No. 22- 21-7680

IN THE SUPREME COURT OF THE UNITED STATES

In re: Israel Romero

Petitioner

On Petition for a Writ of Mandamus to the
United States Court of Appeals for the
Fourth Circuit

PETITION FOR WRIT OF MANDAMUS

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QUESTION PRESENTED

1. Did the U.S. Court of Appeals for the Fourth Circuit (Fourth Circuit) err by placing this case in abeyance pending a decision by the court in Britt v. DeJoy, No. 20-1620, that has no relationship to the Petitioner's case and will not have any incidence whatever way is decided?

PARTIES TO THE PROCEEDING

1. Petitioner Israel Romero

The Petitioner Israel Romero (Petitioner) is a retired elderly 72 year-old person with Social Security Administration benefits, especially for Health and Medical services, cover by Medicare (Federal) and Medicaid (State of South Carolina).

2. Defendant No. 1 ALLWELL FROM ABSOLUTE TOTAL CARE (ALLWELL)
Medicare Advantage (HMO)
1441 main Street, Suite 900
Columbia, SC 29201

3. Defendant No. 2 UPSTATE CAROLINA RADIOLOGY, PA
Provider of Radiology Medical Services
101 E. Wood Street
Spartanburg, SC 29303

4. Defendant No. 3 RECEIVABLE MANAGEMENT GROUP, INC.
Accounts Collection Agency
2901 University Avenue # 29
Columbus, GA 31907

5. Defendant No. 4 THOMAS STEPHENS
Sales Rep – Medicare Sales
1441 Main Street, Suite 900
Columbia, SC 29201

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, the Petitioner states that Defendants/Respondents Numbers 1, 2 and 3 are corporations. ALLWELL from ATC is represented by Jonathan Edward Schulz, Esq., and Michael J. Bentley, Esq., from Bradley Arant Boult Cummings, LLP, 214 N. Tryon Street, Suite 3700, Charlotte, NC 28202. Defendant # 2 UPSTATE CAROLINA RADIOLOGY is a corporation, and Applicant does not know its legal counsel because the defendant did not answered or replied to anything at all. Defendant # 3 RECEIVABLE MAGAMENT GROUP is a corporation, and Applicant does not know its legal counsel because this defendant never answered or replied to anything.

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OPINIONS AND ORDERS ENTERED

On February 24, 2022, the Fourth Circuit placed this case in abeyance pending a decision by that court in Britt v. DeJoy, No. 20-1620 "on the issue of when a dismissal without prejudice is final, and thus appealable." Both orders the one filed on 2/24/2022 in Petitioner case, and the one filed on 10/14/2021 on Britt v. DeJoy. (Appendix 1 (a) (b)

JURISDICTION

The Fourth Circuit placed Petitioner's appeal on abeyance on February 24, 2022, App. 2056 (7:20-cv-04344-JMC) This Petition for Writ of Mandamus is timely filed which due to the COVID-19 pandemic should be filed within 150 days from the date of the order that would be August 25, 2022. In this case, there is no other tribunal to seek for relief but the United States Supreme Court for a Writ of Mandamus.

RELEVANT LEGAL PROVISIONS

I. Due Process Clause of the Fourteenth Amendment to the Constitution: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;...nor deny to any person within its jurisdiction the equal protection of the laws."

II. Due Process Clause of the Fifth Amendment to the Constitution: "...nor be deprived of life, liberty, or *property*, without due process of law..."

III. Rule 56 Fed. Rules of Civ. Proc. 2009 Amendment subdivision (c)(1) The new rule allows a party to move for summary judgment at any time, even as early as the commencement of the action.

IV. Rule 3 FRCP Commencing an Action. "A civil action is commenced by filing a complaint with the court."

RULE 20.1 STATEMENT

In this case exist truly exceptional circumstances that mandate the issuance of the writ sought by the Petitioner. As set forth below in detail, placing the appeal in abeyance has no other remedy but mandamus, and the relief is not available in any other court but the United States Supreme Court. The order filed on 2/24/2022 by the Fourth Circuit does not explain the reason for placing in abeyance this case. It just states, "For reasons appearing to the court," which only leaves this case in limbo. The Petitioner made some research and found that on 10/14/2021 in Britt v. DeJoy the court asked the parties to "submit supplemental briefs on the issue of when a dismissal without prejudice is final, and thus appealable." The Petitioner will show that the issue does not apply to his case because plaintiff's motion for summary judgment was denied, and the complaint was dismissed *without prejudice but with prejudice* at the same time, and the Petitioner made that point clear on his appeal to the Fourth Circuit. Besides, the main issue on appeal is whether the motion for summary judgment was premature (?) which is the reason the S.C. District Court stated for denial of the motion. (See Appendix No. 3)

This court will learn that the four defendants did not answer the complaint, did not answer Plaintiff (Appellant/Petitioner) motion for summary judgment, did not answer/reply the plaintiff (Appellant/Petitioner) objections I and II to every Magistrate Judge Report and Recommendation. The South Carolina District Court gave them the exact date for responses to be filed. (See CIVIL DOCKET FOR CASE # 7:20-cv-04344-JMC hereby attached as Appendix No. 2)

This court also will learn that the Petitioner filed 76 pages of written evidence, all of them issued by the four defendants, and are part of the record at the S.C. District Court, Spartanburg Division. The four defendants failed not only to answer or reply but also to submit arguments or evidence in contrary at all.

When the four defendants did not answer at all, and submitted no evidence at all to rebut Petitioner's case, the S.C. District Court (trial court), and the Fourth Circuit committed plain error by denying the motion for summary judgment and dismissing the complaint the first, and placing the case in abeyance the second, and the mandamus should be granted. (1946 Amendment to FRCP Rule 12(b)(c); Samara v. United States, 317 U.S. 686; Boro Hall Corp. v. General Motors Corp., 317 U.S. 695; see also Kithcart v. Metropolitan Life Ins. Co., 150 F.2d 997).

"As a precondition of the issuance of the writ, the petitioner must establish that there is no alternative remedy or other adequate means to obtain the desired relief, and the petitioner must demonstrate a clear and undisputable right to the relief sought." Kerr v. United States District Court, 426 U.S. 394, 403 (1976) In Kerr, this court wrote that, "There must be a demonstration of clear abuse of discretion or conduct amounting to usurpation of judicial power in order to grant such a writ." Below this court will find plenty of facts showing that the courts below committed clear abuse of discretion and conduct amounting to usurpation of judicial power, and this Supreme Court of the United States needs to correct a clear error or prevent the manifest injustice. Therefore, the petition should be granted and the mandamus should be issued.

STATEMENT OF THE CASE

On March 2020, Petitioner transferred his health insurance to defendant No. 1 ALLWELL FROM ABSOLUTE TOTAL CARE (ALLWELL) –coverage began on April 1, 2020 – based upon representations by defendant No. 4 agent Thomas Stephens, by officers of ALLWELL, corroborated with brochures and official letters of coverage. (All these documentary evidence is on the record of this case) The representations guaranteed Petitioner that he will receive what was "actually receiving and more, and will pay ZERO DOLLAR –because Petitioner has total coverage by Medicare and Medicaid - for total medical bills, medications, and health related services including dental and vision." On October 29, 2020 Petitioner received a letter of collection from defendant No. 3 RECEIVABLE MANAGEMENT GROUP in representation of defendant No. 2 UPSTATE CAROLINA RADIOLOGY, because defendant No. 1 ALLWELL refused to pay the Petitioner's bills. It means defendant # 1 ALLWELL breached the contract and the representations became misrepresentations. On December 15, 2020 Petitioner filed a lawsuit (ECF # 1) *Pro Se* with motion to Proceed in Forma Pauperis in the U.S Federal Court for the District of South Carolina, Spartanburg Division. On January 5, 2021, defendant No. 1 ALLWELL filed an ANSWER to the complaint (ECF #6). On January 6, 2021, the District Court ordered the answer to be deleted as "premature (ECF #11)." On January 27, 2021, the Petitioner filed a Motion for Summary Judgment. The court set 2/10/2021 as due date for response to the motion (ECF # 15). On January 28, 2021 the Magistrate Judge filed a Report and Recommendation (R&R) that the plaintiff's motion for summary judgment be denied as premature (ECF # 16). On February 11, 2021 the

Petitioner filed his objections to the R&R (ECF # 18). On 3/04/2021 the Petitioner amended the complaint after being ordered by the court (ECFs # 20 and #23. Please take notice that the DOCKET Appendix 2 is missing ECF # 22, and Petitioner ignores the reason). On 3/25/2021 the Magistrate Judge R&R recommended the action be dismissed with prejudice and without leave for further amendment. (ECF # 27) On 4/08/2021 the Petitioner filed his OBJECTIONS to the R&R. (ECF # 30) On 9/17/2021 the court ruled denying the motion for summary judgment as premature, dismissed the federal law claims under FDCPA and FCRA and all state claims without prejudice. (ECFs # 31 and # 32) Please take notice that on ECF # 31 at p. 11, there is a marginal note 7 where the court states, "All other federal claims in Plaintiff's Complaint, Amended Complaint, and Objections to Report I and Report II are dismissed *with prejudice*." (See Appendix 3) On 9/24/2021 the Petitioner filed a NOTICE OF APPEAL. (ECF # 34) (see Appendix No. 2)

On October 22, 2021 the Petitioner filed his INFORMAL BRIEF at the U.S. Court of Appeals for the Fourth Circuit (Fourth Circuit). On 11/04/2021 the defendant No. 1 ALLWELL filed an INFORMAL RESPONSE BRIEF. On 11/12/2021 the Petitioner filed his INFORMAL REPLY BRIEF. On 2/24/2022 the Fourth Circuit placed this case "in abeyance pending a decision by this court Britt v. DeJoy No. 20-1620, orally argued January 28, 2022, (en banc)." The only explanation the court made is, "For reasons appearing to the court..." [See Appendix No. 1 (a) (b)]

Where the case was placed to sleep in the freezer for no real reason because the MOTION FOR SUMMARY JUDGMENT was DENIED, the only remedy was an

appeal. In addition, the rest of the matter was DISMISSED WITHOUT PREJUDICE but at the same time was DISMISSED WITH PREJUDICE, some parts in the official order and other parts in a marginal note, the only remedy was an appeal due to the "need to correct a clear error or to prevent a manifest injustice." (Official Comm. Of Unsecured Creditors v. Cooper & Lybrand, LLP, 322 F.3d 147, 167 (Second Cir. 2003)

Please take notice that the documents cited: ORDER No. 21-2056 (7:20-cv-04344-JMC) on ROMERO v. ALLWELL et. al. filed on February 24, 2022 by the Fourth Circuit; ORDER No. 20-1620 on BRITT v. DeJoy filed October 14, 2021 by the Fourth Circuit; the CIVIL DOCKET for Case # 7:20-cv-04344-JMC from the District Court, and the ORDER AND OPINION and the JUDGMENT on ROMERO v. ALLWELL et. al. filed on 9/17/2021 by the District Court, are hereby attached as Appendixes 1, 2, 3.

ARGUMENT

RELATED TO THE FOURTH CIRCUIT

The Fourth Circuit placed this case in abeyance until the decision on Britt v. DeJoy is rendered. A research on the matter showed that on Britt the Fourth Circuit placed the question of "when a dismissal without prejudice is final, and thus appealable." Petitioner contends that in no way the Britt decision will affect our case for several reasons:

FIRST. The District Court denied Petitioner's Motion for Summary Judgment in the final ORDER and DECISION (Appendix No. 3). Thus it is appealable. Petitioner's motion for summary judgment is final and the only recourse available is appeal.

SECOND. The ORDER AND OPINION, and the JUDGMENT entered on 9/17/2021 by the District Court is a plain and clear error. Does not mention by name the causes of action that are dismissed without prejudice, and which causes of action are dismissed with prejudice. Mentions dismissing some claims without prejudice in the body or text of the ORDER AND OPINION, failing to say exactly which are those claims. In a marginal note numbered 7, states that "All other federal claims in Plaintiff's Complaint, Amended Complaint, and Objections to Report I and Report II are dismissed *with prejudice*." This decision violates FRCP Rule 41 (a)(2) that states that dismissal by the court initiative MUST be without prejudice. In one word: we don't know if the decision of 9/17/2021 is *hen or rooster* but we certainly know it is a mess. Hence, this matter is appealable.

THIRD. The Fourth Circuit has decided Goode v. Central Virginia Legal Aid Society, 807 F.3d 619 (2015), and 313 other cases in the same issue by the Fourth Circuit. For reason thereof, placing Petitioner's case in abeyance does not serve any purpose but to freeze the case, throw it to the forgotten box, and protect the possible criminal activity committed by the defendants. Take a look to the ORDER AND OPINION filed on 9/17/21 (ECF # 31 at S.C. District Court) where on p. 9 states, "Plaintiff also attempts to state various causes of action under federal criminal statutes and allege Defendant's conduct violated various criminal laws. (See, e.g., ECF No. 30 at 14). Plaintiff is advised that this is a civil action, and private parties may not bring suit under criminal statutes." If the Judge J. Michel Childs would be honest, she should have submitted the matter to the proper law enforcement people, i.e. the FBI or U.S. Department of Justice to investigate the criminal activity by those four defendants. Furthermore, in the complaint the

Petitioner stated that ALLWELL is a hoax. The judge wrote in response at p. 3 of ECF #30 that, "Upon review, the court takes judicial notice that Allwell's parent, Absolute Total Care, Inc. is incorporated in, and therefore a citizen of, South Carolina. (3) The South Carolina Secretary of State lists Absolute Total Care, Inc. as a South Carolina corporation in good standing...Allwell from Absolute Total care appears to be part of Absolute Total Care, Inc., which is a wholly owned subsidiary of Centene Corporation..." Four points must call the attention of this court: (1) The S.C. District Court had many activities that were not reported to the Petitioner. Take notice that the CIVIL DOCKET FOR CASE #7:20-cv-04344-JMC (Appendix No. 2) shows exactly ten (10) ENTRIES in blank. What those entries contain? This court should take care of it. (2) According to Judge Childs, defendant ALLWELL "appears" to have a license to sell health insurance in South Carolina. Big problem because a license to sell insurance is a real license not the "appearance of a license." (3) ALLWELL advertises and sells insurance as an independent corporation. Petitioner prior to signing with ALLWELL was insured with Absolute Total Care. Neither defendant #4 Thomas Stephens nor any other officer of ALLWELL told Petitioner that it was the same corporation ALLWELL and my prior insurer Absolute Total Care. Hence, ALLWELL is a hoax to squeeze illegally money from the State of South Carolina and from the Federal Government. (4) How it comes that the court was making research in favor of the defendants, becoming judge and party, in violation of the Federal Rules of Civil Procedure and the Rules of Ethics for the Judiciary 3 and 4.

FOURTH. If the denial of the motion for summary judgment in the final ORDER and DECISION is appealable *per se*, some claims are dismissed without prejudice, and other claims are dismissed with prejudice, the Britt case will not affect our case at all.

FIFTH. Given the exposed possible criminal activity –perhaps confirmed by the S.C. District Court and by Judge J. Michel Childs, including but not limited to fraud, extortion, and selling health insurance without a license, placing this case in abeyance would be considered a cover up of that alleged criminal activity by the Fourth Circuit, and by the S.C. District Court.

SIXTH. Please take notice that on Petitioner's INFORMAL BRIEF to the Fourth Circuit, the "**ISSUE IV**. Whether the lower court *erred* when denied plaintiff's motion for summary judgment and motion on the pleadings, by applying to plaintiff a Code Red? Maybe yes, and it is plain error that warrants reversal." It is suggested that this court take a look to the entire record of this case in the S.C. District Court, and in the Fourth Circuit.

SEVENTH. When a party had submitted overwhelming or extraneous evidence –such as in the present case where Petitioner submitted 76 pages of documentary evidence, and the four defendants submitted no answer or reply at all not to mention a piece of evidence in contrary, and the case reached the circuit court of appeals, and the evidence shows that there is no genuine issue as to any material question of fact and that on the undisputed facts as disclosed, one party is entitled to judgment as a matter of law, the matter may be treated as a motion for summary judgment and disposed of as such. [See Samara (supra); Boro Hall (supra); Kithcart (supra); Gallup v. Caldwell, 120 F.2d 90; Central Mexico

L&P v. Munch, 116 F.2d 85; National Labor Relations Board v. Montgomery Ward, 144 F.2d 528] Where defendants waived their defenses, the court has no other way but to decide in favor of plaintiff/appellant now Petitioner. "If ever there were a classic case of waiver, this is it!" See Latimer v. Roaring Toyz, Inc. 601 F.3d 1224, 1239 (11th Cir. 2010)

THEREFORE, the petition should be granted and this court should issue the Mandamus.

RELATED TO THE SOUTH CAROLINA DISTRICT COURT

FIRST. The District Court failed to make a decision in Plaintiff's Motion for Summary Judgment and decided to order plaintiff to amend the complaint. Then, on 9/17/21 decided the case and denied the motion "for premature." (ECF 31 at 1, 10) The decision violates Rule 56 Fed. Rules of Civ. Proc. 2009 Amendment subdivision (c)(1) The new rule allows a party to move for summary judgment at any time, even as early as the commencement of the action. Rule 3 FRCP Commencing an Action. "A civil action is commenced by filing a complaint with the court." Pursuant to the prior laws, the court misapplied it, in clear and plain error or manifest injustice that warrants reversal.

SECOND. The District Court failed to make the right decision when the plaintiff, now Petitioner submitted 76 pages of evidence in the form of documents provided by the four defendants. The four defendants did not answer, did not reply, and did not submit evidence in contrary. Pursuant to Rule 12 (b)(6) the court had no other way but to decide in favor of plaintiff/Petitioner. The court dismissed the complaint misapplying the law (ECF No. 31 at 1, 11) "A complaint should not be dismissed pursuant to Fed. R. Civ. P.

12 (b)(6) for failure to state a cause of action upon which relief can be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Cooper v. Parsky, 140 F.3d 433, 440 (2d Cir. 1998) (quoting Comley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957) In this case, 76 pages of documentary evidence against zero is a *no brainer* to decide in favor of plaintiff, and the court committed a clear and plain error or manifest injustice that warrants reversal. If ever there were a classic case of waiver, this is it! See Latimer v. Roaring Toyz, Inc., 601 F.3d 1224, 1239 (11th Cir. 2010) ("Failure to plead an affirmative defense generally results in waiver of that defense")

THIRD. The District Court took to death the defense of the four defendants, especially ALLWELL. Plaintiff/Petitioner stated in the complaint that ALLWELL (defendant # 1) is a hoax. The *court investigated or made research in representation of defendant* ALLWELL and found that "Allwell from Absolute Total Care *appears* to be part of Absolute Total Care..." (ECF No. 31 at 3 – Appendix No. 3) Please take notice that a license to sell insurance MUST NOT be apparent: either you have license or not. Petitioner repeats that ALLWELL is a hoax. TAKE NOTICE that on July 12, 2021, ALLWELL notified that changed its name to now known as WELLCARE, a move to deceive elderly people, and to keep squeezing money from the State of South Carolina and from the Federal Government. (See letter attached as Appendix No. 4) This Supreme Court should submit this information to the proper law enforcement authority for an investigation. SCOTUS is clear and firm on the point as follows: "When the express terms of a statute give us one answer and extratextual considerations suggest another, it's

no contest. Only the written word is the law, and all persons are entitled to its benefit." 17-1618 Bostock v. Clayton County, 590 U.S. ___ (2020)

REASONS FOR GRANTING THE WRIT

Both the decision by the Fourth Circuit and by the S.C. District Court, violate the Petitioner's Constitutional rights of Due Process Clause of the Fourteenth Amendment to the Constitution: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;...nor deny to any person within its jurisdiction the equal protection of the laws." Also violate the Due Process Clause of the Fifth Amendment to the Constitution: "...nor be deprived of life, liberty, or *property*, without due process of law..." Violate the Rule 56 Fed. Rules of Civ. Proc. 2009 Amendment subdivision (c)(1) The new rule allows a party to move for summary judgment at any time, even as early as the commencement of the action. Violate the Rule 3 FRCP Commencing an Action. "A civil action is commenced by filing a complaint with the court." Violate FRCP Rule 12 (b)(6) waiver of defenses, and violate decisions by the same Fourth Circuit (see 14-1939 Goode v. Central, supra, cited in more than 1000 cases, including 313 only by the Fourth Circuit), and violate many decisions from the United States Supreme Court, including 17-1618 Bostock (supra).

Not granting the petition would be a contribution to the clear abuse of discretion by the courts below, or approving conduct that amounts to usurpation of judicial power, and perhaps crimes. Therefore, the application for a writ of mandamus should be granted.

CONCLUSION

This court ruling states that, "as a precondition to the issuance of the writ, the petitioner must establish that there is no alternative remedy or another adequate means to obtain the desired relief, and the petitioner must demonstrate a clear and indisputable right to the relief sought." Kerr v. United States District Court, 426 U.S. 394, 403 (1976) In Kerr, this court stated that, "There must be a demonstration of a clear abuse of discretion or conduct amounting to usurpation of judicial power in order to grant such a writ." Petitioner's case meets those requirements.

The issuance of a Writ of Mandamus is an "extraordinary remedy" that will occur only "when the duty to act is clear." Baker v. Atkinson, 2001 S.D. 49 at 16; 625 N.W.2d 265, 271. This court has stated that Mandamus is a potent, but precise remedy. Its power lies in its expediency; its precision in its narrow application. (reference: Opinion – ujs.sd.gov) The Petitioner has demonstrated with exhaustive facts and evidence that the preconditions set in Kerr and in Baker are met. Therefore, the petition should be granted.

RELIEF REQUESTED

Petitioner requests the United States Supreme Court to take this precise action:

a) **Grant** the petition, and issue a Writ of **Mandamus** to the United States Court of Appeals for the Fourth Circuit mandating that court to

b) **Reverse** the ORDER filed on 2/24/2022 placing this case in abeyance pending a decision by that court on Britt v. DeJoy No. 20-1620 [Appendix 1 (a)], because the result of that case will not change the outcome of the instant case;

c) **Reverse** the ORDER AND DECISION (ECF No. 31) and the JUDGMENT (ECF No. 32) (Appendix No. 3) filed on 9/17/2021 by the South Carolina District Court, Spartanburg Division;

d) **Mandate** the lower courts grant Petitioner's Motion for Summary Judgment (ECF No. 15) because it was filed on time pursuant to the applicable law as argued in this brief; or, grant the complaint as a Motion for Judgment on the Pleadings (ECF No. 30 at 4);

e) **Mandate** the lower courts to grant monetary award in favor of Plaintiff/Appellant and Petitioner of not less than EIGHT MILLION DOLLARS ($8,000,000);

f) And **mandate** such other and further relief as the court may deem just and proper, i.e. exemplary and punitive damages, and other damages.

Dated: March 31, 2022

Respectfully submitted

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CERTIFICATE OF SERVICE
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I certify that on this 31st day of March, 2022, I served a copy of this PETITION FOR WRIT OF MANDAMUS, by FIRST CLASS MAIL via United States Postal Service, addressed as shown below:

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