No. ___

In the
Supreme Court of the United States

ROBERT CAMPO,
Petitioner,

v.

U.S. DEPARTMENT OF JUSTICE,
Respondent.

FERISSA TALLEY,
Petitioner,

v.

U.S. DEPARTMENT OF LABOR,
Respondent.

UNOPPOSED APPLICATION TO THE HONORABLE BRETT KAVANAUGH FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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To the Honorable Brett Kavanaugh as Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2 and 30.3, Petitioners Robert Campo and Ferissa Talley respectfully request that the time to file their Petition for Writ of Certiorari be extended 60 days, up to and including April 1, 2022. The Court of Appeals issued its Opinion on July 30, 2021. *See* App. 1a-3a). A timely-filed petition for rehearing was denied on November 2, 2021. *See* App. 4a.

Absent an extension of time, the Petition for Writ of Certiorari will be due on January 31, 2022. Petitioners filed this Application 10 days before such date. This Court will have jurisdiction over the judgment under 28 U.S.C. § 1254(1). Respondent received a copy of this Motion in advance and kindly stated it does not oppose Petitioners' request for a 60-day extension.

BACKGROUND

Petitioner Campo sued the U.S. Department of Justice ("**DOJ**") and Petitioner Talley sued the U.S. Department of Labor ("**DOL**") under the Freedom of Information Act ("**FOIA**"), primarily to obtain (at least) two parts of one email Darin Powers sent on July 30, 2013 ("**Powers' email**").

Powers' email will prove that, over the course of six years, many DOL and DOJ employees and federal judges have knowingly misrepresented or deceitfully

implied that on July 30, 2013 Powers marked Powers' email with a particular privilege notation (either "Subject to Attorney Client Privilege" or "subject to attorney-client privilege") and that in Powers' email Powers expressly requested "legal advice" or "input and review" by a particular attorney. Any such express request must include non-confidential, non-commercial words such as "please advise regarding" or "please let us know what you think" or "please review and provide input." No such phrase or any privilege notation could possibly be privileged or commercial information or withheld under any FOIA exemption.

Even so, Judge Smith (Mo. W.D.) granted summary judgment for both agencies based on multiple lies. Three Eighth Circuit judges summarily affirmed based on their own lies. They knowingly misrepresented that "we agree with" Judge Smith "that no genuine issue of material fact remained for trial" in either case (*Campo* or *Talley*). App. 3a. But they could not have agreed with Judge Smith because he clearly never applied that (or any other) Rule 56 standard regarding anything in either case. They knowingly misrepresented that "[i]n each case, the United States fully complied with the Freedom of Information Act." *Id*. None of the foregoing judges (or the DOJ attorneys representing the government in *Campo* and *Talley*) could possibly believe their contentions. Judge Smith's and

DOJ attorneys' contentions in *Campo* were absurd and they conflicted obviously, extremely and irreconcilably with their own contentions in *Talley*.

In *Campo*, three DOJ attorneys, Judge Smith and three Eighth Circuit judges asserted the most obviously deceitful justifications ever asserted for withholding information requested under FOIA. When the DOJ moved for summary judgment, three DOJ attorneys suddenly pretended that all redacted parts of Powers' email were the personal private information of Campo's counsel (*i.e.*, Counsel of Record, Jack Jordan). All such information was withheld from Campo because three DOJ attorneys and Judge Smith insisted that the DOJ's mere defense against Jordan in previous FOIA litigation *automatically* converted all such information (including Powers' email) into *Jordan's* personal private information.

In *Campo*, three DOJ attorneys and Judge Smith pretended to support summary judgment with a DOJ attorney's declaration repeatedly declaring that all information redacted from Powers' email was Jordan's personal private information. *See* App. 6a ¶4 ("email records of Darin Powers"). The DOJ withheld *only* "records pertaining to the third party [ ] *Mr. Jordan*. Plaintiff is seeking these files of *Mr. Jordan*." *Id*. ¶10 (emphasis added). Any "any public interest in disclosure" must "outweigh the *strong privacy interests* of *Mr. Jordan*." *Id*. ¶11 (emphasis added). The "requested material" constituted "files of" the

"named third parties (*Mr. Jordan*)." *Id*. ¶6 (emphasis added). Campo "failed to provide" the DOJ "with consent from *Mr. Jordan* … Consequently, the third-party individual's *privacy* interests" are being protected, *i.e*. "[Jordan's] *personal* privacy." *Id*. ¶14 (emphasis added). "It is under these circumstances" that the DOJ "denied access to *Mr. Jordan's* [ ] records." *Id*. (emphasis added).

The DOJ attorneys, Judge Smith and the Eighth Circuit judges knew that FOIA "Exemption (b)(6)" could apply only to protect *Jordan's* "personal privacy" regarding only "information contained in" *Jordan's* "personnel, medical, and similar files." *Id*. ¶13 quoting 5 U.S.C. § 552(b)(6). They also knew that FOIA "Exemption (B)(7)(C)" could apply only to protect Jordan's "information" if "release" to Campo would "constitute an unwarranted invasion of" Jordan's "personal privacy." *Id*. ¶8 quoting 5 U.S.C. § 552(b)(7)(C).

In granting summary judgment, Judge Smith even more publicly flaunted the DOJ's arguments and declarations. *See Campo v. U.S. Dept. of Justice*, 2020 U.S. Dist. LEXIS 122429 at *25 (Mo. W.D. Jul. 13, 2020):

> According to DOJ's declaration, [the DOJ] invoked [FOIA] Exemption 7(C), [and] Exemption 6, "to withhold [*only*] any records pertaining to [ ] Mr. Jordan." … DOJ's declaration states [the DOJ invoked] Exemption 6, [and] Exemption 7(C), [*only*] because Jordan "has strong privacy interests" in the information [in Powers' email].… Consequently, [the DOJ withheld the requested records *only* to protect] "[Jordan's] privacy interests … [because the DOJ] concluded

> "to release any requested information would constitute a clearly unwarranted invasion of [Jordan's] privacy."

Judge Smith emphasized that "Campo's request was limited" to "documents maintained by DOJ that pertained to the transmission of the Powers email to or from any DOJ employee in relation to Jordan's three FOIA lawsuits." *Id.* at *23. Judge Smith emphasized that *only* because of "Jordan's strong privacy interests" in such records, the "DOJ properly withheld the requested documents pursuant to Exemptions 6 and 7(C)." *Id*. at *26-27. Three Eighth Circuit judges then flaunted their affirmance of "summary judgment" to help the DOL and DOJ conceal "various emails" that "Jack Jordan has been trying to get." App. 2a.

In *Talley* (also on July 13, 2020), Judge Smith emphasized they all were concealing and helping conceal evidence of two phrases *because* many government employees *purported* to publicly revealed such phrases. In a DOL adjudication in 2016 after "in camera inspection" a DOL "ALJ issued an order" personally representing that Powers' email "*expressly* sought *legal* advice." *Talley v. U.S. Dept. of Labor*, 2020 WL 3966312 at *2 (Mo. W.D. Jul. 13, 2020) (emphasis added). To conceal evidence the ALJ lied, in Jordan's 2016 FOIA lawsuit a DOL "Declaration and *Vaughn* Index" and three DOJ attorneys' briefing "explain[ ] that" Powers' email "*expressly* sought" a particular "attorney's *input* and *review*" and was "marked" by some unidentified person on some unidentified

date "Subject to Attorney Client Privilege." *Id*. at *3 (quoting a DOL declaration) (emphasis added).

Subsequently, in *Talley* the DOL "withheld the Powers email" purportedly "because" all "information [therein] was privileged." *Id*. at *15. Specifically, yet another DOL employee's "declaration" (and two more DOJ attorneys' briefing) "states" that Powers' email was "marked" by someone sometime "Subject to Attorney Client Privilege" and it was "sent" by some unidentified person on some unidentified date to some unidentified attorney "to *explicitly* request the attorney's *input* and *review* of the information transmitted." *Id*. (emphasis added).

After all the foregoing, Judge Smith personally represented based on his "in camera review" that "the email" was "marked" by some unidentified person on some unidentified date "Subject to Attorney Client Privilege" and it somehow "seeks counsel's *advice*" (which the DOL did not even assert) "and *input*" (as the DOL asserted) "on the information contained in the email. Accordingly, [ ] the Powers email is protected by the attorney-client privilege" and the DOL "properly withheld the email pursuant to [FOIA] Exemption 4." *Id*. at *15 (emphasis added).

With the foregoing, multiple DOL employees, multiple DOJ attorneys and Judge Smith purported to reveal two phrases in Powers' email that they especially

wished to conceal. But according to all four judges and three DOJ attorneys in *Campo,* such phrases were *Jordan's* personal private information.

It is impossible that *all* information redacted from Powers' email is both Jordan's personal private information and a company's privileged commercial information. Moreover, Judge Smith (and the Eighth Circuit judges and DOJ attorneys) knew (in part, because Petitioners briefed) that the plain language of Rule 56 of the Federal Rules of Civil Procedure (and other federal rules of procedure and evidence) and copious emphatic precedent of this Court clearly precluded the conduct of all judges and all judgments in *Campo* and *Talley*.

As a direct result of Petitioners' filings in Petitioners' appeals, unidentified judges of the Court of Appeals for the Eighth Circuit caused the Clerk of Court to issue an order (without any explanation) stating that "Jordan is disbarred from practicing law in this court." App. 14a. The only hints at justification for such order were provided in two earlier orders retaliating against Petitioners' Counsel.

Initially, Judges Gruender, Benton and Stras asserted the extremely vague, mostly false, conclusory contention that Petitioners' Counsel "accuses" some unidentified "judges of [the Eighth Circuit] and the district court of being liars, criminals, and 'con men,'" and the foregoing contentions purportedly were "unbecoming of an officer of the court." App. 16a (Order 8/6/2021).

Petitioners' Counsel immediately explained that he did not accuse any judge of being a liar or a criminal. He explained that he clearly stated that the responsible judges lied and committed crimes (*i.e.*, their conduct was criminal), and he showed how they lied and how their conduct was criminal, including as described, above. *Cf.* 18 U.S.C. §§ 241, 242, 371, 1001, 1512(b), 1519. Petitioners' Counsel also repeatedly explained why the expression "con men" was appropriately applied to all four judges, above, who abused the confidence of Americans that judges would not lie about facts, evidence or law and not knowingly violate litigants' rights under the law or the Constitution.

After receiving the foregoing, Judges Gruender, Benton and Stras directed the Clerk to revise their contentions to state only that Petitioner's Counsel included some unidentified "unfounded" somehow "scurrilous allegations" about somebody in some unidentified "filings" with some court. App. 18a (Order 8/9/2021).

Petitioner's Counsel timely filed two responses to the Eighth Circuit show cause order and, twice, he requested a hearing. Such a hearing was required by federal law. *See* FED.R.APP.P. 46(b)(3), (c). So it was required by the Constitution. *See* U.S. Const. Art. VI (Supremacy Clause), Amend. V (Due Process Clause). No hearing was scheduled. Petitioner's Counsel was summarily disbarred by Eighth Circuit judges who hid their identities. *See* App. 14a.

On November 17, 2021, Chief Judge Phillips (Mo. W.D.) (who previously fined Petitioners' Counsel $1,000 for exposing Judge Smith's and Judge Phillips's lies and crimes) also announced her desire and intention to (unilaterally) disbar Petitioners' Counsel. *See* App. 19a. Petitioner's Counsel timely responded to Judge Phillips's show cause order and explained, in part, that only the district court en banc could disbar Petitioners' Counsel and only after the hearing that Petitioners' Counsel had requested. Such a hearing is required by Local Rule 83.6(d)(3)(A)(i). So it was required by the Constitution. *See* U.S. Const. Art. VI (Supremacy Clause), Amend. V (Due Process Clause). No hearing has been ordered and no decision has been issued since Judge Phillips's show cause order.

REASONS TO GRANT THE EXTENSION

The time within which Petitioners may file their Petition for Writ of Certiorari in this matter should be extended by 60 days for the following reasons.

1. Eighth Circuit judges summarily disbarred Petitioner's Counsel. As a result, this Court normally would "enter an order suspending" Petitioner's Counsel "from practice before this Court" and afford him "an opportunity to show cause, within 40 days, why a disbarment order should not be entered." S. Ct. R. 8.1.

2. Judge Phillips continues to imply that she has the power to disbar Petitioner's Counsel based on the conduct and contentions of the Eighth Circuit

judges, above (and while and for the purpose of concealing evidence that Judge Smith lied and committed federal crimes as Petitioners' Counsel showed).

3. No court can constitutionally disbar or suspend Petitioner's Counsel based on anything Eighth Circuit judges did or failed to do. The Eighth Circuit orders, above, clearly established that Eighth Circuit judges illegally retaliated in clear violation of the First Amendment rights and freedoms of Petitioners and Petitioners' Counsel. Even "Congress shall make no law" (under any label, *e.g.*, civil, criminal, regulatory or disciplinary) in any way "abridging" Petitioners' or Petitioners' Counsel's "freedom of speech" or their "right" to "petition" the government "for a redress of grievances" against judges. U.S. Const. Amend. I.

A "judge may not" punish any critic who "ventures to publish anything that [merely] tends to make [a judge] unpopular or to belittle him" even by using "strong language, intemperate language" or even "unfair criticism." *Craig v. Harney*, 331 U.S. 367, 376 (1947). *Accord Bridges v. California*, 314 U.S. 252 (1941); *Pennekamp v. Florida*, 328 U.S. 331 (1946); *Wood v. Georgia*, 370 U.S. 375 (1962); *Garrison v. Louisiana*, 379 U.S. 64 (1964). The "citizenry is the final judge of the proper conduct of public business." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 495 (1975).

"Truth may not be the subject of" any type of "either civil or criminal" (or quasi-criminal) "sanctions where discussion of public affairs is concerned." *Garrison*, 379 U.S. at 74. All courts must apply "the *New York Times* rule, which *absolutely* prohibits" any type of "punishment of *truthful* criticism" of any public official's official conduct. *Id.* at 78 (emphasis added).

"In addition," even if a "particular" statement by Petitioners' Counsel had been "false," that "would not normally have any necessary impact on the actual operation of the" judges being criticized "beyond its tendency to anger" such judges. *Pickering v. Bd. of Ed*., 391 U.S. 563, 571 (1968). "It *could*, therefore, have had *no effect* on the *ability* of" any court to function exactly as it was required to operate, and "there was no showing" that it did. *Id*. (emphasis added).

Judges cannot pretend to have the power to "excise" a purportedly "scurrilous epithet from the public discourse" merely "because it" was "offensive" to them. *Cohen v. California*, 403 U.S. 15, 22 (1971). Precisely "because governmental officials cannot make principled distinctions in this area," the "Constitution leaves matters of taste and style" to judges' critics, not judges, and "so long as the means are peaceful, the communication need not meet" any judge's "standards of acceptability." *Id*. at 25.

Moreover, a "principal function of free speech" is "to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest" or "even stirs people to anger." *Texas v. Johnson*, 491 U.S. 397, 408-09 (1989) (cleaned up) quoting *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949). If an "opinion" actually "gives offense" to a judge who abused his position and powers to violate the law, that "is a reason for according it constitutional protection." *Id*. at 409.

New York Times irrefutably and clearly protects even attorneys who are officers of the court and even actual government employees. *See esp. Garrison*, 379 U.S. 64 (protecting a government attorney who was an officer of the same court as eight judges he criticized); *Wood*, 370 U.S. at 393, n.19 (protecting a sheriff who was "an officer of the" same "Court" as the judges he criticized); *Pickering*, 391 U.S. at 568-74 (even actual government employees are free to criticize their employers regarding public issues). "In the realm of protected speech," judges and legislators are "constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue." *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 784-85 (1978).

The "stake of the people in public business and the conduct of public officials is so great" that Petitioners' Counsel cannot be required to prove the "truth" of any statement as a "defense." *St. Amant v. Thompson*, 390 U.S. 727,

731-32 (1968). The "First Amendment" clearly "mandates a 'clear and convincing' standard" of proof regarding each material fact. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 252 (1986). That "requirement must be" applied whenever "*New York Times* applies." *Id*. at 244. The government cannot bear any such burden regarding either falsehood or actual malice because it concealed all admissible (non-hearsay) evidence of the truth.

4. "Based on the vagueness and implausibility of" DOL and DOJ employees' and judges' "stories" about the two phrases that Powers purportedly included in Powers' email, everyone can reasonably infer they all "were lying" and "their lies suggested a guilty mind." *District of Columbia v. Wesby*, 138 S. Ct. 577, 587 (2018). Petitioners' Counsel cannot be disbarred or suspended by any court for exposing judges' deliberate and egregious abuses of their powers and positions to lie about material facts, relevant evidence or the law and knowingly violate clear, well-known provisions of federal law and the Constitution (repeatedly emphasized in this Court's well-known precedent).

5. This Court should address the status of Petitioners' Counsel before this matter proceeds, so by January 24, 2022, Petitioners' Counsel will submit detailed briefing further confirming that no court can constitutionally disbar or

suspend Plaintiff's Counsel based on anything Eighth Circuit judges did or failed to do (or anything Petitioners' Counsel stated in any court filing).

6. No prejudice to Respondent would flow from granting the extension. All mandates already have issued by the Eighth Circuit, and no such matter was stayed. No judgment at issue required the government to release any evidence. Moreover, Respondent kindly refrained from opposing this 60-day extension.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that an extension of time up to and including April 1, 2022 be granted within which Petitioners may file their petition for writ of certiorari.

DATED: January 21, 2022

Respectfully submitted,
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