22-763

No. _____

ORIGINAL

In The

Supreme Court of the United States

GANIYU AYINLA JAIYEOLA,

Petitioner,

v.

TOYOTA MOTOR NORTH AMERICA, INC.,
TOYOTA MOTOR CORPORATION, a foreign corporation,
and AISAN INDUSTRY COMPANY, LTD.,
a foreign corporation,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Question 1 presented is:

Whether the Sixth Circuit panel's decision to affirm the District Court decision that was based on the "application of the wrong legal test" constituted a violation of a Supreme Court guideline ("an erroneous legal conclusion deserves no deference on appeal"[1]), a denial of due process to Plaintiff, and a violation of the "just" aspect of Rule 1; because even though the panel applied the correct law to the District Court decision, the panel and the District Court held no hearing and Plaintiff therefore did not have the opportunity to be heard. Indeed, the panel asserted as follows: "On remand, the district court denied Jaiyeola's motion for sanctions, concluding that he had failed to meet his burden of proving by "clear and convincing evidence that Defendants' counsel presented intentionally false material to the Court." Obviously, Plaintiff could not have presented a "clear and convincing evidence that Defendants' counsel presented intentionally false material to the Court." without a hearing at the District Court or at the Sixth Circuit.

A "clear and convincing evidence" burden of proof is a very high standard for a Court to ask for. In a lawsuit where credibility of the litigants are tied to the facts of the case, an evidentiary hearing and cross-examination

[1] *Koon*.

QUESTIONS PRESENTED—Continued

must be allowed. *Hemphill v. New York*, No. 20-637, 595 U.S. ___ (2022). As the Supreme Court has noted, cross-examination is the "greatest legal engine ever invented for the discovery of truth." *California v. Green*, 399 U.S. 149, 158, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970)." *Johnson v. Bell*, 605 F.3d 333 (6th Cir. 2010). And if there is a video evidence that is central to the issues, the Court should admit the video into evidence. A litigant cannot overcome a "clear and convincing evidence" burden of proof without evidentiary hearing, cross-examination, and admission of evidence like a video evidence. Both the District Court and the Sixth Circuit Court of Appeals denied Plaintiff a hearing. Plaintiff was unable to overcome a "clear and convincing evidence" burden of proof at the District Court.

Question 2 presented is:

Whether a Court can correctly decide a lawsuit when the Court demands "clear and convincing evidence" burden of proof and where credibility of the litigants are tied to the facts of the case without conducting evidentiary hearing, allowing for cross-examination, and admitting any valid video into evidence.

"Because a district court has no discretion not to abide by governing law, an erroneous legal conclusion deserves no deference on appeal. *See Koon v. United*

QUESTIONS PRESENTED—Continued

States, 518 U.S. 81, 100 (1996)."[2] "Rule 1 . . . emphasize that . . . the court should construe and administer these rules to secure the **just**, . . . determination of every action," Fed. R. Civ. P. 1 (Committee Notes on Rules—2015 Amendment). The Sixth Circuit Court of Appeals violated the "just" aspect of Rule 1 and denied Plaintiff due process when the panel affirmed a District Court decision where the District Court used the wrong legal standard and the District Court denied Plaintiff a hearing. The Sixth Circuit also denied Plaintiff a hearing. "injustice was more likely to be caused than avoided by deciding the issue without petitioner's having had an opportunity to be heard." *Singleton v. Wulff*, 428 U.S. 106 (1976). "Accordingly, the proceedings did not comply with [Rule 1], and neither did they comport with due process. *See, e.g.*, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ('The fundamental requisite of due process of law is the opportunity to be heard.') (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914))." *Nelson v. Adams USA, Inc.*, 529 U.S. 460 (2000).

The Sixth Circuit panel asserted as follows: "In denying that motion on remand, the district court applied Sixth Circuit precedent stating that a party seeking to show a fraud on the court must present clear and convincing evidence of the following elements:

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[2] *United States v. LaDeau*, No. 12-6611 (6th Cir. 2013).

QUESTIONS PRESENTED—Continued

1) [conduct] on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court. *Carter v. Anderson*, 585 F.3d 1007, 1011 (6th Cir. 2009). **But the district court erred in doing so.** "The problem with applying this test is that the fraud-on-the-court doctrine deals with courts' inherent power to vacate their judgments, whereas this case involves a court's inherent power to sanction for misconduct in litigation." *Williamson v. Recovery Ltd. P'ship*, 826 F.3d 297, 302 (6th Cir. 2016). However, the panel went on to make the following assertion:

"Despite the district court's application of the wrong legal test, "we may affirm the district court's order on any ground that is supported by the record." *Id.* (citing *Moore v. Lafayette Life Ins.*, 458 F.3d 416, 446 (6th Cir. 2006))." (9a-10a). The panel's position is contrary to the position of the Supreme Court. The Supreme Court is very clear on what should happen when an inferior Court uses the "wrong legal test" to decide a lawsuit: "**Because a district court has no discretion not to abide by governing law, an erroneous legal conclusion deserves no deference on appeal. See *Koon v. United States***, 518 U.S. 81, 100 (1996)."[3] In plain language, a

[3] *United States v. LaDeau*, No. 12-6611 (6th Cir. 2013).

QUESTIONS PRESENTED—Continued

Court Order based on the wrong legal test is not a valid Order and should be null and void. The Sixth Circuit panel denied Plaintiff a hearing, denied Plaintiff due process, and violated the "just" aspect of Rule 1.

PARTIES

The petitioner is Ganiyu Ayinla Jaiyeola. The respondent is TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR CORPORATION, a foreign corporation, and AISAN INDUSTRY COMPANY, LTD., a foreign corporation.

DIRECTLY RELATED CASES

Jaiyeola v. TOYOTA MOTOR NORTH AMERICA, INC., TOYOTA MOTOR CORPORATION, a foreign corporation, and AISAN INDUSTRY COMPANY, LTD., a foreign corporation, No. 22-1083, Sixth Circuit Court of Appeals, judgment entered October 7, 2022.

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Petitioner Ganiyu Ayinla Jaiyeola, respectfully pray that this Court grant a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered on October 7, 2022.

OPINIONS BELOW

The October 7, 2022, opinion of the court of appeals is set out at App. 1-7 of the Appendix. The April 14, 2021, decision of the district court is set out at App. 8-11 of the Appendix. The November 15, 2022, order denying rehearing en banc is set out at App. 12 of the Appendix. The opinion and orders are not reported.

JURISDICTION

The decision of the court of appeals was entered on October 7, 2022. A timely petition for rehearing en banc was denied on November 15, 2022. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The district court had jurisdiction pursuant to 28 U.S.C. § 1331.

STATUTORY PROVISION INVOLVED

No federal statute explicitly prescribes judicial standards of proof in a civil case. Standards of proof

are judicial precedents established by the Supreme Court.

When a party has the burden of proving any claim or defense by clear and convincing evidence, it means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. "Clear and convincing" is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt. *See Colorado v. New Mexico*, 467 U.S. 310, 316 (1984) (defining clear and convincing evidence). "A "clear and convincing evidence" standard adequately conveys to the factfinder the level of subjective certainty about his factual conclusions necessary to satisfy due process." *Santosky v. Kramer*, 455 U.S. 745 (1982). A "clear and convincing" standard of proof required that due process must not be denied. "**The next question, then, is whether a "beyond a reasonable doubt" or a "clear and convincing" standard is constitutionally mandated."** *Santosky*. If due process requirements are met for "clear and convincing" standard of proof, then a "clear and convincing" standard of proof is constitutional. "When it comes to due process, the "opportunity to be heard" is the constitutional minimum. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)." *Doe v. Baum, et al.*, No. 17-2213 (6th Cir. 2018).

STATEMENT OF THE CASE

Background

This is a motor vehicle product liability case in which pro se Appellant Ganiyu Jaiyeola ("Plaintiff" or "Jaiyeola") asserted claims for injuries and other damages against the Appellees (Toyota Motor Corporation and Aisan Industry Co., Ltd.—both indicated as "Defendants" or "Toyota") arising out of Plaintiff's 1996 Toyota Camry LE ("Camry") sudden unintended acceleration ("SUA")[4] car accident that occurred on November 25, 2013. Plaintiff is a disable because of the SUA car accident. Jaiyeola is married with three (3) children (15, 11, and 8 years). The facts on Plaintiff's Camry, the Camry accident of November 25, 2013, Plaintiffs' injuries (including Brain (Subdural Hematoma), Spinal Cord (Cervical Stenosis with Myelopathy), and Fractured Left Eye Socket), brain surgery, pending spinal cord surgery, and health prognosis are stated in Plaintiff's affidavit. (Plaintiff's Affidavit, R.[5] 243-2, Page ID #5500-5510).

"The Court received "Plaintiff's Motion To Strike the Defendants' Response (ECF No. 156) Because It Contains Lies Against Plaintiff And Sanction The Defendants' Attorneys (CARMEN M. BICKERDT and DAVID L. AYERS) For Misconduct (Authoring a

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[4] "SUA" refers to sudden unintended acceleration of the Camry.

[5] "R." refers to the record entry number in the District Court Docket. "R'." refers to the record entry number in a Sixth Circuit Docket.

Response That Contains Lies)" on December 6, 2018 (ECF No. 264). Defendants responded on December 14, 2018 with "Defendants Toyota Motor Corporation and Aisan Industry Co, Ltd.'s Response in Opposition to Plaintiff's Motion to Strike the Defendants' Response (ECF No. 156) Because It Contains Lies Against Plaintiff and Sanction the Defendants' Attorneys (Carmen M. Bickerdt and David L. Ayers) for Misconduct (Authoring a Response that Contains Lies) [ECF 256]" (ECF No. 274). The Court entered a judgment in favor of Defendants and against Plaintiff on August 5, 2019 (ECF No. 305) and denied as moot Plaintiff's various other motions, including its motion for sanctions (ECF No. 304 at PageID.6728). On appeal the Sixth Circuit reversed and remanded on February 1, 2021, finding that ECF No. 264 "requests that the court strike a filing and sanction defense counsel. It seems to delineate between relief on a merits issue and relief on a collateral issue[,] . . . '[t]he district court should have considered and ruled on the merits of' that request, which is separate from Jaiyeola's request for relief on a merits issue." *Jaiyeola*, 2021 WL 518155, at *5 (quoting *Knight Capital Partners Corp. v. Henkel AG & Co., KGaA*, 930 F.3d 775, 787 (6th Cir. 2019))." (R.352, Page ID #7481-7482). The Sixth Circuit Order ("ORDER of USCA") was filed as R.346. Toyota filed a Motion after R.346 was filed: "RESPONSE IN OPPOSITION TO PLAINTIFF'S REMANDED MOTION TO STRIKE THE DEFENDANTS' RESPONSE (ECF NO. 156)" (R.348; Page ID #7442-7445). The District Court denied Plaintiff the opportunity to be heard by denying Plaintiff the right to file a Response to Toyota's R.348.

(*See* (R.349) and (R.351). In an Order dated April 14, 2021 (R.352), the District Court held that "IT IS HEREBY ORDERED that "Plaintiff's Motion To Strike the Defendants' Response (ECF No. 156) Because It Contains Lies Against Plaintiff And Sanction The Defendants' Attorneys (CARMEN M. BICKERDT and DAVID L. AYERS) For Misconduct (Authoring a Response That Contains Lies)" (ECF No. 264) is DENIED." (R.352). Plaintiff's Motion for Reconsideration (R.353-1, Page ID #7489-7509) was Denied. (R.362). Plaintiff timely filed a Notice of Appeal.[6] (R.363). *See* Fed. R. App. P. 4.

Proceedings Below District Court

"Federal courts possess certain inherent powers, including "the ability to fashion an appropriate sanction for conduct which abuses the judicial process."[7] "A district court has inherent authority to award sanctions when a party litigates in bad faith or commits a fraud on the court. *See First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 512–16 (6th Cir. 2002) (. . .). In *First Bank of Marietta*, the Sixth Circuit noted that a district court may invoke its inherent authority to impose sanctions for bad-faith conduct, even if the district court failed to consider

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[6] ("Notice of Appeal") R.406, Page ID #8261).

[7] *Goodyear Tire & Rubber Co. v. Haeger, et al.*, 137 S.Ct. 1178 (2017).

whether sanctions may be appropriate under any rules or statutes."[8]

To determine the truth of the evidence in a lawsuit or determine if a litigant has abused the judicial process, a Court usually conducts evidentiary hearing or appoints a Special Master. The District Court did neither. "An evidentiary hearing is assuredly a reasonable response to serious allegations . . . "[9] Evidentiary hearing allows for cross-examination. In this case, the District Court did not conduct evidentiary hearing and therefore no cross-examination. The District Court was "without the aid of the truth-seeking device of cross-examination."[10] As the Supreme Court has noted, cross-examination is the "greatest legal engine ever invented for the discovery of truth." *California v. Green*, 399 U.S. 149, 158, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970)." *Johnson v. Bell*. At the minimum in this lawsuit, " . . . the interests of justice require an evidentiary hearing where witnesses can be subjected to cross-examination."[11] And the Court did not appoint a Special Master to seek the truth. Since the District Court neither held an evidentiary hearing nor appoint a Special Master to seek the truth in this lawsuit, "the interests of justice" were not served by the District Court.

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[8] *Quantum Sail Design Group, LLC v. Jannie Reuvers Sails, Ltd., et al.*, No. 1:2013cv00879—Document 233 (W.D. Mich. 2018).

[9] *Johnson v. Bell*.

[10] *Johnson v. Bell*.

[11] *Johnson v. Bell*.

The District Court held that "Plaintiff has not fulfilled his burden here because Plaintiff has not come forward with clear and convincing evidence that Defendants' counsel presented intentionally false material to the Court." (App. 11) and denied Plaintiff's Motion for Sanctions against the Defendants' Attorneys. Obviously, "Plaintiff has not fulfilled his burden . . . with clear and convincing evidence . . . " because the District Court denied Plaintiff an evidentiary hearing, did not allow for cross-examination, did not allow the Defendants to produce a video evidence, and did not appoint a Special Master.

Court of Appeals

The Sixth Circuit Court of Appeals affirmed the decision of the District Court. The panel asserted and held as follows: "Although Jaiyeola argues that the district court should have held an evidentiary hearing on his sanctions motion, permitted him to file a reply brief in support of the motion, or referred the matter to a special master, the district court was not required to do so before ruling on his motion. *See Cook v. Am. S.S. Co.*, 134 F.3d 771, 774 (6th Cir. 1998)." (App. 7). The panel's assertion and holding are contrary to the norm in the Sixth Circuit for cases where credibility is an issue. "If credibility is in dispute and material to the outcome, due process requires cross-examination." "Cross-examination is essential in cases . . . because it does more than uncover inconsistencies—it "takes aim at credibility like no other procedural device," and "cross-examination was unnecessary when conduct

depicted in videos and photos was sufficient to sustain a finding of misconduct." " *Doe v. Baum*, 903 F.3d 575 (6th Cir. 2018). There was a video evidence in this lawsuit but the District Court did not allow for it to be produced or allowed for a hearing. The Sixth Circuit panel denied Plaintiff due process by not holding a hearing.

" "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " *See, e.g.*, *Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manso*, 380 U.S. 545, 552 (1965))."[12]

After the Sixth Circuit's Order on Plaintiff's appeal (of R.304 and R.305) was filed at the District Court as R.346, the District Court permitted Toyota to file a Motion regarding R.346: "RESPONSE IN OPPOSITION TO PLAINTIFF'S REMANDED MOTION TO STRIKE THE DEFENDANTS' RESPONSE (ECF NO. 156)" (R.348; Ex C Page ID #7442-7445). The District Court did not permit Plaintiff to file a Response Motion. The District Court denied Plaintiff the opportunity to be heard by denying Plaintiff the right to file a Response to Toyota's R.348 ((R.349) and (R.351)). The District Court then went on to rule on the case by denying Plaintiff's Motion (R.264) to sanction Attorney Bickerdt and Attorney Ayers. (R.352).

"A litigant has the fundamental right to fairness in every proceeding. Fairness is upheld by avoiding even the appearance of partiality. *See, e.g.*, *Marshall v.*

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[12] *Johnson v. Morales, et al.*, No. 17-2519 (6th Cir. 2020).

Jerrico, Inc., 446 U.S. 238, 242 (1980). When a judge's actions stand at odds with these basic notions, we must act or suffer the loss of public confidence in our judicial system. "[J]ustice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 (1954)." *Miller v. Sam Houston State University, et al.*, No. 19-20752, c/w No. 19-20753 (5th Cir. Jan. 29, 2021).

In (R.264, Page ID #6249-6256), Plaintiff presented facts that showed that the Defendants and their Attorneys (Bickerdt and Ayers) intentionally lied that Plaintiff took pictures of Plaintiff's SUA accident 1996 Toyota Camry LE during an inspection that was scheduled by the Defendants at a Toyota dealership in Grand Rapids, Michigan. In R.156, Toyota asserted (very strongly and unequivocally): "Four (4) post-suit vehicle inspections, which Plaintiff attended and took his own photographs and video footage." (R. 156, Page ID #2642). Plaintiff filed a motion to sanction the Defendants, Bickerdt, and Ayers. (R.264). The District Court did not consider Plaintiff's Motion for Sanctions (R.264) but denied R.264 as moot in the summary judgment awarded to the Defendants. (R.304; PageID #6728). The Sixth Circuit remanded R.264 back to the District Court because "A district court retains jurisdiction to consider collateral issues, such as sanctions, even after entry of judgment on the merits." (R.346).

On Remand, the District Court denied R.264 because "Plaintiff has not fulfilled his burden here because Plaintiff has not come forward with clear and convincing evidence that Defendants' counsel presented intentionally false material to the Court."

(R.352). Plaintiff filed a motion for reconsideration. (R.353-1, Page ID #7489-7509). Plaintiff's motion for reconsideration was denied. (R.362).

"A lie uttered in court is not a fraud on the liar's opponent if the opponent knows it's a lie yet fails to point this out to the court."[13] The District Judge ruled that Plaintiff had no "clear and convincing evidence" (R.352); however, Plaintiff repeatedly argued (in R.264), R.349, and R.353-1 that the Defendants, Bickerdt, and Ayers intentionally lied against Plaintiff. Indeed, in R.353-1, Plaintiff asserted as follows: "Toyota never issued a subpoena to demand the video and photos that they claimed Jaiyeola made on August 3, 2017 before Toyota filed the motion ECF No. 156 (July 5, 2018) that contained lies against Jaiyeola. Toyota had 11 months (August 3, 2017 to July 5, 2018) to demand the alleged video and photos that Jaiyeola had in his possession. Also, formal discovery started on January 3, 2018 and ended on August 22, 2018. (ECF No. 34). Toyota had 6 months (January 3, 2018 to July 5, 2018) during formal discovery to subpoena the video and photos that they claimed Jaiyeola made on August 3, 2017." (R.353-1, Page ID #7503-7504).

The District Judge declined to appoint a Special Master or "conduct an evidentiary hearing." A Special Master " . . . aid judges in the performance of specific judicial duties, as they may arise in the progress of a

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[13] *Oxxford Clothes XX, Inc. v. Expeditors International of Washington, Inc.*, 127 F.3d 574 (7th Cir. 1997).

cause." *LaBuy v. Howes Leather Co.*, 352 U.S. 249, 256 (1957) . . . Fed. R. Civ. P. 53(a)(1)."[14]

In a false statement case against an Attorney, the Second Circuit affirmed the conviction of an Attorney who lied. The Second Circuit asserted that "Materiality is "broadly construed," . . . , and "does not require proof of actual reliance," . . . Rather, "the test is the intrinsic capabilities of the false statement itself, rather than the possibility of the actual attainment of its end." . . . "[15] The "intrinsic capabilities of the false statement" by the Defendants, Bickerdt, and Ayers constituted a conduct that is an abuse of the judicial process. Their conduct of intentional false statements against a pro se Plaintiff had "the risk of undermining the public confidence in the judicial process." *Buck v. Davis*, 137 S.Ct. 759, 197 L.Ed.2d 1 (2017).

The origin of the lies by Bickerdt and Ayers is explained in R.265. In R.265, Plaintiff explained how Toyota hid the evidence of a defect in Plaintiff's accident Toyota Camry (by failing to provide the pictures of the defect in the Camry) after the August 3, 2017 inspection of the Camry. The inspection was done by Toyota at a Toyota dealership in Grand Rapids, Michigan. Plaintiff was present throughout the inspection. Plaintiff requested for the defect pictures from Bickerdt. (Email from Plaintiff to Bickerdt dated

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[14] *Glover v. Wells Fargo Home Mortgage*, No. 14-4829 (3d Cir. Oct. 14, 2015).

[15] *United States v. Brettschneider, et al.*, 19-2423-cr (L) (2d Cir. 2020).

September 29, 2017) Bickerdt replied by falsely accusing Plaintiff of taking pictures during the inspection. Bickerdt made the following unequivocal assertions and false accusations: 1.) "On a related note, can you provide us with all photos and video you made at the inspection" (Email from Bickerdt to Plaintiff dated October 12, 2017); 2.) " . . . please be reminded that you were present for the inspection and had every opportunity to photograph and video the activities" (Email from Bickerdt to Plaintiff dated October 20, 2017) " . . . we believe you took your own photographs and/or video at the inspection, and ask you to produce that to us. We certainly expect to ask for this during the course of discovery, once we are allowed to take discovery, but in the spirit of cooperation and us providing our materials to you, we are asking that you send it to us now. In any event, please take notice of our intent to request, during discovery, all relevant photos, images and video in your possession, custody and control, including, but not exclusively, of the inspections in this case, and ask that you take all necessary steps to preserve that potential evidence." (Email from Bickerdt to Plaintiff dated October 20, 2017). Toyota never asked Plaintiff to produce "all relevant photos, images and video in your possession, custody and control, including, but not exclusively, of the inspections in this case" during discovery and Toyota never subpoena any "photos, images and video in your possession, custody and control" from Plaintiff. Toyota filed R.156 (with lies against Plaintiff) on July 5, 2018. Discovery ended on August 22, 2018. In R.265, Plaintiff filed a Motion for Sanctions against Bickerdt. In R.264, Plaintiff filed a

Motion for Sanctions against Toyota, Bickerdt, and Ayers. The District Court Denied both R.264 and R.265 as moot in its Summary Judgment in favor of Toyota. R.304.

Attorney Ayers[16] has been practicing law since 1983 (39 years). Likewise, Attorney Bickerdt[17] has been practicing law since 2003 (19 years). Both Ayers and Bickerdt are Senior Attorneys. Both therefore knew what they were doing when they made false statements against a pro se Plaintiff.

The intentional false statements against pro se Plaintiff by Attorney Bickerdt and Attorney Ayers constitute Attorney professional misconduct. The misconduct should be referred to the disciplinary units of all the State Bars where Bickerdt and Ayers are licensed to practice law.

" "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " *See, e.g.*, *Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manso*, 380 U.S. 545, 552 (1965))."[18]

One lawsuit that is a mirror image of this lawsuit in terms of "merits" of a Remanded sanction Motion is *Knight Capital Partners Corp. v. Henkel AG & Co., KGaA*, No. 16-12022 (E.D. Mich. 2019). However,

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[16] https://www.watkinseager.com/professionals-david-l-ayers

[17] https://www.bowmanandbrooke.com/attorneys/carmen-m-bickerdt

[18] *Johnson v. Morales, et al.*, No. 17-2519 (6th Cir. 2020).

unlike this case, the District Court in *Knight Capital Partners Corp.* "permitted the parties" to file Motions on the Remanded Motion. The District Court in this lawsuit "permitted" Toyota to file a Motion (R.348) on the Remanded Motion (R.264) but denied Plaintiff's Motion (R.349) on the Remanded Motion. Plaintiff was denied due process and the opportunity to be heard. The District Court was unfair to Plaintiff.

In his Motion for Reconsideration (R.353-1), Plaintiff pointed out to the District Court that the Sixth Circuit appointed a Special Master[19,20] to find out the truth in a case that required convincing evidence. Also, in R.353-1, Plaintiff asked the District Court to " "conduct an evidentiary hearing" on the following electronic mails between Jaiyeola and Bickerdt concerning the August 3, 2017 accident 1996 Toyota Camry LE inspection that Toyota did:" (to determine if the false statement was intentional). (R.353-1, Page ID #7502-7503). The District Judge denied the Motion for Reconsideration. (R.353-1). For pro se Plaintiff to get a "clear and convincing evidence" that Defendants, Bickerdt, and Ayers intentionally presented false statements to the Court about Plaintiff, the Court had to appoint a Special Master or "conduct an evidentiary hearing" that would allow for cross-examination. " . . . cross-examination is the "greatest legal engine ever invented

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[19] *Demjanjuk v. Petrovsky*, 10 F.3d 338, 348 (6th Cir. 1993).

[20] *Johnson*.

for the discovery of truth." *California v. Green*, 399 U.S. 149, 158, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970)."[21]

"Rule 201 outlines the requirements for judicial notice of adjudicative facts. It permits courts to take notice of "a fact that is not subject to reasonable dispute" because it either "is generally known within the trial court's territorial jurisdiction" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Under this rule and relevant case law, courts take notice of "developments in related proceedings in other courts of record.". . . ."[22] " "court filings in other cases" are appropriate for judicial notice."[23]

Attorney Ayers[24] has been practicing law since 1983 (39 years). Likewise, Attorney Bickerdt[25] has been practicing law since 2003 (19 years). Both Ayers and Bickerdt are Senior Attorneys. Both therefore knew what they were doing when they made false statements against a pro se Plaintiff.

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[21] *Johnson*.

[22] *Hancock v. Miller*, No. 20-5422 (6th Cir. 2021).

[23] *Hancock*.

[24] https://www.watkinseager.com/professionals-david-l-ayers

[25] https://www.bowmanandbrooke.com/attorneys/carmen-m-bickerdt

REASON FOR GRANTING THE WRIT

I. A COURT OF APPEALS MUST BE A COURT OF REVIEW AND NOT FIRST VIEW BECAUSE OF DUE PROCESS AND RULE 1 CONSTITUTIONAL REQUIREMENTS

"Because a district court has no discretion not to abide by governing law, an erroneous legal conclusion deserves no deference on appeal. *See Koon v. United States*, 518 U.S. 81, 100 (1996) . . . "[26] "Rule 1 . . . emphasize that . . . the court should construe and administer these rules to secure the **just**, . . . determination of every action, . . . " Fed. R. Civ. P. 1 (Committee Notes on Rules—2015 Amendment). The Sixth Circuit Court of Appeals violated the "just" aspect of Rule 1 and denied Plaintiff due process when the panel affirmed a District Court decision where the District Court used the wrong legal standard and the District Court denied Plaintiff a hearing. The Sixth Circuit also denied Plaintiff a hearing. " . . . injustice was more likely to be caused than avoided by deciding the issue without petitioner's having had an opportunity to be heard." *Singleton v. Wulff*, 428 U.S. 106 (1976). "Accordingly, the proceedings did not comply with [Rule 1], and neither did they comport with due process. *See, e.g.*, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ('The fundamental requisite of due process of law is the opportunity to be heard.") (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914))." *Nelson v. Adams USA, Inc.*, 529 U.S. 460 (2000).

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[26] *LaDeau.*

The Sixth Circuit panel asserted as follows: "In denying that motion on remand, the district court applied Sixth Circuit precedent stating that a party seeking to show a fraud on the court must present clear and convincing evidence of the following elements:

1) [conduct] on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court. *Carter v. Anderson*, 585 F.3d 1007, 1011 (6th Cir. 2009). **But the district court erred in doing so.** "The problem with applying this test is that the fraud-on-the-court doctrine deals with courts' inherent power to vacate their judgments, whereas this case involves a court's inherent power to sanction for misconduct in litigation." *Williamson v. Recovery Ltd. P'ship*, 826 F.3d 297, 302 (6th Cir. 2016)." However, the panel went on to make the following assertion:

"Despite the district court's application of the wrong legal test, "we may affirm the district court's order on any ground that is supported by the record." *Id.* (citing *Moore v. Lafayette Life Ins.*, 458 F.3d 416, 446 (6th Cir. 2006))." (9a-10a). The panel's position is contrary to the position of the Supreme Court. The Supreme Court is very clear on what should happen when an inferior Court uses the "wrong legal test" to decide a lawsuit: **"Because a district court has no discretion not to abide by governing law, an erroneous legal conclusion**

deserves no deference on appeal. *See Koon v. United States*, 518 U.S. 81, 100 (1996) . . . "[27]. In plain language, a Court Order based on the wrong legal test is not a valid Order and should be null and void. The Sixth Circuit panel denied Plaintiff a hearing, denied Plaintiff due process, and violated the "just" aspect of Rule 1.

A hearing will allow for "just" and due process. "As we've said before, we are a court of review, not first view." *Wantou v. Wal-Mart Stores Texas, L.L.C.*, 23 F.4th 422 (5th Cir. 2022). Many Courts of Appeals have been denying due process and violating "just" by being "first review"; which they shouldn't be. "Although we have grave doubts concerning the correctness of the district court's conclusion that the assessment for parking placards is a tax rather than a fee, we are free to affirm the judgment on any basis supported by the record. *See Abercrombie Fitch Stores, Inc. v. Am. Eagle Outfitters, Inc.*, 280 F.3d 619, 629 (6th Cir. 2002) (pointing out that "[b]ecause this court's de novo review involves only application of legal propositions to the undisputed facts in the record, we may affirm on any grounds supported by the record even if different from the reasons of the district court")." *Angel v. Kentucky*, 314 F.3d 262 (6th Cir. 2002). "Despite the district court's erroneous application of these legal tests, we may affirm the court's order on any ground that is supported by the record. *See Moore v. Lafayette Life Ins. Co.*, 458 F.3d 416, 446 (6th Cir. 2006)." *Williamson v. Recovery*

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[27] *United States v. LaDeau*, No. 12-6611 (6th Cir. 2013).

Ltd. P'ship, 826 F.3d 297 (6th Cir. 2016). "[o]n judicial review, the correctness of the decision appealed from can be defended by the [Litigant] on any ground that is supported by the record." *Rexnord Indus., LLC v. Kappos*, 705 F.3d 1347, 1356 (Fed. Cir. 2013). A district court's judgment may be affirmed on "any ground that is supported by the record," *Algarin v. Town of Wallkill*, 421 F.3d 137, 139 (2d Cir. 2005), including grounds "not raised in the district court . . . " *Griffith v. Colo. Div. of Youth Servs.*, 17 F.3d 1323, 1328 (10th Cir. 1994). " "[W]e can affirm the district court's judgment on any ground that is supported by the record." . . . (quoting *Taylor v. United States*, 204 F.3d 828, 829 (8th Cir. 2000)" *United States v. Trogdon*, No. 21-2089 (8th Cir. 2022). "We find the most straightforward approach to analyze this appeal is to look at only one of those grounds. This is because we may affirm the district court on any ground that is supported by the record. *See Davis v. Scott*, 157 F.3d 1003, 1005 (5th Cir. 1998)." *Bell v. Livingston, et al.*, No. 08-20354 (5th Cir. 2009).

As indicated above, courts of appeals are not applying the "just" aspect of Rule 1 and they are denying litigants due process. "Because a district court has no discretion not to abide by governing law, an erroneous legal conclusion deserves no deference on appeal. *See Koon v. United States*, 518 U.S. 81, 100 (1996) . . . "[28]

In this case, Plaintiff was denied a hearing at the District Court and at the Sixth Circuit Court of Appeals; a denial of due process. The lack of a hearing

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[28] *LaDeau.*

distinguishes this case from *Wantou v. Wal-Mart Stores Texas, L.L.C.*, No. 20-40284 (S.Ct. January 23, 2023), cert. denied. In *Wantou*, the District Court used the wrong legal test, the Fifth Circuit affirmed, and the Supreme Court denied the cert petition; however Wantou had a hearing at the District Court and at the Fifth Circuit Court of Appeals.

II. A COURT CANNOT CORRECTLY DECIDE A LAWSUIT WHEN THE COURT DEMANDS "CLEAR AND CONVINCING EVIDENCE" BURDEN OF PROOF AND WHERE CREDIBILITY OF THE LITIGANTS ARE TIED TO THE FACTS OF THE CASE WITHOUT CONDUCTING EVIDENTIARY HEARING, ALLOWING FOR CROSS-EXAMINATION, AND ADMITTING ANY VALID VIDEO INTO EVIDENCE

Standards of proof apply to issues of fact. Evidentiary standards such as "clear and convincing proof" do not apply to questions of law. *See Microsoft Corp. v. i4i Ltd. Partnership*, 564 U.S. 91, 100 n.4 (2011); id. at 114 (Breyer, J., concurring). In a lawsuit where credibility of the litigants are tied to the facts of the case, an evidentiary hearing and cross-examination must be allowed. *Hemphill v. New York*, No. 20-637, 595 U.S. ___ (2022). As the Supreme Court has noted, cross-examination is the "greatest legal engine ever invented for the discovery of truth." *California v. Green*, 399 U.S. 149, 158, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970)." *Johnson v. Bell*, 605 F.3d 333 (6th Cir. 2010). And if there is

a video evidence that is central to the issues, the Court should admit the video into evidence.

The District Court held that "Plaintiff has not fulfilled his burden here because Plaintiff has not come forward with clear and convincing evidence that Defendants' counsel presented intentionally false material to the Court." (App. 11) and denied Plaintiff's Motion for Sanctions against the Defendants' Attorneys. A "clear and convincing evidence" standard of proof is a heightened standard of proof burden that Plaintiff could never overcome without an evidentiary hearing, cross-examination, and the video evidence that the Defendants' Attorneys have. Obviously, "Plaintiff has not fulfilled his burden . . . with clear and convincing evidence . . . " because the District Court denied Plaintiff an evidentiary hearing, did not allow for cross-examination, did not allow the Defendants to produce a video evidence, and did not appoint a Special Master.

The Sixth Circuit Court of Appeals affirmed the decision of the District Court. The panel asserted and held as follows: "Although Jaiyeola argues that the district court should have held an evidentiary hearing on his sanctions motion, permitted him to file a reply brief in support of the motion, or referred the matter to a special master, the district court was not required to do so before ruling on his motion. *See Cook v. Am. S.S. Co.*, 134 F.3d 771, 774 (6th Cir. 1998)." (App. 7). The panel's assertion and holding are contrary to the norm in the Sixth Circuit for cases where credibility is an issue. "if credibility is in dispute and material to the outcome, due process requires cross-examination."

"Cross-examination is essential in cases . . . because it does more than uncover inconsistencies—it "takes aim at credibility like no other procedural device," and "cross-examination was unnecessary when conduct depicted in videos and photos was sufficient to sustain a finding of misconduct." " *Doe v. Baum*, 903 F.3d 575 (6th Cir. 2018). There was a video evidence in this lawsuit but the District Court did not allow for it to be produced or allowed for a hearing. "**the Court finds clear and convincing evidence . . . is material, controlling, and clearly would have produced a different result if presented**." *Luna v. Bell, et al.*, Nos. 17-5608/5675 (6th Cir. 2018). The Sixth Circuit panel denied Plaintiff due process by not holding a hearing.

" "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " *See, e.g., Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manso*, 380 U.S. 545, 552 (1965))."[29]

In this case, Plaintiff was denied a hearing at the District Court and at the Sixth Circuit Court of Appeals; a denial of due process. The lack of a hearing distinguishes this case from *Wantou v. Wal-Mart Stores Texas, L.L.C.*, No. 20-40284 (S.Ct. January 23, 2023), cert. denied. In *Wantou*, the District Court used the wrong legal test, the Fifth Circuit affirmed, and the Supreme Court denied the cert petition; however

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[29] *Johnson v. Morales, et al.*, No. 17-2519 (6th Cir. 2020).

Wantou had a hearing at the District Court and at the Fifth Circuit Court of Appeals.

CONCLUSION

For the above reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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