ORIGINAL

21-6281

Case No.

IN THE SUPREME COURT OF THE UNITED STATES

In re MAC TRUONG, Debtor,

MAC TRUONG,
Appellant-Petitioner

-against-

R. KENNETH BARNARD, U.S. TRUSTEE,
ROSEMARY I. MERGENTHALER,
Appellees-Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Mac Truong, J.S.D., Ph.D., LL.M., Petitioner *pro se*
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QUESTIONS PRESENTED

1. Did the United States Court of Appeals for the Third Circuit (USCA3 hereafter) criminally obstruct justice and/or abuse and/or exceed its legal authority when the Court had willfully and calculatedly violated Appellant-Petitioner's constitutional right to due process and justice by knowingly making without any justification, for instance, the following false finding of fact that was obviously wrong to even a layperson: Petitioner's Appeal #21-1171 against Respondents-Appellees U.S. Trustee and R. Kenneth Barnard is identical in substance and on the merit to another entirely different Appeal #21-1172 before the Court to consolidate them and dismiss Petitioner's most meritorious appeal for absolutely no ground at all, based on affirmative defenses, if any, that were only available in the latter appeal, to which Petitioner's was wrongfully consolidated?

2. Did the USCA3 err as a matter of law when the Court dismissed Petitioner's appeal being grounded on the finding that Petitioner's 60(b) Motion in the USBC-DNJ was untimely in that it was filed "more than two and a half years after the District (sic) Court's November 2016 order" had been issued, while in this case Petitioner's said motion was based on Respondents' absolutely proven-beyond-a-reasonable-doubt egregious criminal activities to obstruct justice and convert Petitioner's $575,000.00 assets, in concert with the U.S. Trustee, respondent herein, and two U.S. Bankruptcy Judges, which criminal and fraudulent activities could only be affirmed and became undisputed on court record after Respondents' May 16 2019 Filing of his TFR, about one month prior to Petitioner's filing of my 60(b) Motion?

3. Did the USCA3 err as a matter of law when the Court dismissed Petitioner's appeal based on the Barton doctrine, while as a matter of law Petitioner did not need any prior court leave to sue Trustee-Respondent Barnard in the U.S. Bankruptcy Court for the District of New Jersey, which has the original subject-matter jurisdiction over Petitioner's causes of action against Respondents herein?

PARTIES TO THE PROCEEDING

There are no other parties than those named in the caption. Upon information and belief Appellee-Respondent R. Kenneth Barnard having filed a Final Report with the USBC-EDNY on 5/16/2019 has as such withdrawn from this proceeding as active Chapter 7 Trustee of Petitioner herein.

RULE 29.6 STATEMENT

Appellant-Petitioner Mac Truong is an individual, having no stocks for any private or publicly traded company to own 10% or more of my stocks.

OPINIONS BELOW

The Court dismissed Petitioner's appeal by finding (i) that the Barton doctrine that protects Chapter 7 Trustees from lawsuits applies in this case and as such since Petitioner has failed to secured proper prior court leave to this effect, my appeal must be dismissed; and (ii) Petitioner's 60(b) Motion was untimely for having not filed within one year of the November 2016 Dismissal order, and as such the USCA3 opined that the USBC-DNJ was correct to deny Petitioner's 60(b) motion for untimeliness.

Without stating any rational ground, the Court further "believed" that Appeal #21-1171 and Appeal #21-1172 were "similar," and as such the Court opined that the two actually absolutely different cases could be consolidated for all purposes as if they had been one and the same.

JURISDICTION

(1) Basis of the USDC-DNJ's Subject-Matter Jurisdiction:

The USDC-DNJ has jurisdiction over Appellant Mac Truong's Bankruptcy Proceeding pursuant to 11 USC 8001(a) in that Appellant is a debtor having timely filed an appeal from final order(s) of the U.S. Bankruptcy Court for the District of New Jersey ["USBC-DNJ" hereafter] Case No. 16-19929-VFP.

(2) Basis of the USCA3's Subject-Matter Jurisdiction:

The Order(s), being appealed, are inextricably intertwined and final decisions of the USDC-DNJ, under 28 U.S.C. 1291. [See, USDC-DNJ, #21-00074 DE #1 Filed 2/2/2021].

(3) Basis of this USSC's Subject-Matter Jurisdiction:

28 USCS § 1254 provides that cases in the U.S. Court of Appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. Debtor-Appellant herein appeals from the following inextricably intertwined orders of the USCA3:

(a) 5/13/2021 Doc #17 – USCA3 - **ORDER** consolidating the appeals as docketed at C.A. Nos. 21-1171 and 21-1172. USDC Dkt#2-20-cv-00074] [A:1]

(b) 10/05/2021 Doc #34-1-3 – 8/5/2021 **JUDGMENT** Affirming the Judgment of USDC-DNJ entered September 25, 2020. [USCA3 Dkt#21-1171 & 21-1172] [A: 2-4]

(c) 08/5/2021 Doc #34-2 - **OPINION**, Affirming the Judgment of USDC-DNJ entered September 25, 2020. [USCA3 Dkt#21-1171 & 21-1172] [A: 5-13]

(d) 09/25/2020 - **ORDER,** [USDC-DNJ - Dkt#20-00074 (KM)] Affirming 12/20/2019 Judgment of USBC-DNJ being appealed in A/P 16-01618. [A: 14-15]

(e) 02/22/2019 USCA3 Case #18-2430 – Doc #311325671030 – **ORDER**, Circuit Jd Ambro, Krause and Porter - Affirming the District Court 6/18/2018 Judgment. [A: 16-22]

(f) 9/16/2021 Doc #29 – USCA3 - **ORDER** Denying Petition for Rehearing at USCA3 Nos. 21-1171. USDC Dkt#2-20-cv-00074] [A: 23-24]

SUMMARY OF ARGUMENT

1. In appeal under Docket No. 21-1172 before the USCA3, Appellee-Respondent Rosemary I. Mergenthaler herein sued Respondents-

Appellees R. Kenneth Barnard and U.S. Trustee for having acted in concert since May 11, 2015, to unlawfully convert her Chapter 7 bankruptcy asset in the exact sum of $2,793,000.16 by having submitted to the United States Bankruptcy Court for the Eastern District of New York a Final Trustee's Report (FTR) dated May 16, 2019, that is fraudulent as a matter of fact and law on its face. The USCA3 dismissed Mergenthaler's appeal without any valid rational ground be that procedural or jurisdictional or substantive on the merits after having merely, but willfully, made knowing false finding of fact and/or of law that her appeal is similar to Debtor-Plaintiff-Appellant-Petitioner *pro se* Mac Truong's appeal under Docket No. 21-1171, and consolidated them on May 13, 2013 [A: 1]. In the foregoing appellate proceeding, appellant Mac Truong, having filed for bankruptcy under Chapter 7 in the USBC-DNJ on May 23, 2016, sued in August 2016 Respondent Rosemary Mergenthaler herein and Respondents R. Kenneth Barnard and U.S. Trustee, in the USBC-DNJ to recover 25% of a shared New York Property, being worth $2,300,000.00, 75% of which belonged to Respondent Mergenthaler herein. The USBC-DNJ dismissed Mac Truong's complaint allegedly based on the Rooker-Feldman doctrine in that purportedly Mac Truong's title to 25% of the Property was declared null and void by an August 6 2015 Order of the New York Supreme Court, Suffolk County. Mac Truong filed for appeal. On February 22, 2019, in appellate proceeding under Docket No. 18-2430, the USCA3 decided in favor of Mac Truong on this only disputed material issue regarding whether Mac Truong's title to the Property was indeed annulled. The Court determined that the Rooker-Feldman doctrine did not apply to bar Mac Truong's title since I was not a party to the underlying proceeding in the NYSC. [A: 16-22] Petitioner herein then returned to the USBC-DNJ and filed a 60(b) motion, seeking the return

of my $575,000.00 that was my property, and not that of Rosemary Mergenthaler. Since, the asset is mine, it is under the exclusive subject-matter jurisdiction of the USBC-DNJ, and not that of the USBC-EDNY, as the latter and the USBC-DNJ and USDC-DNJ and USCA3 had willfully and falsely pretended to assist Respondent Barnard to convert my money. Respondent Mergenthaler herein, being a party to the proceeding from its onset, also joined in Petitioner's 60(b) Motion and moved the Court under FRCvP 13(g) and (i) for an order directing Barnard and/or the U.S. Trustee to give back her $2,793,000.16 in his custody to her, on the grounds that aggravated frauds and glaring criminal activities could be proven beyond a reasonable doubt on the face of respondent Barnard's FTR, which was filed with the USBC-EDNY on May 16, 2019.

2. The USBC-DNJ denied Truong's and Mergenthaler's joint 60(b) motion on the purported applicability of the Barton doctrine. Mac Truong again appealed to the USDC-DNJ under Docket No. 20-cv-00074, Esther Salas, Presiding Judge. Upon reliable information and belief, Judge Esther Salas appeared willing to decide in favor of appellants Mac Truong and Rosemary Mergenthaler but against Appellees herein. However, only a few days prior to her honor's expected favorable decision could be issued, on July 19, 2019, an assassin, having undoubtedly been arranged by Appellees' judicial organized crime (JOC) unit, headed by then USCA2 Chief Judge Robert A. Katzmann, shot dead Daniel Anderl, Judge Salas's only beloved son, and seriously wounded her husband.

3. Within 8 days, Petitioner Mac Truong's case was transferred to Judge Kevin McNulty, who dismissed it with such haste and demonstrated unfamiliarity with the matter that his honor misspelled Defendants-Appellees R. Kenneth Barnard and U.S. Trustee to be "THE UNITED

STATES OF AMERICA." [A: 14-15] The Court also outrageously and erroneously deemed my appeal only as a motion for reconsideration of the USBC-DNJ's immaterial injunction order, but not for any other issue. [A: 14-15]

4. Respondent Rosemary Mergenthaler herein then exercised her constitutional right to due process under FRCvP 13(g) and (i), and filed her own appeal, i.e., totally separate and independent from Petitioner's appeal, from Judge Kevin McNulty's erroneous order(s) to the USCA3.

5. Shortly thereafter, it appeared that the USCA3 had also, like Judge McNulty, ran absolutely out of any ground or correct reasoning to dismiss Respondent Mergenthaler's appeal, or rather her causes of action under FRCvP 13(g) and (i) for an order of the Court directing Respondent Barnard to turn over her estate asset of $2,793,000.16 in his unlawful custody to her.

6. As such, on May 13, 2021, the USCA3 issued an illegal and unconstitutional order consolidating her appeal #21-1172 and mine under Docket No. 21-1171. [A: 1] Respondent Mergenthaler thereafter timely made a motion to the Court to vacate that egregiously criminally-intended and unlawful May 13 2021 Order, [A: 1], which was undisputedly a glaring sign of fraudulent activities that would certainly be committed by the Court to dismiss her appeal without any reason at all in egregious violation of her and Petitioner's constitutional rights to due process.

7. However, as cruelly and sadly expected, on August 5, 2021, the USCA3 issued its fake order affirming its unconstitutionally-intended May 13 2021 Order on literally a fine-print footnote that the Court (recklessly or naively or carelessly) believed in bad faith that Respondent Mergenthaler's Appeal #21-1172 and that of Petitioner herein under Docket #21-1171 were "similar," and dismissed her most meritorious

appeal without at all discussing its very existence and/or its merits. [A: 9 - Footprint 7]

8. Petitioner Mac Truong herein filed my Petition for Rehearing by the panel and/or the court *en banc*. On or about September 16, 2021, my petition for rehearing by the panel and/or the court *en banc* was denied by **a separate order** of the Court without any opinion of the Court having even been issued [Doc #29, A: 23-24], except the consolidated opinion dated August 5, 2021 [A: 5-13].

THE BARTON DOCTRINE DID NOT APPLY TO BAR PETITIONER'S CLAIM TO MY $575,000.00 ASSET BEING WRONGFULLY CONVERTED BY RESPONDENTS

9. The Barton doctrine is a legal principle that limits a court's jurisdiction over a cause of action brought against a court-appointed receiver. Specifically, the doctrine requires that before a plaintiff can sue a receiver in a forum other than the court which appointed the receiver, the plaintiff must obtain leave from the appointing court to do so. Though the *Barton* doctrine was initially applicable to state court receiverships, federal courts have applied the doctrine in the bankruptcy context to shield a bankruptcy trustee from suits arising in connection with the trustee's administration of a bankruptcy estate. As a result, before a plaintiff can sue a bankruptcy trustee in a non-bankruptcy forum, the plaintiff must obtain leave from the bankruptcy court. However, as the U.S. District Court for the Northern District of Illinois recently explained in *In re World Marketing Chicago,* 2018 WL 1989435 (Bankr. N.D. Ill. Apr. 26, 2018), this rule does not apply if the plaintiff brings suit in the very bankruptcy court that appointed the trustee. *[By Rudolph J. Di Massa, Jr. and Jarret P. Hitchings.]*

10. Viewing the foregoing undisputed legal authority, the USCA3's dismissal of the instant Appeal based on the Barton doctrine is erroneous as a matter of fact and law and should be reversed by this USSC because **(i)** Debtor-Plaintiff-Appellant-Petitioner Mac Truong herein sued Respondents Barnard and U.S. Trustee in the USBC-DNJ, which is the very court that had appointed Barnard in re Chapter 7 Debtor Rosemary Mergenthaler USBC-EDNY Case #15-72040 (REG). Indeed, the difference between USBC-EDNY and USBC-DNJ is an issue of venue, hence waivable, but not of subject-matter jurisdiction, which cannot be waived; **(ii)** the jurisdiction of the USBC-DNJ over Respondent Barnard is further undisputed since he had wrongfully held Debtor's Mac Truong's asset but not an asset of Debtor Mergenthaler that would have indeed belonged to her estate under his purported administration; **(iii)** the USBC-DNJ has original subject-matter jurisdiction over said asset pursuant to 11 USC 541, and as such it is proper forum for Petitioner Mac Truong to sue Debtor Mergenthaler and/or her Trustee Barnard to recover my said asset; **(iv) Petitioner was not required to obtain prior leave from the USBC-EDNY to sue Barnard in USBC-DNJ, since as a matter of law the former did not have subject-matter jurisdiction over Mac Truong's asset, which is not an asset of Debtor Mergenthaler estate; (v)** as such, as a matter of law, there was no need for Petitioner herein to get prior court leave from the USBC-EDNY to ask the USBC-DNJ, who had the subject-matter jurisdiction over Debtor Mac Truong's asset pursuant to 11 USC 541 to direct purported Trustee Barnard to turn over my assets to me.

11. At the onset, there might have been some confusion due to Barnard's incorrect claim that Mac Truong was not owner of the 25% of the Property. My title had been voided by an order of the NYSC. As such, it

was allegedly an asset of Mergenthaler's estate under Barnard's administration. However, so soon as the USCA3 had declared that my title was valid, it is undisputed that 25% of the Property is mine and as such it should have been returned to me. The Barton doctrine has no role to play to require that I must have obtained a prior leave from the USBC-EDNY to sue Barnard in the USBC-DNJ to get my money back from him as a matter of law.

12. Any claim or objection to deprive me of my money under the Barton doctrine is undisputedly a false pretense by corrupted judges to assist members of their JOC unit to rob me of my $575,000.00 in open court.

ALLEGED UNTIMELINESS OF PETITIONER'S 60(b) MOTION DID NOT APPLY TO BAR PETITIONER'S CLAIM TO MY $575,000.00 ASSET BEING WRONGFULLY CONVERTED BY RESPONDENTS

13. In the USCA3's August 5 2021 Order [A: 9], the Court found that the USBC-DNJ was correct when it dismissed for untimeliness Petitioner's 60(b) Motion being filed on June 25 2019, i.e., more than 2 ½ years had passed between the order becoming final and the date said 60(b) motion was filed.

(a)

14. The foregoing finding is patent error because as a matter of law, relief that may be granted by the Court under FRCvP 60(b) may not be limited to only one-year filing requirement. Indeed, FRCvP 60(d)(3) conspicuously provides that the court has the power to set aside a judgment for fraud on the court. [Rule 60(d)(3)]

15. In this proceeding, the fraudulent conducts and criminal activities by Respondents Barnard and U.S. Trustee on the court with the glaring despicable active corrupted participation of the judges of USBC-DNJ, USDC-DNJ and USCA3 to unlawfully convert Petitioner's assets in open court have been so egregious and patent that only those who do not read or want to read the relevant court orders, moving papers or pleadings would find that there was no fraud on the court in this matter.

16. Actually, the very finding that Petitioner's claim to the return of my asset was barred by the Barton doctrine is vivid evidence to everybody who has a brain in working condition that Petitioner herein has been victim of one of the most vicious and despicable group of liars and criminals in black robes, who should be held accountable for their crimes and felonies in violation of 18 USC 153 et al. by this highest and most noble court of this land.

(b)

17. Furthermore, as a matter of law, Plaintiff Mac Truong's 60(b) motion was made within one year after the USBC-DNJ November 4 2016 Order could have become final on the merit. **Indeed, since now that said order was granted to Defendant Barnard on the Barton doctrine alone, without solely grounded on the Rooker-Feldman doctrine, the dismissal of Plaintiff's adversary proceeding for the recovery of my $575,000.00 was <u>not decided on the merit, but merely because of an alleged failure to comply with a procedural technicality that was waivable</u>.** And as such, there is no *res judicata* effect on any future litigation by Plaintiff to recover my said asset, which cause of action would only be barred from litigation after the 6-year statute of limitation over Defendant's fraudulent grand larceny in

violation of 18 USC 153 et al. on May 16, 2019, would have run out. In other words, as a matter of law, Petitioner herein would only be barred from suing Respondent Barnard for fraudulent conversion of my $575,000.00 after May 16, 2025.

18. Viewing the foregoing, since Plaintiff has until May 16, 2025, to sue Defendant for having fraudulently converted my $575,000.00, my 60(b) motion in the USBC-DNJ having been filed in June 2019 was not untimely and could **not** in any event be dismissed with finality on the merit. As a consequence, on August 5, 2021, when the USCA3 agreed with the USBC-DNJ and dismissed my 60(b) motion purportedly because of its untimeliness to raise a substantive issue in court that was supposed to be disposed of by the Court's November 4 2016 Dismissal Order, **the Court erred both as a matter of law and fact.**

19. In conclusion, the Barton doctrine does not apply in my case because I do not need to apply for any prior court leave to sue Respondent Barnard in the USBC-DNJ that has had absolute total subject and personal jurisdiction over him, a Chapter 7 Trustee, since May 23, 2016, date I filed for Chapter 7 Bankruptcy to the present, whether he had been appointed by the USBC-EDNY or any other U.S. Bankruptcy Court in the United States of America. It is so pursuant to 11 USC 105 and 541, after the USCA3 had found on February 22, 2019 [A: 16-22] in substance that Barnard was incorrect when he had originally asserted to the Court that my title to 25% of the Property had been voided by the NYSC's August 6 2015 Order. [A: 16-22]

20. The Barton doctrine has been adopted to protect receivers and/or bankruptcy trustees against lawsuits in non-bankruptcy courts, which of course may not be familiar with the Code, but not in another U.S. Bankruptcy Court that has total subject-matter jurisdiction over the issue

of protecting the assets of debtors under 11 USC 541 and 11 USC 105. It is absurd to say that USBC-DNJ Judge Papalia would need a special permission from USBC-EDNY Judge Grossman to issue an order directing Trustee Barnard to turn over Debtor Mac Truong's undisputed asset of $575,000.00 in his custody to Petitioner herein. Both these judges were unwilling to do so because both of them are ostensibly members of Katzmann and Barnard JOC unit all readily to make up false pretenses both as a matter of fact and/or law to convert Petitioner and other litigants' assets in glaring violation of 18 USC 153 et al.

OTHER GROUNDLESS NEGATIVE FINDINGS BY THE USCA3 DID NOT APPLY TO BAR PETITIONER'S CLAIM TO MY $575,000.00 ASSET HAVING BEEN WRONGFULLY CONVERTED BY RESPONDENTS

21. A review of the USCA3 August 5 2021 Dismissal Order [A: 5-13] shows the following biased and prejudiced footnote: *"[1] (...) We note generally that Appellants have sought unsuccessfully (in multiple federal courts) to obtain an order directing the Trustee in Mergenthaler's Chapter 7 bankruptcy, Kenneth Barnard, to return assets from the bankruptcy estate to which they claim they are entitled. Also, Truong has been enjoined by the District Court for the Eastern District of New York and the Bankruptcy Court from interfering with Mergenthaler's bankruptcy proceedings. See Truong, 763 F. App'x at 152 n.1; D.N.J. Bankr. Ct. 16-ap-01618, Doc. No. 22 at 4-5."*

22. As a matter of law, the foregoing footnote may not be used for the Court's intended malicious purpose of disparaging Petitioner herein to rationalize the Court's ultimate dismissal of Petitioner's appeal and affirming the District Court's injunction order based on Petitioner's

alleged frivolous conduct. It actually is only a devious way to conceal Barnard's conversion of Petitioner's $575,000.00 in his custody.

23. Indeed, even if the foregoing allegations by Appellee Barnard had been true from a distance, they were not at all accurate to be relied on. Petitioner's unsuccessful effort in one (not "multiple") federal court, to obtain an order directing Trustee Barnard to return assets from the Mergenthaler's bankruptcy estate to me, has never been on the merit and as such could not be used with *res judicata* effect in later litigation, at a time when Barnard had not yet filed his May 16 2019 TFR. As such, such failure, if any, due to premature claim being filed, may not bar such claim once it would have become mature subsequent to May 16 2019 filing of Barnard's TFR. In other words, before May 16, 2019, any claim may be put on hold, and unless there is a dismissal on the merit with finality, a claim that was rejected for being premature may certainly be renewed after Barnard's TFR is filed with the Court.

24. Last but not least, the "finding" that "*Also, Truong has been enjoined by the District Court for the Eastern District of New York and the Bankruptcy Court from interfering with Mergenthaler's bankruptcy proceedings*" is also nauseatingly frivolous and erroneous to be used by the USCA3 to dismiss Petitioner's current claim to my assets in custody of Trustee Barnard after he had filed his TFR on May 16, 2019, without showing that such filing injunction by the USDC-EDNY and/or the Bankruptcy Court from interfering with Mergenthaler's bankruptcy proceedings had been issued on the merits with unambiguous determination that the Court had after trial determined that Truong's claim that he owned 25% of the Property was incorrect based on the NYSC August 6 2015 Order. Clearly such injunction order(s) made sense to bar Petitioner from making a claim to the immediate return of my asset, while my title was in dispute, and during the time period, the Trustee needed to have, to sort out all the

assets and debts of the estate he had to administer. However, from that finding of an injunction order, if any, to conclude that Rosemary Mergenthaler and/or I had been banned forever on the merit to renew our respective claims to our assets, even after Respondent Trustee Barnard had filed his fraudulent-on-its-face TFR on May 16, 2019, it is patently not only an error indicating the idee fix of the Court to say anything whether it makes sense or not to help Barnard rob our total assets in the admitted sum of $2,793,000.00 in undisputed violation of 18 USC 53 et al.

25. So, the footnote is undisputed evidence on court record beyond a reasonable doubt showing that the USCA3 has willfully made a fake order to conceal felonies having been committed by Respondents Barnard and U.S. Trustee in open court in undisputed violation of Petitioner's constitutional rights to due process and property..

STATEMENTS OF FACTS AND PROCEDURAL HISTORY

26. Prior to May 11, 2015, Petitioner Mac Truong herein owned by uncontested valid title 25% of a real estate property in Long Island, NY, (the Property hereafter), of which Respondent Rosemary Mergenthaler herein owned 75%.

27. On May 11, 2015, Mergenthaler filed for bankruptcy under Chapter 7, in the United States Bankruptcy Court for the Eastern District of New York, Case No. 15-72040 (REG), Robert E. Grossman, Judge, R. Kenneth Barnard, Chapter 7 Trustee.

28. On May 23, 2016, Mac Truong also filed for bankruptcy under Chapter 7 in the United States Bankruptcy Court for the District of New Jersey,

Case No. 16-19929 (VFP), Vincent F. Papalia, Judge, Charles M. Forman, Trustee.

29. Debtor Mac Truong requested Trustee Forman to claim my $575,000.00-worth share to the Property. He moved the Court instead for leave to abandon it under two incorrect allegations that **(i)** the Property belonged to Debtor's creditors, and **(ii)** my title to 25% of the Property had been voided by NYSC Justice Pitts's August 6 2015 Order. Judge Papalia erroneously so ordered.

30. On or about August 2, 2016, Truong commenced Adversary Proceeding No. 16-1618 (VFP) against Respondent Mergenthaler herein and her Trustee Barnard to recover my said $575,000.00. Barnard moved Judge Papalia to summarily dismiss my complaint on the ground that my title to 25% of the Property had been voided by the August 6 2015 Order of NYSC Justice Pitts. Petitioner argued that said order, if any, was **not** applicable to me to annul my title. Indeed, it had been issued to Mark Cuthbertson, a court-appointed receiver of the Property to sell it, upon his motion in *Dean Osekavage v. Rosemary and Peter Mergenthaler,* NYSC, Index No. 29626/11, an action to which I was not a party.

31. On November 4, 2016, Judge Papalia granted Barnard's motion to dismiss my adversary proceeding on three following incorrect grounds: **(i)** the Rooker-Feldman doctrine, **(ii)** the Barton doctrine, and **(iii)** Section 362(a) Automatic Stay. The Court further demonstrated its bias in favor of Barnard JOC (Judicial Organized Crime) unit by abusing Petitioner herein with an unjustified filing injunction based on Respondent Barnard's long list of libelous statements that I was a very aggressive disbarred lawyer suing everybody on sight just because they may not agree with me on anything, notwithstanding **(a)** the USCA3 May 12 2005 Order prohibiting anybody under the court jurisdiction from

doing so; and **(b)** even had those allegations been true, they were no grounds for Respondents herein to convert my $575,000.00 as they had done with the active assistance by the lower courts in violation of 18 USC 153 *et al.*

32. Petitioner timely appealed from Judge Papalia's November 4 2016 Dismissal Order [(VFP) Dkt #22 11/4/2016] to the USDC-DNJ under Docket No. 16-Cv-8591(ES), Esther Salas, Judge.

33. Judge Salas affirmed on or about June 18, 2018, Judge Papalia's November 4 2016 Dismissal Order on the Rooker-Feldman doctrine alone, without affirming Judge Papalia's limited filing injunction order. [USDC-DNJ 16-Cv-8591- Dkt #42 6/18/2018]

34. Petitioner appealed from Judge Salas's June 18 2018 Order to the USCA3 under Docket No. 18-2430. On February 22, 2019, the USCA3 issued its **NON-PRECEDENTIAL** order dismissing my appeal based on the Barton doctrine and Section 362(a) Automatic Stay, after having unambiguously declared that Appellant Mac Truong's title to 25% of the property was not voided by NYSC August 6 2015 Order, since Truong was not a party to the underlying proceeding. [A: 16-22 - USCA3 18-2430- Dkt #None 2/22/2019].

35. On May 16, 2019, Respondent Barnard filed his Trustee's Final Report (TFR) with the USBC-EDNY Case No. 15-72050 (REG). [Dkt #233] Amazingly, this document included all the required legal elements to establish Barnard and U.S. Trustee's illegal conversion of Petitioner's $575,000.00 as follows:

(i) Mac Truong's claim to 25% of the Property in the amount of $625,000.00 has been formally docketed and acknowledged.

(ii) Mergenthaler's estate has a total asset of $2,793,000.16, which includes $2,300,000.00 sale proceeds of the Property, and as

such Mac Truong's actual share is $575,000.00 instead of $625,000.00.

(iii) Mac Truong receives none of my $575,000.00 asset because none of the estate assets is left after their distribution to allegedly allowed creditors.

36. On June 25, 2019, i.e., 40 days after Respondent Barnard's FTR filing exposing in plain view his felonies of conversion of assets in his custody, Petitioner herein returned to the USBC-DNJ to file my 60(b) motion for reconsideration of the November 4 2016 Dismissal Order. [id.]

37. In his papers in opposition, Respondent Barnard has absolutely failed to allege one single argument on the merit showing why he had the option of not turning over to Petitioner herein my $575,000.00 that had been in his custody since the sale of the Property for $2,300,000.00 in November 2016.

38. On October 30, 2019, Judge Vincent F. Papalia opined that the Court was bound by the USCA3 February 22 2019 Order [A: 16-22] determining that the Rooker-Feldman doctrine did **not** apply to void Mac Truong's title to 25% of the Property. However, the Court dismissed Petitioner's June 25 2019 60(b) Motion under the Barton doctrine, 11 USC 362(a), and untimeliness.

39. Petitioner timely appealed from Judge Papalia's December 20 2019 Order to USDC-DNJ Judge Salas. This time Judge Salas seemed to welcome my appeal despite Barnard's attorney David Blansky's ludicrous declaration that "the Trustee" would not dignify Truong's "frivolous" "untimely" and "unallowed" appeal with an answer.

40. Notwithstanding, Petitioner eagerly complied with Judge Salas's instructions to perfect my appeal. Respondents only filed a very short brief discussing issues that are irrelevant to those at bar, but failed to dispute, hence admitted, that they

had indeed unlawfully converted my $575,000.00 in violation of 18 USC 153 *et al.*

41. On or about May 2, 2020, Judge Salas ordered the appeal and moving papers marked submitted for adjudication without oral argument.

42. On July 19, 2019, i.e., about 2 ½ months after Movant's appeal had been submitted with great expectation to prevail, her honor's only beloved son Daniel Anderl was murdered and her husband Mark Anderl seriously wounded by gunshots of assassin Roy Den Hollander, a practicing lawyer, duly admitted to practice in the USCA2 under then Chief Judge Robert A. Katzmann.

43. Within one week following the assassination and attempted murder of her family, on July 27, 2019, Mergenthaler and Mac Truong's joint Appellate proceeding #20-Cv-00074 (ES) were abruptly taken away from Judge Salas and transferred to Judge Kevin McNulty and became 20-Cv-00074 (KM). Undisputedly, said transfer or rather Mafia-styled forum shopping would not have happened without those terrifying murder and attempted murder of Judge Salas's family.

44. On or about September 25, 2020, Judge McNulty issuing an order dismissing Petitioner's appeal with so many incredible material errors such as the name of Respondent Rosemary Mergenthaler and those of her co-Respondents Barnard and U.S. Trustee were all missing and replaced by THE UNITED STATES OF AMERICA. [See, Dkt #30 - 9/24/2020 – A: 14-15]. It is glaring evidence showing Judge McNulty's horrifying unfamiliarity and recklessness with a matter, in which his honor had been obviously assigned with a fixed unlawful mission of dismissing Mac Truong and/or Mergenthaler's appeals at any cost and with a fake reason or without any reason at all as former USCA2 Chief Judge Katzmann had done routinely, so long as Barnard and his Katzmann JOC unit's felonies of conversion of my $575,000.00 in violation of 18 USC 153 *et al.* are concealed instead of them being indicted and prosecuted.

45. After an intensive motion practice to vacate and/or amend the District Court's absurd September 25 2020 Order, the Court issued several orders allowing

Petitioner herein to proceed with my timely appeal to the USCA3 as *pro se* appellant with an approved IFP status. For the balance, the Court, however, affirmed its September 25 2020 Order dismissing my appeal by affirming the Papalia's order being appealed as is. Hence for all practical and procedural purposes, my appellate proceeding under USDC-DNJ #20-00074 (KM) was merely a neutral no-content appellate passage from the USBC-DNJ to the USCA3.

46. In February 2021, after the USCA3 had received Respondent Rosemary Mergenthaler's individual Notice of Appeal that is completely severed from that of Petitioner Mac Truong herein, instead of making it one single appellate proceeding under the same Docket No. 21-1171 with Mac Truong as the main Appellant-Appellant, **the USCA3 correctly opened two separate appellate proceedings and assigned Dkt No. 21-1172 to Appellee-Appellant Rosemary Mergenthaler's appeal, which could, as a matter of law under FRCvP 13(g) and (i) from then on, be granted or dismissed on its own merits, without having anything to do with Appellant-Appellant Mac Truong's Appeal No. 21-1171.**

47. On March 11, 2021, Appellant Mac Truong's Motion for Summary Judgment under FRCvP 56 was docketed [Case #21-1171 - Dkt #10 - 3/11/2021 – 458 Pages.]

48. On April 1, 2021, Appellee Barnard filed his 6-page response but failed to object to my motion on the merits, or regarding it as being oversized, if any. [Dkt #11 - 4/1/2021].

49. On April 9, 2021, Appellant Mac Truong filed my Motion to be Relieved from Motion to File Overlength Response. [Dkt #13 - 4/9/2021]

50. Only on April 19, 2021, Appellee Barnard filed his 2-page Objection to Appellant's April 9 2021 Motion. [Dkt #14 - 4/19/2021]

51. Nothing further was filed with the USCA3. However, unexpectedly on May 13, 2021, the Court Clerk abruptly and unusually issued her Order *sua sponte*

irresponsibly and unconscionably consolidating the two absolutely separate appeals #21-1172 and 21-1171. [Dkt #17 - 5/13/2021]

52. Expectedly, however, on the next day of May 14, 2021, the USCA3 Court Clerk issued another order directing in substance that *"the case will be submitted to a panel of this Court for possible summary action, (...) unless concerned parties may successfully object to such submission within 21 days."* [Dkt #18 - 5/14/2021]

53. The foregoing unusual rush and lack of fairness have glaringly demonstrated that instead of doing her job without bias or prejudice, the Clerk of the USCA3 has taken side and subtly prepared the court's unfair, unjust, and even unlawful dismissal of both Appeals #21-1171 and 21-1172, to cover up Appellees' undisputed felonies by some kind of technical confusion as being explained in Appellant's motion to vacate the Court's May 13 2021 Consolidation Order. [Dkt #19 - 5/25//2021 – A: 1]

54. On May 25, 2021, the Clerk of the USCA3 docketed Appellant's Notice of Motion to vacate the Consolidation Order [Dkt #19 - 5/25//2021]. I strongly argued therein that Mergenthaler's Appeal #21-1172 was absolutely different from and even opposite to my Appeal #21-1171. In my personal experience of more than 40 years dealing with the corrupted judicial activities of the New York State Court system and about 20 years with Katzmann JOC unit in federal courts, the absolutely groundless consolidation of my appeal with that of Mergenthaler is an undisputed signal by the USCA3 that it will reproduce the pattern of criminal activities of Barnard and Katzmann JOC unit in New York, who had most unjustly and unfairly dismissed my absolutely meritorious appeal [USCA2 #19-2562 – March 2020] by using the most ludicrous false pretenses, such as, for instance, about 10 years ago Mac Truong was enjoined from filing any new appeal in the USCA2, without having first obtained prior leave to do so, something, of course, that had absolutely nothing to do with my new filing or Mergenthaler's.

55. Viewing the foregoing undisputed facts and rules of law, it was undisputed that

Respondent Barnard and/or the U.S. Trustee have had the legal duty of turning over to me my assets being admittedly held in their custody since November 2016 according to their own FTR.

56. However, as seen in the USCA3 Orders being appealed to this Court [A: 1-24], the Court willfully acted in defiance of the Constitution and applicable laws of the United States of America and egregiously violated Appellant-Petitioner's constitution right to due process and concealed Appellees' felonies of grand larcenies, conversions of funds in violation of 18 USC 153, 155, 157 and 1961.

GROUNDS UPON WHICH THIS PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED

The facts and circumstances of this case glaringly and undisputedly show on public court records that:

(a) The United States Court of Appeals for the Third Circuit has entered a decision in conflict with its prior decisions and those of other United States Court of Appeals on the same important issue in that the Court has so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a U.S. District Court, as to call for an exercise of this USSC's supervisory power. *[To be right on the point, no other U.S. Courts of Appeals, except the Second Circuit under former Chief Judge Robert A. Katzmann, have demonstrated an open despicable practice of abusing legal authority of the Court to obstruct justice by making willful egregious false findings of fact and/or controlling legal authorities to unlawfully violate Petitioner's constitutional right to due process as the USCA3 has done in this appellate proceeding. The corruption by the Court is total absolute and undeniable. It's time for this Supreme Court to put an end to such despicable*

outright criminal hypocrisy to restore the trust of the American people in our system of justice, which used to be the best in world history.]

(b) The USCA3 has further entered a decision in this appeal in conflict with its prior decisions and those of other United States Court of Appeals on the same important issue in that the Court has decided an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court, or has decided an important federal question in a way that conflicts with relevant decisions of this USSC. Indeed, in this case, in order to conceal Appellees' undeniable felonies of grand larcenies and/or conversion of my $575,000.00 in violation of 18 USC 153 et al., the USCA3 has criminally and willfully consolidated Petitioner's appeal under Docket No. 21-1171, which is not only different from but also opposite to Petitioner's adversary Mergenthaler's appeal under Docket No. 21-1172 in order to make Appellees' affirmative defenses against one appellant available to dismiss the causes of actions in the other appeal.

As such, in the interest of justice and for the sake of effectively defending any litigant's most fundamental constitutional right to due process, this Supreme Court of the United States of America should absolutely intervene and control the USCA3's shameful despicable lawlessness to have abused its legal authority to literally obstruct justice and cover up by orders being based on willful material misrepresentations of fact to conceal Respondents' conversion of Petitioner's $575,000.00 in their custody in egregious violation of 18 USC 153, 155, 157 and 1961.

CONCLUSION

1. With due respect, Petitioner's $575,000.00 is my money that has been wrongfully been held in Respondent Barnard's custody. No Barton theory or alleged untimeliness of my 60(b) motion, or purported filing injunction order by some other federal courts in entirely different matters could be any valid excuse for the USCA3 to assist Respondent to convert my said assets in violation of 18 USC 153 et al. with impunity.

2. As a thorough review of all relevant court records would reveal beyond a reasonable doubt, there is no reasonable way to explain how Petitioner's $575,000.00, which had been 25% of the Property, could not be returned to me but paid to those who are not owners thereof prior to May 11, 2015, date Respondent Mergenthaler herein filed for her bankruptcy under Chapter 7.

3. It is indeed very sad for America that some judges are the ones who lie and cheat believing they could be protected by absolute judicial immunity, i.e., above the law, while they are plain criminals glaringly lying to assist members of their respective JOC units to convert billions of dollars of litigants relying on them for justice.

4. As a matter of law, judges having knowledge of crimes but refusing to report them and instead wilfully covering them up with clever so-called technicalities, are themselves criminals having concealed criminal activities they have been sworn in to prosecute.

5. The foregoing sacred duty is not only for everyday judges but certainly and mostly so for every member of this highest court of this land of democracy, where proudly live the best, the free and the brave.

6. As such, now that this noble Supreme Court of the great United States of America has been presented with the most clear-cut opportunity to do justice to

Americans, by eliminating the corrupted portion of the second and/or third most powerful courts in America, Petitioner strongly hopes that the Court would seize this opportunity and rise to the occasion to make America more just, stronger, kinder and prouder than ever before.

For all the reasons and authorities outlined hereinabove, Debtor-Petitioner Mac Truong respectfully petitions to this Court for an order granting my instant Petition for a Writ of Certiorari and/or directing appropriate solution viewing all the facts and correct applicable legal principles in the extremely serious matter of national proportion by issuing any remedy that this Court may deem reasonable and appropriate to do justice not only for Petitioner herein but for all victims of Judicial Organized Crime in the United States of America.

Dated: October 20, 2021

Mac Truong, Appellant-Petitioner Pro se

LIST OF
PARTIES TO BE SERVED

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Rosemary Mergenthaler, Respondent