, that plaintiff's action is not in pursuit of the US government (/third party) damages and may proceed *pro se* (28 U.S.C. § 1654) had additional support in this expressly stated in plaintiff's Response to the US Jan. 2, 2020 "suggestion to dismiss". The Response filed Jan. 30, 2020 is appended at (App.C).

A writ of mandamus in this case aids the Court in its 'appellate' jurisdiction in regards a clear abuse of judicial powers in the district court. The trial court's deliberate purposeful false statements of the case as an action it clearly is not (cast as an FCA case in pursuit of government damages v. remedy for plaintiff's injuries) warrants the petitioned writ of mandamus, treating the trial court's denial of constitutional legal provisions and dismissal of federal regulations in the judicial process in not adjudicating a process/motion before it. The trial court's willful disregard (failure to decide) of process material to the case or outcome of the case - since to do so would negate the court's argument for dismissal - is 'clear abuse of judicial power' and the Court's issuance of writ of mandamus to this district court is appropriate.

Quoting Cornell Law School's Legal Information Institute (LII) publication on "*Judicial Power and Jurisdiction - Cases and Controversies*": "The potential for abuse of judicial

power was of concern to the Founding Fathers, leading them to establish limits on the circumstance in which the courts could consider cases. Th[e] passage, and the language of *Article III, § 2*, makes clear that the Framers did not intend for federal judges to roam at large in construing the Constitution and laws of the United States, but rather preferred and provided for resolution of disputes arising in a “judicial” manner.”

Judicial abuse is evinced in the trial court’s ‘over-step’ of its limit to ‘consider’ a case. Not before it or more pointedly, discretionary powers abuse is substantiated in the way this was done. A critical denial at trial for an outcome that deprived plaintiff of the relief sought - *a denial not based on the merits of the case but on the court’s purposeful denial of process*. Plaintiff’s case was not tried resultant the court’s violations of judicial process. The failure of the court to adjudicate the summary motion was expedient and necessary to the dismissal of case.

A writ of mandamus to the trial court treats the evident affront to *Article III sec. 2* of the Constitution. Abuse of judicial powers in present matter in the clear falsification of the case (the complaint is clearly and expressly, not in pursuit of third party damages), and where the court denied acting on a process that would invalidate the district court’s opinion for dismissing the case (the summary judgment is *prima facie* counter the trial court’s given statements for dismissal) the Court finds round violations of the constitutional privileges entrusted to the court.

“Judicial power is “the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision.” *Muskrat v. United States*, 219 U.S. 346 (1911) *id.*

In this case that power was abused in failure to adhere to prescribed Federal Rules of Civil Procedure. The summary judgment motion’s reliance on statutory regulations and

precedent in law was rendered incompetent to effect the action's pursuit for relief/remedy for plaintiff' damages (or a fair trial for said relief/remedy) where the trial court so flagrantly denied the constitutional provisions of these relied on grounds for remedy sought in a court of law.

Congress' established FCA statutes of the complaint's claims were not so much misinterpreted as dismissed in the trial court's wrongful act of attributing to the case third party 'representation' (or an attempt at third party representation) where the complaint clearly informs that redress sought is not for government (third party) damages and the convincing material motion for summary judgment *prima facie* supports that.

"The meaning attached to the terms "cases" and "controversies" determinesthe extent of the judicial power as well as the capacity of the federal courts to receive jurisdiction. ... "By cases and controversies are intended the claims of litigants brought before the courts for determination by such regular proceedings as are established by law or custom for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs."” *id.*

Petitioner's case /claims brought before the NJ district court for adjudication by established by law / customs for the protection / enforcement of rights, and for the prevention, redress, and punishment of defendants' wrongs, at this point in the proceedings can only be remedied by the Court' grant of writ of mandamus to the trial court for summary / default judgment or otherwise grant this extraordinary relief of writ of summary judgment.

ii) As to the Court's 'original' jurisdiction, also founded in *Article III*, and *28 U.S.C. sec. 1651(a)* petitioner' incorporated "motion for extraordinary writ for summary judgment",

in short, a move to grant (/act on) the summary/default motion not adjudicated in the trial court, in the petition for rehear of the petition of certiorari, is significant for substantial grounds not previously presented in the petition for certiorari and was done, necessarily done, invoking the Court' 'original' jurisdiction whereas petitioner has no further or any other means but to petition in this Court for relief.

REASONS TO GRANT/ISSUE EXTRAORDINARY WRIT OF MANDAMUS TO THE TRIAL COURT FOR SUMMARY / DEFAULT JUDGMENT, OR EXTRAORDINARY WRIT OF SUMMARY JUDGMENT

From *Cheney*, the Court' opinion further gives, "Although courts have not "confined themselves to an arbitrary and technical definition of 'jurisdiction'," *Will v. United States*, 389 U. S. 90, 95 (1967), "only exceptional circumstances amounting to a judicial 'usurpation of power,' *ibid.*, or a 'clear abuse of discretion,' *Bankers Life & Casualty Co. v. Holland*, 346 U. S. 379, 383 (1953), 'will justify the invocation of this extraordinary remedy,' *Will*, 389 U. S., at 95. As [for] the writ is one of "the most potent weapons in the judicial arsenal," *id.*, at 107, three conditions must be satisfied before it may issue. *Kerr v. United States Dist. Court for Northern Dist. of Cal.*, 426 U. S. 394, 403 (1976). First, "the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires," *ibid.* - a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process, *Fahey, supra*, at 260. Second, the petitioner must satisfy " 'the burden of showing that [his] right to issuance of the writ is 'clear and indisputable.' " *Kerr, supra*, at 403 (quoting *Banker's Life & Casualty Co., supra*, at 384). Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. *Kerr, supra*, at 403 (citing *Schlagenhauf v. Holder*, 379 U. S. 104, 112, n. 8 (1964))."

I. PETITIONER HAS NO OTHER ADEQUATE MEANS FOR TO REMEDY SUBSTANTIAL DENIAL OF DUE PROCESS IN TRIAL COURT PROCEEDINGS THAT LEFT UNDECIDED A CLEAR SUMMARY/DEFAULT JUDGMENT FOR THE RELIEF SOUGHT

The trial court's failure to act on/decide/adjudicate the motion for summary(/default) judgment amounts to a 'clear abuse of judicial powers'. A substantial denial of due process rights in the judicial process. The malice exists in the denial of relief /remedy for plaintiff's injuries that the court's inaction effected - intended to effect whereas the dismissal argument relies on this inaction / not deciding the summary judgment. Action on the summary judgment motion would have been lethal to the trial court's argument that plaintiff's case is in pursuit of government damages. This crucial inaction in the trial court was not remedied on appeal since the issue on appeal per force treated the court's decision for dismissal (as opposed indecision respecting the summary motion).

The court of appeals affirmed the dismissal. Plaintiff therefore petitioned the Court for writ of certiorari to instruct on lower courts arbitrary application of Congress' provisions in the 2009 FERA reforms of the FCA.

The petition is now before the Court for rehear upon substantial grounds that this arbitrary application of statutes in the lower courts perpetuates (/ is causative of the perpetuation of) the very serious matter of FCA medical malpractice. A practice that contributes to the deaths of an estimated 400,000 persons in the U.S. each year.

Unrestrained apparently for assumed impunity. In this case, defendant RWJ Barnabas examples this nationwide crisis. Not only a repeat FCA medical malpractice offender, this defendant so flagrantly flaunt 'assumed impunity' - they did not bother to respond to the complaint. The point however is that the lower courts' arbitrary application of statutes guards that 'impunity'. As noted in the rehear petition, as to the above estimate, approximately a million deaths have occurred in the US from medical malpractice since

this action was originally taken in district court.

The rehear for certiorari argues that whereas Congress' 2009 FERA reforms now grant [an]other than the government to pursue individual (not the government') damages the Court' instructions will guard the rights of victims of the FCA medical malpractice to "protect / enforce their rights and to prevent, redress, / punish the wrong" uniquely suffered. The petition for extraordinary writ as argued underlines the need for Court guidance in this very serious matter of FCA medical malpractice with impunity.

It is of exceptional national importance the writ of certiorari here and instant petition for writ of mandamus for summary judgment provides the substantial grounds for rehear not previously presented. The petition stresses that this extreme request for the denied relief is context in the petition for certiorari per force, with no other adequate means to obtain this relief, because of the singular/national importance of the writ of certiorari plaintiff's relief is necessarily a part of this national question when appellate procedures to answer this national question are followed and applied for 'issues on appeal', and as here, 'questions of national importance' brought to the Court. The extraordinary writ of mandamus for the summary /default relief is "done in good faith and not [for delay] to circumvent or substitute for regular appeals process'. *Fahey, supra* at 260.

II. PETITIONER'S RIGHTS TO THE ISSUANCE OF THE WRIT OF MANDAMUS OR EXTRAORDINARY WRIT OF SUMMARY JUDGMENT IS "CLEAR AND INDISPUTABLE"

Instant petition for writ of mandamus for summary/default judgment or extraordinary writ for summary judgment does not arise from a mere indiscretion at law nor is it conditioned on a procedural right *in vacuo* - denial of a procedural right as by 'oversight',

misunderstanding, or outright ignorance of standard, for example. It is found rather in the substantial context of a decided inaction by the court/denial of judicial process at trial that was pivotal to the outcome of the case and relief sought/ remedy of injuries sustained in “clear abuse of judicial discretionary powers” an exceptional circumstance that warrants the writ.

The Court teaches in *Cheney*, a ‘clear abuse of discretion,’ *Bankers Life & Casualty Co. v. Holland*, 346 U. S. 379, 383 (1953), ‘will justify the invocation of th[e] extraordinary remedy’ of the writ of mandamus, *Will v. United States*, 389 U. S. 95 (1967).

Further, appellate procedural regulations necessitated appeal from the ‘conditions’ of the denied relief - that is, the reasons given by the trial court for the dismissal of the compliant, however false / coming under guise of law, as opposed the denied relief per se. Wherefore in the Court’ ‘appellate’ (and too ‘original’) jurisdiction the grant /issuance of the writ of mandamus to the trial court for summary/default judgment is appropriate - petitioner has no other adequate means for a relief denied that should have been awarded as a matter law.

III. THE PETITION IS WARRANTED/APPRORIATE UNDER THE EXCEPTIONAL CIRCUMSTANCES CREATED BY THE THE TRIAL COURT’S ORDER OF DISMISSAL

The extreme circumstances occasioning the petition finds standing in both the Court’ ‘appellate’ and ‘original’ jurisdiction, speaking to the substantial of the questions raised. Granting the writ of mandamus aids the Court in its appellate jurisdiction in the trial court’s disregard of federal regulatory statutes in judicial proceedings - this extreme dismissal of laws informs petitioner’ denial of relief / summary judgment as a matter of

law.

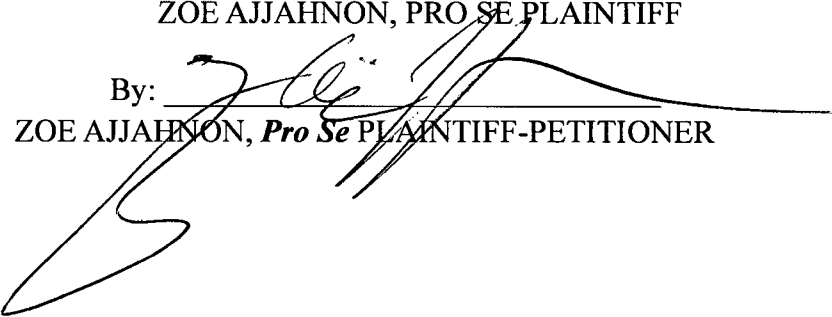
Whereas the petition for writ for summary relief is context in an overarching petition for writ of certiorari the two writs arising from a single case seems to indicate the substantial grounds for grant - of both petitions. However, this observation for grant of both writs is understood in the inherent substantive for grant uniquely- of each petition independently - nonetheless, the interwoven circumstances effects a 'substantial' that unavoidably necessitates the Court's action in this, that is, the Court's grant of both petitions.

CONCLUSION AND PRAYER

In light of the foregoing, petitioner respectfully prays the Court to grant/ issue the Extraordinary Writ of Mandamus for summary/default judgment or Extraordinary Writ of summary judgment.

Respectfully submitted,

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DATED: July 1, 2021