No. 23-1104

IN THE

Supreme Court of the United States

IN RE ROBERT M. MILLER,

Petitioner.

On Petition for a Writ of Mandamus to the United States District Court for the District of Columbia

PETITION FOR A WRIT OF MANDAMUS

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QUESTIONS PRESENTED

The same district judge presides over three of Petitioner's pending cases. Throughout the proceedings, the judge condoned dozens of defendants' rule violations, failed to timely rule on motions, made arbitrary decisions, and refused to take a *pro se* litigant's facts or arguments seriously. The judge created false facts to claim Petitioner's past and current filings were "frivolous" and "duplicative," and the judge threatened Petitioner with sanctions. The judge's intemperate comments indicate he is profoundly biased and prejudiced against Petitioner. The U.S. Court of Appeals for the District of Columbia also made decisions unsupported by facts or law and demonstrative of bias and prejudice. The questions presented are:

1. Whether this Court should issue a writ of mandamus to U.S. District Court for the District of Columbia to reassign the cases because of the presiding judge's deep-seated antagonism toward a *pro se* litigant and favoritism toward a federal defendant as to make fair judgment impossible.

2. Whether the lower courts erred in fact and law and abused their discretion.

3. Whether Federal Rules of Civil Procedure and court practices are prejudicial to *pro se* litigants.

PARTIES TO THE PROCEEDING

Petitioner Robert M. Miller is an employee of the Federal Deposit Insurance Corporation ("FDIC"), an appellant before the Merit Systems Protection Board ("MSPB"), and a complainant before the Equal Employment Opportunity Commission ("EEOC").

Respondents are:

Elizabeth B. Prelogar, Solicitor General of the U.S.
Martin J. Gruenberg; Chairman, FDIC.
Cathy A. Harris; Chairman, MSPB
Aaron Wade Norman, Esq., FDIC Counsel
Jeffrey A. Rosenblum, Esq., FDIC Counsel

RULE 29.6 STATEMENT

Miller is an individual, and thus there are no disclosures to be made by him pursuant to Supreme Court Rule 29.6.

RELATED PROCEEDINGS

Miller v. McWilliams, 1:21-cv-3035 (D.D.C.), *pending*
Miller v. MSPB, 1:23-cv-15 (D.D.C.), *pending*
Miller v. Gruenberg, 1:23-cv-132 (D.D.C), *pending*
Miller v. Gruenberg, No. 23-955 (U.S.), *pending*

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PETITION FOR A WRIT OF MANDAMUS

Petitioner respectfully petitions for a writ of mandamus to the U.S. District Court for the District of Columbia to reassign the case to a district outside those proximate to Washington, D.C. Petitioner requests this Court vacate all decisions in the lower courts adverse to Petitioner, and to order a new district judge to reconsider sanctions on defendants.

DECISIONS BELOW

January 8, 2023, the U.S. Court of Appeals for the District of Columbia denied Miller's *Petition for a Writ of Mandamus* seeking an order for the district judge's withdrawal. *In re Miller,* 23-5241 (D.C. Cir., Jan. 8, 2024), Doc. #2034767. App. 1a.

July 7, 2023, the district judge denied Miller's *Motion for Judge Withdrawal. Miller v. McWilliams*, 1:21-cv-3035 (D.D.C.), Dkt. 89 (July 3, 2023). App. 3a.

STATEMENT OF JURISDICTION

This Court has jurisdiction to grant an extraordinary writ pursuant 28 U.S.C. § 1651(a). In addition to, or in the alternative, this Court may review the judgments and decisions of the lower courts under 28 U.S.C. § 1254(1).

RULE 20.1 STATEMENT

This Court should issue a writ of mandamus because such issuance will be in aid of the Court's appellate jurisdiction, because exceptional

circumstances warrant the exercise of the Court's discretionary powers, and because adequate relief cannot be obtained in any other form or from any other court.

RELEVANT STATUTORY PROVISIONS

28 U.S.C. §454 provides:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, . . .

28 U.S.C. § 1651 provides:

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT OF THE CASE

I. Preliminary Statement

The Federal Deposit Insurance Corporation is an organized crime syndicate. Since 2011, FDIC lawyers, managers, and other officials conspired to violate Miller's constitutional rights. They attacked Miller with ***dozens*** of undeserved personnel actions and ***hundreds*** of felony and misdemeanor crimes, abuses of authority, gross mismanagement, discrimination, retaliation, veterans' preference violations, and whistleblower retaliation. Immediately following his latest whistleblower disclosures, FDIC conducted unconstitutional searches of Miller's computer activities, and it engaged in a massive *gaslighting*[1] conspiracy to make Miller's disclosures about him instead of about FDIC's malfeasance.

This Court need not rely solely on Petitioner's opinions to reach the same conclusion. Congress, FDIC's inspector general, and an independent investigating firm all recently uncovered a corrupt FDIC culture.[2, 3, 4, 5]

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[1] The term *gaslight* comes from the eponymous 1944 film in which the perpetrator of a crime tries to convince the victim and others that the victim is crazy when she sees evidence of the crime.

[2] https://tinyurl.com/42aaa5m9

[3] https://tinyurl.com/4v535y87

[4] https://www.wsj.com/articles/fdic-6d9e8bf1

[5] https://tinyurl.com/yv3ej93h

For thirteen years, Miller has petitioned the judiciary and adjudicative agencies for relief in grievances, EEO complaints, MSPB appeals, and federal lawsuits. In every case, Article III and administrative judges were profoundly biased and antagonistic against Miller, and they favored federal defendants as to make fair judgment impossible.

The three cases underlying this petition are more of the same. The presiding judge condoned literally ***dozens*** of Rule 11 violations by the U.S. Attorney representing FDIC and MSPB. The judge failed to rule on motions or delayed rulings for many months. The judge granted FDIC's motions that violated rules and orders without a showing of good cause. The judge denied Miller's motions despite strong showings of good cause.

After denying a motion for a preliminary injunction, the judge launched into a factually false rant declaring Miller to be a vexatious litigant:

> One last point. For the past decade, Miller has flooded the court system with an endless stream of filings – many of which have been frivolous, duplicative, or both – and there is no sign of that abating any time soon.[3] Indeed, Miller filed a new lawsuit against the FDIC just two weeks after he filed this action. In his reply brief here, Miller also promises to file a motion to disqualify the U.S. Attorney for the District of Columbia from further participation in this case.

> And if past is prologue, the Court will soon receive the same motion – really, *motions* – for sanctions that Miller files in nearly all his lawsuits. In short, Miller's actions have placed a significant strain on judicial resources, and it is high time for a court to stem the flow of frivolous and duplicative filings.

Miller v. MSPB, 1:23-cv-15 (D.D.C.), Dkt. 12 at 3.

As esteemed circuit court judge Richard Posner said when resigning from the Seventh Circuit bench, "The basic thing is that most judges regard [*pro se* litigants] as kind of trash not worth the time of a federal judge." *ABA Journal*, Sep. 11, 2017. No judge in any case has ***ever*** taken Miller's *pro se* arguments seriously.

Every school child learns that the Judicial Branch is designed as a check and balance against excesses by the other two branches. It is high time this Court supervised its lower courts and held FDIC and MSPB accountable for their crimes, torts, and abuses.

II. Facts and Procedural History

In 2011, two FDIC interns accused Petitioner of sexual harassment. All their allegations were false, frivolous, and untimely. FDIC decided not to promote Miller because of the allegations *two weeks prior* to questioning him. When FDIC questioned Miller, it did not provide him notice of the allegations nor opportunity to respond. When Miller discovered FDIC

would not promote him, he filed a grievance alleging violations of his right to due process.

FDIC designated three persons Miller identified as wrongdoers as grievance officials. MSPB previously held this was an *abuse of authority*. See *Loyd v. Dep't of the Army*, 69 MSPR 684, 688 (1996). The three grievance responses contained more than ***one hundred*** false statements of fact and law.

During the next nine years, FDIC did not select Miller for more than twenty vacancies, training, and detail opportunities. FDIC gave Miller nine consecutive below-average performance evaluations. Miller filed MSPB appeals and EEOC complaints for each unfavorable employment action.

In 2014, FDIC failed to select Miller two positions. He filed complaints for, *inter alia,* age and sex discrimination and retaliation for prior EEO activities. An administrative judge ("AJ") of the Equal Employment Opportunity Commission ("EEOC" or "Commission") held in Petitioner's favor. FDIC appealed to the Office of Federal Operations ("OFO"), which affirmed the decision on September 11, 2020.

The Commission ordered FDIC to provide appropriate back pay and benefits. FDIC calculated *negative* back pay for twenty-eight pay periods and netted these against future periods of positive back pay, depriving Miller of more than $10,000 in relief.

November 13, 2019 and January 9, 2020, Miller made protected whistleblower and Title VII disclosures to, *inter alia,* FDIC Chairman Jelena

McWilliams, General Counsel Nicholas Podsiadly, Inspector General Jay Lerner, and two U.S. Senators. *McWilliams*, Dkt. 1-1 at 2—7. Miller's disclosures alleged ***hundreds*** of crimes, torts, abuses of authority, discrimination, retaliation, and veterans' preference violations. He alleged that among forty-five FDIC officials who violated the law since 2011, 73% of them were Democrats and 80% were women or minorities.

Shortly after the disclosures, FDIC attorneys Jeff Rosenblum and Aaron Wade Norman conspired to conduct an unconstitutional search of Miller's workplace emails, computer, and browsing activities. Rosenblum admitted FDIC was seeking information to discipline Miller for gathering information for his disclosures during duty hours.

Less than 24-hours after Miller's second disclosures, FDIC held an investigation under contrived concerns Miller's was "mentally unstable" and "posed a threat to himself and others."

Miller's supervisors put him indefinite administrative leave and directed Miller, under threat of disciplinary action, to undergo a psychiatric examination by one of three agency designated doctors. Dkt. 1-1 at 51. The directive said Miller could obtain medical information from his own doctor to be considered "in addition" to the agency doctor's report. In violation of 5 C.F.R. § 339, the directive did not give reasons for the examination and did not state what medical information FDIC was seeking. Miller objected to the three doctors (two women, all minority,

all Democrats), alleging they would be biased by his disclosures.

March 9, 2020, Miller's second-level supervisor proposed he be indefinitely suspended for failure to undergo psychiatric examination. Dkt. 1-1 at 70. The proposal relied, *inter alia*, directly on Miller's protected disclosures, false facts, speculation, Miller's defense of his rights, Miller's disabilities, and Miller's complaints of physical and psychological effects from FDIC's nine years of unlawful actions.

After Miller responded to the proposed suspension, FDIC gave Miller "additional flexibility" to obtain medical information from his own doctor rather than an agency-designated doctor.

June 2, 2020, Miller submitted a letter from his Veterans' Administration psychiatrist describing his diagnoses as "mild" and his compliance with and effectiveness of treatment. *McWilliams*, Dkt. 1-1 at 127. The letter stated Miller expressed no suicidal or homicidal ideations, he was "safe and stable" for outpatient care, and he was not a threat to himself or others. *Id.*

FDIC demanded to ask Miller's doctor whether her opinion changed after reading Miller's disclosures and emails to management. Miller alleged FDIC was attempting to prejudice his minority, female doctor against him with his disclosures.

June 5, 2020, Miller filed suit against FDIC in the Eastern District of Virginia for unrelated discrimination and retaliation claims. Because MSPB

had no sitting members who could grant a stay of personnel actions, Miller moved the district court to preliminarily enjoin FDIC from taking adverse actions against Miller. See *Miller v. Gruenberg*, No. 23-843 (U.S.). Just hours after the judge denied the injunction, FDIC indefinitely suspended Miller.

Miller also raised a claim in EDVA for retaliation for Title VII disclosures. The parties stipulated to dismissal of that claim, without prejudice.

August 7, 2020, Miller appealed his indefinite suspension to MSPB. AJ consolidated this appeal with Miller's whistleblower appeal.

January 6, 2021, AJ granted Miller's motion to add civil rights claims, making Miller's appeal a *mixed case*. May 6, 2021, more than 120 days passed since raising his mixed case; thus, Miller could proceed to district court. See 5 U.S.C. § 7702(e)(1).

On April 8, 2021, Miller provided FDIC an updated letter from his doctor answering the two additional questions FDIC posed.

In April 2021, AJ held a hearing. September 30, 2021, AJ issued an initial decision denying relief on both appeals. AJ claimed Miller did not make whistleblower disclosures, but rather made "complaints and grievances about the way he was being treated," relying on *Rzucidlo v. Dep't of the Army*, 101 M.S.P.R. 116, ¶ 18 (2006). *Rzucidlo* was superseded by the Whistleblower Protection Enhancement Act of 2012, yet MSPB continues to rely upon it to dismiss whistleblower appeals.

Although AJ held Miller engaged in protected whistleblowing activity, she found FDIC met its burden by clear and convincing evidence to show it would have taken the same action absent whistleblowing. Though citing the proper authority, AJ's decision failed to consider the strength of the agency's reasons for its actions, FDIC's strong motives to retaliate, and FDIC's failure to prove it took similar actions against non-whistleblowers for similar conduct. See *Carr v. Dep't of Defense*, 61 M.S.P.R. 172, 181 (1994).

AJ did, however, find that on April 8, 2021, Miller provided FDIC with all the medical information it had requested, and she ordered FDIC to cancel Miller's suspension effective on that date. Although Miller was a prevailing party, AJ violated 5 C.F.R. §§ 1201.111(b)(4) by failing to include a statement on interim relief in her initial decision.

FDIC filed a petition for review ("PFR") to the Board challenging the initial decision. Pursuant to 5 U.S.C. § 7701(b)(2), Miller immediately became entitled to interim relief pending Board review of FDIC's PFR. Interim relief would consist of cancelation of Miller's indefinite suspension.

Because AJ did not order interim relief, FDIC refused to provide it. Miller moved MSPB for interim relief on the docket of FDIC's PFR, but the Clerk of the Board refused to grant it, saying the Board would consider Miller's motion at the same time it considered FDIC's PFR. But that refusal meant Miller would not receive interim relief for the entire period

of Board review. See *Miller v. Gruenberg*, No. 23-955 (U.S.).

III. Miller's *Mixed Case* in *Miller v. McWilliams*, 1:21-cv-3035 (D.D.C).

December 3, 2021, Miller timely filed a *mixed case* in the district court challenging the Board's initial decision. *Miller v. McWilliams*, 1:21-cv-3035 (D.D.C.) ("*McWilliams*".) The court had jurisdiction pursuant to 5 U.S.C. § 7702(e)(1).

The court set a deadline for defendants' response sixty days after the U.S. Attorney ***received*** the summons and complaint, which was delayed three weeks by the U.S. Postal Service. Federal rules stated that federal defendants must respond within sixty days after the papers are ***served***. Miller filed a *Motion for Clarification and to Reset Answer Deadline*. Dkt. 7. The court ordered defendants to respond to the motion, but FDIC never responded and the court never acted on the motion.

Before defendants answered the complaint, Miller voluntarily withdrew his claims believing the court lacked jurisdiction. Dkt. 8. Two weeks later, after learning the court had jurisdiction, he filed a *Motion for Rule 60 Relief*. Dkt. 9. Despite providing proof of service, the court ordered Miller to serve the motion a second time. *Minute Order 03/07/2022*.

As the ninetieth day after filing the complaint approached without defendants' appearance, Miller requested and received an extension of time to serve

process, and he served papers a second time. April 5, 2022, Miller provided proof of service. Dkt. 14. The court set deadlines for defendants' answer on May 27, 2022, which was 60 days after the ***second*** service of process.

April 12, 2022, defendants appeared four months after Miller initially served his complaint. Defendants did not oppose Rule 60 relief. Dkt. 16. April 14, 2022, the court vacated the voluntary dismissal. *Minute Order 04/14/2022.* However, the court did not reset defendants' answer deadlines taking into account the time during which the case was closed.

April 25, 2022, Miller moved to reset deadlines for defendants' response to sixty days after the initial service of his complaint, excluding the time during case closure, ending on May 5, 2022. Dkt. 17. The motion requested an order for defendants to show cause why they should not be held in default.

May 3, 2022, defendants opposed resetting deadlines. *McWilliams*, Dkt. 18. For the first time, defendants claimed Miller did not perfect service until March 28, 2022. *Id* at 10, 12—13. Defendants opposition included ***ten pages*** of facts and arguments relating to the merits of their defenses, having nothing to do with resetting deadlines. *Id.* at 2—10, 14—15.

Miller replied on May 4, 2022, arguing defendants could not ignore his first service of process. Federal rules required defendants to make a timely motion to

dismiss under Fed. R. Civ. P. 12(b)(5) along with all dispositive motions. Dkt. 19, amended at Dkt. 20.

May 27, 2022, defendants filed *Defendants' Motion to Dismiss* ("*MTD*"). Dkt. 22. Citing *Rzucidlo*, Defendants argued the court should dismiss Miller's whistleblower claims because he failed to make whistleblower disclosures. Dkt. 22-1 at 17. Defendants argued that only Miller's indefinite suspension could form the basis of his *mixed case*. Dkt. 22-1 at 18. Defendants argued that other personnel actions FDIC took were not "adverse employment actions" or "materially adverse actions" for purposes of Miller's Title VII and Rehabilitation Act claims. Dkt. 19—21. Defendants contradicted themselves claiming FDIC's proposal to indefinitely suspend plaintiff was not an adverse action, but then admitted the proposal adverse because it was consummated by suspension. *Id.* at 21. Miller opposed the MTD. Dkt. 25. Defendants replied. Dkt. 32. Miller sur-replied with leave of the court. Dkt. 38.

July 12, 2022, Miller filed his first *Motion for Rule 11 Sanctions*. Dkt. 30, 30-9. Petitioner alleged defendants violated Fed. R. Civ. P. 11 ("Rule 11") by including ten pages of irrelevant facts in their opposition to Miller's motion to show cause and reset deadlines. Dkt. 17. The improper purpose was to pre-argue the merits and prejudice the court against Miller with his allegations of wrongdoing by women, minorities, and Democrats and other inflammatory allegations. Defendants opposed the motion. Dkt. 34. Miller replied. Dkt. 35.

August 12, 2022, Miller filed a *Motion for Interim Relief, a Temporary Restraining Order, and a Preliminary Injunction*. Dkt. 39, 39-6. Miller argued he was entitled to interim relief when he became a prevailing party in his MSPB appeal, and FDIC petitioned for review. *Id.* Petitioner argued the court had jurisdiction to grant the motion pursuant to 5 U.S.C. § 7702(a)(1) and (3), and that 5 U.S.C. § 7703(c) was the proper standard of review. The motion's second part sought injunctive relief against additional requests for medical information and disciplinary action. Miller sought an injunction preventing FDIC from denying Miller remote access to FDIC's computer network, with which Miller could access employment benefits.

Defendants opposed the motion, arguing the preliminary injunction standards applied, and without mentioning the standards in 5 U.S.C. § 7703(c). Dkt. 45. Miller replied, reiterating that the deferential standards were appropriate for district court review. Dkt. 46. The just denied the motion, relying solely on preliminary injunction standards. Dkt. 47. See *Miller v. Gruenberg*, 23-955 (U.S.). Miller objected and timely noticed appeal. Dkt. 48, 50.

August 16, 2022, Miller filed his second motion for Rule 11 sanctions. Dkt. 41, 41-1. Plaintiff alleged defendants falsely claimed Exhibit A to their MTD was "incorporated by reference" when the document was not in the administrative record, the complaint and initial decision referred to a different document, AJ denied FDIC's motion to include such a document, and FDIC included the exhibit as "new and material

evidence" in its PFR to the Board. Miller's motion alleged FDIC raised a frivolous defense that Miller made no whistleblower disclosures when he obviously disclosed abuses of authority and numerous crimes. Miller alleged defendants falsely claimed their MTD was fully dispositive and that they were not required to meet and confer, but defendants failed to move to dismiss Miller's adverse action claim. Miller alleged defendants frivolously argued that Miller's doctor's statement that he was "safe and stable today" applied only to *that day*, rather than her continuing assessment of Miller. Miller alleged defendants deliberately omitted "a decision to order psychiatric testing" from a list of prohibited personnel practices to deceive the court. Miller alleged defendants falsely claimed that 5 U.S.C. § 2302(a)(2)(A)(x) included only *orders* for psychiatric examinations, when longstanding MSPB precedent held that *offers* of psychiatric examination under threat of disciplinary action were covered under that statute. Miller's motion alleged defendants sought to prejudice the court against Miller by repeatedly reprising irrelevant facts that Miller made errors in service of process, which had no legal merit in defendants' motions to extend time for their filings. Miller alleged defendants deliberately deceived the court about the proximity in time between Miller's protected whistleblower disclosures and retaliatory personnel actions by relying on Miller's *first* disclosures and FDIC's *last* prohibited personnel action, while ignoring disclosures and personnel actions in between those events.

More than ***four months*** after Miller's motions for Rule 11 sanctions, the court denied both motions with clear abuses of discretion. Dkt. 65. Miller timely objected. Dkt. 66.

Miller filed a *First Amended Complaint* on January 30, 2023, admitted at Dkt. 69.

Defendants filed their second motion to dismiss on February 24, 2023. Dkt. 68, 68-1. Defendants also moved to strike "impertinent" and "scandalous" allegations consisting of Petitioner's allegations of FDIC wrongdoing. FDIC falsely characterized Miller's pleaded allegations upon information and belief as "speculation." FDIC falsely claimed Miller presented no evidence in support of his allegations FDIC favors minority-owned banks, when the court was required to take Miller's factual pleadings as true without any evidence. FDIC made mere cries of indignation that Petitioner would accuse FDIC officials of anti-white, anti-male, and politically motivated hiring and promotions, all of which were supported by well-pleaded factual allegations. FDIC objected to Miller's well-pleaded factual allegations of felony crimes by FDIC officials, which were part and parcel of his protected whistleblower disclosures.

IV. Miller's Petition for a Writ of Mandamus in the Circuit Court, and his Complaint in the Nature of Mandamus in *Miller v. MSPB*, 1:23-cv-15 (D.D.C).

September 6, 2022, Miller filed a *Petition for a Writ of Mandamus* in circuit court. *In re Robert M. Miller,*

22-1232 (D.C. Cir.), Doc. #1962453. The petition sought an order to FDIC or MSPB to provide Miller interim relief to which he was entitled as a matter of law. Miller amended his petition on September 21, 2022. Doc. #1965361. Miller moved to consolidate the petition with his interlocutory appeal of the district court's order denying Miller's motion for interim relief. Doc. #1967279.

November 10, 2022, the circuit court dismissed the mandamus petition and denied the motion to consolidate as moot. The court claimed it lacked jurisdiction to hear the petition, and that mandamus authority lied with the district court. Doc. #1973187.

Miller filed a complaint in the nature of mandamus in the district court on January 3, 2023. *Miller v. MSPB*, 1:23-cv-15 (D.D.C.), *MSPB,* Dkt. 1. The clerk of court assigned the case to the same district judge.

January 30, 2023, Miller filed an *Application for a Temporary Restraining Order and Preliminary and Permanent Injunction. MSPB,* Dkt. 6 & 6-1.

After MSPB opposed and Miller replied, the court denied the *Application*. Dkt. 12. The court cited its decision in *McWilliams*, Dkt. 47, holding "the loss of income and benefits, and the prospect of intrusive medical examinations and workplace discipline – did not constitute irreparable harm." *Id.* at 1. The court then falsely accused Miller of "flooding the court system" with an "endless stream" of "frivolous and duplicative filings." *MSPB*, Dkt. 12 at 3; *supra* at 5. The court falsely concluded that Miller files motion's

for sanctions "in nearly all his lawsuits." *Id.* The court's footnote [3] listed more than a dozen cases and appeals Miller previously filed. *Id.* at 3.

The district court threatened Petitioner with monetary sanctions and restrictions on filing suits. *Id.* at 4. The court implied Miller was a vexatious litigant saying, "*Pro se* sanctions may be particularly appropriate when, as here, the plaintiff has a 'long history of litigation and relitigation of the same issues' and 'is certainly not without some practical experience with the law.'" *Id.* The court continued, "That said, the Court will not impose any sanctions at this time. But the Court cautions Miller against future attempts to rehash issues that have already been decided. Next time, he may not be so fortunate." *Id.*

MSPB, represented by the U.S. Attorney for the District of Columbia, requested an extraordinary 45-day extension to file a responsive pleading in the case. *MSPB,* Dkt. 13. As purported "good cause," defendant claimed she needed more time because Petitioner had sought her consent for several motions he had not yet filed. Defendant claimed "good cause" from counsel's "obligations in other matters," and need to "research the issues" in the instant case. Defense counsel claimed, without explanation, that she would "also be out of the office this week," and she needs "additional time to confer with the Board's counsel and have any filings reviewed and approved by the Board." Miller opposed the extension saying that the press of cases is almost never grounds for an extension of time, that defendant's counsel provided no explanation for her week-long absence, and that

conferring with Board counsel was unnecessary and should have been done concurrent with drafting her response. Dkt. 14. Miller argued that a 45-day extension, on top of the 60 days afforded to government defendants, was excessive and prejudicial to him. The district court granted MSPB's extension for 39 additional days – 87% of its requested extension.

Three days after the court denied Miller's *Application*, the Board issued an *Acknowledgment of Cross-Filing* on the docket of FDIC's PFR. Board attorneys attempted to force Miller to make one of two choices. The first choice was to acknowledge his *Motion for Interim Relief* was an untimely cross-petition for review, which the Board would have denied for the same reasons it denied his previous untimely petition for review. Had Miller signed the acknowledgment, then FDIC and MSPB would have moved to dismiss Miller's claims in district court. The second choice was to not sign the acknowledgment, in which case the Board would not decide on his *Motion for Interim Relief*. Miller moved the district court to stay MSPB's action on the *Acknowledgment*. Dkt. 15. The court never ruled on Miller's motion.

May 2, 2023, Miller filed a *Motion for Judge Withdrawal* for all three cases. Dkt. 21, 21-1. The motion alleged that: (1) Fed. R. Civ. P. 4(c)(2) disparately treats *pro se* litigants; (2) the court failed to timely respond to motions; (3) the court condoned blatant rule violations; (4) the court has deep-seated antagonism toward plaintiff and favors defendants; (5) the court's intemperate comments unsupported by

facts; (6) plaintiff had a right to seek remedies for violations of law; (7) none of plaintiff's complaints or filings were frivolous; (8) the district court actively sought reasons to dismiss plaintiff's cases, to sanction plaintiff, and to disfavor him; (9) defendants relied directly on the court's prejudiced pronouncements to amplify its rule violations; and (10) federal courts are inherently prejudiced against *pro se* litigants.

July 3, 2023, the court denied the recusal motion. Dkt. 30. The judge relied upon the court's general discretion in denying motions for sanctions, but without addressing any of Miller's factual contentions that the judge abused his discretion. The judge claimed, "Miller's ability to prosecute his cases [is not] undercut by my admonishment to Miller not to make frivolous or duplicative *filings*." [emphasis in original] *Id.* at 2. The court continued:

> This warning was prompted by Miller's attempts to relitigate issues that have already been decided by this Court and others. At no point have I suggested that Miller's underlying *claims* are themselves frivolous. Indeed, I have not reached the merits of his claims – in large part due to Miller's extensive motions practice (which includes this motion for recusal).

Id. at 2.

The judge's order indefinitely stayed all three cases, saying, "It is further **ORDERED** that, per

Plaintiff's request, this case is stayed so that Plaintiff can seek whatever relief he deems appropriate from the Court of Appeals."

May 16, 2023, the Board issued a ruling on FDIC's petition for review, reversing the AJ's order canceling Miller's indefinite suspension, and it remanded the case to another AJ to determine whether FDIC should have canceled the suspension. Dkt. 23-1. The Board gratuitously affirmed the initial decision denying Miller relief in his appeals when those matters were being considered in the district court, not by the Board, and neither party briefed the Board on those issues. *Id.* at 2. The Board held that when FDIC petitioned for review, Miller became entitled to interim relief by operation of the statute. *Id.* at 5.

MSPB claimed some of Miller's claims and his motion to stay were now moot. Dkt. 23. The U.S. Attorney, representing ***both*** the FDIC and MSPB, argued on FDIC's behalf that the Board concluded FDIC properly imposed the indefinite suspension. The U.S. Attorney further argued on FDIC's behalf that the Board properly declined to dismiss FDIC's petition for review for failure to provide interim relief. That is, the U.S. Attorney was coordinating the cases of two different defendants to defeat Miller's entitlements to relief, which is clearly a conflict of interest.

V. Miller's Petition for Enforcement in *Miller v. Gruenberg*, 23-cv-132 (D.D.C.)

February 8, 2021, Miller filed a *Petition for Enforcement* with the Commission to obtain the

correct amount of back pay and benefits from his prevailing complaint. August 7, 2021, more than 180 days had passed without a decision by the EEOC, thus Miller could take his petition to federal court at any time. See Section 717(c) of Title VII, 42 U.S.C. § 2000e-16(c).

January 17, 2023, Miller filed a *Petition for Enforcement* in district court. *Gruenberg*, Dkt. 1. The clerk of court assigned the case to the same judge.

June 12, 2023, the EEOC issued a decision on Miller's petition for enforcement holding that FDIC wrongfully calculated negative back pay and netted it against positive back pay. *Gruenberg*, pet. no. 2021005182, appeal no. 2020001130. EEOC ordered FDIC to pay Miller $10,137.60 plus concomitant benefits and interest. Dkt. 18. However, EEOC denied Miller's request for additional back pay at a higher locality rate. Thus, the Commission's decision did not moot the case.

The judge hunted through the record of another case within the district. *Miller v. Garland, et. al*, 22-cv-02579 (D.D.C.) In that case, the judge denied Miller's motion for electronic case filing. Miller objected and requested reconsideration, saying *inter alia* that Miller's United Parcel Service address on file with the court was distant from his home. The judge in the instant case seized upon that filing to invoke a local rule requiring parties to provide their residential address to the court. See LCvR 5.1(c)(1). The judge ordered Miller to show cause why all three of his cases

should not be dismissed. *Minute Order 03/27/2023* and *04/24/2023.*

Miller timely responded to the show cause order, stating why he used a UPS address, his reasonable fears about FDIC learning his home address, and attempts by violent persons on the internet who knew of his legal cases to locate his home address. *Grunberg*, Dkt. 10. Miller alleged the court was more strict than other courts in the district for the same rule violation; those courts liberally granted *pro se* litigants additional opportunities to provide their residential addresses, and they liberally gave leave to proceed under a postal address for any colorable reason to do so. *Id.* The court denied Miller's motion to proceed under a UPS address claiming Miller "has not identified a plausible, particularized risk of harm that would warrant granting an exception to the Local Civil Rules." *Minute Order 05/05/2023.* Miller objected to the court's denial, he provided his residential address to the court, and he moved to have it sealed. Dkt. 17, 17-1. The judge never ruled on the motion to seal.

Defendant's responsive pleading in the case was due on April 17, 2023. Despite a standing order of the court requiring motions for extensions of time to be filed at least ***four days*** before the deadline, defendants requested a 30-day extension of time just ***hours*** before the deadline. As purported good cause, defendant argued that:

> Over the past month, the undersigned counsel had been conferring with agency

> counsel to investigate the claims asserted in the complaint and potential defenses. The undersigned counsel had been diligently preparing Defendant's response to the Complaint to be filed today. However, this morning, the undersigned counsel's supervisor flagged that additional issues will need to be considered and addressed before Defendant can respond to the Complaint. As a result, additional time will be needed for appropriate review by the FDIC and the U.S. Attorney's Office.

Gruenberg, Dkt. 9

Miller opposed the extension of time, and he requested default judgment. Dkt. 13. Miller argued defendants' motion was untimely, failed to show good cause, and defendants failed to meet and confer. The court granted defendant's motion. *Minute Order 04/24/2023.* The court denied Miller's motion for default judgment. *Minute Order 05/05/2023.*

The court delayed fourth months in approving Miller's motion for ECF filing, causing undue hardship. See Dkt. 3 and *Minute Order 05/05/2023.*

VI. Miller's Interlocutory Appeal of the Denial of a *Motion for Interim Relief* in *Miller v. Gruenberg*, 22-5256 (D.C. Cir).

September 21, 2022, Miller noticed interlocutory appeal of the court denying his motion for interim relief. *McWilliams*, Dkt. 50.

Defendants moved for summary affirmance. Doc. #1973628. Miller opposed the motion, and the circuit court denied defendants' motion. Doc. #1991382. The court appointed *amicus curiae* to "present arguments in favor of appellant's position that *amicus* determines are potentially meritorious."

The parties and *amicus* fully briefed the appeal. The circuit court held oral arguments on September 7, 2023, but the court did not permit Petitioner to present his appeal himself.

September 25, 2023, the circuit panel affirmed the district court's denial of the preliminary injunction. Doc. #2018582. The circuit court denied Miller's motion for panel rehearing and rehearing *en banc* on December 4, 2023. Docs. #2029835, #2029836.

VII. Miller's Petition for a Writ of Mandamus for Judge Withdrawal.

October 18, 2023, Miller filed a *Petition for a Writ of Mandamus* seeking an order from the circuit court to the district judge to withdraw from the three cases. *In re Robert M. Miller*, 23-5241 (D.C. Cir.). Doc. #2023075.

Miller alleged the district court erroneously regarded Miller's past, present, and even expected future claims and motions as "frivolous" and "duplicative" when none of them were. Miller claimed that the number of his cases were based upon dozens of personnel actions FDIC took against Miller spanning more than eleven years, and he had a right to seek relief. *Id.* at 11—15. Far from being frivolous, FDIC was found liable for discrimination and retaliation for two nonselections, and EEOC held FDIC underpaid back pay as Miller alleged.

Miller demonstrated he did not seek sanctions "in nearly all his cases." In five out of eight district court cases (63%), there were no motions for sanctions. In some cases seeking sanctions, they were for Rule 37 violations. *Id.* Miller's petition alleged that the court refused to sanction the U.S. Attorney for numerous Rule 11 violations.

January 8, 2024, the circuit court denied the petition. Doc. #2034767. Miller did not request panel rehearing or rehearing *en banc.*

REASONS FOR GRANTING THE PETITION

I. DISTRICT JUDGE HAS A CLEAR DUTY TO WITHDRAW, AND PETITIONER HAS A CLEAR RIGHT TO CASE REASSIGNMENT.

Title 28, U.S. Code, Section 455 requires the district judge to disqualify himself in any proceeding in which his impartiality might reasonable

questioned. He shall also disqualify himself where he has a personal bias or prejudice concerning a party.

This petition demonstrates the district judge refused to hold defense counsel accountable for obvious false signings, frivolous legal contentions, and papers submitted for improper purposes directly under his nose and proven with evidence. Such a judge will not recognize FDIC lies for the reasons given for Miller's suspension and other personnel actions.

Miller's protected disclosures ***included*** false signings and frivolous legal contentions by agency counsel in prior cases, but the judge refused to recognize identical violations directly under his nose.

The judge gave defendants a green light for continued violations. Immediately after the judge's intemperate comments about Miller's prior and ongoing complaints defendants amplified their attacks on Miller with specious defenses such as a motion to strike well-pleaded allegations supporting Miller's discrimination and whistleblower claims.

II. PETITIONER CANNOT OBTAIN RELIEF IN ANY OTHER FORM OR FROM ANY OTHER COURT

Petitioner presented his motion for withdrawal to the district court. *McWilliams*, Dkt. 78. The judge denied the motion. Dkt. 89. App. 3a. Miller petitioned the circuit court for a writ of mandamus ordering the district judge to withdraw, which the circuit court

denied. *In re Miller*, 23-4241 (D.C. Cir. Jan 8, 2024). App 1a.

Exactly like a judge's duty at the threshold of a case, and continuously thereafter, to question the court's jurisdiction, the disqualification statute imposes upon a judge a threshold and continuous duty to withdraw from cases whenever his impartiality might reasonably be questioned or where he has a personal bias or prejudice concerning a party. 28 U.S.C. § 455.

The availability of remedies on appeal for various decisions potentially influenced by judicial bias or prejudice is no remedy at all. Parties are entitled to full and fair consideration of their cases in the first instance. "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness." *In re Murchison*, 349 U.S. 133, 136 (1955).

The disqualification statute aims to obliterate even the *appearance* of bias or prejudice; thus, even a judge's decisions that are evidently unassailable on appeal fails to remove the taint of actual or perceived bias or prejudice. There are a million ways a judge can affect the outcome of a case beyond the capacity of reviewing courts to discern reversible errors.

IV. DISTRICT COURT DISPLAYED SUCH DEEP-SEATED BIAS AND PREJUDICE AGAINST PETITIONER AND FAVORITISM TOWARD FEDERAL DEFENDANTS AS TO MAKE FAIR JUDGMENT IMPOSSIBLE.

A. This Court's Decision in *Liteky v. United States* is Controlling.

This Court laid the foundation for considering rare circumstances when judges must recuse themselves or be ordered to withdraw *solely* because of adverse decisions displaying such deep-seated antagonism toward a party, or favoritism toward another party, as to make fair judgment impossible. *Liteky v. United States*, 510 U.S. 540, 555 (1994).

This case is exceptionally important to prevent further abuses of *pro se* litigants by federal judges, such as those denying Miller just relief in every case since 2012. Rather than fulfilling their duties as a check and balance against executive branch malfeasance, federal judges are protecting federal agencies and officials from accountability for their crimes, torts, abuses, and other violations of law.

B. The District Court Wantonly Abused Its Discretion.

The presiding judge exonerated defense counsel for more than a dozen obvious Rule 11 violations. See motions for sanctions, *McWilliams*, Dkt. 30, 41. The court condoned defendants' rule and order violations such as failing to respond to a motion to reset

deadlines (*McWilliams*, Dkt. 7), failing to raise a Rule 12(b)(5) motion with a motion to dismiss (*McWilliams*, Dkt. 22), and by filing an untimely motion to extend the deadline for an answer to a complaint (*Gruenberg*, Dkt. 10). The court repeatedly granted defendants additional time for reasons that were obviously not good cause for an extension, such as defense counsel's case load, her failure to manage her time to respond, and the frivolous, self-proclaimed "need" to confer with agency counsel before filing a responsive pleading or to have her submissions reviewed by a supervisor.

Meanwhile, the court repeatedly denied Miller's motions after he demonstrated good cause. The judge denied Miller's motion to proceed under a UPS address after he submitted verified facts, unrebutted by defendants, that he reasonably feared FDIC searches of his mailbox and trash can, and he reasonably feared violent threats from persons on the internet who had followed his legal cases. Under prevailing law, courts routinely grant leave to proceed under a postal address for any colorable argument of danger. See *Gruenberg*, Dkt. 10.

The court dithered on every important motion, or it did not rule on motions at all. It never ruled on Miller's motion to reset deadlines in *McWilliams* despite defendants never responding. The court took four to five months to rule on two Rule 11 motions, denying both of them. The court took four months to grant a motion for electronic case filing, causing extreme hardship and unnecessary costs on a *pro se* litigant who had proven electronic case filing skills.

The court never ruled on Miller's motion to seal a document with his home address (*McWilliams*, Dkt. 82), and it never imposed sanctions or ruled on a motion to stay MSPB's improper ploy to force Miller to take action that would have led to dismissal of one or more cases or claims (*MSPB*, Dkt. 15).

The district court denied Miller's *Motion for Interim Relief* without mentioning Miller's contention the proper standards of review are in 5 U.S.C. § 7703(c) rather than the preliminary injunction standards. *McWilliams*, Dkt. 47. See also *Miller v. Gruenberg*, 23-955 (U.S.).

In an obvious act of extreme bias, the district court hunted through the record of another case in the district to determine that Miller did not provide his residential address to the court as required by Local Rule 5.1. The judge ordered Miller to comply with the rule and to show cause why ***all three*** of his cases should not be dismissed. The judge abused his discretion by denying Miller's motion to proceed under a UPS, despite Miller demonstrating more than a colorable argument that persons on the internet were attempting to *doxx*[6] Miller and threatened him with financial and physical harm.

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[6] *Doxxing* is a practice of making a person's identity, employer, telephone number, email address, and home address public. This tactic is commonly used by leftists to harass people with contrary opinions (usually Republicans or conservatives), to provoke violence and intimidation, and to damage their employment, careers, and reputations.

C. District Court's Intemperate Comments Demonstrated Bias and Prejudice.

This Court has held that "judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." *Liteky* at 555. However, this Court held such remarks may demonstrate bias if they're derived from an extrajudicial source or if they reveal "such a high degree of favoritism or antagonism as to make fair judgment impossible." *Id.*

This Court should modify its holding in *Liteky*. Even when a judge's harsh attitudes are justified by case events, this Court too readily condones the practice of judges expressing "dissatisfaction, annoyance, and even anger" whilst the parties must constrain themselves in their expressions to and about the court and the other parties. Judges are not above the law, nor are they above the professional standards of comportment of a court officer who must, at all times, remain fair and impartial. "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially. *Model Code of Judicial Conduct*, Rule 2.2. "A judge shall be patient, dignified, and courteous to litigants . . . subject to the judge's discretion and control." *Id.* Rule 2.8. Allowing judges to make decisions in wrath inherently leads to partiality and *cut-of-his-jib* antagonism towards a party. This is especially hazardous when judges deal with *pro se* litigants who, despite every effort, are likely to make mistakes that annoy judges.

In the instant case, the district court's intemperate comments about Miller's "frivolous" and "duplicative" filings were not derived from any transactions in the cases at hand, nor were they derived from the court's review of any prior filings Miller had made in other cases. Contrary to facts, the district court ***invented from thin air*** the following unsupported conclusions:

- "For the past decade, Miller has flooded the court system with an endless stream of filings – many of which have been frivolous, duplicative, or both."
-
- "Indeed, Miller files a new lawsuit against the FDIC just two weeks after he filed this action."

- "The Court will soon receive the same motion – really, *motions* – for sanctions that Miller files in nearly all his lawsuits."

Miller's numerous complaints against FDIC were predicated on dozens of unlawful personnel actions FDIC has taken since 2011. The district court gave lip-service to Miller's right to seek relief, while qualifying those rights: "Although 'no petitioner or person shall ever be denied his right to the processes of the court,' it is 'well settled that a court may employ injunctive remedies to protect the integrity of the courts and the orderly and expeditious administration of justice." *MSPB*, Dkt. 12 at 3. The district judge substituted his own judgment for those of the other tribunals, unilaterally declaring Miller's filings, claims, or cases to be "frivolous" and "duplicative" when no other judge had held as such.

The district judge made the conclusory claim that Petitioner "has a long history of litigating and relitigating the same issues." *Id.* Yet again, the court provided no examples of Miller doing so, and Miller has not done so except when circumstances warranted it, such as refiling cases dismissed without prejudice, when separate claims for the same unlawful personnel action had to be filed in separate forums, or upon instructions from a higher court.

Shortly after declaring Miller's "new lawsuit" to be frivolous and duplicative, the EEOC granted Miller partial relief on his *Petition for Enforcement*, demonstrating his claim in the district court was not frivolous. *MSPB*, Dkt. 18.

The district court ignored that FDIC had been found liable for age and sex discrimination and retaliation. The judge in that case found five FDIC witnesses to be not credible, which is consistent with Miller's claims that FDIC personnel committed perjury and that his claims are not frivolous.

The district judge erroneously stated that Miller files "motions for sanctions in nearly all of his cases." Miller demonstrated he filed motions for sanctions – including both Rule 11 and Rule 37 sanctions – in less than half of his district court cases. The district court never measured, as he did not measure in the instant cases, that Miller's motions for sanctions had merit.

In denying Miller's motion for recusal, the district court ***lied*** by claiming he referred not to Miller's claims or cases as frivolous and duplicative but to his

"filings." The judge clearly referred to cases in the footnote of his comments, and the court did not identify a single duplicative or frivolous filing.

V. DISTRICT OF COLUMBIA CIRCUIT IS BIASED AND PREJUDICED AND IT ABUSED ITS DISCRETION.

A. D.C. Circuit Abused Its Discretion Denying Miller's Petition for a Writ of Mandamus for Interim Relief.

The D.C. Circuit revealed its bias and prejudice against Miller through a series of irrational decisions and without providing explanations for its decisions such that this Court could understand its reasoning.

D.C. Circuit erroneously denied Miller's petition for a writ of mandamus to order MSPB to order FDIC to provide interim relief, claiming it lacked jurisdiction. *In Re Miller,* 22-1232, Doc. #1973187. Citing inapposite precedent in *In re Tennant*, 359 F.3d 523, 531 (D.C. Cir. 2004) and this Court's precedent in *Perry v. MSPB*, 137 S. Ct. 1975, 1979-82 & n.2 (2017), the circuit erroneously held that jurisdiction for Miller's petition resided with the district court. Unlike *Tennant*, Miller presented a *Motion for Interim Relief* to the Board, which the Board refused to decide upon until after the interim relief period was exhausted, defeating the entire Congressional purpose of interim relief.

Under the All Circuits Review Act, Pub. L. 115-195 (2017), July 8, 2018, the D.C. Circuit unquestionably had jurisdiction to review the Board's refusal to order

interim relief because it was a proper appellate authority for any decision the Board made regarding FDIC's petition for review.

B. D.C. Circuit Abused Its Discretion Affirming the District Court's Denial of Miller's Motion for Interim Relief.

As more fully laid out in Miller's petition for a writ of certiorari in a separate action, the D.C. Circuit was profoundly biased and prejudiced against Miller with its plainly erroneous decision affirming the district court's denial of Miller's *Motion for Interim Relief, a Temporary Restraining Order, and a Preliminary Injunction.* See *Miller v. Gruenberg*, 23-955 (U.S.).

C. The D.C. Circuit Abused Its Discretion Denying Miller's Petition for a Writ of Mandamus Ordering District Court Judge Withdrawal.

Miller filed a *Petition for a Writ of Mandamus* to the district court ordering the presiding judge to withdraw because of his profound bias and prejudice. *In re Miller,* 23-5241 (D.C. Cir., Jan. 8, 2024). Petitioner adequately demonstrated his clear and indisputable right to the relief requested by showing the district court's deep-seated antagonism toward Petitioner and favoritism toward federal defendants as to make fair judgment impossible. *Liteky, supra.*

The circuit court made the conclusory claim that "The district court's statements, actions, and rulings at issue do not provide a sufficient basis to warrant

recusal," citing *SEC v. Loving Spirit Found., Inc.*, 392 F. 3d. 486, 494 (D.C. Cir. 2004).

It is beyond question defendants violated Rule 11 many times, the district judge failed to sanction them, and the judge warned Miller against filing motions for sanctions for additional rule violations. Like every case before, the judge has rigged the outcome in defendants' favor.

It is beyond question that the district court judge fabricated false facts to justify its unjust and harsh rebuke of Miller seeking relief for FDIC's dozens of adverse personnel actions and its constant stream of lies and cheating in legal cases. Yet the circuit court could discern no reason to disqualify the obviously biased district judge.

VI. THIS CASE PRESENTS QUESTIONS OF EXCEPTIONAL IMPORTANCE AND OF FIRST IMPRESSION

To the best of Petitioner's knowledge and belief, these are the first cases to consider circumstances where an appellant and an agency in an MSPB appeal were both partially prevailing parties, the appellant's petition for review in a *mixed case* went to federal district court, and the agency's petition for review went to the Board. The bifurcation of these petitions led to intractable confusion in the cases below, always disfavoring Petitioner. Coupled with the Board's failure to provide clear and particularized appellate instructions to a *pro se* appellant, this created chaos that has prolonged Miller's legal challenges against

obviously erroneous Board decisions for more than two years.

VII. BIAS AGAINST *PRO SE* LITIGANTS IS RAMPANT IN THE JUDICIARY AND MSPB

This Court need not take Petitioner's word for it. The U.S. Congress, FDIC's OIG, and an independent investigator have all recently uncovered a corrupt culture inside FDIC identical to the complaints and disclosures Miller has made for thirteen years.[7, 8, 9, 10]

This Court is currently considering petitions for three cases in two circuits in which judges committed the same kind of misconduct, and Miller called upon this court to review similar judge malfeasance in other cases. *Miller v. Merit. Sys. Prot. Bd.*, No. 15-996 (U.S. May 28, 2016), *cert. denied*; *Miller v. Olesiuk, et. al*, 15-1181 (U.S. May 23, 2016), *cert. denied*; *Miller v. FDIC*, No. 16-292 (U.S. Oct. 31, 2016), *cert. denied*; *Miller v. Merit Sys. Prot. Bd.*, No. 17-764 (U.S. Jan 8, 2018), *cert. denied. Miller v. Gruenberg*, No. 17-1363 (U.S. May 29, 2018), *cert. denied*;

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7 https://www.reuters.com/sustainability/boards-policy-regulation/us-fdic-announces-special-committee-review-allegations-sexual-harassment-2023-11-21/

8 https://www.fdicoig.gov/sites/default/files/reports/2022-08/EVAL-20-006.pdf

9 https://www.wsj.com/articles/fdic-6d9e8bf1

10 https://www.wsj.com/finance/regulation/fdic-hires-independent-firm-to-conduct-assessment-into-alleged-harassment-and-discrimination-at-agency-a48baee0

Miller's litigative record *pro se* is now 0—5 in district courts, 0—16 in appellate courts, and 0—15 in MSPB appeals. And if the district judge has his way, Miller's record will fall to 0—8. Miller lost ***none*** of these cases because of his failure to correctly prosecute his cases. Certainly, Miller made mistakes in his cases, but none of those mistakes were the reasons for his losses.

VIII. FEDERAL RULES ARE PREJUDICIAL TO *PRO SE* LITIGANTS.

A. Rule 4's Service Requirements Are Vague, Arbitrary, and Prejudicial to *Pro Se* Litigants.

Defendants relied upon Fed. R. Civ. P. 4(c)(2) for the proposition that Petitioner failed to perfect service of his complaint when he deposited it himself in certified mail. Defendants refused to enter an appearance in *McWilliams* for four months until after Miller served his complaint a second time. Despite defendants failing to file a Rule 12(b)(5) motion with their motions to dismiss, the district court refused to hold defendants in default or set deadlines based on a service that defendants did not properly contest. Defendants operate under the false belief that improper service of process excuses them from an appearance when challenges to improper service are waivable defenses if not timely raised.

Rule 4(c)(2)'s requirements ***only*** burden *pro se* parties because represented parties can have their attorneys serve the complaint. Miller had tremendous

difficulty locating a non-party who was willing to deposit the summons and complaint in the mail. Several professional process servers ***refused*** to serve process for a *pro se* litigant.

The plain language of Rule 4(i) is exceptional to Rule 4(c)(2): "To serve the United States, a ***party*** must ... ***send*** a copy of [the summons and complaint] to the civil process clerk at the United States attorney's office." Miller's certified mailing of these documents himself constitutes a proper sending. Indeed, employees of the U.S. Postal Service who handled and delivered Miller's summons and complaint are presumptively non-parties over age 18 for purposes of Rule 4(c)(2).

There is also sufficient ambiguity in the rule to excuse Petitioner's failure to engage a non-party for service. The sole circuit court to fully examine this issue stated that Rule 4 was ambiguous. *Constien v. U.S.*, 628 F.3d 1207; 1215 n. 7 (10th Cir. 2010).

Rule 4(c)(2)'s requirements are also arbitrary. Whatever purpose Rule 4(c)(2) served, it has been long lost to history. See *Smith v. U.S.*, 475 F. Supp. 2d 1, 11 (D.D.C. 2006), citing Charles Alan Wright and Arthur R. Miller, 4A Federal Practice Procedure §1106, at 151 n. 13 (2d ed. 1987).

B. Rule 11 Is Vague, Arbitrary, and Prejudicial to *Pro Se* Litigants.

District courts are loathe to impose sanctions against government attorneys no matter how

numerous, obvious, and egregious their violations are. The Rule 11 safe harbor serves ***no purpose*** other than protecting attorney careers while putting needless obstacles in front of parties aggrieved by rule violations.

Pro se parties cannot recover costs for filing a motion for sanctions if a court grants it. Combined with a near-zero probability of courts imposing sanctions and deep federal government pockets, the lack of any meaningful risks and costs means that government attorneys will lie with impunity.

Where, as here, defense attorneys lie with nearly every breath from their mouths, it is nearly impossible for a party to give defense counsel 21 days to retract false signings while the press of court deadlines continues. For example, as here, if a defendant makes false signings in a motion to dismiss, the plaintiff must prepare a motion for Rule 11 sanctions ***at the same time*** as preparing an opposition. Defendants can lie faster than Petitioner can employ Rule 11 procedures.

CONCLUSION

For the foregoing reasons, this Court should issue a writ of mandamus ordering the district judge to withdraw and ordering the district court to transfer the case to the Northern District of Texas or the District of North Dakota where courts will not be as biased in favor of federal defendants as the three *inside-the-beltway* courts have relentlessly been.

Respectfully submitted:

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