No. 23-_____

In The

Supreme Court of the United States

JACK JORDAN,

Petitioner,

v.

UNITED STATES DEPARTMENT OF JUSTICE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a U.S. Court of Appeals may preclude appellant's filing of any brief and presentation of any oral argument by merely asserting the vague conclusory contention that "[t]he merits of the parties' positions [] warrant summary action" and "[t]he district court" judge "did not abuse" his "discretion in denying appellant's motion" when the appeal is of denial of a motion under Rule 60(b)(3) of the Federal Rules of Civil Procedure requesting relief from judgment for "fraud," "misrepresentation" and criminal "misconduct by" federal agency employees and when the appellant's position is that such employees conspired with the district court judge to lie and deceive about and conceal evidence of material facts and commit wire fraud.

2. Whether, in an appeal governed by the Administrative Procedure Act, 5 U.S.C. 551-559, 701-706, a U.S. Court of Appeals has the power to summarily affirm judgment for the government based on a mere vague allusion to the "merits of the parties' positions."

3. Whether a U.S. Court of Appeals three-judge panel may preclude appellant's filing of any brief and presentation of any oral argument by merely asserting *per curiam* the wholly-unsubstantiated conclusory contention that "[t]he merits of the parties' positions [] warrant summary action."

DIRECTLY RELATED PROCEEDINGS

U.S. District Court, District of Columbia:

Jack Jordan v. U.S. Dept. of Justice, No. 1:17-cv-02702-RC (Minute Order denying Mot. under Fed.R.Civ.P. 60(b)(3)) (Sep. 1, 2022).

U.S. Court of Appeals, District of Columbia Circuit:

Jack Jordan v. U.S. Dept. of Justice, No. 20-2439 (Apr. 11, 2023) (summary affirmance), *reh'ng* and *reh'ng en banc denied* (July 20, 2023).

INDIRECTLY RELATED PROCEEDINGS

U.S. District Court, District of Columbia:

Jack Jordan v. U.S. Dept. of Labor, No. 1:16-cv-01868-RC (summary judgment) (Mar. 30, 2018).

Jack Jordan v. U.S. Dept. of Justice, No. 1:17-cv-02702-RC (summary judgment) (Sep. 3, 2021).

U.S. Court of Appeals, District of Columbia Circuit:

Jack Jordan v. U.S. Dept. of Labor, No. 18-5128 (summary affirmance) (Oct. 19, 2018), *reh'ng* and *reh'ng en banc denied* (Jan. 24, 2019).

Jack Jordan v. U.S. Dept. of Labor, No. 19-5201 (summary affirmance) (Jan. 16, 2020) *reh'ng denied* (Feb. 18, 2020), *cert. denied* (Oct 19 2020) (No. 20-0241).

INDIRECTLY RELATED PROCEEDINGS—
Continued

In re Jack Jordan, No. 23-8505 (disbarment proceedings initiated by the Panel in No. 20-2439, above) (Apr. 24, 2023).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jack Jordan respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the District of Columbia Circuit.

DECISIONS BELOW

The orders of the U.S. Court of Appeals for the District of Columbia Circuit summarily affirming (App. 1-2) and denying rehearing *en banc* (App. 34) are unreported but available at 2023 WL 2899540 and 2023 WL 4669325, respectively. The Minute Order of the U.S. District Court for the District of Columbia (App. 3) refusing to "reconsider" is unreported. The prior opinion of the U.S. District Court for the District of Columbia purportedly supporting summary judgment (App. 4-31) is unreported but available at 2021 WL 4033070.

JURISDICTION

The appeals court judgment was entered on April 11, 2023. A timely-filed petition for rehearing *en banc* was denied on July 20, 2023. A timely-filed application for extension of time to file this petition by November 17, 2023 was granted. *See* Order regarding Application 23A313. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. Amend. I:

Congress shall make no law . . . 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.

U.S. Const. Amend. V:

No person shall . . . be deprived of life, liberty, or property, without due process of law. . . .

U.S. Const. Amend. X:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

U.S. Const. Art. III, §2:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . [and] to Controversies to which the United States shall be a Party. . . .

U.S. Const. Art. VI:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;

and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution. . . .

28 U.S.C. 2072:

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates [magistrate judges] thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

28 U.S.C. 2074(b):

Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress.

18 U.S.C. 241:

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession,

or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same. . . . They shall be fined under this title or imprisoned not more than ten years, or both. . . .

18 U.S.C. 242:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States . . . shall be fined under this title or imprisoned not more than one year, or both. . . .

18 U.S.C. 371:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. 1001:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the [] judicial branch of the Government of the United States, knowingly and willfully—

> (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
>
> (2) makes any materially false, fictitious, or fraudulent statement or representation; or
>
> (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
>
> shall be fined under this title, imprisoned not more than 5 years. . . .

(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate [United States magistrate judge] in that proceeding.

18 U.S.C. 1519:

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States [] or in relation to or contemplation of any such matter [], shall be fined under this title, imprisoned not more than 20 years, or both.

STATEMENT OF THE CASE

Petitioner filed a motion, reply and two supplements (comprising more than 80 pages of facts, legal authorities and analysis) for relief from judgment under Rule 60 of the Federal Rules of Civil Procedure ("**FRCP**"). *See* App. 36-45; R.100, 102-104. Petitioner focused on knowing falsehoods (lies) and federal offenses (crimes) by U.S. Department of Labor ("**DOL**") Administrative Law Judge ("**ALJ**") Larry Merck, attorneys of the DOL and the U.S. Department of Justice ("**DOJ**") and Judge Contreras (D.D.C.) relevant to Rule 60(b)(3). *See id*.

The DOJ filed one three-page response. *See* R.101. Judge Contreras issued a mere Minute Order in which he failed to address Rule 60 or any particular material fact or legal authority presented by Petitioner. *See* App. 3. Judge Contreras directly and knowingly misrepresented that Petitioner "asks" Judge Contreras merely "to reconsider" his "previous orders." *Id*.

Judge Contreras expressly failed to apply Rule 60. The DOJ and Judge Contreras failed to even attempt to refute or dispute any particular Petitioner showing of misrepresentation or criminal misconduct by DOL or DOJ attorneys, ALJ Merck or Judge Contreras.

Petitioner appealed. DOJ attorneys requested and judges granted summary affirmance. App. 1. Such judges also directly helped DOJ attorneys and Judge Contreras conceal evidence that they lied about particular phrases being included in an email to further lie about it being protected by the attorney-client

privilege and Freedom of Information Act, 5 U.S.C. 552 ("**FOIA**") Exemption 4. The Panel refused to order the DOJ or the District Court to supplement the record with the parts of Powers' email showing any privilege notation or any words such as "please advise regarding" or "please review and provide input." *Cf*. App. 1 *with* Dkt. 1974001 (*unopposed* Mot. re: Powers' email).

No admissible evidence in any proceeding involving Petitioner lawfully established that Powers' email contained any privilege notation or any non-commercial words requesting "advice" or "input and review." *Cf*. pages 37-38, below. No admissible evidence in any proceeding involving Petitioner lawfully established that any recipient of Powers' email in July 2013 ever was admitted to practice law before any court.

The Panel disposed of Petitioner's appeal with a further knowing falsehood and knowing violations of federal law and the Constitution. They knowingly misrepresented that *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) somehow established that they could precluded Petitioner's briefing and oral argument by merely vaguely contending that "[t]he merits of the parties' positions [] warrant summary action." App. 1-2. D.C. Circuit judges repeatedly abused those words and that citation to summarily dispose of appeals pertaining to Powers' email. *See Jordan v. U.S. Dept. of Labor*, 2018 WL 5819393 (D.C. Cir. 2018) at *1; 2020 WL 283003 (D.C. Cir. 2020) at *1.

Petitioner's positions included the following. DOJ attorneys used "fraud," "misrepresentation" and criminal "misconduct" to procure summary judgment and summary affirmance. App. 39 (Rule 60 Mot.) *quoting* Fed.R.Civ.P. 60(b)(3); D.C. Cir. Dkt. 1987803 (Opp. to DOJ Summary Affirmance Mot.) at 1, 3, DOJ attorneys and Judge Contreras used the wires in a "scheme or artifice to defraud" Petitioner "by means of false or fraudulent pretenses [or] representations." App. 40 *quoting* 18 U.S.C. 1343. They conspired to defraud Petitioner. *Id*. *quoting* 18 U.S.C. 1349.

The Panel further knowingly misrepresented that Judge Contreras "did not abuse" his "discretion in denying appellant's motion for relief from the judgment under Federal Rule of Civil Procedure 60." App. 2. Judge Contreras failed to address Rule 60 or any particular material fact or relevant legal authority. *See* App. 3.

For many years, DOJ attorneys have repeatedly urged federal judges to lie and commit crimes to conceal evidence of whether one or two emails contained any privilege notation or any express request for advice, input or review. Federal judges repeatedly lied and committed crimes to help conceal such evidence. Judge Contreras (a former high-level DOJ attorney) was the first federal judge to lie. He did so in decisions selected for publication so that other judges would repeat and follow his lies and crimes. *See Jordan v. U.S. Dept. of Labor*, 273 F. Supp. 3d 214 (D.D.C. 8/4/2017) ("***Jordan I***"); 308 F. Supp. 3d 24 (D.D.C. 3/30/2018) ("***Jordan II***"); 331 F.R.D. 444 (D.D.C. 7/1/2019) ("***Jordan III***"). Many judges chose to follow Judge Contreras

instead of applying and complying with the precedent of this Court, federal law or the Constitution.

Under FOIA and the Administrative Procedure Act, 5 U.S.C. 551-559, 701-706 ("**APA**"), Petitioner sued repeatedly to obtain evidence of whether one or two emails contained any privilege notation or any non-commercial words expressly requesting an attorney's "legal advice" or "input and review."

Petitioner sued for such evidence because, starting in 2016, initially ALJ Merck, and subsequently, attorneys of Littler Mendelson, P.C., DOL and DOJ attorneys, and even federal judges lied and committed crimes to conceal the *evidence* of whether Darin Powers or Robert Huber included in either Powers' email or Huber's email (sent in July 2013) any purported privilege notation or express request for "legal advice" or "input and review."

Such *information* clearly was not "commercial" or "financial" or treated as "confidential" or "privileged." 5 U.S.C. 552(b)(4). Agency employees and judges purported to publicly *quote* (two inconsistent versions of) the purported privilege notation. They also repeatedly publicly represented that one or both emails contained particular express or explicit requests for a particular attorney's "legal advice" or "input and review."

It is undisputed in any legal proceeding involving Petitioner that any purported express or explicit request for "legal advice" or "input and review" must include non-commercial words, *e.g.*, "please advise

regarding" or "please review and provide input about" something.

Initially, ALJ Merck, DOL, DOJ and Littler Mendelson attorneys and Judge Contreras lied about *both* Huber's email and Powers' email, and Judge Contreras knew they all lied. In an *ex parte* communication, DOJ attorneys sent both emails to Judge Contreras, and he "carefully reviewed them." *Jordan I* at 224. So Judge Contreras knew that "ALJ Merck" had lied when he personally represented based on "in camera review" that "management-level employees" (*i.e.*, *both* Powers and Huber) "*expressly* sought *legal advice*" in *both* emails. *Jordan I* at 223, 235 (emphasis added).

Judge Contreras knew that DOJ attorneys lied in their filings (repeatedly knowingly violating FRCP Rule 11), and a DOL attorney lied in his declaration. *See id*. at 231-232 (emphasis added):

> [T]he DOL asserts that [*both*] emails had "been marked 'S*ubject to Attorney Client Privilege*' and . . . *explicitly* request [Christopher Bellomy's] *input* and *review* of the information transmitted." Smyth Decl. ¶ 31; see also *Vaughn* Index. . . .
>
> [T]he DOL explains that [*both*] emails concerned DynCorp's *confidential information regarding a business contract* and *expressly* sought [Bellomy's] *input* and *review* . . . and [both] emails are "marked 'S*ubject to Attorney Client Privilege*.'" Smyth Decl. ¶ 31; *Vaughn* Index.

Judge Contreras used his own lies and deceit to help agency employees conceal evidence of their lies. He deceitfully pretended that FRCP Rule 56 empowered him to make "inferences" to bolster the agency attorneys' lies even though he knew they had lied. *See id*. at 232 (emphasis added):

> This description [above] supports the *inference* that [both] emails concern *contractual information* [ ] and that this *contractual information* was sent to in-house attorney Christopher Bellomy *for* his *legal advice*.
>
> However, the Court's review of the DynCorp emails in camera has revealed that [all] the DOL's justifications are [clearly false regarding] the Huber email.

Moreover, Judge Contreras knew somebody criminally altered and falsified Powers' email to *add* a privilege notation ("subject to attorney-client privilege"). *Jordan I* at 232; *Jordan II* at 30; *Jordan III* at 448. *Cf*. 18 U.S.C. 1519, above. So Judge Contreras knew DOL, DOJ and Littler Mendelson attorneys lied about Powers including a different privilege notation ("Subject to Attorney Client Privilege") in Powers' email. *Id*. at 221, 231, 232, 236, 237; *Jordan II* at 29.

Further regarding Powers' email, Judge Contreras knew the lies of DOL, DOJ and Littler Mendelson attorneys were facially inadequate (as a matter of law), so Judge Contreras bolstered their lies with his own lie: "Powers email *contains* an *express* request for *legal advice*." (*Jordan I* at 232), "Powers email *contained* an

express request for *legal advice*" (*Jordan II* at 30), "Powers email" "*contained* an *explicit* request for *legal advice*" (*Jordan III* at 448) (emphasis added). Judge Contreras even lied about the D.C. Circuit ("found" that "Powers email *contains* an *explicit* request for *legal advice*"). *Id*. at 450 (emphasis added).

Judge Contreras further lied about "nothing" being "in the record to" cause him to even "question the presumption of good faith that" he "affords the DOL in its explanation" about *either* Huber's email or Powers' email. *Jordan I* at 232; *Jordan II* at 30. Judge Contreras lied about believing the DOL and DOJ attorneys' "description" of both emails "supports" his "inference" that *both* "emails concern *contractual* information" and "this *contractual* information was sent" specifically to Bellomy, specifically, "for his *legal advice*" about such "*contractual* information." *Id*. (emphasis added). Judge Contreras lied about believing that "contractual information" in both "emails bears directly upon the 'commercial fortunes' of DynCorp as a company." *Id*. at 230. Judge Contreras lied about believing that "the information in question" in Huber's email was "commercial" or "financial." *Id*. at 231.

When Judge Contreras afforded the DOL and DOJ attorneys another opportunity to be truthful and comply with FOIA regarding Huber's email, DOJ and Littler Mendelson attorneys conspired to lie even more clearly and fabricate even more false evidence. DOJ attorneys lied about Huber's email being "*specifically* conveyed to DynCorp's in-house attorney, *Mr. Bellomy*, *for* his *review* so that he would be able *to form a legal*

basis for advising on . . . the *business contract*." *Jordan II* at 42 *citing* "Def.'s MSJ Mem." based on a mere "declaration from Mr. Huber" provided by Littler Mendelson attorneys (emphasis added).

Judge Contreras (and the DOL and DOJ employees who lied about Huber's email and the Littler Mendelson attorneys who helped them lie and fabricate evidence) knew that Huber's email was "specifically directed to another person—a non-attorney—and the email specifically (and only) seeks information from that person." *Id*. at 43. Moreover, they all knew it did "not at all" actually "provide" any "information" that "might in any way shape" any "legal advice on the business contract or any other legal matter." *Id*. at 43-44. They all knew it clearly did not "contain any factual information on which" an attorney "might rely to form a legal judgment." *Id*. at 44.

Eventually, Judge Contreras ordered the DOL to release Huber's email, and (after concealing it for 60 additional days), DOJ attorneys eventually complied. Huber's one-sentence email proved conclusively that everything any DOL or DOJ attorney or ALJ wrote about its content or purpose (and what Judge Contreras wrote in *Jordan I* about his "inferences" and the DOL's "good faith") was knowingly false and fraudulent.

No one could have looked at Huber's one-sentence email and believed that it included any privilege notation, any express request for anything from Bellomy, or

any commercial or financial information. *Cf.* App. 35 (Huber's email reproduced).

Petitioner filed Huber's email with the district court and quoted it to support his Rule 60 motion. *See* R.21-1 at 1-2 (Huber's email); R.100 (Mot.) at 3 quoting same. No one ever disputed Petitioner's assertions and evidence that ALJ Merck, DOL, DOJ and Littler Mendelson attorneys and Judge Contreras lied and committed crimes to conceal or help conceal the text redacted from Huber's email (and Powers' email) and DOL and DOJ attorneys' treatment of Huber's email.

On appeal regarding *Jordan I*, *II*, and *III*, in multiple filings with the D.C. Circuit, DOJ attorneys knowingly misrepresented that Powers' email contained *four* phrases: it "*explicitly* request[ed]" Bellomy's "*input* and *review*" and contained the notation "*Subject to Attorney Client Privilege*." D.C. Cir. No. 18-5128, Dkt. 1744229 (DOL Summary Affirmance Mot.) at 3 (emphasis added). It also "*contains* an *explicit* request for *legal advice*" from Bellomy and the notation "*subject to attorney-client privilege.*" *Id*. at 8 (emphasis added). It "*expressly* sought DynCorp's attorney's *input* and *review*." D.C. Cir. No. 18-5128, Dkt. 1752385 (DOL Reply) at 6 (emphasis added). "Further, it was "labeled 's*ubject to attorney-client privilege*,'" and it "*contains* an *explicit* request for *legal advice*." *Id*. (emphasis added). *See also id*. at 8 ("*Primary Purpose* of the Powers Email was to *Expressly Request Legal Advice*"); *id*. at 9 ("*expressly* requested his *legal advice*"); *id*. at 10 ("The fact that Powers' email . . . specifically *contained* an *express* request for *legal advice*") (emphasis added).

The evidence that DOJ attorneys and Judge Contreras lied about the phrases purportedly in Powers' email included their own words subsequently contrived to conceal all admissible evidence of whether Powers' email included any privilege notation or any express request for advice, input or review.

Despite all the foregoing, DOJ attorneys lied about all the words actually in any of the foregoing phrases "separately or together hav[ing] minimal or no information content." *Id*. at 11; Dkt. 1744229 at 10.

D.C. Circuit judges (regarding the foregoing appeal)—and even Judge Contreras in this very case—also personally represented that all the words (if any) actually in any of the foregoing phrases were merely "disjointed words" having "*minimal or no information content*." *Jordan v. U.S. Dept. of Justice*, 2019 WL 2028399 at *4 (D.D.C. 5/8/2019) (emphasis by Judge Contreras). *Accord id*. at *5 and n.4 (repeatedly stating same, including by quoting *Jordan v. U.S. Dept. of Labor*, 2018 WL 5819393 at *1 (D.C. Cir. 10/19/2018) (Rogers, Srinivasan, Wilkins, JJ.)). Judge Contreras even emphasized that any "words" actually in any such phrase were "meaningless;" he even threatened "sanctions" for seeking evidence of such "meaningless words." *Id*. at *5, n.5.

Despite all the foregoing (and more lies and deceit), in the case below, DOJ attorneys and Judge Contreras fraudulently pretended *the DOJ* was entitled to "summary judgment" as "a matter of law" regarding Powers' email. App. 12. Their fraudulent pretense was

based on nothing more than the fraudulent so-called summary judgment and summary affirmance that *the DOL* previously requested and Judge Contreras and D.C. Circuit judges previously granted based on DOL and DOJ attorneys' and Judge Contreras' representations about the existence and materiality of the very phrases that DOJ attorneys, Judge Contreras and D.C. Circuit judges subsequently insisted were "meaningless" or had "minimal or no information content." *Cf.* App. 4-5, 17-18.

The DOJ attorneys, Judge Contreras and the D.C. Circuit judges knew that abusing "preclusion" to dispose of this "case" was illegal and unconstitutional because the DOJ failed to present any Rule 56 materials establishing beyond genuine dispute that "preclusion" would "not work a basic unfairness to" Petitioner. App. 18 *quoting* D.C. Circuit precedent. So Judge Contreras repeatedly lied again: "No material facts" regarding the illegality, unconstitutionality or criminality of the prior summary judgment for the DOL were "genuinely in dispute," and the DOJ is "entitled to summary judgment" based solely on judgments granted to the DOL. App. 13.

Judge Contreras and DOJ attorneys continued to criminally conceal material facts and evidence establishing that ALJ Merck, DOL and DOJ attorneys and Judge Contreras lied about the content and nature of Powers' email and their treatment of Powers' email. *Cf*. 18 U.S.C. 1001(a)(1), 1519. For eight years in multiple court proceedings pertaining to Powers' email,

DOJ attorneys have encouraged and exploited Judge Contreras' lies and crimes.

After all the foregoing, for no apparent reason other than that the Panel (Judges Millett, Wilkins, and Katsas) had illegally and unconstitutionally disposed of Petitioner's appeal, above, within two weeks the same judges *sua sponte* purported to initiate a separate appeal by Petitioner of a state-court order disbarring Petitioner (*solely* and *expressly* because in federal court filings Petitioner exposed and opposed the lies and crimes of Judge Contreras and other federal judges). *See* App. 46-48. *Cf*. Pet. Nos. 22-684 (re: Kansas State disbarment) and 22-1029 (re: reciprocal Tenth Circuit disbarment).

Once again, Judges Millett, Wilkins, and Katsas helped conceal material facts and relevant evidence. They "denied" Petitioner an "evidentiary hearing." App. 46. Instead, they ordered Petitioner to file an appellate "brief." *Id*. *citing* D.C. Cir. Rule 28(e). Instead of a hearing to create an evidentiary record, they ordered "oral argument before a merits panel." *Id*. They further ordered that "[o]ral argument will be confined to the issue of whether" Petitioner can be disbarred based on lies, knowing violations of Kansas law and the U.S. and Kansas Constitutions and federal offenses committed by Kansas state judges. *Id*.

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REASONS FOR GRANTING THE WRIT

Certiorari should be granted for many compelling reasons.

I. Judges of Higher Courts Must and Should Demonstrate Leadership by Leading this Nation's Judges (and Lawyers) in Supporting and Defending the Constitution.

For hundreds of years, many Americans (including Petitioner for many years in dangerous locations around the world) have physically fought, risked and sacrificed life and limb, and endured great danger and difficulty to establish and preserve the "Privileges and Immunities of" American "Citizens," including "a Republican Form of Government." U.S. Const. Art. IV. Federal judges also must help "guarantee" a "Republican Form of Government" and protect the "Privileges and Immunities of Citizens" (*id.*), even when it requires enduring a little difficulty or discomfort.

Mobs must not be allowed to rule America or American courts. Even the mob of judges including all judges below (or 1,000 times that mob) cannot be allowed to trample the Constitution. Judges pretending that they may choose to act like an undisciplined mob and follow other judges instead of acting with integrity and discipline to comply with the Constitution and federal law directly contravenes copious plain language of the Constitution, federal law and this Court's precedent.

"No person" may "be deprived" of any "liberty" or any "property" by any judge (or any mob of judges) "without" all "due process of law." U.S. Const. Amend. V. The "Constitution" and federal "Laws" (not a mob of judges) are "the supreme Law of the Land" governing all Petitioner's cases, and all state and federal "Judges" are "bound thereby;" moreover, "all" court "Officers" were and are "bound" to "support this Constitution" in all official conduct. Art. VI. *See also* 5 U.S.C. 3331; 28 U.S.C. 453, 2072, 2074(b); 18 U.S.C. 241, 242, 371.

No federal judge has any "powers" that were "not delegated" to his court. U.S. Const. Amend. X. Neither Congress nor the Constitution granted any court any power to abridge Americans' "freedom of speech" and "press" to expose and oppose the lies and crimes of judges "or the right of the people" to "petition the Government" for "redress of grievances" against judges who abuse their powers and positions by lying and committing federal offenses. Amend. I.

No "judicial Power" can "extend" (or be allowed to extend) any further than allowed "under" the "Constitution" and federal "Laws." Art. III. Moreover, all judges below were required to "extend" their "Power" (actually adjudicate) the case and controversies at issue. *Id*.

As a result of the foregoing constitutional provisions, every federal judge must and did swear and promise to his court and the American people that every day in every case he would "support and defend the Constitution" against "all enemies" (including judges and

DOJ attorneys attacking and undermining the Constitution). 5 U.S.C. 3331. Every judge swore and promised that every day in every case he would "administer justice" and "do equal right to" judges, lawyers and litigants, and "faithfully" to the Constitution and "impartially discharge and perform all" his "duties" under "the Constitution and" federal "laws." 28 U.S.C. 453. Every judge in every case or appeal involving Petitioner and pertaining to Powers' email knowingly and maliciously violated both oaths and many provisions of the Constitution and federal law.

All judges below willfully failed to adjudicate. They willfully failed to afford Petitioner due process of law. They willfully failed to apply or comply with copious controlling legal authority. They willfully failed to address any material fact or any evidence. They willfully abridged Americans' freedom of speech and press and right to petition. With vicious arrogance, the Panel pretended they had the power to knowingly violate all rights secured to litigants by federal law and the Constitution with a mere vague allusion to "the parties' positions" and a deceitful, vague allusion (citation) to something other judges wrote. App. 1.

Years of presenting this Court's precedent to federal judges in and under the Second, Eighth and D.C. Circuits has taught that far too many judges do not care much, if at all, what this Court has written in carefully considered decisions about the meaning of the Constitution when such judges want to violate the Constitution and they think this Court will allow them to do so. Even DOJ attorneys do not care. This Court

bears the title of Supreme Court, but its leadership is not—and is not viewed as being—supreme.

Justices sometimes contend that this Court is "infallible" because its decisions "are final." *Brown v. Allen*, 344 U.S. 443, 540 (1953) (Jackson, J., concurring). In fact, "[a]ll judges make mistakes. (Even us.)" *Dietz v. Bouldin*, 579 U.S. 40, 53 (2016). This Court's own decisions and conduct powerfully emphasize that some of this Court's decisions were egregious, obvious and fundamental mistakes. Too often, judges are too powerfully motivated by, and they wield the power of their courts to support, their own personal desires and interests, not the Constitution.

Every attorney at the DOL, the DOJ or Littler Mendelson and every ALJ or federal judge who has concealed or helped conceal evidence of whether Powers' email contains the particular phrases at issue has proved that this Court's decisions are not final. To such judges and attorneys, this Court's decisions are mere advisory opinions that they feel free to flout—and they did flout them flagrantly. Many attorneys, ALJs and federal judges acted as a mutinous mob, knowingly violating the Constitution and their oaths of office.

Ours was "emphatically termed a government of laws, and not of men." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (Marshall, C.J.). "It will certainly cease to deserve this high appellation, if" judges "furnish no remedy for" judges' vicious and malicious "violation[s] of" APA litigants' "vested legal right[s]." *Id*. The many judgments and opinions pertaining to

Powers email or Petitioner—and the repeated denials of *certiorari* by this Court—are evidence that lawyers and judges are governed by outlaws, not laws.

Every judge below knowingly violated controlling legal authority, specifically to "subvert the very foundation of" the Constitution. *Id.* at 178. They pretended they may "do what is expressly forbidden" by the Constitution, giving themselves "a practical and real omnipotence." *Id*. Such misconduct "reduces to nothing" America's "greatest improvement on political institutions—a written constitution." *Id*.

Judges "cannot" pretend to have the "discretion" to "sport away" Americans' "vested rights," but they did. *Id.* at 166. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws," so "[o]ne of the first duties of government is to afford that protection." *Id.* at 163. Clearly, the "very essence of judicial duty" is to "decide" every matter "conformably to the constitution." *Id.* at 178.

"It is emphatically" judges' "duty" to "*say* what the *law*" actually "is" (not lie about or violate the law). *Id*. at 177 (emphasis added). Judges must actually apply the actual "rule," and they "must" expressly "*expound* and *interpret* that *rule*" (not merely falsehoods or false pretenses about such rule). *Id*. (emphasis added). Every order and opinion below was a frivolous, fraudulent sham undermining all the above.

Any "judge" who "swear[s] to discharge his duties agreeably to the constitution" and then violates his

oath commits "worse than solemn mockery" of the Constitution, Congress, this Court, his court, and the American public. *Id*. at 180. As two unanimous Supreme Courts properly emphasized, judges "*have no*" power "*to usurp*" any power which "*is not given*" to them in the Constitution, and doing so is "treason to the constitution." *United States v. Will*, 449 U.S. 200, at 216, n.19 (1980) (Burger, C.J.) *quoting Cohens v. State of Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) (Marshall, C.J.) (emphasis in *Will*).

II. The Judges Below Knowingly and Egregiously Violated and Undermined the APA and the Constitutionality of Agency Adjudications.

Congress specially designed the APA as a "bill of rights for [the multitude of] Americans whose affairs are controlled or regulated" by federal agencies. 92 Cong. Rec. 2149 (statement of Sen. McCarran). FOIA (5 U.S.C. 552) clearly is part of the APA (5 U.S.C. 551-559, 701-706). Judges reviewing agency actions are required to "*decide all* relevant questions of law" and "*interpret* constitutional and statutory provisions" to the full "extent necessary to" any "decision and *when* presented." 5 U.S.C. 706 (emphasis added). Many judges knowingly and willfully violated the APA to help conceal Powers' email.

Congress imposed on "courts" the "duty" to "prevent avoidance of the requirements of the [APA] by *any manner or form of indirection*." *Am. Bus Ass'n v. United*

States, 627 F.2d 525, 528 (D.C. Cir. 1980) *quoting* S. Doc. No. 248, 79th Cong., 2d Sess. 19, 199, 217 (1946) (emphasis added). *Accord* S. Rep. No. 752, 79th Cong., 1st Sess. 31 (1945).

> The [APA (including FOIA)] represents a long period of study and strife; it settles long-continued and hard-fought contentions, and enacts a formula upon which opposing social and political forces have come to rest. It contains many compromises and generalities . . . [and] it would be a disservice to our form of government and to the administrative process itself if the courts should fail, so far as the terms of the [APA] warrant, to give effect to its remedial purposes where the evils it was aimed at appear.

Wong Yang Sung v. McGrath, 339 U.S. 33, 40-41 (1950).

It "is the plain duty of the courts" to "eliminate, so far as [the APA's] text permits, the practices it condemns." *Id.* at 45. In FOIA cases, the "courts are charged" with "ensuring that agencies comply with the 'outline of minimum essential rights and procedures' set out in the APA." *Chrysler Corp. v. Brown*, 441 U.S. 281, 313 (1979) (applying FOIA). Instead, Judge Contreras and D.C. Circuit judges joined ALJ Merck in lying and committing crimes to conceal evidence of whether Powers' email included the phrases at issue.

All FOIA litigation about Powers' email arose because ALJ Merck lied about evidence that he reviewed *in camera* to help Littler Mendelson attorneys criminally conceal evidence to defraud a DynCorp employee

who suffered an injury working in Iraq serving the U.S. government. *Cf*. page 10, above. It is profoundly significant that agency tribunals function "as an adjunct to the Art. III court, analog[ous] to a jury or a special master." *Northern Pipeline Const. Co. v. Marathon Pipe Line Co*., 458 U.S. 50, 77 (1982) *citing Crowell v. Benson*, 285 U.S. 22, 51-65 (1932).

The constitutionality of the entire scheme of administrative adjudications depends on "the appropriate maintenance of the federal judicial power in requiring the observance of constitutional restrictions." *Crowell*, 285 U.S. at 56. The constitutionality ("under the due process" clause) of the "use of the administrative" adjudications depends on courts ensuring that litigants receive "proper opportunity to be heard" and "that findings are based upon [sufficient] evidence." *Id.* at 47. But every federal judge below helped conceal evidence that ALJ decisions were founded on (and protected by) ALJs' and federal judges' lies about evidence and knowing violations of federal law (FOIA, the APA and federal rules governing procedure and evidence).

DOJ attorneys, Judge Contreras and prior D.C. Circuit panels knowingly violated very clear controlling language of FOIA. "Any reasonably segregable portion of a record shall be provided" by each agency "to any person requesting such record after deletion of the portions which are exempt." 5 U.S.C. 552(b). There is no possibility—no one ever even contended—that a copy of Powers' email showing a privilege notation that was *quoted* and words such as "please advise

regarding" or "please review and provide input" cannot be released with a reasonable amount of effort.

If they told the truth, they would not hide the proof. Hiding the proof has required vastly more effort and time of many agency attorneys and federal judges (including this Court's) regarding many *certiorari* petitions. Nothing about the government efforts to hide evidence of the phrases purportedly in Powers' email was reasonable. It was absurdly irrational. It was intentionally illegal, intentionally unconstitutional and intentionally criminal.

III. Judges Are Not Entitled to Violate the Constitution and Commit Federal Offenses.

Judges are not the new royalty or nobility. "No Title of Nobility" may "be granted by the United States." U.S. Const. Art. I, §9. "No State" may "grant any Title of Nobility." *Id*., §10. Judges' titles do not entitle them to lie to, cheat or defraud litigants. Judges' titles do not entitle them to commit federal offenses. The Constitution was written, ratified and revised—and Congress made certain judicial abuses of power criminal—precisely to protect the American public from those purported public servants (including judges) who abuse their powers and positions to violate the "Privileges and Immunities of Citizens." U.S. Const. Art. IV. *See also Butz v. Economou*, 438 U.S. 478, 506 (1978) (citation omitted):

> Our system of jurisprudence rests on the assumption that all individuals, whatever their

> position in government, are subject to federal law:
>
> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it."

The Constitution was founded on the premise (and designed to ensure) that each judge is and acts only as a "deputy," "servant" or "representative" of "the people." Federalist No. 78 (Alexander Hamilton) at https://guides.loc.gov/federalist-papers/text-71-80. The primary point of "the Constitution" is that no "representatives of the people" may "substitute their WILL" for the interests of "their constituents." *Id*. Moreover, "the courts were designed" specifically "to keep" all "representatives" of the people "within the limits assigned to their authority." *Id*.

A primary point of "the Constitution" is to confirm that "the intention of the people" (as the ultimate sovereign power) is "superior" to "the intention of their agents," *i.e*., *all* public servants. *Id*. Our state and federal Constitutions confirm "that the power of the people is superior" to "the judicial" and "the legislative power." *Id*. All judges must "regulate their decisions by the fundamental laws" *i.e*., state and federal Constitutions. *Id*. The foremost "duty" of all judges (state and federal) is "to declare all acts contrary" to "the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing." *Id*.

Multiple federal criminal statutes make criminal the conduct of the judges who are concealing or helping conceal evidence of whether Powers' email contains the particular phrases at issue. *See* 18 U.S.C. 241, 242, 371, 401(2), 1001, 1519. Nothing about Petitioner's "positions" regarding such issues (App. 1) permits abridging Americans' "freedom of speech" and "press" and "right to petition" (U.S. Const. Amend. I) in federal court.

Previously, many judges pretended that some people, because of the mere color of their skin, were outside the Constitution's protection. They merely contended that some people (even those who fought heroically for America and Americans in the Revolution, the War of 1812 or the Civil War) were not truly "people," but an "inferior class of beings" merely because they "had been subjugated" by a "dominant race." *Dred Scott v. Sandford*, 60 U.S. 393, 405 (1857).

This Court decreed that such victims of horrific oppression had "no rights or privileges but such as those who held the power and the Government might choose to grant them." *Id*. To purport to justify its contention, this Court emphasized that it could not say the same about the "people of the United States." *Id*. at 404. In America, the "people" are "sovereign" and "every citizen is one of this people, and a constituent member of this sovereignty." *Id.* at 404. So "the privileges and immunities of citizens" include "the *full* liberty of speech" even "in public" forums about "*all* subjects upon which" any "citizens might speak." *Id*. at 417-18 (emphasis added).

Now, many judges similarly pretend that some people (attorneys) are outside the Constitution's protection and some purported public servants (judges) are outside the Constitution's restraints because of the mere color of their clothes. They pretend that those in black robes are not restrained by the plain language of federal law or the Constitution, and they pretend that attorneys not wearing black robes cannot exercise "the full liberty of speech" about judges and their misconduct, about which any other "citizens" may "speak." *Id*.

D.C. Circuit judges expressly pretended that Petitioner's "positions" (App. 1) that Judge Contreras and DOL and DOJ attorneys lied about evidence, knowingly violated Petitioner's rights secured by the Constitution and federal law, and conspired to commit crimes is, alone, enough to virtually entirely preclude speech or petitions in federal appeals courts. They merely contended that Judge Contreras "did not abuse" his "discretion" (*id*.) by criminally lying about and criminally concealing evidence and criminally violating Petitioner's rights secured by the plain language of the Constitution, copious federal law and this Court's decisions. Their pretenses and contentions are so extremely dangerous to Americans' liberty and their Constitution that this Court must not facilitate or encourage them. This Court must stop this mob of mutinous judges.

"[I]ntolerance of free speech and free discussion" has "often rendered life and property insecure, and led to much unequal legislation" (and many wildly

unequal judicial decisions). *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 123 (1872) (Bradley, J., dissenting). Clearly, however, "the law" (including the First, Fifth and Tenth Amendments) "gives judges as persons, or courts as institutions" absolutely "no greater immunity from criticism" (or the Constitution) "than other persons or institutions." *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 839 (1978) (cleaned up). "The operations of the courts" and "judicial conduct" are "matters of utmost public concern." *Id*. So petitions and "speech" regarding judicial misconduct "cannot be punished" or precluded merely to pretend "to protect the court as a mystical entity" or "judges as individuals or as anointed priests set apart from the community and spared the criticism to which" all "other public servants are exposed." *Id*. at 842.

IV. The Panel Illegally Targeted Petitioner's Viewpoint.

D.C. Circuit judges expressly targeted Petitioner's "positions" and their purported "merits." App. 1. They clearly targeted Petitioner's viewpoint, which clearly was that DOJ attorneys procured summary judgment by "fraud," "misrepresentation" and criminal "misconduct." Fed.R.Civ.P. 60(b)(3). DOJ attorneys lied about material facts and criminally concealed evidence and they conspired with Judge Contreras, who criminally lied about material facts and criminally concealed evidence. *Cf*. 18 U.S.C. 1001, 1519. They conspired with Judge Contreras to criminally injure Petitioner in his exercise of rights and because he exercised rights that

were clearly secured by the plain language of federal law and the Constitution. *Cf*. 18 U.S.C. 241, 242, 371.

Americans have a long, strong tradition of strongly protecting speech and petitions such as Petitioner's. To entice Quebec to join the Revolution, "Congress" emphasized that "the freedom of the press" was one of our "five great rights" especially because it serves "diffusion of liberal sentiments on the administration of Government" so that "oppressive officers" can be "ashamed or intimidated, into more honourable and just modes of conducting [public] affairs." *Thornhill v. Alabama*, 310 U.S. 88, 102 (1940) *quoting* Address to the Inhabitants of Quebec, First Continental Congress (Oct. 26, 1774).

The foregoing clarified and emphasized the meaning of formal declarations by Congress days earlier. Congress "claim[ed], demand[ed], and insist[ed] on" Americans' "indubitable rights and liberties; which cannot be legally taken from them" or "altered or abridged by any power whatever, without their own consent." Declaration of Rights and Grievances ¶17, First Continental Congress (Oct. 14, 1774). That included the "right" to discuss "grievances," so even in 1774 Americans declared "all prosecutions, prohibit[ions]" and "commitments for the same, are illegal." *Id*. ¶14.

The "right to petition" is "one of the most precious of the liberties safeguarded by the Bill of Rights." *BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 524 (2002) *quoting United Mine Workers v. Illinois Bar Ass'n*, 389 U.S. 217, 222 (1967) (cleaned up). Such "right is

implied" by "the very idea of a government, republican in form." *Id*. at 524-25.

"[T]he right to petition extends to all departments of the Government," so it clearly includes "the right of access to the courts." *Id*. at 525. "When the government encourages diverse expression," *e.g*., "by creating a forum for debate" regarding legal issues in court filings and oral argument, "the First Amendment prevents it from discriminating against speakers based on their viewpoint." *Shurtleff v. City of Bos*., 142 S.Ct. 1583, 1587 (2022).

Courts "may not exclude speech" or petitions to repress the "viewpoint" that judges are not entitled to lie and commit crimes to influence litigation and attack and undermine the Constitution. *Id*. at 1593. Such repression clearly is "impermissible viewpoint discrimination." *Id*. Such "viewpoint discrimination" clearly is unconstitutional "even when the limited public forum" (*i.e*., courts) are of the government's "own creation." *Rosenberger v. Rector & Visitors of the Univ. of Va*., 515 U.S. 819, 829 (1995).

Clearly, courts "may legally preserve" court filings "for the use to which" courts are "dedicated." *Id*. They may reserve court filings for "certain groups" (*e.g*., litigants and *amici*) "or for the discussion of certain topics" (*e.g*., relevant to Rule 60). *Id*. But all judges "must respect the lawful boundaries" that the Constitution, Congress and this Court have "set." *Id*. Courts "may not exclude speech" unless they *prove* it is not "reasonable in light of the purpose served by the forum," and

they cannot ever merely "discriminate against speech on the basis of its viewpoint." *Id*. Any "viewpoint discrimination" is "presumed impermissible [unconstitutional] when directed against speech otherwise within the forum's limitations." *Id*. at 830.

"Constitutional concerns are greatest when the State attempts to impose its will by force of law." *Maher v. Roe*, 432 U.S. 464, 476 (1977). Clearly, "the Government may not" directly or indirectly actually "aim at the suppression of" Petitioner's "ideas." *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 587 (1998). Court rules and rulings cannot be (but were) "manipulated" to have a "coercive effect" on lawyers' viewpoints about judges' and agency attorneys' lies and knowing violations of law and the Constitution. *Id*. Any "[d]ifferential" treatment "of First Amendment speakers is constitutionally suspect when it" even merely "threatens to suppress the expression of particular ideas or viewpoints." *Id*.

Judges cannot engage in conduct "result[ing] in the imposition of" even "a disproportionate burden calculated to drive" Petitioner's "ideas or viewpoints from the marketplace." *Id*. Court rules and rulings cannot be "applied" for "suppression of disfavored viewpoints." *Id*. This Court assured the public that it "will deal with" such "problems" properly "when they arise." *Id*. It should do so now.

V. The Government Must Bear its Burden of Proof.

D.C. Circuit judges expressly targeted Petitioner's "positions" and their purported "merits." App. 1. They clearly targeted the content of speech and petitions. So they must (but failed to) bear the burden of proof that this Court repeatedly has emphasized is required by the Constitution.

"Content-based laws" (or court rules or rulings) are "presumptively unconstitutional." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Judges precluded additional petitions and speech (briefs and oral argument) because of the content of prior petitions and speech. *Cf. id*. at 163-64 (identifying types of "content-based" restrictions). Such repression of expression must "be justified only" by "prov[ing] that" it was "narrowly tailored to serve" public "interests" that are "compelling." *Id*. at 163.

"When First Amendment compliance is the point to be proved, the risk of non-persuasion" always "must rest with the Government, not with the citizen." *United States v. Playboy Entertainment Group, Inc*., 529 U.S. 803, 818 (2000). "When" any "Government restricts [any] speech, the Government" always "bears the burden of proving the constitutionality of its actions." *Id.* at 816. "When the Government seeks to restrict [any] speech based on its content," any potential "presumption of constitutionality" must be "reversed. Content-based regulations are presumptively invalid, and the

Government bears the burden to rebut that presumption." *Id*. at 817 (cleaned up).

Moreover, any purported "proof presented to show" each material fact must have "the convincing clarity which the constitutional standard demands." *New York Times Co. v. Sullivan*, 376 U.S. 254, 285-86 (1964). The "First Amendment mandates a 'clear and convincing' standard" of proof of each material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

Such "standard of proof" is "embodied in the Due Process Clause" to establish "the degree of confidence" each court must "have in the correctness" of its own "factual conclusions." *Addington v. Texas*, 441 U.S. 418, 423 (1979). It "allocate[s] the risk of error" to each court repressing speech/petitions, and "indicate[s] the" great "importance attached to the ultimate decision." *Id*. It "reflects the" great "value society places" on the "liberty" at stake. *Id*. at 425.

VI. Federal Judges Are Knowingly and Maliciously Violating the Constitution, FOIA and Fundamental Rules of Procedure and Evidence; Petitioner's Briefing and Oral Argument Cannot Be Precluded with the Panel's Mere Conclusory Contentions.

Every federal judge who helped conceal Powers' email (with any summary judgment or summary affirmance) knowingly (criminally) violated some of the most fundamental and clear rules of evidence and procedure.

Petitioner's right to petition and speak were secured by federal law, which the Panel clearly violated. Three judges abused a *per curiam* decision to preclude oral argument without any evidence they "unanimously agree[d] that oral argument [was] unnecessary for any" of only three potentially-lawful "reasons." Fed.R.App.P. 34(a)(2).

FOIA requesters have the right to move for relief from a final district court judgment procured by federal agency employee "fraud," "misrepresentation, or misconduct." Fed.R.Civ.P. 60(b)(3). They have the right to appeal the denial of such motion. *See*, *e.g.*, Fed.R.App.P. 4(a)(1)(A), 4(a)(4)(A)(iv). They have the right to appellate "procedure" that federal "rules govern." Fed.R.App.P. 1(a)(1). They have the right to file a "brief" and "reply brief." Fed.R.App.P. 28. They have the right to present "oral argument" subject to very limited exceptions and circumstances. Fed.R.App.P. 34.

They have the right to an appeal that is administered "fairly" and "to the end of ascertaining the truth and securing a just determination." Fed.R.Evid. 102. The Federal Rules of Evidence "apply to proceedings before" U.S. "district courts" and "courts of appeals." Fed.R.Evid. 1101.

No court had any power to issue any judgment based (explicitly or implicitly) on any judge's or agency declarant's mere hearsay about the content of Powers email. All agency motions for summary judgment or summary affirmance and all such judgments regarding Powers' email were frivolous, fraudulent shams.

"An original writing" (Powers' email) was "required in order to prove its content unless" federal "rules" or "statute provides otherwise." Fed.R.Evid. 1002. A paper "duplicate" of Powers' email would be "admissible" unless "the circumstances make it unfair to admit the duplicate." Fed.R.Evid. 1003. But any "other evidence of the content of a writing" is "admissible" only under circumstances that do not apply to Powers' email. Fed.R.Evid. 1004.

No hearsay by any judge or agency declarant about the purported phrases in Powers' email was or is admissible in any federal court proceeding. "Hearsay" about such purported content of Powers' email was "not admissible" because it was not permitted by any "federal statute" or relevant "rules." Fed.R.Evid. 802. Judges' hearsay is admissible for some purposes, but not for any purpose in any proceeding regarding Powers' email. *See* Fed.R.Evid. 803(8), (22), (23).

Furthermore, a "presiding judge may not testify as a witness at the trial." Fed.R.Evid. 605. He "may not" in any way purport to "assume the role of a witness," and "he may not either distort" any "evidence" or "add to it." *Quercia v. United States*, 289 U.S. 466, 470 (1933).

Moreover, courts cannot merely pretend that an agency declarant's mere hearsay about anything could dispense with FOIA requesters' right to cross-examination. "When" any "hearsay statement" has "been admitted in evidence, the declarant's credibility may be attacked" by "any evidence that would be

admissible for [such] purposes." Fed.R.Evid. 806. Petitioner was entitled to "examine" any agency declarant about his hearsay "as if on cross-examination." *Id*.

The government clearly was not "entitled to judgment as a matter of law" because no agency "show[ed]" (with Rule 56 materials) that "no" FOIA requester's "dispute" of any "material fact" about the content of Powers' email (or whether any recipient was admitted to practice law before any court) was "genuine." Fed.R.Civ.P. 56(a). No agency "establish[ed]" (with Rule 56 materials) "the absence" of "genuine dispute" regarding any such "material fact." Fed.R.Civ.P. 56(c)(1)(B). The words and conduct of many DOJ attorneys and judges proved conclusively that the dispute about the content of Powers' email was at least genuine. *See* pages 10-15 and Section VIII herein.

No agency "declaration" about the content of Powers' email (or about any recipient thereof being an attorney) even was "made on personal knowledge" or "set out facts that" that could be supported with "evidence" that was "admissible," including "facts" that "show that" the "declarant" was even "competent to testify on" such "matters stated." Fed.R.Civ.P. 56(c)(4). A "witness" may testify to any fact "only if evidence" is "introduced" proving "personal knowledge" of each fact about which he testified. Fed.R.Evid. 602.

Judge Contreras and D.C. Circuit judges knowingly (criminally) violated the provisions of federal law, above. They had no discretionary power to knowingly violate any such law. *Cf*. U.S. Const. Amends. V, X,

Arts. III, VI; 28 U.S.C. 2072, 2074(b); 18 U.S.C. 241, 242, above.

VII. Petitions Cannot Be Precluded or Ignored Because they Expose and Oppose the Lies and Crimes of Judges.

The judicial misconduct at issue here allows and encourages so-called judicial, legal and justice systems that dangerously threaten—and actually are designed by judges to attack and undermine—the Constitution. Judges (including every judge in every case pertaining to Powers' email) have designed decisions to con the American public into believing that judges have the power to lie about facts and evidence, knowingly violate governing provisions of federal law and the Constitution and commit federal offenses.

This Court's carefully considered precedent—and even federal law and the Constitution—have been rendered irrelevant to a great and shocking extent by the devious misconduct of designing judges. Their tricks, schemes and designs (like those of Judge Contreras and the D.C. Circuit judges, below) are not even subtle or sophisticated. They are brutish and thuggish. Their "use of the judicial system" truly and clearly "amounts to legal thuggery." *Seltzer v. Morton*, 154 P.3d 561, 609 (Mont. 2007).

Their conduct does not inspire confidence or respect. It inspires disgust, loathing and even hatred. Their conduct endangers judges' physical safety and even the security of national government. *See*, *e.g.*,

New York Times, 376 U.S. at 270 *quoting Whitney v. California*, 274 U.S. 357, 375-76 (1927) (Brandeis and Holmes, JJ., concurring):

> Those who won our independence believed . . . that public discussion is a political duty; and [] a fundamental principle of the American government. . . . [They believed] it is hazardous to discourage thought . . . [because] repression breeds hate [and] hate menaces stable government; [so] the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies. . . . [So the Founders] eschewed silence coerced by law—the argument of force in its worst form. [Specifically to prevent] tyrannies of governing majorities [including in courts], they amended the Constitution so that free speech and assembly should be guaranteed.

See also id. at 269:

> The constitutional safeguard [of the freedom of speech and press and the right to petition] was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people. The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.

Accord De Jonge v. Oregon, 299 U.S. 353, 365 (1936).

VIII. If this Court Fails to Support and Defend the Constitution Now, More Litigation and Petitions Will Follow.

This Court's silence now will result in more litigation and petitions pertaining to Powers' email and judges lying and committing crimes to conceal it. Already, D.C. Circuit judges are seeking Petitioner's disbarment as a thuggish means of concealing Powers' email. *See* page 17, above.

Petitioner will be compelled to sue again to obtain Powers' email under the Eighth Circuit as a result of the contentions and conduct by DOJ attorneys and judges in *Campo v. U.S. Dept. of Justice*, 2020 U.S. Dist. LEXIS 122429 (W.D. Mo. 2020), *aff'd*, 854 Fed. Appx. 768 (8th Cir. 2021).

Remarkably, in *Campo* DOJ attorneys and judges insisted the DOJ could conceal Powers' email from Campo *only* because Powers' email and all information therein *belonged to Petitioner.* All judges and DOJ attorneys involved in *Campo* knew that Petitioner was Campo's counsel (the judges fined and disbarred Petitioner to criminally retaliate for his exposing their lies and crimes). Even so, they insisted the DOJ was entitled to *summary judgment* because all information in Powers' email was *Petitioner's* personal private information.

They insisted that Powers' email was in Petitioner's "personnel" or "medical" or "similar files" and it included *only* Petitioner's personal, private information. *Campo*, 2020 U.S. Dist. LEXIS 122429 at *25-26 invoking FOIA

Exemption 6. A DOJ attorney even declared the foregoing to be true. *See* Cert. Pet. No. 21-1320 App. 50-56 (Declaration of Vinay Jolly).

The DOJ attorneys and judges who helped conceal Powers' email from Campo knew that FOIA Exemption 6 permitted the government to withhold only Petitioner's "personnel" or "medical" or "similar" information and only when "disclosure" would "constitute a clearly unwarranted invasion of" Petitioner's "personal privacy." *Campo* at *24 *quoting* 5 U.S.C. 552(b)(6). *Accord* Pet. No. 21-1320 App. 54-55, ¶13.

Jolly specifically addressed the "email records of Darin Powers." Pet. 21-1320 App. 51, ¶4. *See also* Pet. 21-1320 App. 57 (FOIA request for Powers' email). Then Jolly declared all the following. They were "records pertaining" only to "Mr. Jordan," *i.e*., only "these files of Mr. Jordan." Pet. 21-1320 App. 53, ¶10. The DOJ was protecting only "the strong privacy interests of Mr. Jordan." Pet. 21-1320 App. 54, ¶11. The "requested material" constituted "files of" only "Mr. Jordan." Pet. 21-1320 App. 51, ¶6. The DOJ would have released Powers' email "with consent from Mr. Jordan" because only Jordan's "privacy interests" are being protected, *i.e*. "[Jordan's] personal privacy." Pet. 21-1320 App. 55, ¶14. "It is under these circumstances" that the DOJ "denied" Campo "access to Mr. Jordan's" personal and private "records." *Id*.

Judge Smith also emphasized the foregoing. *See Campo*, 2020 U.S. Dist. LEXIS 122429 at *25-26:

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

Judge Smith further insisted that *only* because of "Jordan's strong privacy interests" in such records the "DOJ properly withheld the requested documents pursuant to Exemptions 6 and 7(C)." *Id*. at *26-27.

Regarding the factual contentions, above, three Eighth Circuit judges insisted that "we agree with" Judge Smith (and the DOJ) "that no genuine issue of material fact" even "remained for trial." *Campo*, 854 Fed. Appx. at 769 (Gruender, Benton, Stras, JJ.). They admittedly did so precisely because "Jordan has been trying to get" Powers' email. *Id.* So, if necessary, Petitioner will sue again in the Eighth Circuit to obtain Powers' email.

IX. This Is a Clean Vehicle to Address Issues of Profound Constitutional Importance.

The facts are clean and straightforward. No material facts are or can be in dispute. The controlling legal authorities and issues are clear and compelling. D.C. Circuit judges clearly failed to bear their burden of proof before repressing Petitioner's speech and petitions (briefing and oral argument). They clearly targeted the content and viewpoint thereof. Moreover, their conclusory contentions irrefutably were false and their citation to *Taxpayer's Watchdog* was deceitful. Nothing in that decision did (or could) authorize or even support the Panel's conduct or contentions.

CONCLUSION

Petitioner and his clients were the victims of a vicious and malicious black-collar crime spree (by a mob of mutinous judges in the Second, Eighth and D.C. Circuits) orchestrated by DOJ attorneys. Such widespread criminal misconduct is compelling evidence that our systems of law and justice need much stronger leadership and much more discipline. For the foregoing reasons, *certiorari* should be granted.

Respectfully submitted,

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