23-5056

NO_____

IN THE

SUPREME COURT OF THE UNITED STATES

CARLOS ANTONIO RAYMOND
Petitioner,

V.

J.P. MORGAN CHASE BANK

&

FLAGSTAR BANK

Respondents,

ON PETITION FOR A WRIT OF CERTIORARI FROM THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Carlos Antonio Raymond
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Date: June 17, 2023

Petitioner Pro se

QUESTION PRESENTED

This case is of national importance because they effect the rights to substantive and procedural due process and diminishing trust in the judicial system by "we, the people". The decisions of the Fifth Circuit and U.S. District Court "reflected a clear deviation and misapprehension of summary judgment standards in light of [Supreme Court] precedents" --- like what happened in Tolan v. Cotton, 572 U.S. 650, 659, 134 S.Ct. 1861, 1868 (2014) (per curiam). By Overruling and Ignoring Petitioner Raymond's detailed facts of the case violated Procedural, First, Fifth, Seventh and Fourteenth Amendment and the Supreme Court "axiom[s]", "general rule[s]", and "fundamental principle[s]" governing summary judgment. Id., 134 S.Ct. at 651, 656, 660.

The U.S. Supreme Court precedents require that, "The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505 (1986). That did NOT happen here.

The U.S. Supreme Court precedents require that, "the judge's function is not himself to weigh the evidence." - The weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or direct verdict. That did NOT happen here.

"Courts must review the evidentiary materials submitted in support of a motion for summary judgment to ensure that the motion is supported by admissible evidence. If the evidence submitted in support of the summary judgment motion does not meet the movant's burden, then summary judgment must be denied." That did NOT happen here.

The court's function on a motion for summary judgment is "to determine whether material factual issues exist, not to resolve such issues." Lopez v. Beltre, 59 A.D.3d 683, 685 (2d Dept. 2009). A motion for summary judgment, therefore, "should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility' " Ruiz v. Griffin, 71 A.D.3d 1112, 1115 (2d Dept. 2010), quoting Scott v. Long Is.

Power Auth., 294 A.D.2d 348, 348 (2d Dept. 2002). See also Bykov v. Brody, 150 AD 3d 808, 809 (2d Dept. May 10, 2017) ("Resolving questions of credibility, determining the accuracy of witnesses, and reconciling the testimony of witnesses are for the trier of fact.") (citation and internal quotation marks omitted). That did not happen here. (APP. 1, 2)

"Courts remained wary of summary disposition because they "perceiv[ed] it as threatening a denial of such fundamental guarantees as the right to confront witnesses, the right of the jury to make inferences and determinations of credibility, and the right to have one's cause advocated by counsel before a jury. "The standard formulation was that summary judgment should be denied whenever there was the "slightest doubt as to the facts- citing See Armco Steel Corp. v. Realty Inv. Co., 273 F.2d 483, 484 (8th Cir. 1960) (cited in CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2532, at 307 (1995)); That did not happen here.

This Court, therefore, must resolve the Reason For The Writ in the light most favorable to Petitioner.

I addition, under 42 U.S. Code § 1983, Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b) and First Amendment, give the right to sue those who violate the laws under its purview in Federal District Court. The statute authorizes district courts in such cases to issue "a permanent injunction." Seven courts of appeals have held that district courts exercising that authority may enter an injunction that requires defendants to return to the victims of their wrongdoing funds obtained through their illegal activity. Other Appellate Court have held the opposite.

Thus, the QUESTIONS PRESENTED are as follows:

Whether The Violation of Standard of Review for Summary Judgment (Rule 60(d)(3); 18 U.S. Code § 1341; 18 U.S. Code § 1519 be allowed to stand uncorrected or violator go unpunished?

Whether and when a defendant's contemporaneous subjective understanding or beliefs about the lawfulness of its conduct are relevant to whether it "knowingly" violated 42 U.S. Code § 1983. Section 5 of the Federal Trade Commission Act (FTC Act) (15 USC 45) and First Amendment, which allows Petitioner to Petition The Government ('Courts) For Redress Of Grievances and to prohibits "unfair or deceptive acts or practices in or affecting commerce under Color Of Law."

Whether There Is A Double Standard In The Law, One For Respondent ("Corporate Banks') and Another For Pro Se Petitioner Pursuant to Summary Judgment, FRCP 56(c)?

Whether a judgment void on its face, when a Respondent Tampered with (or Altered Or Fabricated) Documentary Evidence in support of its Motion For Summary Judgment, and the District Judge adopted and rubber-stamped Defendant's version Of The Facts, and Granted the Motion by not strictly adhering to the FRCP 56 and other Federal statute, thereby implicating biased.

Whether U.S. District Court's charges stating "he reurges his arguments that defendant fabricated or doctored the documentary evidence it presented to the court in support of its motion for summary judgement is frivolous" is in conflict with Supreme Court precedent regarding "the axiom that in ruling on a motion for summary judgment, '[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." Citing Tolan v. Cotton, supra, 134 S.Ct. at 1863, quoting Anderson v. Liberty Lobby, Inc., supra, 477 U.S. at 255. (See APP.12)

Whether the U.S. District Judge provided evidence or proof on the record supporting his claim that his claim is "frivolous"; failure to give Petitioner Raymond a jury trial in light of the fact he request one as part of the determination of whether his claim is frivolous? (APP. 12)

Whether the U.S. District Court abused its discretion in permitting a Defendant to file a motion for summary judgment, while simultaneously denying documentary hearing and discovery to the plaintiff?

Whether the U.S. District Court properly granted summary judgment on claims in which there were (even on slightest doubts regarding the evidence) genuine issues of material fact?

Whether there is a categorical good-faith defense to 42 U.S.C. § 1983 that shields a defendant from damages liability for depriving citizens of their constitutional rights if the defendant acted under color of a law before it was held unconstitutional?

PARTIES TO THE PROCEEDINGS AND RELATED PROCEEDINGS

All parties appear in the caption of the cases on the cover page:

Petitioner is Carlos Antonio Raymond. He was the plaintiff in the district court and appellant in the Fifth Circuit court of appeals. Respondent Is J.P. Morgan Chase Bank. ("JPMC") Respondent was the defendant in the district court and appellee in the court of appeals. Assuming they will use the same Attorney for the entire pretrial proceedings.

Respondent is Flagstar Bank. ("FS") Respondent was the defendant in the district court along with the above Defendant, but was not an Appellant in the Fifth Circuit Court Of Appeals because But the District Court dismissed it from the case.

The related proceedings below are:

1) Corey Holder Petitioner. VS. N. Sepanex, Warden, USP, Respondent, U.S. Supreme Court, No. 2600-035 – judgment entered December 22, 2017, Id. at 37

2) Sanchez v. Board of Regents of Texas Southern University, 625 F.2d 521 (5th Cit. August 26, 1980) - judgment entered August 25, 1980 - Id. At 38

3) Mullins v Allstate Insurance, No. 4:05-cv-40118-PVG-RSW (E.D. MICH) – Judgment entered July 25, 2007 - Id. At 24

4) United States Of America, v. Kevin Cline Smith, Defendant Criminal Action No. 20-165 (JEB) (D.D.C.) Judgment entered Jan. 19, 2021 - Id. At 41

5) Holland v. Florida, 560 U.S. 631 (2010) - Docket No.09-5327 - Judgment entered October 13, 2009 - Id. At 38

6) Maples v. Thomas, 565 U.S. 266 (2012) - Docket No.10-63 - Judgment entered 2012 - Id. At 40

(7) Lanham v. Blue Cross and Blue Shield, 338 S.C. 343, 526 S.E.2d 253 (Ct.App. 2000)

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IV. The decision or opinion of the Circuits and Lower courts are in complete disarray over a settled and well-established precedent of the Supreme Court held in Fidelity & Deposit Co. v. United States, 187 U.S. 315 (1902) And in *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]

A. The Fifth Circuit creates a Circuit-Splits among the nineth Circuit Court Appeals and other Circuits Court's decision that is irreconcilable, inconsistent that adds to the confusion in the lower courts over An exceptionally important question about what constitutes fraud on the court, 60(d)(3) precedent in Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944)

B. In Mullin due to the serious nature of fraud perpetrated upon the Court, a monetary penalty as sanction was imposed on both Plaintiff and Plaintiff's counsel in the form of attorney fees, witness fees, and costs. Whereas in Petitioner Raymond's the United States District Court denied his Motion for Sanction against Respondent J.P. Morgan Chase Bank. Thus, the equal protection clause of the Fourteenth Amendment was not afforded to Petition Raymond in light of the above cases.

C. In this case, the Fifth Circuit Court Of Appeals Did Not Apply The Correct Standard for "excusable Neglect" in conflict with the U.S. Supreme Court's Well-Established precedent in Pioneer Investment Service Co. v. Brunswick Ltd. Partnership, 507 U.S. 380, 395, 113 S.ct. 1489, 1498, 123 L.Ed.2d 74 (1993) Pursuant to Motion For Reconsideration, Fed, R. App. P. RULE 27

D. There is another Circuit-Split among the Fifth Circuit and other Circuit Court, as well as the U.S. District Court regarding the Granting of Summary Judgment standards in light of [Supreme Court] precedents" in Tolan v. Cotton, 572 U.S. 650, 659, 134 S.Ct. 1861, 1868 (2014) (per curiam).

E. There is a Circuit Split among the Fifth Circuit and Other Circuit Courts regarding the Granting Of Summary Judgment in light of [Supreme Court] precedents" --- like what happened in Tolan v. Cotton, 572 U.S. 650, 659, 134 S.Ct. 1861, 1868 (2014) (per curiam).

F. In this case, the Fifth Circuit Court Of Appeals Did Not Apply The Correct Standard for "excusable Neglect" in conflict with the U.S. Supreme Court's Well-Established precedent in Pioneer Investment Service Co. v. Brunswick Ltd. Partnership, 507 U.S. 380, 395, 113 S.ct. 1489, 1498, 123 L.Ed.2d 74 (1993) Pursuant to Motion For Reconsideration, Fed, R. App. P. RULE 27The Fifth Circuit Granted Appellee JPMC's Motion To Dismiss The Notice of Appeal For Untimely Filing. (See APP.

G. Quetel Corporation v. Hisham Abbas, No. 18-2334 (4th Cir. 2020) ("*QueTel Corporation v. Abbas*,")

H. Luxshare, Ltd.1; AlixPartners v. The Fund for Prot. of Inv; Lanham v. Blue Cross and Blue Shield, 338 S.C. 343, 526 S.E.2d 253 (Ct.App. 2000)

I. A district court's obligation—or lack thereof—to provide summary judgment instructions to pro se litigants. A pro se litigant nevertheless remains unaware of their obligation under the rule Fed. R. Civ. P. RULE # 56. This struggle is evidenced by a split among the Federal Circuit Courts over whether these instructions should be given. This Court should grant certiorari under Supreme Court Rule 10(a) and resolve the current circuit split.

J. The Fifth Circuit Court and Court below conflict or split with the Supreme Court Of The United States' Abuse Of Discretion Standard precident in General electric Co. V. Joiner, 522 U.S. 136 (1997); Nutter & Co. v. Namahoe and Lanham v. Blue Cross and Blue Shield, 338 S.C. 343, 526 S.E.2d 253 (Ct. App. 2000)

CONCLUSION

TABLE OF APPENDICES

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PETITION FOR WRIT OF CERTIORARI

Carlos Antonio Raymond, Petitioner, respectfully petitions for a writ of certiorari to of the Order and Judgement of the United States Court of Appeals for The Fifth Circuit and court below:

The undersigned Petitioner, is a Pro se litigant out of necessity, not by choice and was unfairly treated by the Fifth Circuit and District Court under 42 U.S. Code § 1983 and other statutes and Laws..

At this stage of litigation, this matter should have been well heard and decided on facts and evidence in the record, not dismissed by a District Judge who lays down illicit findings of fact and enters orders not consistent with the law. The trial Court distorted the facts sufficiently to make Petitioner seem like just another Pro se whiner, willing to say anything to get released. We are a Nation Of "Justice for all) as laid down by the Constitution. We are also a nation Of Laws. But right now, the laws in place are inadequate to guarantee the protections promised by the Constitution. Petitioner, here forth seeks a writ of Certiorari to clarify and apply to Constitution and to level the plain field for all.

OPINION BELOW

A copy of the Notice from the Fifth Circuit Court, dated June 01, 2022, Docketing The Notice Of Appeal, in Case No. 22-50527, appears herein as Appendix # 1

A copy of the Order from the Fifth Circuit Court June 27, 2022, Granting Appellee's Opposed Motion to Dismiss The Appeal, in Case No. 22-50527, appears herein as Appendix #2

A copy of the Order from the Fifth Circuit, dated July 29, 2022, Notice to Poncio, Raymond in Case No. 22-50527, appears herein as Appendix # 3

A copy of the Order from the Fifth Circuit Court, dated August 11, 2022, Advisory to Poncio in Case No. 22-50527, appears herein as Appendix # 4

A copy of the Order from the Fifth Circuit Court dated September 16, 2022, Advisory to Raymond and Poncio in Case No. 22-50527, appears herein as Appendix # 5

A copy of the Order from Fifth Circuit Court dated October 13, 2022 Granting Poncio Motion To Withdraw As Retained Counsel in Case No. 22-50527, appears herein as Appendix # 6

A copy of the Order from Fifth Circuit Court dated December 15, 2022 to Raymond, the Court has issued its final ruling in Case No. 22-50527, appears herein as Appendix # 7

A copy of the Order from Fifth Circuit Court, dated November 02, 2022 Denying Motion For Reconsideration in Case No. 22-50527, appears herein as Appendix # 8

A copy of the Record of The U.S. District Court, dated May 28, 2021 Defendant J.P. Morgan Chase Bank Motion For Summary Judgement and Supporting Exhibits (APPS) reflecting ALTERED Evidence in Case No. 5:19-cv-00596, appears herein as Appendix # 9

A copy of the Record of The U.S. District Court, dated November 20, 2018 ORIGINAL Respondent's Correspondence – E-mails UN ALTERED in Case No. 5:19-cv-00596, appears herein as Appendix # 10

A copy of the Record of the U.S. District Court, dated September 17, 2021 Report And Recommendation from the United States Magistrate Judge in Case No. 5:19-cv-00596, appears herein as Appendix # 11

A copy of the Record of The U.S. District Court, dated February 14, 2022, ORDER Accepting Report And Recommendation Of United States Magistrate Judge in Case No. 5:19-cv-00596, appears herein as Appendix # 12

A copy of the Record of The U.S. District Court, dated October 24, 2022 Email Correspondence From Court-Appointed Attorney, Kenneth E. Grubbs) in Case No. 5:19-cv-00596, appears herein as Appendix # 13

A copy of the Record of The U.S. District Court, dated April 06, 2022, ORDER Regarding Plaintiff's Emergency Motion in Case No. 5:19-cv-00596, appears herein as Appendix # 14

A copy of the Record of The U.S. District Court, dated May 09, 2022 ORDER Denying Plaintiff's Third Motion For Reconsideration in Case No. 5:19-cv-00596, appears herein as Appendix # 15

A copy of the Record of The U.S. District Court, dated November 11, 2019 Granting Defendant JPMorgan Chase Bank, N.A.'s Motion To Dismiss For Failure To State A Claim, in Case No. 5:19-cv-00596, appears herein as Appendix # 16

A copy of the Record of The U.S. District Court, dated February 14, 2022, JUDGEMENT in Case No. 5:19-cv-00596, appears herein as Appendix # 16 in Case No. 5:19-cv-00596, appears herein as Appendix # 17

A copy of the Record of The U.S. District Court dated May 23, 2022, Plaintiff's Notice Of Appeal in Case No. 22-50427, appears herein as Appendix # 18

A copy of the Record of The U.S. District Court dated June 09, 2022 Appellees' Motion To Dismiss Untimely Appeal in Case No. 22-50427, appears herein as Appendix # 19

A copy of the Record of The U.S. District Court dated June 15, 2021 DN.A.'S Response To Plaintiff's Notice And motion To Set Aside Order Granting Motion To Vacate Scheduling Order in Case No. 22-50427, appears herein as Appendix # 20

A copy of the Record of The U.S. District Court dated January 07, 2021 Photo Of Petitioner Raymond's Eviction in Case No. 22-50427, appears herein as Appendix # 21

A copy of the Record of The U.S. District Court dated April 17, 2022 ORDER DENYING Motion For Reconsideration in Case No. 22-50427, appears herein as Appendix # 22

A copy of the Record of The U.S. District Court dated February 22, 2021 ORDER, Granting Court-Appointed Counsel's Motion To Withdraw in Case No. 22-50427, appears herein as Appendix # 23

A copy of the Record of The U.S. District Court dated May 28, 2021 ORDER Granting Defendant J.P. Morgan Chase Banks' Motion For Summary Judgment in Case No. 22-50427, appears herein as Appendix # 24

A copy of the Record of The U.S. District Court dated June 03, 2021 ORDER Vacating Scheduling Order in Case No. 22-50427, appears herein as Appendix # 25

A copy of the Record of The U.S. District Court dated May 27, 2021Declaration Of Rachael Lee Hytken in Case No. 22-50427, appears herein as Appendix # 26

A copy of the Record of The U.S. District Court dated June 01, 2021 ORDER DENYING Plaintiffs Emergency Motion To Set Hearing: Motion To Stay; Motion For Justice To Be Served under the Law in Case No. 22-50427, appears herein as (See Appendix # 27)

A copy of the Record of The U.S. District Court dated August 24, 2021 ORDER DENYING Plaintiff's Motion To Sanction; Motion To Supplement; Motion To Stay in Case No. 22-50427, appears herein as (See Appendix # 28)

A copy of the Record of The U.S. District Court dated June 24, 2021 Plaintiff's Counter Response To Defendant J.P. Morgan Chase Bank, N.A.'s Motion To Vacate Scheduling Order Stay in Case No. 22-50427, appears herein as (See Appendix # 29)

A copy of the Record of The U.S. District Court dated June 23, 2021, Defendant J. P. Morgan Chase Bank's Response In Opposition To Plaintiff's Motion For Sanction And Second Motion To Set Aside Order in Case No. 22-50427, appears herein as (See Appendix # 30)

A copy of One of Three Settlement Offers, June____, 20__, by Attorney Representing Defendant J. P. Morgan Chase Bank's instead of jury trial, appears herein as (See Appendix # 31)

JURISDICTION

On November 11, 2019, The U.S. District Court Order Granting Defendant/Respondent JP Morgan Chase Bank's Partial Motion To Dismiss For Failure To State A Claim. APP # 1 –

On February 14, 2022, The District Court Order Accepting Report And Recommendation Of The United States Magistrate Judge. (APP.12) Judge Fred Biery, United States District Judge improperly adopted and weighed the Evidence in the light most favorably to Defendant/Respondent holding, "in his objection, plaintiff reurges his argument that defendant fabricated or doctored the documentary evidence it presented to the Court in support of its motion for summary judgment.

As explained in the Report and recommendation, these claims are frivolous." – Plaintiff contends that the Court, respectively, violated Petitioner's First Amendment Right to petition the Court For redress or relief in violation of Federal (Fraud) Laws And Due Process Rights under the Fifth and Fourteenth Amendment of The Constitution Of The United States.

The District Court Furthers Hold, "Although some documents have been redacted in accordance with the Court's rule for redaction of identifying information, the documents submitted are properly supported by a sworn business record affidavit and an affidavit attesting to plaintiff's admission as their authenticity. (docket no. 250, page 8, fn. 5)(citing docket no. 204-1, pages 1-2, 86-90.

Holding, this is proper summary Judgment." (APP. # 2) Plaintiff/Petitioner timely filed an objection and opposition asserting that the evidence in support of Summary Judgment was altered (Doctored, Spoofed, Fabricated.). Petitioner requested a Evidentiary Hearing and it was denied.

On or about February 14, 2022, The U.S. District Court, Order improperly granting Respondent's JP. Morgan Chase Bank's Motion for Summary Judgment (Docket no. 203) and improperly Dismissed Plaintiff's case With Prejudice. (APP. # 3)

On April 06, 2022, The U.S. District Court Grated Petitioner's Motion For extension of Time to File A Notice of Appeals Before the Fifth Circuit Court of Appeals (Docket no. 274) and extended the filing date up to including May 18, 2022. The United States District Court further denied the Motion for a new trial. (APP. # 4-1)

On or about April, 2022, Plaintiff/Petitioner further filed second Motion for extension of time to file a notice Of Appeal, and this Motion was denied, as well. (APP. # 4-2). On May 23, 2022, Plaintiff/Petitioner filed Notice Of Appeal and clearly stated that he is appealing the (a) (b) the lack of Discovery opportunity, (c) Deprivation of Due Process and (d) Denial of a new Appointed Counsel. (APP. # 5)

On June 09, 2022, , Appellee/Respondent J.P. Morgan Chase Bank Filed A Motion To dismiss Untimely filing. (APP. # 6). On June 27, 2022, The United States Court Of Appeals For The Fifth Circuit Order Granting Appellee/Respondents' Motion To Dismiss The Notice Of Appeal as untimely filed. (APP. # 7)

On October 13, 2022, The United States Court Of Appeals For The Fifth Circuit Order Granting Appellant/Petitioner's retained Counsel's Motion To Withdraw Representation from the case. (APP. # 11)

On November 02, 2022, The United States Court Of Appeals For The Fifth Circuit order Denying Appellant/Respondent's Motion For Reconsideration. (APP. # 13).

On December 15, 2022, The United States Court Of Appeals For The Fifth Circuit declined to rule on a motion for Opportunity to Appeal To The Supreme Court Of The United States, as no Appeal rights nor instructions were offered. Petitioner requested some guidance from the Appellate Court in order that he may timely calculate the Writ Of Certiorari. (APP. # 15) -

Plaintiff unsuccessfully attempted to mail the Notice of Appeal On May 17, 2021 via FedEx to be delivered on May 18, 2021, but due to intervening or circumstances and the week end dates, Friday, May 20 2021; Saturday, May 21, 2021 and Sunday, May 22, 2021, FedEx shipped out the Notice of Appeal on Monday, May 23, 2021 to have been delivered to the District Court on Tuesday, May 24, 2021.

Unfortunately, the District Court failed to file the Notice Of Appeal and enter on the docket on this same day, and instead did so on Wednesday, May 25, 2021 and further caused the Notice Of Appeal to be delayed or untimely filled.

The Fifth Circuit filed and entered on the docket the Notice Of Appeal on this day holding that the Notice cleared Jurisdiction and issue a case number. The Fifth Circuit thereafter retrieved the case number; closed the case and thereafter granted Defendant's Motion To Dismiss for untimely filing. This Court has jurisdiction under 28 U.S.C. §1254(1).

The Court's jurisdiction of to review the Judgement of The United States Court of Appeals for the Fifth Circuit and the U.S. District court to which case was filed. The Court's jurisdiction to review the Fifth Circuit's ORDERS rests on 28 U.S.C. § 1254, and its jurisdiction to review both orders rests on the All Writs Act, 28 U.S.C. § 1651(a), and under 28 U.S.C. §1257:

[ ] For cases from federal courts:
The opinion of the United States fifth court of appeals appear at the petition and is:

[ ] reported at _____: or

[X] has been designated for publication but is no yet reported; or

[ ] is unpublished.

The opinion of the United States District Court appear at Appendix 29 & 30 and is:
[ ] reported at _____: or

[X] has been designated for publication but is no yet reported; or

[ ] is unpublished.

[ ] For cases from state courts:

The date on which the highest state Court decided my case was _____
A copy of that decision appears at

[ ] A timely petition for rehearing was thereafter denied on the following date, and a copy of the order denying rehearing appears at.

[ ] An extension Application of time to file the petition for a writ od certiorari was granted to and including (date) on (date) in Application No.

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a)

STATUTES AND REGULATORY PROVISION INVOLVED

The pertinent statutory and regulatory provisions involved in this case are:

United States Constitution, Amendment I: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

United States Constitution, Amendment V: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment IV: The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment VI: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

United States Constitution, Amendment VII: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

United States Constitution, Amendment XIV: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Federal Law - 42 U.S. Code § 1983 ("Civil Action For Deprivation Of Rights"): "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b):

INTRODUCTION

The pertinent issues in the Original Lawsuit of this case is of National Or Public importance of "Wee, The People Pursuant to the First Amendment and 42 U.S. Code § 1983 that seeks Redress of Grievances against the Respondence, and nowhere is it written that a citizen of this nation cannot do this under the First Amendment of the Constitution of the United States Of America and bring a cause of action in Federal Courts.

The First Amendment supposed to protect and guarantee citizens a right to not only (1) "Impede the free exercise of religion (2) abridge the freedom of speech (3) infringe upon the freedom of the press (4) interfere with the right to peaceably assemble (5) or prohibit citizens from petitioning for a governmental redress of grievances of all times without fear of sanction, punishment, retaliation or reprisal" - The United States District Court is sworn to enforce and apply rules of procedure and evidence to the case it hears and these procedures are applied uniformly, regardless of who is appearing before the court. Respectfully, that was not followed in this case.

STATEMENT OF THE CASE

This case has significant national importance and as wells much wider implications and significance that merits the consideration and attention of the Supreme Court of The United States.

Federal Rules of Civil Procedure and Congress' mandate should be applied uniformly without prejudice by different courts to maintain decisional uniformity and integrity. If Certiorari is not granted, it would seriously affect the public reputation of judicial proceedings. In so far as it has affected, threatened, harmed Petitioner's rights substantially and also the society at large. Based on the foregoing, Plaintiff-Appellant respectfully urges and begs that this Petition for Writ of Certiorari be granted.

A. Legal Background

Prior Proceedings Leading Up To Filing Of The Notice Of Appeal: This case evolved from a Residential mortgage and the fallout from alleged nonpayment. Mr. Raymond took out a residential mortgage loan in October 2009 to purchase the property located at 8054 Silver Grove, San Antonio, Texas 78254. (Docket Entry 40, at) –

Respondent, J.P. Morgan Chase Bank ("JPMC") was the original servicer of the loan, and made automatic monthly withdrawals from his bank account to cover his mortgage payments. (Docket Entry 52, at 2; cf. Docket Entry # 40, at 3.) Mr. Raymond made regular payments in this way for nearly a decade without missing being late not one single time.

Petitioner, (Here in after "Mr. Raymond") claimed that in November 2018 he contacted JPMC to request a "Pause" of his December 2018 and January 2009 automatic mortgage payments. (Docket Entry 40, at 9.) The reason for his request was an alleged two-fold hardship: He needed funds to pay for the Christmas and New Year's Day holidays, and to provide financial support for family members and close friends who had been displaced by a natural disaster.

Petitioner, Raymond claimed he spoke with customer service representative, Abraham Gutierrez, regarding his hardship. (Id. At 10.) Gutierrez approved his request and stated JPMC would pause his automatic mortgage payment withdraws from his checking account for the month of December and January and would resume automatic payment in February. Such is what Mr. Raymond was promised but was never came to pass by Mr. Gutierrez.

Unbeknown to Mr. Raymond, however, JPMC was transferring servicing of his loan to Flagstar hereafter, FS, effective December 4, 2018. Docket Entry 40, at 10.) JPMC had agreed to the transfer of service on November 19, 2018, but Mr. Gutierrez never mentioned the transfer, and Mr. Raymond claims he received no other notice of the transfer.

When automatic withdrawals were supposed to resume in February, no withdrawals were made. (Id. At 10), And no withdrawal was made in March, either. Petitioner immediately both respondents contacted and requested production of records, but they refused to produced it. (Id.)

Petitioner Raymond assert that he first became aware of the mortgage default on April 10, 2019, when he was called by a representative from the Department of Veterans Affairs ("VA"), LaTonya Morris, who told him FS "had initiated or threatened" to foreclose on his home on June 4, 2019, due to the default.

The same day, Mr. Raymond sent a written request to JPMC for a copy of the alleged forbearance agreement and additional information regarding his loan. (Docket Entry 40, at 20.) JPMC, emailed Mr. Raymond three original documents: (1) a copy of an email dated November 20, 2018 detailing the agreement regarding the pause of the December 2018 and January 2019 payments. (2) A letter dated April 10, 2019 detailing the action taken by Respondent (3)and a copy of a Notice of Loan Transfer Notice detailing the service transfer from Respondents JPMC to FS, dated November 20, 2018. (APP. 10)

The copy of the email stated that the automatic payments would be paused in December 2018 and January 2019 and would resume in February 2019. (APP. 10) The email did not, however, state there was a forbearance; it requested the December and January payments be made by check instead of automatic withdrawal.

The loan transfer notice stated that service of Mr. Raymond's loan had been transferred to FS effective December 4, 2018, and that all payments should be sent to FS after that date. Petitioner Raymond provided the original email agreement to Respondent, advising them he believed it constituted an "implied forbearance agreement" between himself and JPMC, and that he did not owe mortgage payments for December 2018 and January 2019. (Docket Entry 40, at 4,6.)

Responder, JPMC claims refused to investigate the alleged forbearance agreement and elected to move forward with foreclosure of the property. At some specified point thereafter, a Flagstar representative contacted Mr. Raymond and requested a payment in the amount of $ 3,192.63.

Petitioner Raymond immediately tendered this payment to FS but claims FS later rejected and returned the payments as having been received in error "due to foreclosure."

Mr. Raymond was informed on May 8, 2019 that his loan had been accelerated. He was then informed that foreclosure would take place on June 4, 2019. Respondent, JPMC filed a partial Motion To Dismiss under Federal Rules of Civil Procedure 12(b)(6), and so threatened to pursue a Motion For Summary Judgement.

Mr. Raymond immediately suspected that WM. Lance Lewis (Texas Bar No. 12314560) and Rachel L. Hytken (Texas Bar No. 24072163) Attorneys representing JPMC will altered (fabricate) evidence to stop the case from your to trial. This Petition will further show the exact deceptive action exhibited by council for JPMC. (APP. 9) The Honorable Henry B. Bemporad, United States Magistrate Judge Ruled that Exceptional circumstance exist whereas Petitioner Carlos Antonio Raymond is 74-year-old US Army veteran.

Petitioner, Raymond is an Indigent, African American with Hispanic background who was rated 100% permanent and totally disable rated by the Department Of Veterans Affair ("VA"). Petitioner Raymond suffered from multiple disabling mental and emotional conditions such as Traumatic Brain Injuries ("TBI") Post Traumatic Stress Disorder ("PTSD") Cognitive Disorder, to name a few.

The Magistrate Judge Appointed Attorney Kenneth E. Grubs to assist Mr. Raymond through the pretrial proceeding, but Attorney Kenneth Grubs withdrew from the case for personal selfish reasons involving more pay from Mr. Raymond.

The District Court failed to even conduct a judicial investigation into this ineffective assistance of counsel because Mr. Raymond was abandoned to fend for himself. The District Judge also failed to appoint a new or replacement council to assist Mr. Raymond for the rest of the pretrial proceedings. (APP. # 13)

Prior to the Court granting Mr. Kenneth E. Grubs' Motion to withdraw, attorneys Lance Lewis and Rachel L. Hytken took unfair advantage of Mr. Raymond mental health condition and vulnerability and mailed a legal document called question to interrogatory directly to Mr. Raymond and not to Mr. Kenneth E. Grubs.

Never-the-less, Raymond forwarded the document to Attorney Kenneth E. Grubs, but he ignored and took no action. (APP. # 13) Adding insult to injury, attorneys Lance Lewis and Rachel L. Hytken attorneys representing JPMC took a rather drastic action and filed a Motion for Summary Judgment and accused or blamed Respondent Raymond for not returning the question for interrogatory.

The District Court granted the motion in violation of Mr. Raymond First, Fifth, Seventh and Fourteenth Amendment Rights because there existed triable issues of material fact existed in the case, and upon which were altered or doctored by counsel for Respondent. (APP. # 10)

The District Court erred in granting summary judgment for the JPMC procedural due process issue that unfairly blocked Mr. Raymond from having a fair trial on the merits of his June 3, 2019 Third Amended Complaint. But this was not Mr.

Raymond's fault because he did complete and mailed the documents to his Court Appointed Counsel, Kenneth E. Grubbs, and it is his failure not to resubmit to attorneys Lance Lewis and Rachel L. Hytken.

Upon information and belief, Mr. Raymond feels that this misconduct of Attorney Kenneth E. Grubs caused or opened the door for JPMC to file Motion for Summary Judgment based upon false evidence and fraudulent Misrepresentation.

The U.S. District Judge relied on altered evidence and grant JPMC Judgment in the case. Pursuant to the record in the U.S. District Court, there was never any consideration or attempt to have an expert review and authenticate The Altered evidence that Respondent relied upon in support of Motion For Summary Judgment. The Court Just believed it.

Mr. Raymond was severely prejudiced or harm because the Judgment caused a ripple effect. First, the third-party buyer, Flagstar Bank wrongfully foreclosed on the Property on January 7, 2020 despite a Bexar County civil court Order forbidding them to do so.

Then, Mr. Raymond was removed (Evicted) from the Property by a forcible removal action. (APP. # 21) In support of the fraud claim against FS, Mr. Raymond alleges that both "Notice of Loan Transfers" ("NOTICE") produced by JPMC and FS are altered (fraudulent & faked documents. Docket Entry 40, at 24). (APP. # 10). Similarly, Respondent Flag Star Bank also filed fraudulent ("NOTICE') as evidence.

More clearly, attorneys Lance Lewis and Rachel L. Hytken altered (Forged & Fabricated) Evidence it relied on in support of Summary Judgment, and indeed JPMC was successful In this respect because the District court granted their Motion for Summary Judgment and also Granted Its Motion To Dismiss the Complaint against Both JPMC and FS. (APP. # 10)

On January 7, 2021, The Bexar County Constable wrongfully evicted Petitioner from the property on the heart of COVID-19 Pandemic and below zero cold temperature.

Petitioner was left stranded outside of his home while it rained all day Friday-Monday. He was found unconscious and was transported to the Audie Murphy VA Medical Center and was hospitalized and treated for Respiratory and mental health care. There were multiple violations Of Texas Laws) This eviction action was a direct result of Respondent wrongful inaction to provide Notice or good-by letter in violation of RESPA. (APP. # 21)

Report And Recommendation – dated - Fred Biery, United States District Judge Accepted Magistrate's Report And Recommendation. (APP. # 12) Mr. Raymond Objection filed a timely response in objection to the acceptance of Report and Recommendation entered by the District Court. Proceeding:

After learning of the evidence Supporting the Motion For Summary Judgment that Attorneys Lance Lewis and Rachel L. Hytken who represents JPMC ALTERED (Manipulated, Fabricated) and to some extend this constitutes FRAUD On The Court. (APP. # 9) - Fed. R. Civ. P. Rule 56 lays out the standard to survive a Motion For Summary Judgment and states in relevant terms:

> The nonmoving party "party opposing a motion for summary judgment" has the burden of proving by competent evidence the existence of a disputed issue of material fact.") The non-moving party "must present evidence of a substantial nature predicated on more than mere conclusory statements." *McGovern,* No. 2013-184-Appeal at 7 (citing *Riel v. Harleysville Worcester Ins. Co.*, 45 A.3d 561, 570 (R.I. 2012)) - *See Plainfield Pike Gas & Convenience, LLC*, 994 A.2d at 57

Upon information and belief, Petitioner has met this burden by producing on the record three ORIGINAL Evidentiary Documents supporting his claim in the Complaint filed on June 3, 2019, and his objection to the Motion For Summary Judgment, but the District Court ruled that it is "frivolous." (APP. # 10 & 29)

On April, 2022, Mr. Raymond filed an Emergency Motion For Extension Of Time To File A Notice Of Appeal To The Fifth Circuit (Appealing Summary Judgment Evidence). On April 04, 2022, The U.S. District Court entered an Order Granting Emergency Motion For Extension of Time until, May 18, 2022. (APP. # 14) On May 17, 2022, Mr. Raymond filed a Notice Of Appeal under stressful and other extraordinary circumstances. (APP. 18)

The District Court miscalculated and failed to docket the correct date the Notice Of Appeal was Received by the Court. Rather than docketing the Notice Of Appeal dated May 24, 2022, the District Court miss-docketed the Notice Of Appeal on May 25, 2022 at Petitioner's expense, so now the Notice Of Appeal Became late, which was no fault of Petitioner, and such was an error or the part of the U.S. District Court. On or before June 05, 2022, Petition retained the ineffective assistance of counsel, Mr. Adam PONCIO to represent and appeal his case before the Fifth Circuit.

On June 09, 2022, JPMC swiftly Filed its Motion To Dismiss the appeal and blocked (or Deprived Mr. Raymond of his right to fair appellate hearing before the Fifth Circuit, which in a violation of his First, Fifth, Seventh and Fourteenth Amendment rights.

JPMC did so knowingly that Petition was not late and that Mr. Raymond was retained or represented by Counsel, Adam PONCIO, who contacted Respondent and notified that Petitioner, Raymond has retained counsel, and that all correspondence should be directed to him and not to Petitioner Raymond's personal email, but Respondent's Attorney blatantly ignored.

This constitutes improper Service (APP. # 2) On June 27, 2022, the Fifth Circuit Court Of Appeals ("Fifth Circuit") granted JPMC's Motion To Dismiss The Notice Of Appeal without first addressing or considering the evidence supporting both parties version of the facts, including the alleged altered evidence supporting the Motion For Summary Judgment. This was an error. (APP. # 2)

On June 02, 2022, the fifth circuit closed the case immediately. Mr. Raymond's retained attorney Adam PONCIO had thirty days from this date to file a response, and he failed to do so, so the Fifth Circuit closed the case, and deprived Mr. Raymond of a fair review on the merits of his complained.

The complaint was filed on June 3, 2019, which includes a review of the False evidence supporting Summary Judgment filed by attorney Rachel Hytken who currently represents JPMC. Retained Council, Adam PONCIO to Represent him before the Fifth Circuit Court Of Appeals. but Counsel failed in his obligation to do so. He had 14-days from the date of the order o file an extension of time or a motion for reconsideration, but failed to do so. After the 14-days deadline expired, the Court Dismissed and closed the case.

On August 09, 2022, and because Petitioner's Counsel, Adam PONCIO refused to file a Motion for reconsideration, Plaintiff took it upon himself to file said motion, but the court took no action on the Motion. (APPS. # 3, 4, 5, 6, 7, 8)

On August 10, 2022 and after repeated urging, insisting and pleading by Petitioner, Attorney Adam PONCIO finally filed the Motion For Reconsideration, and again, the court took no action on the Motion because it was untimely filed and did not contained a Motion to file out-of-time.

The ineffective assistance of Counsel was fatal and Petitioner suffered the consequences. APP. 8, 9, 10 - On October 05, 2022, after missing two consecutive filing deadlines, Mr. PONCIO moved to withdraw his representation.

On October 13, 2022, the Court entered an order granting Attorney Adam PONCIO's motion to withdraw as counsel, but failed to even consider a replacement counsel and essentially abandoning Petitioner in the middle of the case to represent himself. (APP. # 6)

The Fifth Circuit erred in Granting Motion To withdraw representation and left client Raymond abandoned and to defend himself against counsel representing JPMC. This decision is unconstitutional because it violated the Fifth and Fourteenth amendment of the Constitution.

Petitioner is entitled to representation and the right to a fair hearing, but the U.S. District Court denied him that right in violation of his Fifth & Fourteenth Amendment rights. On October 07, 2022, Mr. Raymond filed his response/opposition to the motion to withdraw.

Mr. Raymond pleaded to the Court to enter an order to urge Attorney Kenneth E. Grubbs to help find a suitable replacement council because Mr. Raymond was mentally and physically incapable of proceeding with the case on his own without the assistance of counsel. (APP. # 13 & 23)

On October 24, 2022, Mr. Raymond filed a Motion For Reconsideration, Pro se outlining the many reason for the delay in late filing the Notice Of Appeal. On November 02, 2022 the Fifth Circuit denied Mr. Raymond's Motion For Reconsideration without addressing or considering excusable neglect or request for extension of time for the untimely appeal, although, presented on the record, and ignoring this Court's Precedents. (APP. # 15)

In addition, this case represents and follow a pattern of Attorney's abuse and abandonment leaving Plaintiff/Petitioner a 74-year-old Viet Nam Era Veteran who has a history of various Emotional, Mental health life-threatening conditions alone on his own to represent himself before the Court. Sadly, the Defendant/Respondent took unfair advantage of the matter.

More specifically, The District Court Appointed Attorney Kenneth E. Grubbs to represent Mr. Raymond through the Pre-trial proceedings. Apparently, the Court offered to pay Mr. grubs about $ 3,000.00 for his time in assisting the court. Court-appointed counsel was very unsatisfied with this low payment.

While in his office, Attorney Grubs said that he invited Petitioner in his Law Office and office to take this case providing Petitioner signed a contract with me and eliminate the U.S. District Court. Attorney Grubbs being unhappy with the small amount of money paid, decided to pursue a written contract with Mr. Raymond for more pay, and when he failed to comply, Mr. Grubbs Moved to withdraw representation. (APP. 13).

B. Factual And Procedural Background

Standard For Review FRCP Rule 56:

Petitioner proceeding Pro se or without the assistance Of Counsel and in determining whether a genuine issue of material fact exist, the EVIDENCE of the nonmovant is to be believed and Courts must draw all justifiable or reasonable inference in favor of the nonmoving party.

On January 08, 2021, Mr. Raymond file another EMERGENCY Motion for a hearing as he was being forcibly evicted from his home by Bexar County Constable. The U.S. District Court DENIED the Motion, (APP. # 15, 22) On March 10, 2021, Petitioner Raymond filed a Motion To Appoint a replacement Counsel, bit this Motion was DENIED on June 01, 2021.

The United States Magistrate Judge offered on order that he would consider the Motion after Respondent address its Motion For Summary Judgment, but he failed to do so. Instead, he granted the Motion even without discovery opportunity. (APP. # 27)

On May 28, 2021, Respondent J.P. Morgan Chase took unfair advantage of Mr. Raymond representation by counsel and quickly filed a Motion for Summary Judgment, and in that motion Counsel For Respondent attach a voluminous amount of documents and entered as attachment # 1 Exhibits, Summary Judgment Evidence. (APP. # 9)

Plaintiff, carefully and painstakingly search through the volume of documents and found many to be altered and Planted (See APP # 1). Plaintiff provided the original Documents that he originally received from Respondent, J.P. Morgan Chase on November 20, 2018 and again On April 10, 2021.

Petitioner asks that the Court notice the discrepancies of Respondent Summary Judgment Evidence filed on record with the U.S. District Court. There are different version of the evidence which signals some form of tampering or Altercation Involved.

Petitioner continued to search through the entire Exbibits only to encounter more and more evidence tampering including documents planted (added) to some of the original documents. Petitioner suffered an emotional and mental breakdown. (APP. # 9)

This court may Take Judicial Review Regarding Multiple Offers By Counsel Representing Respondent regarding quick Settlement agreements. Plaintiff Was In and out of the hospital and was unable to do any sort Of Settlement.

Petitioner view these respective settlement as Annoying. (APP. # 31) On June 01, 2021, Petitioner filed A Third Motion For Hearing and Motion to Reappoint Counsel, and on June 07, 2021, The United States Magistrate Judge entered an ORDER "DENNING WITHOUT PREJUDICE to reconsideration after J.P. Morgan Chase Motion for Summary Judgment is addressed."

Petitioner repeatedly filed countless Motions attempting to refute the evidence supporting Summary Judgment, and the U.S. District Court DENIED each and every one of the Motions and essentially deprived Petitioner of Procedural Due Process Right.

This Court once emphasized that its inherent power is a crucial mechanism for protecting the integrity of the judicial process. (Id at 12)

This Court enumerated four factors to determine whether or not neglectful late filings of claims are excusable: (1) whether allowing the late claim will prejudice the debtor; (2) the length of the delay in filing the claim and the resulting potential impact on the judicial proceedings; (3) the reason for the delay, including whether the delay was within the reasonable control of the creditor filing the claim; and (4) whether the creditor that filed the claim acted in good faith., but the Fifth Circuit failed to follow this precedent. Texas Disciplinary Rules of Professional Conduct (RULE 8.04) States in relevant terms (a) A lawyer shall not:

> (1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;
>
> (2) commit a serious crime or commit any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
>
> (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
>
> "Fraud on the court is typically limited to the most egregious conduct that implicates an officer of the court. Similarly, this court's holding that fraud on the court only includes actions "such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated").

Pursuant to the above rules, Rachael L. Hytken (State Bar No. 24072163 and WM. Lance Lewis (State Bar No. 12314560) are License Attorney representing JPMC, and are otherwise officers of the court whose conducts may constitute fraud upon the court. Id At 14

Both Attorneys violated Raymond's Six, Seventh, Fifth and Fourteenth Amendment constitutional rights" to a fair and impartial trial before a jury of his peers as well as "not to be deprived of liberty as a result of fabrication of Summary Judgment Evidence," which the District Court heavily relied when it granted the Motion For Summary Judgment and Motion to Dismiss under Fed. R. Civ. P (RULE 12(b).

Petitioner Raymond feels that both the U.S. District Court and the Fifth Circuit demonstrate bias against him by ruling against him on numerous occasions and he feels that such is renders his case an unconscionable scheme against him to appease the interest of the courts and to dispose of his case or simply cast it aside without a fair adjudication on the merits of his complaint. As a Pro se, Mr. Raymond will never be able to trust the Fairness and Impartiality of the Courts whose function is to apply and defend the Constitution.

This petition, however seeks a review of this case to described his petition as (1) a due-process claim based or on the grounds of fabricated evidence in support of Summary Judgment by two of the above-mentioned officers of the court.

Upon information and belief, the due-process claim, this court, in past cases, reasoned that "[u]nder the Fifth and Fourteenth Amendments' Due Process Clauses, individuals have 'the right not to be deprived of liberty as a result of the fabrication of evidence by a government officer. Petitioner Raymond feels that the U.S. District Court erred In Granting Summary Judgment based on False (Altered or Fabricated) evidence it relied on in support of a Motion For Summary Judgement.

The District Court Grated JPMC motion for Summary Judgment and dismissed the complaint filed on June 3, 2019. This "drastic measured" and decision automatically and swiftly blocked Petitioner's right to a Jury Trial.

Respondent deliberately intended and planed this wrongful action and the Court wrongfully bought into it without any consideration given in regards to the Evidence produced by Petitioner Raymond.

If fact, the U.S. District Judge, Fred Bieri ignored or completely disregarded such evidence. And only believe the Summary Judgment Evidence filed by Respondent, which is incontinent with FRCP- Rule # 56 (APP. # 10)

REASON FOR GRATING THE WRIT

Petitioner respectfully suggest that this Court use this case to resolve widespread conflicts on multiple issues that arose during Petitioner's pretrial, that short-circuited his right to a fair jury trial, and the same is likely to affect hundreds of other protected groups nationwide, especially the working-class minorities, Pro se litigants, like Petitioner himself.

I. The Fifth Circuit and Lower Court are in disarray regarding Discovery right in conflict with 18 U.S.C. § 3599. Relying on (1) *Dade County, etc. v. Bosch, Fla. App. 1961, 133 So. 2d 578 (2) Ormond Beach First National Bank v. J. M. Montgomery Roofing Company, Inc., Fla. App. 1966, 189 So. 2d 239 (3) Leithauser v. Harrison, Fla. App. 1964, 168 So. 2d 95, 97*

On or About February 2020, Attorney Grubbs filed a Motion to Withdraw, but this Motion was denied by the Court. Attorney Grubs assignment under the appointment of counsel was to participate in discovery process, which includes Respondence, but Attorney Grubs failed in his obligation to do so.

On or About February 22, 2021, Attorney Kenneth E. Grubs filed a second Motion To Withdraw Representation, and this time, The Court granted that Motion. On May 28, 2021, Respondent filed a Motion For Summary Judgment alleging among other things, a lack of discovery. (APP. # 9)

On March 2021, Petitioner filed a Motion For Discovery Opportunity, and the United States Magistrate Judge denied the Motion and despite the fact of the Ineffective Court-Appointed Counsel, Kenneth E. Grubs failed to do his Job. He Demanded Money From Petitioner. (APP.# 27) This issue of lack Of Adequate Discovery opportunity is discussed more fully in Section 'H' Below.

II. The Fifth Circuit and the Lower Court is in conflict with the Supreme Court's Precedents in Maples v. Thomas, 565 U.S. 266 (2012)

Similarly, this case is all about the Ineffectiveness and abandonment of the named Attorneys involved in this case.

"The Supreme Court Of The United States holds, "No person may be denied counsel as a reasonable accommodation solely because of their mental or emotional conditions because doing so violates the equal protection and due process, clause."

Petition further alleged that despite notifying both Attorneys of his mental health condition, both of his attorneys, Kenneth Grubbs and Adam PONCIO failed to afford him the effective assistance guaranteed by the Sixth and Fourteenth Amendment. The Fifth Circuit denied the Motion and granted Respondent Motion to withdraw the Notice Of Appeal as untimely filed.

Petitioner asks that this Court consider Petitioner Mental and Emotional Conditions it is review of the case in all due respect to Reasonable Accommodation Required Under The American With Disability Act. (ADA). The U.S. District Court's granting Of Summary Judgement was A Drastic Measure in violation to Petitioners Due Process an Seventh Amendment right. The Fifth Circuit and Court Below pretty much disregarded the matter.

III. This case presents an exceptionally important issue that has divided the courts of appeals: when the statute of limitations begins to run for an action under 42 U.S.C. § 1983 in conflict with the Supreme Court well established precedent in Rehberg v. Palk, 566 U.S. 356, 361 (2012)

Petitioner Raymond is a qualified Person with Disability rated by the Veterans Administration (VA) and qualified under the American With Disability Act. Petitioner asserts that the U.S. District Court entered a decision and judgment and blatantly ignored Title 42 U.S.C. § 1983 Law upon which this case and other cases was brought before the court. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides:

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

Title 42 U.S. Code § 1983, Provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law..."

First Amendment:

> **Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.**

The Court's overruling Petitioner objection and response to the Motion For Summary Judgment asserting that Respondent Evidence was altered and fabricated holding "the claim is frivolous." APP.# 12, which infringed on Petitioner's First Amendment rights to petition the Government (Court) for grievance. By this order, the United States District Court has violated Petitioner's First Amendment Constitutional right and that is to "petition the Government (Courts) for a redress of grievances." Bivens v. Six Unknown Named Agents Six Unknown Named Agents, 403 U.S. 388 (1971). (Id at 21)

This Court should grant review to resolve a circuit split regarding an entity's obligation to engage in an interactive process with an individual with a known disability.

IV. The decision or opinion of the Circuits and Lower courts are in complete disarray over a settled and well-established precedent of the Supreme Court held in Fidelity & Deposit Co. v. United States, 187 U.S. 315 (1902) And in *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]

Seventh Amendment Civil Trial Rights:

- "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."
- This case presents a "deeply entrenched" undeniable split and confusion over this fundamental and constitutionality of summary judgment in the face of the Seventh Amendment is deep, obvious and overwhelming.

The circuits have fractured multiple ways, and the profound confusion is interfering with the effective judicial proceedings. Circuits Courts and Lower Courts are desperate for a clear guidance and answer, which only this Court can provide. Petitioner Raymond's right under the Seventh Amendment guarantee of a right to trial by jury was violated and short circuited by grants of summary judgment where there are "genuine issue[s] as to material fact[s]" and a right to jury trial exists. Such grants entail a judge deciding questions reserved for the jury and not by the District Court.

Standard of Review for a Summary Judgment Motion Pursuant To Federal Rule of Civil Procedure ("FRCP") 56 States In Relevant Part:

> "Requires a federal court to grant a motion for summary judgment if the party shows no genuine dispute of material fact exists and the party "is entitled to judgment as a matter of law."
>
> Once the moving party shows there is no genuine dispute of material fact, the burden then shifts to the non-moving party to affirmatively show that there is. ("there are still facts or evidence in dispute) which were altered that severely and potentially affected the case's outcome.
>
> The opposing party must be given sufficient time to conduct discovery. The court may deny the motion if there has not been adequate time for discovery. If the nonmoving party has not had time to obtain discovery, it may file an affidavit or declaration pursuant to FRCP 56(d) stating the reasons it is unable to present the facts supporting its opposition. In such cases, the court may defer the motion, deny the motion, allow additional time for discovery, affidavits, or declarations, or issue another appropriate order.
>
> The court's role is not to weigh the evidence when deciding a motion for summary judgment, but to determine if there is a material fact in dispute. Generally, a trial court deciding whether to grant a motion for summary judgment must view the facts in the light most favorable to the non-moving party, drawing any reasonable inferences in that party's favor."

But, the U.S. District Court did not apply this standard to the case. Upon information and belief, the is clearly a text book definition of a Double-Standard; One For Respondent and the Other for Pro Se, Raymond.

> The Supreme Court in 2007 held in Scott v. Harris, however, that a trial court should not adopt a party's version of the facts when the record "blatantly contradicts" it such that a reasonable jury could not believe it. The trial court, therefore, must view the facts in the light most favorable to the party opposing the motion for summary judgment only if there exists a genuine dispute regarding those facts.

Petitioner was further prejudiced as he was not allowed Discovery opportunity in this case. Discovery could potentially raise disputed facts that are material. Without "facts" and "evidence", the lack of a genuine issue of material facts is difficult to prove. With respect to section (2) (4) and (5) above, Petitioner has already argued this Point in previous section, so, it will be superfluous to do so here.

However, Petitioner believed that the summary judgment in and of itself was a "drastic remedy" mainly to short circuit a trial case or to clear the docket, and in all probability, this is exactly the position held by the U.S. District Court at the expense of Petitioner Raymond

If facts and Evidence are in dispute, as they are in this case, and it is not the role and province of the District court to resolve or weigh the genuine issues (Evidence) of material fact on a summary judgment motion by supplanting a full trial with its ruling." Pollard v. Sherwin-Williams Co., 955 So. 2d 764, 769 (Miss. 2007) (quoting Daniels v. GNB, Inc., 629 So. 2d 595, 599 (Miss. 1993)). Leflore Cnty. v. Givens, 754 So. 2d 1223, 1231 (Miss. 17 2000). Petitioner Raymond is entitled to similar consideration by this honorable Court as did Pollard.

Both The Fifth Circuit and Court below has treated Petitioner Very Unfairly despite Rule 56

> "In deciding whether there is a disputed fact issue, the court reviews the evidence in the light most favorable to the nonmovant, crediting favorable evidence if reasonable jurors could do so, and disregarding contrary evidence unless reasonable jurors could not. But, that did not happened in this case. "Relying on Sillman v Twentieth Century-Fox Film Corp., 3 NY2d 395, 404 [1957]

A. The Fifth Circuit creates a Circuit-Splits among the nineth Circuit Court Appeals and other Circuits Court's decision that is irreconcilable, inconsistent that adds to the confusion in the lower courts over An exceptionally important question about what constitutes fraud on the court, 60(d)(3) precedent in Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944) – In Husky International Electronics, Inc. v. Ritz - 578 U.S. 356, 136 S. Ct. 1581, 194 L. Ed. 2d 655 (2016)

Respondent Sought and Obtained Summary Judgment by means of False or Fraudulent Pretenses when they altered or authenticate its original E-Mail Header and in doing so the altered e-mail purported to be the act of Petitioner who did not authorize that act. Respondent's Fraudulent action deprived Petitioner of a fair jury trial pursuant to his seventh Amendment Right and Texas Penal Code § 32.21.

In Husky, this Court has taken a swift action against any Act of Fraud, and states, "Thus, anything that counts as "fraud" and is done with wrongful intent is 'actual fraud." - This case is an attractive vehicle to resolve an important, recurring and widespread confusion over Fed. R. Civ. P. RULE 60(b)(3).

No one is perfect—not even judges. On rare occasions, courts fail to apply dispositive precedent. Or they render their judgment unaware that the legislature repealed the statute at issue. Or they interpret the Constitution to prohibit certain conduct, and this Court confirms years later that the Constitution allowed that conduct all along:

> Federal fraud law is defined under 18 U.S.C. § 1001 as knowingly and intentionally doing any of the following: Falsifying, concealing, or covering up by any trick, scheme, or device a material fact; Making any materially false, fictitious, or fraudulent statement or representation.

Federal Rule of Civil Procedure 60(b)(3) undisputedly authorizes litigants to seek relief in cases of "fraud misrepresentation, or misconduct by an opposing party.," based on District Court error of law or Federal Jurisdiction element of 18 U.S.C. Sec 1519, which make it a crime to knowingly, alter, falsify or fabricate record or document. The decision entered here by the United States District Court flatly contradicts this Court's leading fraud-on-the court's precedent—Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944) (APP.# 24)

The Ninth Circuit's decision adds to the confusion in the lower courts about what constitutes fraud on the court, an issue this Court has not addressed since Hazel-Atlas. "Almost all of the principles that govern a claim of fraud on the court are derivable from the Hazel-Atlas case," and a review is warranted in light of this court's precedent in hazel.

Standard of Review for a Summary Judgment Motion in Federal Court: Petition respectfully begs pardon for the superfluous and redundant section of this Petition. The reason for the receptiveness is because the Grant Of Summary Judgement is the cornerstone of this Petition as is warrants the Court's Attention.

The Movant's Burden under FRCP 56(c) – Motion For Summary Judgment: "FRCP 56 requires a federal court to grant a motion for summary judgment if the party shows no genuine dispute of material fact exists and the party "is entitled to judgment as a matter of law." Cited materials may include depositions, stipulations, affidavits or declarations, admissions, interrogatory responses, and other documents and materials." FRCP 56(c)."

"The United States District Court viewed Summary Judgment Evidence In the Light Most Favorable to Respondent and Not Petitioner. The District Court overruled Plaintiff's Objection regarding Summary Judgment Evidence holding that it is "Frivolous." The District Court's decision and holding is inconsistent with FRCP 56." - The Non-Movant's Burden Under FRCP 56(c) – Opposition The Motion:

"The court may deny the motion if there has not been adequate time for discovery. If the nonmoving party has not had time to obtain discovery, it may file an affidavit or declaration pursuant to FRCP 56(d) stating the reasons it is unable to present the facts supporting its opposition. In such cases, the court may defer the motion, deny the motion, allow additional time for discovery, affidavits, or declarations, or issue another appropriate order."

But that did not happen in this case. The peril here and pursuant to the record, Petitioner Raymond was not given adequate time for discovery because, which is caused by failure of his court-Appointed Counsel Kenneth E. Grubbs.

Pursuant to Applicable Rules, and this Court has repeated hold that adequate opportunity for Discovery should be allowed. The Court's Role Under FRCP 56(c): "The court's role is not to weigh the evidence when deciding a motion for summary judgment, but to determine if there is a material fact in dispute. Generally, a trial court deciding whether to grant a motion for summary judgment must view the facts in the light most favorable to the non-moving party, drawing any reasonable inferences in that party's favor."

> **"The Supreme Court in 2007 held in *Scott v. Harris*, however, that a trial court should not adopt a party's version of the facts when the record "blatantly contradicts" it such that a reasonable jury could not believe it.**

Pursuant to the record, the disputed evidence and facts in this case involves three written documents which consists of (a) one (E-mail) agreements dated November 20, 2018, which purported modeled the original implied agreement or contract between Respondent.

Pursuant to the record, J.P. Morgan Chase Bank and Petition Raymond detailing a "Pause" of the Mortgage payment for the Month of December 2018 and January 2019 (b) A letter dated April 10, 2019 detailing where to mail the mortgage payment and (c) Notice Of Transferring Loan ("Notice") detailing The effective date of Mortgage Transfer. All three documents were essential to Petitioner's Complaint or Claim or Law suit filed on June 3, 2019. (SEE APP. 9).

Thus, the decision of the District Court failed to rule that there is no genuine issue of material fact, and as a matter of law, Respondent was not entitled to summary judgment in its favor on Petitioner's claims. This Court and Several other courts stated that "so long as there was the "slightest doubt as to the facts," a genuine issue of material fact existed within the meaning of Rule 56(c) and summary judgment was inappropriate." On the record, the parties in the case disputed the evidence. See APP. 10, 14, 15, 18, 22, & 29.

B. The United States District Court in Mullins v. Allstate Insurance Co. CIVIL CASE NO. 05-40118 states "allegations of a possible perpetration of fraud upon Defendant and upon this Court are allegations that the Court takes seriously[1]."

[1] United States Of America, v. Kevin Cline Smith, Defendant Criminal Action No. 20-165 (JEB) (D.D.C.). Petitioner Asks this Court To Consider This Case even though it was not published. The Defendant in this case admitted to altering email.

Similarly, Petition Raymond relies on Mullin in this case and request that this Court enters and order to 'Void' the Judgment Of The United States District Court on all three cases pending before the Court: 5:20-cv-00965 And 5:20cv-01439.

Mullin case evolved much differently that Petitioner Raymond in that (a) 'evidential hearing' was allowed and counsel for both sides presented evidence on the issue of the authenticity of three documents that had been presented by Plaintiff to the Court as exhibits in support of Plaintiff's motion for summary judgment. Plaintiff Raymond heavily relies on Mullin as a perfectly situated situation.

Thus, the equal protection clause of the Fourteenth Amendment was not afforded to Petition Raymond in light of the above cases. Pursuant to Rule 60(d)(3) functions as a saving clause: it allows courts to "set aside a judgment for fraud on the court" without a strict time bar.

The standard for "fraud on the court" is, as a consequence, demanding. "[O]nly the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, will constitute fraud on the court." Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978) (citations omitted). Fraud under Rule 60(d)(3) "embrace [s] ... the species of fraud which does or attempts to[ ] defile the court itself." Wilson v. Johns-Manville Sales Corp., 873 F.2d 869, 872 (5th Cir. 1989) (quotation omitted).

The Fifth Circuit Court Of Appeals And The U.S. District Court did not realize, upon deciding on a Federal Question Of law it when it held denied Petitioner Due Process under the First, Fifth, Seventh and Fourteenth Amendment of the U.S. Constitution. Under 42 U.S. Code § 1983, Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b) and First Amendment, give the right to sue those who violate the laws under its purview in Federal District Court.

The Fifth Circuit Court and the Court below never once considered the Fraud aspect of the case, which implemented Attorneys For Respondent who blatantly manipulated, altered, planted and fabricated the Evidence that it relied on in support of its Motion For Summary Judgment. The District Court erred by holding it was proper summary judgment when the record reflects just the opposite.

The District Court never did review the Evidence, and besides, the Court deprived Petitioner of an Evidentiary hearing to do so. The Judgement Of The United States District Court should be VOID.

C. In this case, the Fifth Circuit Court Of Appeals Did Not Apply The Correct Standard for "excusable Neglect" in conflict with the U.S. Supreme Court's Well-Established precedent in Pioneer Investment Service Co. v. Brunswick Ltd. Partnership, 507 U.S. 380, 395, 113 S.ct. 1489, 1498, 123 L.Ed.2d 74 (1993) Pursuant to Motion For Reconsideration, Fed, R. App. P. RULE 27

This case raises issues of recurring significance to the fair and efficient administration of litigation in the federal courts:

> "In determining whether circumstances constituted "excusable neglect", this honorable Supreme Court had set forth the following four-factor test in Pioneer Investment Service Co. v. Brunswick Associates, Ltd Partnership, 113 S.Ct. 1489 (1993): id at 31 (1) the danger of prejudice to the debtor, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith. 113 S.Ct. at 1497."

Upon information and belief, Petitioner has satisfied all of the above elements governing "excusable neglect" standard that are ripe for review and decision by this Court. The Fifth Circuit Court errored in granting Motion to Dismissed the Notice Of Appeal as untimely and Denied Petitioner's Motion For Reconsideration when it was clear and obvious that there was good cause for the delay in filing the Notice Of Appeal.

In doing so, the Fifth Circuit Court has missed the mark In light of the fact that Pioneer resolved some of the confusion evinced by the District Court. (APP. 2, 7,) There is no reason why Fifth Circuit Court declined to consider or and apply Pioneer's excusable Neglect analysis as used in *Rule* 60(b) but not as used in *Federal Rule of* Appellate Procedure 4(a)(5).

The Fifth Circuit Court Of Appeals district court adopted the supposition advanced in the light most favorably to Respondents, unsupported by any evidence, that "Notice Of Appeal" was untimely filed." (See APP. 2) Thus, the Fifth Circuit could use some guidance in interpreting and applying the well establish precedent of this Court in Pioneer "excusable Neglect" Analysis.

D. There is another Circuit-Split among the Fifth Circuit and other Circuit Court, as well as the U.S. District Court regarding the Granting of Summary Judgment standards in light of [Supreme Court] precedents" in Tolan v. Cotton, 572 U.S. 650, 659, 134 S.Ct. 1861, 1868 (2014) (per curiam).

In the Report and Recommendation (APP. # 2), the District Court hold, "In his objection, Plaintiff reurges his arguments that defendant fabricated or doctored the documentary evidence it presented to the court in support of its Motion For Summary Judgment.

As explained in the Report and Recommendation, these claims are frivolous." (App. # 12) The First Amendment is supposed to guarantee, we, the people, a right to (a) free speech and to (b) petition the government for redress of grievances at all times.

The Term, "Frivolous": Of little weight or importance. A pleading is "frivolous" when it is clearly insufficient on its face, and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purposes of delay or to embarrass the opponent: A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense." Liebowitz v. Aimexco Inc., Colo.App., 701 P.2d 140, 142:

The above terms, however, does not apply in this case, and it definitely does not address the subject matter upon which this case was initially filed on June 3, 2019. It is difficult for Petitioner to comprehend why the District Court suddenly used this boiler point term, but the only reason is left to speculation.

This Court should take judicial notice that the District Court used similar boiler point term in Petitioner's other case in Raymond Vs. Ivest Properties, LLC, Case # 5:20-cv-00965, and in violation of his First Amendment Rights to Petition the Government ("Court") For Redress of grievance.

There is no evidence or proof on the record supporting the Court's claim that Petitioner's claim or objections to the evidence supporting Summary Judgment is Frivolous. Petitioner respectfully feels that the U.S. District Judge Fred Biery applied the wrong standard pursuant to Federal Rule Of Civil Procedure, RULE 56 holding that Petitioner claiming that Respondent Altered or Fabricated their Summary Judgment evidence is "frivolous"[2]. (APP. # 12).

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[2] Neitzke v. Williams - No. 87-1882 U.S. 490 U.S. 319 (1989)109 S. Ct. 1827. Petitioner asks this Court to consider this case because it is very similar to Petitioner Raymond's Case. "The District Court dismissed the complaint *sua sponte* as frivolous under § 1915(d) on the grounds that Williams had failed to state a claim upon which relief could be granted under Federal Rule of Civil Procedure 12(b)(6). The Court of Appeals, holding that the District Court had wrongly equated the standard for failure to state a claim under Rule 12(b)(6) with the more lenient standard for frivolousness under § 1915(d), which permits dismissal only if a petitioner cannot make any rational argument in law or fact entitling him to relief; the Appellate Court affirmed.

Adding insult to injury, Petitioner Raymond moved the Court for a evidentiary hearing to evaluate the authenticity of the disputed summary judgment evidence, and the District Court overruled. (APP. # 12)

In addition, United States District Court failed to even allow a jury trial, as part of the determination of whether it is frivolous. In fact, and most importantly, the United States District Court Usurps its own authority in the case and did not recuse and have the charges heard and ruled upon by another judge other than himself based on the disputed evidence.

It is NOT, however, a judgment, nor is the judge solely allowed to make the judgment of frivolity or contempt *himself* on a case he is hearing, since this would be a conflict of interest in violation of 28 U.S.C. §455.

This case is of national importance because they effect the rights to substantive and procedural due process and diminishing trust in the judicial system by "we, the people". By Overruling and Ignoring Petitioner Raymond's detailed facts of the case violated Procedural, First, Fifth, Seventh and Fourteenth Amendment and the Supreme Court "axiom[s]", "general rule[s]", and "fundamental principle[s]" governing summary judgment. Id., 134 S.Ct. at 651, 656, 660.

The First Amendment is supposed to guarantee, we, the people, a right to free speech and to petition the government for redress of grievances at all times, and this is what Mr. Raymond rightfully did in his opposition to the Evidence supporting the Motion For Summary Judgement. Petitioner Raymond was simply petitioning the Court for redress of grievances under the First Amendment.

This is a right guaranteed by the constitution, and the exercise of rights cannot be penalized, taxed, or fined by the trial court! A review of the record by Fifth Circuit, however, would have shown discovery was not provided, and that the District Court improperly and summarily denied Petitioner's motion without an evidentiary hearing because his pleadings was adequately pleaded. Thus, Petitioner was also denied the right to effective assistance of counsel.

E. There is a Circuit Split among the Fifth Circuit and Other Circuit Courts regarding the Granting Of Summary Judgment in light of [Supreme Court] precedents" --- like what happened in Tolan v. Cotton, 572 U.S. 650, 659, 134 S.Ct. 1861, 1868 (2014) (per curiam).

Petitioner seeks a review to consider whether the decision and opinion of the United States District properly follow the Fed. R. Civ. P. – RULE 56 in conflict with this Court's precedent regarding "its axiom that in ruling on a motion for summary judgment, '[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.' "Tolan v. Cotton, supra, 134 S. Ct. at 1863, quoting Anderson v. Liberty Lobby, Inc., supra, 477 U.S. at 255."

The petitioner is entitled to a writ because (1) his right to the writ is clear and indisputable; (2) his has no other adequate means to obtain relief; and (3) the writ is appropriate under the circumstances. As explained below, the district court clearly and indisputably erred when it enjoined Petitioners from his right to a Jury Trial under the Seventh Amendment.

But "[i]t is no part of the function of a court" decide truth of the matter absent the Jury. In entering a Judgment, the district court clearly abused its discretion by failing to apply (or even acknowledge) the framework governing the standard for review pursuant to FRCP Rule 56.

In essence, this honorable Court's precedents require that, "The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505 (1986). That did NOT happen here. In facts, this court repeated hold that the "judge's function is not himself to weigh the evidence."

That the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or direct verdict."

To put it more succinctly, "Courts must review the evidentiary materials submitted in support of a motion for summary judgment to ensure that the motion is supported by evidence. If the evidence submitted in support of the summary judgment motion does not meet the movant's burden, then summary judgment must be denied."

But this is not what happened here. The U.S. District Court blatantly believed, adopted or accepted respondent's version of the fact over that of Petitioner which is not inconsistence with Rule 56. But, this is NOT what happened in this case.

The order Accepting Report And Recommendation of the United States Magistrate Judge, Document 266, dated February 14, 2022, the District Court reviewed the arguments proffered by both parties, but only adopted Respondent J.P. Morgan Version Of The Facts and overruled that of Petitioner Raymond.

More specifically, the United States District Court states: "In his objection, plaintiff reurges his argument that defendant fabricated or doctored the documentary evidence it presented to the Court in support of its motion for summary judgment. As explained in the Report and Recommendation, these claims are frivolous." (APP. # 12).

By Overruling and Ignoring Petitioner Raymond's detailed facts of the case violated procedural: First, Fifth, Seventh and Fourteenth Amendment and Supreme Court "axiom[s]", "general rule[s]", and "fundamental principle[s]" governing summary judgment. Id., 134 S. Ct. at 651, 656, 660.

This Court clearly cites holding that "court's function on a motion for summary judgment is "to determine whether material factual issues exist, not to resolve such issues." *Lopez v. Beltre*, 59 A.D.3d 683, 685 (2d Dept. 2009); a motion for summary judgment, therefore, "should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility' "*Ruiz v. Griffin*, 71 A.D.3d 1112, 1115 (2d Dept. 2010), quoting *Scott v. Long Is. Power Auth.*, 294 A.D.2d 348, 348 (2d Dept. 2002). *See also Bykov v. Brody*, 150 AD 3d 808, 809 (2d Dept. May 10, 2017) ("Resolving questions of credibility, determining.

In the past decades or so, lots and lots of federal cases raising the issue of the wrongful or unconstitutionality of grant of Summary Judgment afoul of the Seventh Amendment have been decided by Federal Circuit Courts on the same issues, and more petitions will continue to be filed until this Court resolves the split by creating a consistent and unified interpretation of the law binding on all lower courts.

Petitioner is highly convinced and asserts that the Grant Of Summary Judgment was an abuse of discretion on the part of The U.S. District Court because Petition challenged the Summary Judgment Evince and has came forward to show that evidence of material fact exist, and the Motion should have been denied on that point and the case should have proceeded to Jury Trial. But that did not happened. The [Un] Constitutionality Of Summary Judgment- Fed. R. Civ. P. (56(c) provides:

"Summary Judgment should be granted if "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

The Seventh Amendment guarantee of a right to trial by jury is violated by grants of summary judgment where there are "genuine issue[s] as to . . . material fact[s]" In other words, If it's not clear that there is no more evidence, then summary judgment must be denied. If there were disputed material issues of fact, there is a violation of Seventh Amendment.

F. In this case, the Fifth Circuit Court Of Appeals Did Not Apply The Correct Standard for "excusable Neglect" in conflict with the U.S. Supreme Court's Well-Established precedent in Pioneer Investment Service Co. v. Brunswick Ltd. Partnership, 507 U.S. 380, 395, 113 S.ct. 1489, 1498, 123 L.Ed.2d 74 (1993) Pursuant to Motion For Reconsideration, Fed, R. App. P. RULE 27The Fifth Circuit Granted Appellee JPMC's Motion To Dismiss The Notice of Appeal For Untimely Filing. (See APP. # 2)

The Fifth Circuit errored when it decided to closed and dismissed Raymond's appeal for lack of jurisdiction, and untimely filing on its own without a review of the record to determine whether or not there exits genuine issue of material fact and whether or not the evidence (email) on appeal was altered (fabricated, manipulated, fabricated).

The Fifth Circuit Court of Appeals denied Petitioner Raymond his right to be heard and the right to procedures set in place by Congress allowing the process a remand for further findings consistent with above.

The Fifth Circuit errored because a proper review of the trial Court's record would have revealed that Raymond had or attempted to make a timely filings such as: (1) Motion for Extension Of Time To File To File A Notice Of Appeal Before the Fifth Circuit, (2) Mr. Raymond made a second Motion for additional time due to personal illness and other family crises. (3) Mr. Raymond further articulated that the District Court had miscalculated and improperly docketed the wrong date rather that the Post marked date, which should have been May 20, 2023, but instead, the District Court entered May 25, 2023 on its docket sheet. (APP. # 6).

Rather than remanding the case to the District Court to determine "excusable Delay consistent with Pioneer analysis, the Fifth Circuit Court Of Appeals Granted Respondent's Motion To Dismiss the Appeal as untimely filed. Then, the Fifth Circuit Summarily dismissed the Notice of Appeal and then denied Petitioner's Motion For Reconsideration. (APP. # 2, 15, 22, 27)

Given the extraordinary, fraudulent circumstances of this case, petitioners respectfully request that the Court direct both respondents to file an opposition to the petition and to explain the different versions of Summary Judgment evidence on record and to do so immediately upon filing of the Petition. This practice of prematurely dismissing a Notice Of Appeal violates petitioners' due process rights by permitting a one-sided version of the facts without affording the petitioners a full and fair opportunity to litigate those merits before the district court.

G. The Fifth Circuit Court of Appeals created a Circuit-Split on Spoliation Of Evidence in a well established Precent in Quetel Corporation v. Hisham Abbas, No. 18-2334 (4th Cir. 2020) ("*QueTel Corporation v. Abbas*,"): Petitioner, Carlos Antonio Raymond, seeks a final review as a matter of his layman understanding of the rule of law and his rights under the Constitution. The Fourth and Fifth Circuit Courts are split as to whether Spoliation Of Evidence is applicable in this case.

The Fifth Circuit Court Of Appeals and the lower court conceded that split by denying Petitioner's a Motion for sanction against Attorney representing Responder, J.P. Morgan Chase Bank. The Fifth Circuit properly assumes facts in Respondent's favor only with respect to a movant's (J.P. Morgan Chase Bank), inconsistent with rule 56. "Spoliation refers to the destruction or material alteration of evidence or to the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation." Silvestri v. Gen. Motors Corp., 271 F.3d 583, 590 (4th Cir. 2001).

> "A party may be sanctioned for spoliation where the party had a duty to preserve material evidence and willfully engaged in conduct that resulted in the loss or destruction of such evidence at a time when the party knew—or should have known—that the destroyed evidence was or could be relevant in litigation.
>
> Turner v. United States, 736 F.3d 274, 282 (4th Cir. 2013)." Standard Review Of Abuse Of discretion. Petitioner requests a review of the United States District Court's under abuse of discretion a district court's decision to grant a motion for sanctions based on spoliation.
>
> "A District Court abuses its discretion if it relies on an error of law or a clearly erroneous factual finding." SAS Inst., Inc. v. World Programming Ltd., 952 F.3d 513, 523 (4th Cir. 2020) (internal quotation marks omitted).

On or before November 11, 2019, Rachelle Hytken Attorney of Record representing Respondent J.P. Morgan chase filed a Motion For Partial Dismissal Of Third Amended Complaint, [paraphrasing] – reserving the remainder for Summary Judgment.

On or before September 2019, Petitioner file his objection to the Motion For Partial Dismissal, so Respondent, J. P. Morgan Chase Bank were on notice of potential litigation regarding three critical evidence on record, and had a duty to preserve the two critical evidences (APP. # 9).

These evidentiary Electronic Emails were intentionally altered, doctored in bad faith, with the intent of depriving Petitioner Raymond of the evidence's use in the instant litigation. District courts have broad discretion in granting a motion for sanctions for spoliation of evidence.

Typically, negligent destruction of evidence is enough to warrant sanctions for spoliation, but courts within the Fifth Circuit and court below created a split on this issue. Indeed, Petitioner was prejudiced because the spoliated evidence was relevant and material on a key issue, the altered email evidence would have been harmful to the Respondent's case.

This is the case. The question remains, if Respondent had these electronic E-mails when they file the response to the Third Amended Complain, then why did they not file it with the Court at that time? Why did they waited 30 Months to spring board the evidence on a Motion For Summary Judgment?

Petitioner Court Appointed Counsel, Kenneth E. Grubbs was wrong to withdraw from Representation and weigh the evidence in favor of Respondent, KJ.P. Moran Chase Bank. On December 23, 2020, Petitioner Court-Appointed Counsel, Kenneth Grubbs sent a personal e-mail to Petitioner Raymond stating the following:

> "I believe the court thinks (based on the Court's order) that Chase has evidence that their "goodbye" notice was actually mailed to you and was not fraudulent. I do not believe that this Judge thinks your case really has any merit. The reason that the RESPA claim was not in the 12b6 motion was because Chase was reserving that for a summary judgement. This means that they believe they sent the notice and that your case will be dismissed in total at that time." (APP. # 13)

What Court-Appointed Counsel Predicted would happen, came to pass because On May 28, 2021, Respondent did filed the Motion For Summary Judgment and admitted into the record three key evidence which Petitioner Raymond did also filed into the record in support of his lawsuit filed on June 3, 2012. (APP. # 9)

The Fifth Circuit and Lower Court failed to review the record including the destroyed material evidence eliminated the most probative evidence and "effectively deprived the Plaintiff of its ability to defend or pursue its claims of Fraudulent Misrepresentation.

H. The Fifth Circuit and Court Below resolved a Circuit-Split on right to discovery and documentary Hearing prior to a Grant On Summary Judgment In ZF Auto. US v. Luxshare, Ltd.1; AlixPartners v. The Fund for Prot. of Inv; Lanham v. Blue Cross and Blue Shield, 338 S.C. 343, 526 S.E.2d 253 (Ct.App. 2000): Standard Review FRCP 56(c):

Of all the appeals to take, an appeal from summary judgment confers one of the most favorable standards of review possible – de novo review with the evidence viewed in the light most favorable to the plaintiff. (Collin v. CalPortland Company (2014) 228 Cal.App.4th 582, 588.)

An appellate court reviews a grant of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP, which states in relevant Part: The Question for review is not only if the Trial Court failed to apply the correct standard De'novo, but whether this honorable United States Supreme court should take this stand pursuant to FRCP 56(c), as it is warranted given the critical circumstances of the case.

An appellate court reviews a grant of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP. Burden Of Proof Moving Party Pursuant To FRCP 56(c): "Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000)." - "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000)."

FRCP 56(b): Time to File a Motion. "Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.":

Pursuant to the above rule 56(b) and because of pro se status, respondent took this drastic measure and move for summary judgment in the middle of discovery, and she even went as far as filing a Motion to vacate the scheduling order. (APP. 29). But, how can respondent meet its burden under the above rule discovery on both sides? Discovery could raise disputed facts that are material, and without "FACTS" and "EVIDENCE", the lack of a genuine issue of material facts is difficult to prove.

Burden Of Proof Nonmoving Party Pursuant To FRCP 56(c): In this case, Petitioner Raymond did came forward to show that Genuine Issues Of Material Facts exist by pointing out irregularities and wrong doing on the Part of Attorneys Representing Respondent.

Further, Respondent Requested Evidentiary discovery and a Hearing on the issues presented, but the United States District Court Overruled Petitioner holding "his claims is Frivolous" and dismissed the Complaint in favor of Respondent, J.P. Morgan Chase Bank. (APP. # 12) - Role Of The Trial Court Pursuant To FRCP 56(c): In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997).

On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976).

Moreover, courts reviewing summary judgment must "accept as true the facts" contained in plaintiffs' evidence, and plaintiffs are also entitled to all "the reasonable inferences that can be drawn" from those facts. Wright v. State of California (2015) 233 Cal.App.4th 1218, 1228.

> Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. And because "summary judgment is a drastic procedure to be used with caution," "[a]n appellate court will reverse a summary judgment if any kind of a case is shown." (Levin v. State of California (1st Dist. 1983) 146 Cal.App.3d 410, 414 (emphasis added).)

Non of the Above ruling by the U.S. District Court in this case. Respectfully and suffice to add, the U.S. District Court was extremely unfriendly and biased towards Respondent despite the fact that the Court acknowledge such dispute in its Report And Recommendation. (APP. # 12):

I. A District court's obligation—or lack thereof—to provide summary judgment instructions to pro se litigants. A pro se litigant nevertheless remains unaware of their obligation under the rule Fed. R. Civ. P. RULE # 56. This struggle is evidenced by a split among the Federal Circuit Courts over whether these instructions should be given. This Court should grant certiorari under Supreme Court Rule 10(a) and resolve the current circuit split. The circuit split Pursuant to Fed. R. Civ. P. -Rule (10)(a) is a matter of national importance, worthy of this Court's attention.

J. The Fifth Circuit Court and Court below conflict or split with the Supreme Court Of The United States' Abuse Of Discretion Standard precident in General electric Co. V. Joiner, 522 U.S. 136 (1997); James B. Nutter & Co. v. Namahoe and Lanham v. Blue Cross and Blue Shield, 338 S.C. 343, 526 S.E.2d 253 (Ct.App. 2000)

This Court Often held that "Abuse Of Discretion Standard is the proper standard to use when reviewing Evidentiary Ruling." **(General Electric....)** - In this case, the U.S. District Court decided an important errored in granting Summary Judgment holding Raymond's claim is "frivolous," and errored in granted Summery Judgement for Respondent because (there was no genuine issue as to any of Raymond allegation of fraud. This Petition for Writ Of Certiorari challenges the above determination, as followed:

Under FRCP 60(b)(4), the Fifth Circuit court's judgment was void because Raymond was not properly served with the Motion To Dismiss The Notice Of Appeal, as Untimely; (3) under FRCP 60(b)(6), JPMC committed fraud on the court by Altering Critical Summary Judgment Evidence and by failing to satisfy statutory attorney affirmation requirements;

On a the Summery Judgement motion, disputed issue of facts are to be resolved against the Respondent, J.P. Morgan Chase Bank and favorably to Petitioner Carlos Antonio Raymond.

Petitioner Raymond read the Summary Judgment Standard, and nowhere does FRCP. 56 requires the Court to resolve or view the facts most favorable to Respondent, JPMC. Petitioner Raymond's Evidence is to belied and be the benefits of the doubt in all respect. But this is not the position that the U.S. District Court did. **Under Rule 56(c),** the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman, 306 S.C. at 115, 410 S.E.2d at 545. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997).

(a) Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). - Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000).

(b) Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. Baughman v. American Tel. & Tel. Co., supra. This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.

(c) Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). Viewing the evidence in the light most favorable to Petitioner Raymond, it cannot be said, as a matter of law, that he made a "Frivolous claim.," This this will be a violation Amendment seven.

CONCLUSION

Is a judgment void on its face, where Defendant's Attorney misrepresented the facts of the case and otherwise tampered (altered) Documentary Evidence (E-Mail Header) in support of its Motion For Summary Judgement?3 (See Hazel-Atlas Co. v. Hartford Co. 322 U. S. 238 (1943).

The Supreme Court reversed a 12 year old judgment for fraud upon the court, because of a fraudulent article written to deceive the Patent Office and also the Third Circuit Court of Appeals. See App. Pp 109 - 134 for in depth analysis. Finally, this case reflects exact similarity with a Former FBI attorney Kevin Cline smith, 38, pleaded guilty today in the U.S. District Court for the District of Columbia to a false statement offense stemming from his altering of an email in violation of 18 U.S.C. § 1001(a)(3). Like Smith, On May 28, 2021, Attorney For Respondent, Filed a Motion For Summary Judgment and relied on E-mail A Evidence it attached on Exhibits and Appendixes.

PRAYER FOR RELIEF

Petitioner Respectfully asks that this court grant him the relief he sought in the original complaint and specifically, the court should also consider the fraudulent action of Respondent in altering the evidence they relied on in Support Of Summary Judgement. In an effort to comply with the Rules of 40 Page Limitation, Petitioner has eliminated the long list of relief listed in prior Petition For Certiorari, but ask the court to consider those in light of the pain and suffering Petitioner is subjected to in this case.

This Court may soon consider two other petitions raising the same issues presented here regarding Fraudulent activities in case Raymond Vs. Flagstar Bank, 5:20-cv-01439, and another regarding "Frivolity" in Raymond Vs. Ivest Properties, LLC, case 5:20-cv-00965. Both cases and other Motions are currently pending before the United States District Court, and if review is granted, it should hold this Petition pending its decision, or in the alternative, to VOID.

Respectfully Filed,

Carlos Antonio Raymond
Pro Se

[3] Hazel-Atlas Co. v. Hartford Co. 322 U. S. 238 (1943), The Supreme Court reversed a 12 year old judgment for fraud upon the court, because of a fraudulent article written to deceive the Patent Office and also the Third Circuit Court of Appeals. See App. Pp 109 -134 for in depth analysis.