22-5133

SUPREME COURT OF THE UNITED STATES

ORIGINAL

No. **RIAN G. WATERS,**

Plaintiff - Applicant,

v.

FACEBOOK, INC.; GOOGLE LLC; AIDAN KEARNEY,

Defendants - Respondents,

KATHERINE PETER; JEREMY HALEY; MARTHA SMITH-BLACKMORE; WILLIAM HIGGINS; JIM DALTON; MAURA TRACY HEALEY; JOHN DOES (1-10),

Defendants.

PETITION FOR WRIT OF CERTIORARI RELIEF

Respectfully submitted,

Pro se /S/ Rian Waters dated July 14, 2022

199 Allen St E. Longmeadow MA 01028

(530)739-8951 Watersrian@gmail.com

QUESTIONS PRESENTED:

1) Whether plaintiffs and witnesses have a right to receive protection from obstructive crimes while a case is proceeding in federal courts of justice?

2) Whether it is a violation of the constitutional right to due process for the First Circuit to raise issue preclusion to dismiss an appeal of a District Court's sua sponte dismissal that was also without notice and with prejudice.

RELATED PROCEEDINGS

Waters V. Facebook Inc. et al 3:20-cv-30168 Mass. US District Court. Judgment issued 5/11/2022

Waters v. Facebook, Inc., et al 0:21-civil-01582 First Circuit. Second injunction and En Banc reconsideration denied February 14th 2022

Waters v. Facebook, Inc., et al 0:22-civil-01054 First Circuit. Defendant mooted the appeal by identifying the witness.

Waters V. Kearney, 2223A000803 Springfield (state) District Court Magistrate denied probable cause 06/01/2022, redetermination pending.

Table of Contents

Constitutional Provisions

First Circuit Cases

Supreme Court Cases

Other Cases

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. Ninth Amendment

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Fourteenth Amendment

OPINIONS BELOW

None of the decisions were reported, but the First Circuit's dismissal is available on Westlaw. Waters v. Facebook, Inc., 2021 WL 6773557, (C.A.1, 2021)

JURISDICTION

The sua sponte judgment of the court of appeals was entered on December 23rd, 2021. App., infra, 3a. Redetermination was denied February 14th On May 3rd 2022, Justice Breyer extended the time within which to file a petition for a writ of certiorari to and including Thursday, July 14th 2022. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

I argue this court has inherent jurisdiction to investigate Defendant-Respondent Kearney's 6/18/2022 obstructive threats that impaired my ability to file this petition, and that took place after Justice Breyer granted an extension. Arguments that the court should use its inherent power to investigate will nearly mirror the ones argued in the First Circuit to investigate November 19th, 2021.

STATEMENT OF THE CASE

Summary of my argument

Had the District Court contained Aidan Kearney's obstructive behavior, I would have had better arguments, and I would have had more evidence available to me, and more importantly Aidan Kearney would not have impaired my ability to litigate the First Circuit appeal by threatening to rape and murder children in my name on November 19th, 2021. Had the First Circuit investigated the November 19th conspiracy, Kearney never would have threatened or extorted his Coconspirator and confidant. Had the lower courts not silently approved of the January 15th, 2022, threats and extortion, Aidan Kearney would not be impairing my ability to file this brief by threatening witnesses less than a month before this Supreme Court petition is due.

The court also never allowed me to raise my strongest arguments.

Because I never received fundamental protection, and the Lower courts never considered my best legal arguments, I should get a fair opportunity to argue this case with unintimidated witnesses and unintimidated representation.

Factual and Procedural Background of Obstruction:

I filed a lawsuit against Aidan Kearney for defamation in 2018 in the Massachusetts Superior Court. (1879CV0344) Aidan Kearney's consistent harassment after court filings and before court hearings made it "too dangerous for me to present evidence or name witnesses... and I lost the ability to make strong

written and oral arguments." (VC 92) The Superior Court dismissed the case in Kearney's favor, but it was reversed in part by the Massachusetts Appeals Court, (2020-P-0088) and remanded. In 2019 the State Springfield District Court cited outdated elements to deny issuing a criminal complaint over Kearney's witness intimidation. (SAC 22)

I filed a verified complaint ("VC") in the US Massachusetts District Court on October 26th 2022 and I stated under penalties of perjury that I was "diagnosed with Adjustment Disorder" and that "Aidan Kearney's articles [had] been identified as the cause and stressor of the disorder." (VC 88)

Kearney impaired my ability to argue on November 12th 2020 by stating the following threat on his YouTube channel that was watchable and promoted on Facebook; "When General Sherman marched to f****** Atlanta he lit everything on fire, ******* everything, men women children dogs everything ******* burns until you surrender that's how it ******* works if you want to declare war then people ******* die in war including civilians. When we bombed Hiroshima and Nagasaki we knew that a bunch of ******* kids women are gonna die in that, too ******* bad, then ******* surrender, ******* surrender, and then they finally surrendered didn't they? That's what you gotta do, **unfortunately there is collateral damage, so I want to make sure the message is sent here,** if you **** with me, **if you try to sue me,** I'm not going to go after you, **I'm going to go after your ******* family**, don't **** with me, that's all I'm saying alright? I'm not playing with these people I paid 30,000 ******* dollars in legal fees last year, the s**** not ******* cute

anymore and I'm not ******* playing defensive and hiding anymore. **I'm going to burn your family to the ground** just understand that." (SAC 79) No court has explained why this threat is appropriate.

On December 1st, 2020, I filed a motion for an injunction in the US District Court, noting that Aidan Kearney was making it too dangerous to have witnesses in the Federal case, and that he was intentionally hindering my ability to litigate by triggering the adjustment disorder that his harassment is the identified cause and stressor of. Kearney did not oppose the injunction. The Court did not deny the injunction until it sua sponte dismissed the entire complaint without notice on May 11th 2021, and the court did so without legal argument for the injunction aside from likelihood of success. I asked the court to consider granting an injunction pending appeal in my motion for reconsideration, which was denied.

On November 19th, 2021, on the same day Kearney was defaulted for not filing in appellee brief, Aidan Kearney created a fake Facebook account in my name, and used the account to send heinous threats directed at his own children, and then he conspired with 2 coconspirators to frame me for sending the threats.

I reported the fake threats and fake profile to Facebook and the threats and profile were quickly taken down. I sent Facebook's lawyers screenshots of the crime and I asked them to investigate. Facebook responded by deleting my Facebook account the night before Thanksgiving, which blocked me from collecting evidence of the fake profile that I reported.

On December 8th, 2021, I filed a motion for an injunction pending appeal in the First Circuit, and on December 16th, 2021, I filed a motion to investigate the November 19th, 2021, obstruction conspiracy. Facebook opposed the investigation arguing that it was procedurally improper for an appellate court to investigate obstruction that took place on their platform, and that I did not collect enough evidence [before they deleted my account.] On December 23rd, 2021, the First Circuit denied my motions without comment when the court sua sponte dismissed the Appeal.

In January 2022 a coconspirator (Cristina Yakimowsky) gave me evidence proving that Aidan Kearney orchestrated the conspiracy using a Facebook group chat. Aidan Kearney threatened and extorted her on January 15th, 2022. In response I filed a second emergency motion for an injunction pending appeal in the First Circuit on January 21st, 2022, the court denied that motion on February 14th, 2022, the same day that the court denied a petition for rehearing En banc.

On January 24th I filed a motion to include an affidavit and exhibits with the second injunction motion, it was granted. The affidavit contained multiple threats and even extortion by Kearney directed at Cristina Yakimowsky. "I hope she is scared because she should be, cause did you forget who the **** I am, and what the **** I could do? Did you hun? Did you? Are you s****** your pants yet because you should be? What on earth would make you think, because you knew I was going to find out, when the screenshots came out and they're from your perspective..." at 8 "The other people I that I have gone to war with they have nothing to lose, you have

a lot to lose, you own a business... you live in a $600,000 house in Oxbridge, you have a fiancé who does not know that we talk. He is not going to like to see the messages..." at 10. "I am going to still give you a chance to get out of this, you can call me whenever you want, if you don't, February 17th I will be there at your court date." At 11

Exhibit A contained screenshots from a Facebook group chat called #BlogDat from November 19th, 2021, where Kearney ("Clarence" in the group chat) directed Cristina Yakimowsky (messages in blue) to publicly direct his attention to the threats so that it would look like he found them innocently. (Exhibit A 02-03) Exhibit B contained screenshots from the same Facebook conspiracy group as Exhibit A but coming from Kearney's perspective. Kearney used the screenshots to publicly prove that Cristina Yakimowsky conspired to use his blog to intimidate a witness in a different court case. (January 24th Affidavit at 2)

On January 31st, 2022, I successfully moved in this First Circuit to supplement the motion again with a police report that identified the members of the #BlogDat group chat with their real names next to their screen names, and more importantly Aidan Kearney claimed he was the only one with access to the Facebook account "Clarence Woodson Emerson". He told the police that he was "hacked" (I argued for plausible deniability), and he told the officers that he had never sent messages to anyone besides himself. The officers later found out that Kearney lied to them and that he also sent the messages to Cristina Yakimowsky in the #BlogDat group chat, and that she was leaking his messages.

I also filed motions to impound Cristina Yakimowsky's identity, and to hold 27B depositions, but Kearney identified the witness after I filed the appeal.

On March 09th 2022 the District Court approved of the threats and extortion by deciding that Kearney conspiring to frame me for threats to harm his children does not change the state action inquiry. (I never said it did.)

I filed for an extraordinary writ in this court on March 16th, 2022, Justice Breyer denied relief on April 20th 2022 (No. 21A626)

June 18th 2022 threats and relevant but unpreserved facts

***** These facts have only been presented in the state criminal court, they are for inherent power review only.**

Kearney told a woman named Shannon Labarre that the November 19th 2021 conspiracy was Cristina Yakimowsky's idea, and that he was just a coconspirator with her. To try and prove this Kearney sent Shannon Labarre a screenshot of the #BlogDat group chat from his perspective during the conspiracy proving that he has access to the account that orchestrated the conspiracy.

Kearney threatened and extorted Shannon Labarre too.

On June 18th 2022, Aidan Kearney threated Cristina Yakimowsky's several times on YouTube, saying "I don't know why you thought this was a smart idea Chrissy, because you know me, and you know what I do, and you know I'm not gonna rest, you know that right? Like you own a business, I am speaking at Chrissy right now cause I know she's listening. So you own a business, you have couple kids

or whatever, and a family, and it's called Royal Thermal View[1], did you think I wasn't gonna make it like my mission to take all that away from you? Did you think that?" "I'm a vindictive c***. And I'm not gonna stop, we're just beginning here. *I'm not gonna stop destroying your life,* just destroying it, like I am gonna take everything away from you that you love, I want you to feel as low as I did [when he found out she released evidence of the November 19th conspiracy]"***

Factual background of the case.

The Second Amendment complaint starts with claims for product design and gross negligence. For these claims I used several facts including but not limited to;

"Facebook allowed users to provide context to violations of their rules in January 2019, but they have since removed that feature. Facebook is deliberately indifferent to the rights of US citizens as they do not currently provide any method to explain why or how something is unlawful, discriminatory, or violating a person's rights. (SAC 50-51)

"Facebook's and Google's platforms are defectively designed and unreasonably dangerous because of their susceptibility to be used as a weapon without any user support, and without any effective method to report witness intimidation or mitigate the effects. Facebook willingly implemented a system that allows users to create accounts under almost any name with only verifying that the user owns an email address. If someone commits a crime with a fake name

[1] Cristina Yakimowsky's business is named Royal Thermal View.

Facebook does not make any attempt to identify the culprit, and Facebook does not have any notable victim support." (SAC 55-56)

Facebook and Google's platform are defective in their respective designs because the foreseeable risks of harm posed by the products/platforms could have been reduced or avoided by the adoption of a reasonable alternative design." (SAC 58)

"Google and Facebook knew or should have known that their platforms were being routinely used to harass US citizens. Google and Facebook have failed to adequately train their employees to respect the rights of US citizens and litigants in court cases."

"Facebook and Google had a duty under Massachusetts common law to proceed in good faith, and to act with reasonable diligence to bring their litigation to a final conclusion. and to conduct themselves with at least that modicum of civility, courtesy and respect, for all of the parties in this case." SAC 70

The lower court denied these allegations by dismissing the federal claims and arguing I somehow lacked diversity jurisdiction.

I also had 1983 claims for due process and cruel and unusual punishment violations. The idea was that Aidan Kearney learned about the criminal allegations against me from a state agent, and he punished me for crimes without due process with the help of police officers. The Second Amended complaint had the following facts to support this;

"Current and former police officers have harassed and intimidated me on Turtleboy's Facebook and YouTube social media accounts and used Turtleboy's slogan 'don't poke the turtle' (Exhibit B.)" (SAC 23) "Aidan Kearney sent and received emails discussing the criminal allegations against me and or complaints against him with multiple state agents and or police officers. (Exhibit A)" (SAC 15)

Aidan Kearney has bragged while being interviewed that he has police and state agents in every department across Massachusetts that feed him information. Aidan Kearney has also bragged on social media and in his book "I am Turtleboy," that police send him information that they do not send to the traditional media. (SAC 16) Aidan Kearney wrote in his book that being supported and followed by several police departments including Boston has been a big help to him growing his audience and reach. (SAC 17) Aidan Kearney routinely harasses victims of police corruption on his 'weaponized' social media account's and portrays the victims as culprits." (SAC 18) I also made inaction arguments (SAC 20-22)

"YouTube and Facebook have intentionally made it difficult and or impossible to inform them that the state was exploiting their platforms without starting a legal action, and after receiving legal notice they have continued to support and protect the scheme. Their acceptance can be inferred as a wink is as good as a nod to a blind horse. For the reasons set forth above, and reasons currently unknown the Defendants should be considered as acting under the color of the law as the Defendants have received significant support/encouragement both overtly and

covertly, and the state has willingly accepted the benefits of the Defendants' schemes, and the State has intentionally tolerated the illegal conduct." SAC 24-25

At the start of the 1983 claims I "restate[d] and incorporate[d] by reference the allegations contained in the preceding paragraphs," including the product design and gross negligence claims. On appeal and in the rule 60 B motion I argued that the common law claims should hold weight for causation into 1983 claims.

The District court denied the motion to reconsider, deciding that I was not allowed to "relitigate old matters, or to raise new arguments," even though we had no prior decisions on merits, and I did not have prior notice of his intent to dismiss.

I filed a Rule 60 B motion, which the District Court decided on October 12th 2021, the same day my Appellate brief was due, "[t]he court lacks jurisdiction to hear Plaintiff's Rule 60(b) motion because of his pending appeal." So he recharacterized it as a Rule 62.1 motion, and described Kearney's threats to attack children as unflattering posts. The District court again denied relief in a conclusory fashion without addressing half my state action facts or theories, and without addressing my 1983 causation argument.

I filed my appellate brief in the First Circuit on October 14th, 2021, which was accepted for filing the same day. Aidan Kearney was defaulted for not filing an appellee brief on November 19th, 2021. The First Circuit sua sponte dismissed the appeal after briefing was closed on December 23, 2021, by raising the following arguments for Aidan Kearney; 1) Some unidentified issues in my pro se Appellate

brief were too perfunctory to warrant review. 2) Some unidentified issues were precluded because I did not file an amended formal notice of appeal after the District Court's decision on my rule 62.1 motion.

REASONS FOR GRANTING REVIEW

The Proceedings were fundamentally unfair

A. The defendants intentionally impaired me.

I stated under penalties of perjury that I have an adjustment disorder, and that Aidan Kearney is the identified cause and stressor of it. (SAC 38) Just because I am still capable of producing a compliant brief, does not mean that I am fairly presenting my arguments. It should be obvious that a pro se litigant is not being fairly heard if the opposing party is intentionally preventing him from reasonably sleeping at night. "Courts should not second-guess the expert administrators on matters on which they are better informed. For these reasons, the decision, if made by a professional, is presumptively valid" Youngberg v. Romeo, 457 U.S. 307, 323 (1982) I showed the court that adjustment disorder causes preoccupation with the stressor and its consequences, sleep disturbances, and significant impairment in occupational functioning. Kearney consistently exploited my adjustment disorder by sending heinous threats when my cognitive ability mattered the most. Kearney's harassment and threats are "the central impediment to the pursuit of [my] legal remedy" Holland v. Florida, 560 U.S. 631, 653 (2010) There are "fundamental requirements of fairness which are of the essence of due process in a proceeding of a

judicial nature. Those requirements relate not only to the taking and consideration of evidence but also to the concluding, as well as to the beginning and intermediate, steps in the procedure." Morgan v. United States, 304 U.S. 1, (1938) "It is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently [or at least fairly in this case] 'waive' his right." Pate v. Robinson, 383 U.S. 375, 384 (1966)

The heinous threats against witnesses are even worse. How could anyone argue then I had a fair opportunity to present evidence, when a defendant consistently threatens to destroy livelihoods of every witness that I present.

"It must necessarily be found, as an original question, that the specified publications involved created such likelihood of bringing about the substantive evil as to deprive [them] of the constitutional protection." Bridges v. California, 314 U.S. 252, 261 (1941) It is possible that because of my adjustment disorder, I am affected more by Kearney's attempt to frame me for pedophilia threats then the District Court would be if someone tried to frame him for pedophilia. It is important to "consider the unique sensitivity of the recipient." U.S. v. Fulmer, 108 F.3d 1486, 1491 (1st Cir. 1997)

B. I was never meaningfully heard

"[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." Boddie v. Connecticut, 401 U.S. 371, 377 (1971) ("What the Constitution

does require is an opportunity granted at a meaningful time and in a meaningful manner.")

"Supervisory rules cannot conflict with or circumvent a constitutional provision or federal statute." United States v. Tsarnaev, No. 20-443, at *14 (Mar. 4, 2022) see also Thomas v. Arn, 474 U.S. 140, 148 (1985)

The 10th circuit found that sua sponte dismissals with prejudice comported with due process because there are "adequate procedural safeguards to avoid erroneous dismissals. A litigant whose complaint has been dismissed with prejudice could file a motion to alter or amend the judgment under Rule 59(e) or for relief from the judgment under Rule 60(b). The litigant can also bring an appeal, in which we conduct *plenary* review of the sufficiency of the complaint." Curley v. Perry, 246 F.3d 1278, 1284 (10th Cir. 2001) "It is well established that a procedural rule that unreasonably precludes the vindication of constitutional rights itself raises serious constitutional questions." Davis v. United States, 411 U.S. 233, 256-57 (1973)

The District Court prevented me from raising arguments in my rule 59(e) motion. In the common case, issue preclusion makes sense because "the judgment being reviewed by the Rule 59(e) judge has been entered after both parties have argued the points at issue. Here, by contrast, the judgment being reviewed was [sua sponte]" Venegas-Hernandez v. Sonolux Records, 370 F.3d 183, 191 (1st Cir. 2004) "The general rule that an appellate court does not give consideration to issues not raised below should not be applied where the obvious result would be a plain miscarriage of justice." Hormel v. Helvering, 312 U.S. 552, 61 S. Ct. 719, 85 L. Ed.

1037 (1941) I was not heard in a meaningful manner if I was never allowed to get a decision on my best arguments.

While I did file a rule 60 B motion, the Lower court noted, it "lack[ed] jurisdiction to hear Plaintiff's Rule 60(b) motion because of his pending appeal... however, the court liberally construes [my] motion as one pursuant to Rule 62.1 for an indicative ruling." I did not file a formal notice of appeal because I realized if the Lower Court's decision held the same weight as when it had jurisdiction, than rule 62.1(a)(c) would be pointless. Since the Court of appeals never remanded for the District Court to decide the motion, the District Court's conclusory order could not be considered as hearing me in a meaningful manner, and the decision should not hold any weight as to the merits that the District court was without jurisdiction to address. See Rule 62.1(c) "Recharacterization is unlike 'liberal construction,' in that it requires a court deliberately to override the pro se litigant's choice of procedural vehicle for his claim." JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring Castro v. U.S., 540 U.S. 375, 386 (2003)

Regardless, if necessary, I filed an informal notice of appeal in the First Circuit on October 13th, 2021, in my "MOTION to extend time to file brief and appendix filed by Appellant Rian G. Waters." pg 1) The motion stated, "The lower court ruled on my rule 60(b) motion on October 12th, 2021 at around 4:25 pm.... Amended Notice of Appeal will be filed today." The caption of the October 13th filing listed me the Appellant, and each of the Appellees. The Appellant brief was also filed two days after the indicative ruling decision which is within the allotted time

to file a notice and contains the necessary information. "[T]he notice afforded by a document, not the litigant's motivation in filing it, determines the document's sufficiency as a notice of appeal. If a document filed within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal." Smith v. Barry, 502 U.S. 244, 248-49 (1992) ("The Federal Rules do envision that the notice of appeal and the appellant's brief will be two separate filings... They do not preclude an appellate court from treating a filing styled as a brief as a notice of appeal, however, if the filing is timely under Rule 4 and conveys the information required by Rule 3(c). Such treatment is, in fact, appropriate under Torres and under Rule 3(c)'s provision that '[a]n appeal shall not be dismissed for informality of form or title of the notice of appeal...' Rule 4(a)(1) sets out a transmittal procedure to be followed when the notice of appeal is mistakenly filed with an appellate court, and provides that a misfiled notice 'shall be deemed filed in the district court' on the day it was received by the court of appeals.") Id. 249

We have "jurisdiction over [an] underlying order if the appellant's intent to challenge it is clear, and the adverse party will suffer no prejudice if review is permitted." Lincoln Composites, Inc. v. Firetrace USA, LLC, 825 F.3d 453, 458 (8th Cir. 2016

"[T]he right to procedural due process is "absolute" in the sense that it does not depend upon the merits of a claimant's substantive assertions, and [it is important for] organized society that procedural due process be observed..." Carey v. Piphus, 435 U.S. 247, 266 (1978)

Constitutional Duty To Protect Participants:

The First and Seventh Amendment's right to litigation, the Ninth Amendment's reservation of unenumerated rights to the people, and the Fourteenth Amendment's rights to due process and equal protection imply a concomitant right to protection in the courts.

Alternatively, I argue that the first clause of section "1985(2) does create substantive rights" Irizarry v. Quiros, 722 F.2d 869, 872 (1st Cir. 1983) for Plaintiff's and witnesses to be free of obstructive conspiracies, and therefore judicial protection is a right retained by the people for the Ninth Amendment

Finally, if those arguments are insufficient, the Massachusetts Constitution says that this specific right was already included in the Massachusetts Constitution, even though it had not yet been specifically mentioned. "No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition... the right of access to *and protection in courts of justice...*" Massachusetts Constitution 48, Init., Pt. 2, § 2 therefore judicial protection is a right retained by the people for the Ninth Amendment

The First Circuit failed "to observe that fundamental fairness essential to the very concept of justice." Donnelly v. DeChristoforo, 416 U.S. 637, 642 (1974)

Each one of the justices deciding this case took an oath swearing that you would "support and defend the Constitution of the United States against all

enemies, foreign and domestic." "This oath certainly applies in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!" Marbury v. Madison, 5 U.S. 137, 180 (1803) "[A] provision of the Bill of Rights which is 'fundamental and essential to a fair trial' is made obligatory upon the States by the Fourteenth Amendment." Gideon v. Wainwright, 372 U.S. 335, 342 (1963) I argue the Federal courts have a duty to provide protection as well, "where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief" Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 392 (1971) "No court should condone the unconstitutional and ~~possibly~~ criminal behavior of those who planned and executed this [November 19th fake threats conspiracy.]" United States v. Payner, 447 U.S. 727, 733 (1980) "state courts have the solemn responsibility *equally with the federal courts* to safeguard constitutional rights." Burt v. Titlow, 571 U.S. 12, 19, 134 S. Ct. 10, 15, 187 L. Ed. 2d 348 (2013)

"It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure... It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." Coolidge v. New Hampshire, 403 U.S. 443, 454, 91 S. Ct. 2022, 2031, 29 L. Ed. 2d 564 (1971), holding

modified by Horton v. California, 496 U.S. 128, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990)

Kearney's attacks took place on Facebook, the attacks will have lasting obstructive impacts, unlike "violent disruptions [in the courtroom that] can be cured swiftly by bodily removing the offender from the courtroom, or by physical restraints" United States v. Wilson, 421 U.S. 309, 316 (1975) This makes it all the more reason this court should make sure obstruction of this kind does not go unpunished.

"[A]n eventual trial that reflects witness intimidation or jury tampering is as bad as not trial at all. " United States v. Acevedo-Ramos, 755 F.2d 203, 206 (1st Cir. 1985)

"Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. A rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with this policy." Hormel v. Helvering, 312 U.S. 552, 557 (1941)

This court should ask the US Attorney's Office to investigate.

"[I]t is firmly established that the power to punish for contempts is inherent in all courts. This power reaches both conduct before the court and that beyond the court's confines, for 'the underlying concern that gave rise to the contempt power was not . . . merely the disruption of court proceedings. Rather, it was disobedience

to the orders of the Judiciary, regardless of whether such disobedience interfered with the conduct of trial...' Chambers v. Nasco, Inc., 501 U.S. 32, 44 (1991) quoting Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 798 (1987) "Tampering with the administration of justice in this manner involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." Moreover, a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud." Chambers at 44. "For two or more to confederate and combine together to commit or cause to be committed a breach of the criminal laws is an offense of the gravest character, sometimes quite outweighing, in injury to the public, the mere commission of the contemplated crime. It involves deliberate plotting to subvert the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized by secrecy, rendering it difficult of detection, requiring more time for its discovery, and adding to the importance of punishing it when discovered." United States v. Rabinowich, 238 U.S. 78, 35 S.Ct. 682, 59 L.Ed. 1211 (1915)

"The inherent power of a federal court to investigate whether a judgment was obtained by fraud, is beyond question. The power to unearth such a fraud is the power to unearth it effectively. Accordingly, a federal court may bring before it by appropriate means all those who may be affected by the outcome of its investigation." Universal Oil Co. v. Root Rfg. Co., 328 U.S. 575, 580 (1946)

"[A]n inherent power must be a reasonable response to a specific problem and the power cannot contradict any express rule or statute" Dietz v. Bouldin, 136 S. Ct. 1885, 1892 (2016) .

For the comparatively minor crime of a bribe, the 9th Circuit held that "a referral to the U.S. Attorney or the FBI is an appropriate option; they have the investigative resources and authority, and it is their role to investigate and prosecute criminal activity. But the court retains its own authority and *need to rectify abuses or corruption of its own judicial process*, to maintain the integrity of the court. See Young, 481 U.S. at 796, 107 S.Ct. 2124. Thus, although the court may seek the assistance of the executive branch to investigate and prosecute, the court does not abdicate the decision to sanction misconduct. If, as a matter of prosecutorial discretion, the executive branch declines to prosecute, courts still have the authority to appoint private attorneys to prosecute actions. See id. at 800-01, 107 S.Ct. 2124.

A prosecutor, government or private, can function as an independent, dispassionate investigator and presenter of evidence. A prosecutor can gather evidence and investigate matters more thoroughly than a court can at an evidentiary hearing alone. He or she can also serve to shorten the length of trial by culling through evidence and witnesses beforehand to determine which are relevant and credible.

Moreover, a prosecutor plays an important role in the criminal process. Prosecutors, both government and specially appointed, have an ethical duty to

ensure that 'justice be . . . done' and, while responsible for prosecuting the guilty, they must also make sure that the innocent do not suffer." F.J. Hanshaw Enter. v. Emerald River Develop, 244 F.3d 1128, 1140 (9th Cir. 2001)

The Decision conflicts with 4th, 5th, 6th, 7th, and 9th Circuits

The First Circuit was supposed to "uphold a sua sponte order of dismissal only if the allegations contained in the complaint, taken in the light most favorable to the plaintiff, are patently meritless and beyond all hope of redemption." Gonzalez-Gonzalez v. United States, 257 F.3d 31, 37 (1st Cir. 2001) It does not make sense to preclude issues that may give the complaint hope.

"We apply abandonment and waiver principles to "provide a substantial measure of fairness and certainty to the litigants who appear before us." Adbul-Mumit v. Alexandria Hyundai, LLC, 896 F.3d 278, 290 (4th Cir. 2018) "Mindful of our role as a neutral arbiter, this Court typically does not "ventur[e] beyond the confines of the case on appeal to address arguments the parties have deemed unworthy of orderly mention." Manning v. Caldwell, 930 F.3d 264, 271 (4th Cir. 2019) "sua sponte invocation of the res judicata affirmative defense is and should be the rare exception, not the rule, and one reserved for truly "special circumstances."' Clodfelter v. Republic of Sudan, 720 F.3d 199, 212 (4th Cir. 2013)

"A district court may only dismiss a case sua sponte after giving the plaintiff notice of the perceived inadequacy of the complaint and an opportunity for the plaintiff to respond." Brown v. Taylor, 829 F.3d 365, 370 (5th Cir. 2016)" "We agree

with the position of other circuits that the courts should "decide the appeal on the appellant's brief alone when the appellee fails to file a brief." Schmidt v. Gray, 399 F. App'x 925, 926 n.2 (5th Cir. 2010)

"Since it is a waivable defense, it ordinarily is error for a district court to raise the issue sua sponte." Haskell v. Washington Township, 864 F.2d 1266, 1273 (6th Cir. 1988) Because the court did not allow me to raise the issues I am "entitled to raise the issue[s] on appeal instead." Stanislaw v. Thetford Township , 20-1660, at *1 (6th Cir. July 19, 2021)

"It would be reckless to affirm on a ground that the appellant had never had a chance to address because the appellee had failed to raise it." Frederick v. Marquette Nat. Bank, 911 F.2d 1, 2 (7th Cir. 1990) "claim-processing rules, if properly invoked, must be enforced, but they may be waived or forfeited." Hamer v. Neighborhood Hous. Servs. of Chi. , 897 F.3d 835, 838 (7th Cir. 2018)

"Issue preclusion is an affirmative defense that may be waived if not pleaded." Deutsch v. Flannery, 823 F.2d 1361, 1365 n.2 (9th Cir. 1987) "Where the facts are not in dispute an appellate court is not bound by the trial court's finding of ultimate fact or conclusions of law." Teamsters, Chauffeurs, L.U. 524 v. Billington, 402 F.2d 510, 512 (9th Cir. 1968)

"[A] court should not sua sponte dismiss an action when it is possible that the defendant would waive the basis for dismissal by failing to plead a required affirmative defense" Moore v. Morgan, 922 F.2d 1553, 1558 (11th Cir. 1991)

The precluded issues have merit.

A. Section 1983 Common law causation

Both the product liability claim and gross negligence claim were alleged prior to, (SAC 45-71) and re-alleged within the section 1983 claims. (SAC 137 & 150) "Section [1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions" Monroe v. Pape, 365 U.S. 167, 187 (1961) "Anyone who 'causes' any citizen to be subjected to a constitutional deprivation is also liable. The requisite causal connection can be established not only by some kind of direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury." Gutierrez-Rodriguez v. Cartagena, 882 F.2d 553, 561 (1st Cir. 1989) "No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot neither its innocence nor the Constitution is sufficient to prevent the punishment of the plot by law." Aikens v. Wisconsin, 195 U.S. 194, 205-206 (1904)

B. My state Action theories have merit

No court ever addressed police officers harassing me on Kearney's Facebook account "[A]n otherwise private person acts 'under color of' state law when engaged in a conspiracy with state officials to deprive another of federal rights," Tower v.

Glover, 467 U.S. 914 (1984) "The involvement of a state official in such a conspiracy plainly provides the state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights, whether or not the actions of the police were officially authorized, or lawful. Moreover, a private party involved in such a conspiracy, even though not an official of the State, can be liable under § 1983." Adickes v. Kress Co., 398 U.S. 144, 152 (1970) "It is not enough to examine seriatim each of the factors upon which a claimant relies and to dismiss each individually as being insufficient to support a finding of state action. It is the aggregate that is controlling." Jackson v. Metropolitan Edison Co., 419 U.S. 345, 95 S.Ct. 449, 42 L.Ed.2d 477 (1974)

Public shaming on social media is a weapon

"The target[s] of public shaming lose their jobs, and those not yet targeted adjust their own public and perhaps even private speech to avoid being the next national pariah. In a regime where both financial and social possibilities hinge on employment, to be rendered not just temporarily unemployed but unemployable is a fate not substantially better than imprisonment. Social media can punish those deemed offensive more severely than any formal sentence for a speech violation ever could in the United States. The best strategy for most reasonably risk-adverse people will hit upon to deal with this ominous threat to their livelihoods is to shut up." Koganzon, Rita. "The Politics of Digital Shaming." The New Atlantis, no. 45, 2015, pp. 118–26. At 124

The Lower Court's reason for issue preclusion is hypocritical

The First Circuit improperly cited Zannino to call my pro se brief perfunctory. I cited case law for every legal theory, unlike "in a cursory reference in his appellate brief, Zannino [who was represented by 2 attorneys] [sought] to 'adopt all of the arguments made on behalf of co-defendants'" U.S. v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) Ironically the Lower courts' have been sua sponte adopting Kearney's co-defendants' arguments as Kearney's. The First Circuit normally considers arguments with far less support. E.g., United States v. Gray, 780 F.3d 458, 464 (1st Cir. 2015) (finding that argument not waived where defendant cited only one case but "offered a short but on-point argument..." and "further developed her argument in her reply brief, and during oral argument") Regardless, a document filed pro se is 'to be liberally construed,'" Erickson v. Pardus, 551 U.S. 89, 94 (2007)

The first circuits use of Sparkle is just as bad. In Sparkle the lower court dismissed the complaint for statute of limitations argument, which was an issue relevant to the entire complaint, and the entire "argument advanced for why [the court] should reverse [the holding was] in the reply brief." Sparkle Hill, Inc. v. Interstate Mat Corp., 788 F.3d 25, 30 (1st Cir. 2015) In this case the Complaint is not dependent on any single element that the District court dismissed the complaint on, and arguments were made for each of the issues the District court relied on [aside from RICO], the panel just deemed my arguments too perfunctory. Second, in Sparkle the Appellant was not pro se, so the Appellant's arguments did not have any reason to be liberally construed. Third, the Appellee was not defaulted, and the Appellee raised the waiver/issue preclusion argument, (Appellee brief 14-1618 at

12,15, and 16) while in this case the panel was acting sua sponte raising forfeited defenses after briefing was closed, which is exactly the type of "sandbagging" the rule is meant to avoid. Id at 29. "[I]t is equally essential in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence." Hormel v. Helvering, 312 U.S. 552, 556 (1941)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Pro se /S/ Rian Waters dated July 14, 2022

199 Allen St E. Longmeadow MA 01028

(530)739-8951 Watersrian@gmail.com