23-5452

No. _____

In the Supreme Court of the United States

IN RE REINARD SMITH.,

Petitioner,

vs.

MARK VOGIN, et al.

Eastern District of Pa. Case No. C.A. 19-4159

On Petition for Writ of Prohibition to the United States Dstrict Court for the Eastern District of Pennsylvania

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PETITION FOR WRIT OF PROHIBITION PURSUANT TO ALL WRITS ACT 28 U.S.C. § RULE 1651

Reinard Smith, pro se
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QUESTIONS PRESENTED

- Did the District Court conspire to have jurisdiction over Petitioner's Motion for Injunctive Relief where, Petitioner sought to file his Motion for Injunctive Relief as an Independent matter and district court clerks made a determination to instead file the motion in conjunction with Petitioner's pending civil matter under C.A. No. 19-4159 despite Petitioner making it known he was filing it as a separate action?

- Whether district court acted outside its jurisdiction in conspiring with Defendants and their attorney Mark Vogin to commit fraud upon the court and intentionally causing harm to Petitioner through deprivation of a fair trial and the complete elimination of Petitioner's civil trial to conceal their act to commit fraud upon the court and judicial misconduct.

- Whether Respondent attorney Mark Vogin violated the rights of the Public, Petitioner, and the Court in conspiring to commit fraud upon the court with Respondent Eduardo Robreno to unlawfully gain a benefit derived from their act of submitting perjured testimony through a false affidavit intended to deprive Petitioner of winning his civil lawsuit.

PARTIES TO THE PROCEEDING

Reinard Smith, Petitioner

Mark Vogin, Esq. Respondent (Vogin) (Real Party in interest)

Judge Eduardo Robreno, Respondent (Robreno)

Alex Kershentsef, Respondent (Kershentsef) (Real Party in interest)

Key & V Auto Sales, Respondent (Key & V) (Real Party in interest)

STATEMENT OF RELATED CASES

Reinard Smith v. Alex Kershentsef, et al., Civil Action No. 19-4159 U.S. District Court for the Eastern District of Pennsylvania, Judgment entered on May 24, 2023, dismissing Petitioner's civil suit.

Reinard Smith v. Alex Kershentsef, et al., on appeal Case Number 19-3893 U.S. Court of Appeals for the Third Circuit, Judgment entered February 4, 2021, Judgment of District Court affirmed in part, reversed in part, and remanded in part.

Reinard Smith v. Alex Kershentsef et al., Civil Action No. 18-3840 U.S. District Court for the Eastern District of Pennsylvania, Judgment entered February 12, 2019, dismissing Petitioner's complaint with Prejudice and without Prejudice.

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CONSTITUTIONAL CLAUSES INVOLVED

Fifth Amendment of the United States Constitution:

Section 4. "No person shall be deprived of life, liberty, or property, without due process of law."

Fourteenth Amendment of the United States Constitution:

Section 1. "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."

JURISDICTION

The Court has jurisdiction over this application under the All Writs Act, 28 U.S.C. 1651.

PRELIMINARY STATEMENT

This matter comes before the Court seeking, an extraordinary writ of Prohibition, where the lower district court of the Eastern District of Pennsylvania, presided over by Judge Eduardo Robreno, deprived me of a fair and impartial trial. Also, in an effort to conceal the judicial misconduct and fraud upon the court, judge Robreno interfered with the administrative ministerial process so that, a preliminary injunction I sought to file would be, unlawfully assigned to him so he could proceed to ultimately dismiss my matter. In this sense, it is requested that the Court exercise its inherent power to reverse the order of judge Robreno, in the unlawful dismissal of my matter and, to disqualify judge Robreno from adjudicating the matter. As well as, I request that the attorney of record, Mark Vogin, also be, prevented from participating in any further litigation of this matter.

STATEMENT OF FACTS

Since when this matter was first initiated, I unwaveringly alleged Respondent Vogin's clients (Alex Kershentsef et al.) never affixed a Buyer's Guide to the used car in question. As well, they did not have a hard copy of one to submit into evidence. Despite having every opportunity to submit such proof and, support their allegation of affixing a Buyer's Guide; Respondent Vogin being well aware that, no Buyer's Guide existed, still submitted by affidavit his clients' false allegation.

On February 13, 2023, after being denied summary judgment, I filed a Fed. R. Civ. Proc., Rule 37 (C)(1) motion to strike Respondent Vogin clients' Buyer's Guide defense. Given Respondent Vogin clients didn't possess any evidence of the Buyer's Guide and, rather than disclose such lack of the Buyer's Guide, Respondent filed a false affidavit giving the impression they possessed such. Respondent Robreno having already knowingly accepted the false affidavit, denied my motion to strike the Buyer's Guide defense. The denial stands as a miscarriage of justice where, Respondent Vogin and his clients' clearly, didn't possess any proof to support, there was a Buyer's Guide affixed to my used car.

On March 15, 2023, after the arbitration hearing, I was awarded $1,350.00 in damages based on violations of my UTPCPL claims and, the first unlawful repossession. On April 14, 2023, within thirty days of the arbitration, I mailed by certified U.S. Postal First class mail, my arbitration award rejection letter. Respondent Vogin clients' filed a motion to strike my rejection of the arbitration award, asserting my objection was filed late, where Respondent Robreno set a hearing May 24, 2023, to hear Defendants motion to strike.

Determined as a pro se litigant, to keep the judicial machinery in my matter from being corrupted, I brought an action for "fraud upon the court," April 28, 2023. It was based on the fact, officers of the court knew there was no supporting evidence to establish, a legally reasonable defense pertaining Defendant Alex Kershentsef allegation. If there is no physical Buyer's Guide then it would follow, said Buyer's Guide could not be affixed. However, Respondent Vogin still filed a reply seeking to have my motion denied because, Fed. Rules of Civ. Pro., Rule 60(B)(3) only deals with final judgments. In response I requested that, my "fraud upon the court" motion be liberally construed as, a new action under 60(d)(3) which, Respondent Robreno never answered.

May 8, 2023, I moved for an immediate hearing, separate from the May 24, 2023, hearing

believing if it was "fraud upon the court," all past proceedings would be subject to dismissal and new proceedings. Respondent Robreno denied my request and instead, consolidated my motion for fraud upon the court" with the May 24, 2023 hearing. As a result of knowing, my claim for "fraud upon the court" was being undermined, I sought a preliminary injunction on May 17, 2023. About two days after filing for preliminary injunctive relief, I had visited the courthouse to inquire about my filing and learned, my matter had been docketed under my civil action 19-4159. I contended with the district court clerk that, I intended my filing to be entered as an independent action against Respondent Robreno, however, I was told it was docketed as directed and couldn't be filed otherwise.

After my petition for a preliminary injunction was thwarted, on May 24, 2023, I proceeded before Respondents Robreno and Vogin, for the determination of several matters. The first matter disposed of was my action for "fraud upon the court" in which, Respondent Robreno decided a jury should determine whether there was "fraud upon the court." Next, my preliminary injunction had been ruled as being in actuality, a writ of mandamus rather than, an independent action as I intended. Upon such determinations, I left the proceedings under the pretense, Respondent Robreno was proceeding without jurisdiction as a result, my matter was dismissed and the arbitration award entered as the final decision. **See** May 24, 2023, hearing Trans. pp.

My right of appeal having been limited by the arbitration proceeding, and the entire proceedings being corrupted by "fraud upon the court" and, judicial misconduct I now file the present Writ of Prohibition.

REASONS FOR GRANTING THE PETITION

A. FRAUD UPON THE COURT

When "fraud upon the court" is alleged to have occurred during trial proceedings, such is a matter which can be immediately addressed by the established means of filing a Fed. Rules Civ. Proc., Rule 60(b)(3) or 60(d)(3) motion. The available federal civil procedures under Rule 60, do not require the aid of a jury to determine, a matter properly before a court capable of investigating a "fraud upon the court" allegation. Moreover, Fed. Rules Civ. Pro., Rule 60(d)(3) is the codification of, a court's inherent power to

investigate whether a judgment was obtained by fraudulent conduct. It also makes sense as, when "fraud upon the court" is alleged as a new matter, the proceedings in progress should be put on hold until it is determined whether such "fraud upon the court" occurred. See **Universal Oil Products Co. v. Root Refining Co.**, 328 U.S. 575, 580 (1946) ("The inherent power of a federal court to investigate whether a judgment was obtained by fraud is beyond question. *citing* **Hazel-Atlas Co. v. Hartford Empire Co.**, 322 U. S. 238. The power to unearth such a fraud is the power to unearth it effectively. Accordingly, a federal court may bring before it by appropriate means all those who may be affected by the outcome of its investigation."); **Harris v. Nelson**, 394 U.S. 286, 299 (1969) ("the courts may fashion appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial usage. Where their duties require it, this is the inescapable obligation of the courts."). *Emphasis added.* Certainly, it is the duty of the courts to protect the integrity of the judiciary from "fraud upon the court" when it is called upon without delay.

Consequently, where Respondent Robreno chose not to investigate my allegation of "fraud upon the court," such a refusal without justification allowed the guilty party to prosper from their wrongdoing. However, "fraud upon the court" is said to be one of the most serious violations that can occur within a court of law given, no party has the right to trifle with the courts. The law is established that fraud upon the court defiles the integrity of the courts, and does harm not just to the litigant but, also, to the judicial machinery as well as the public. See **Derzack v. County of Allegheny, Pennsylvania**, 173 F.R.D. 400, 414 (W. D. Pa. 1996) ("prejudice" encompasses not only the prejudice to the litigants but also the impact on the judicial system and the threat to the integrity of the courts which cannot command respect if they cannot maintain a level playing field amongst the participants."); **Aoude v. Mobil Oil Corporation**, 892 F.2d 1115, 1119 (1st Cir. 1989) ("Tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." *citing* **Hazel-Atlas Co.** at 246.). *Emphasis added.* My claim was clear, Respondent Vogin's clients failed to affix and provide me a copy of the FTC Buyer's Guide, it was then on Respondent's clients to produce a copy of the Buyer's Guide. Respondent Vogin as well as his clients knew, no such proof of a Buyer's Guide existed.

Despite knowing this, Respondent Vogin and his clients still alleged that they affixed a Buyer's Guide and sought to give such a false assertion credibility by submitting an affidavit. As well as the person on whose behalf the affidavit was submitted, was not even the person who showed me the car,

Vogin's client Alex wasn't on the lot at the time I was being shown the car. He therefore cannot establish that, a Buyer's Guide was affixed to the used car I purchased or, the affidavit was a true declaration to the statement asserted. Because I continuously mentioned it at all times throughout the proceedings that, all Respondent Vogin clients had as evidence was, their bare assertion which legally wasn't proof. See **Notes of Advisory Committee on Rules**—1963 Amendment para. 2. ("The very mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial. The Third Circuit doctrine, which permits the pleadings themselves to stand in the way of granting an otherwise justified summary judgment, is incompatible with the basic purpose of the rule. See 6 Moore's Federal Practice 2069 (2d ed. 1953); 3 Barron & Holtzoff, supra, §1235.1."); **First Nat. Bank of Ariz. v. Cities Service Co.**, 391 US 253, 288 (1968) ("Rule 56 (e) of the Federal Rules of Civil Procedure states that "when a motion for summary judgment is made and supported . . . an adverse party may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial."). *Emphasis added.*

Black's Law dictionary 8th edition defines allegation as, "in a legal pleading; a party's formal statement of a factual matter as being true or provable, *without its having yet been proved.*" Therefore, Respondent Vogin knowing that, affidavits serve to deliver certifiable facts in a way that can reasonably be guaranteed to be truthful. Intentionally submitted the affidavit with the purpose of, making credible, a defense lacking the very proof, Vogin's clients would need to produce at trial. Absent the affidavit, which formally legitimizes claims, by law and fact the court could not have accepted the bare allegation standing alone, unless supported by a credible source. Respondents Vogin and Robreno knew the affidavit would be the credible source. Moreover, it is understood by judges, lawyers and, laymen that: "a great deal of evidence is submitted by affidavit," definition from Black's Law dictionary 8th edition. However, a bare allegation doesn't transform into certified evidence simply because, it's submitted by an affidavit as, actual proof is still required at trial. See **Lujan v. National Wildlife Federation**, 497 U.S. 871, 888 (1990) ("The object of summary judgment practice is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit"); **Peterson v. United States**, 694 F.2d 943, 945 (3d Cir. 1982) ("Fed.R.Civ.P. 56(e) requires a party who files an affidavit to "attach thereto and serve therewith" sworn or certified copies of **all papers referred to in the affidavit**. Despite this clear mandate, the Government never produced, nor did the district court require the Government to produce, this discharge note.").

Respondent Vogin throughout the proceedings, attempted to confuse the issues by making arguments about other paperwork provided, which didn't negate his clients' duty to affix and provide a FTC Buyer's Guide. Also, Respondent Vogin would fail to cite opposing statutes to those he cited, he would try to recast my arguments and legal citing's in a manner appearing as if, I was just rambling nonsense. Vogin claimed that, the failure to affix an FTC Buyer's Guide was harmless. Even though, there is a warning on the Buyer's Guide which states: "Removing this label before consumer purchase (except for purpose of test-driving) violates federal law (**16 C.F.R. 455**)." In light of these circumstances, I am certain this Court can see that, this is not my own made up pro se nonsensible conclusions of fact and law.

Considering the elements which make up "fraud upon the court" as established by this Court and other circuit courts, we can attach the first element to Respondent Vogin. As being an attorney and, also, an officer of the court; Respondent has an obligation to the court, opposing party, and the public not to defile the judicial system. Second, Respondent Vogin knowingly attempted to give a false assertion the appearance of certified evidence by affidavit. By submitting such false affidavit, the very act amounted to intentional fraud as, there is no support for the assertion anywhere. Third, it was Respondent Vogin's intention, the district court accept the affidavit as evidence capable of being valid before a jury, and to deny me summary judgment pertaining the same false evidence. Lastly, is that the court be actually deceived by the misrepresentation in which, the false affidavit was relied upon to deny me, summary judgment on two main issues in my complaint. See **Herring v. United States**, 424 F.3d 384, 386 (3d Cir. 2005); **Weese v. Schukman**, 98 F.3d 542, 552-553 (10th Cir. 1996) ("fraud on the court should embrace only that species of fraud which does or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication."). *Emphasis added.*

Respondent Vogin and his clients had no reason not to disclose, the Buyer's Guide they alleged by affidavit to have affixed to, the used car I purchased. It was a plan to deprive me of my claims. Whether I was provided other documents was irrelevant, it is mandatory the FTC Buyer's Guide be affixed and provided, no exception or substitute was given by the FTC as being the equivalent. State law makes failing to provide all mandatory paperwork a violation of State law, consequently nothing excused the nondisclosure or, made Respondent clients failure to comply harmless. And knowingly, misrepresenting possession of evidence which, does not exist, clearly constitutes the trifle of "fraud upon the court."

B. JUDICIAL MISCONDUCT

1. WHERE JUDGE EDUARDO ROBRENO KNOWINGLY ACCEPTED FALSE EVIDENCE AND DENIED MY SUMMARY JUDGMENT BASED ON THE SAME FALSE EVIDENCE

As a pro se litigant, I like the many, who cannot afford the assistance of a paid attorney, am dependent upon being afforded the legally accepted practice of applying a liberal construction to pro se filings. However, unfortunate it may be, the fundamental tenet of self-representation is not without the negatives of the many incapabilities, we pro se litigants are saddled down with. Yet, taking all the shortcomings of pro se litigants into consideration, there is no support for a Judge conspiring with an attorney to deprive a pro se litigant of a fair trial. See **Lee v. Florida**, 392 U.S. 378, 385-86 (1968) ("Under our Constitution no court, state or federal, may serve as an accomplice in the willful transgression of the Laws of the United States, laws by which the Judges in every State are bound."). And being well aware of the seriousness of allegations I have presented to this Court, I also, believe the evidence within this Writ well establishes my allegations. The fact my claims are against a district court judge as a pro se litigant, presumptively may cause this Court to pause, however, Respondent Robreno status as a judge is not a magic pill which makes all go away. Such a trusted position entails that, a judge will not disregard the law or, turn a blind eye to the material facts of a matter and overall will not willingly, operate outside their oath to the U.S. Constitution. See **Davis v. Passman,** 442 US 228, 246 (1979) ("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 officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it."). *Emphasis added.*

I ask this Court, to not only look at the actions and the results of this matter but, also, at what is required of each party to this matter. Respondent Robreno like Respondent Vogin is, an officer of the Court who is, also, capable of committing "fraud upon the court" and did indeed defraud the court. A court it is said, is under obligation to inspect, all claims and defenses to insure there exist factual support which is admissible at trial. See **Celotex Corp. v. Catrett**, 477 US 317, 327 (1986) ("Rule 56 must be construed with due regard not only for the rights of persons asserting claims and defenses that are *adequately based in fact to have those claims and defenses tried to a jury*, but also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis."). Clearly, when Respondent Robreno accepted not only the

mere allegation but, also, the false affidavit despite my objection that, the Buyer's Guide didn't exist he did so with no reasonable basis. Not once did Respondent Robreno, hold Respondent Vogin and his clients to the duty to disclose the Buyer's Guide, instead, Respondent Vogin was allowed to present such defense absent the required support. Certainly, Robreno as being a senior Judge understood, in allowing the unsupported assertion to oppose my claims violated **Fed. R. Civ. Pro., Rule** 56(e). Before accepting evidence, a court must regard whether a party has submitted more than a scintilla of evidence, which is the amount of proof required to meet the summary judgment threshold. See **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 254 (1986) ("in ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden"); **Biestek v. Berryhill**, 139 S. Ct. 1148, 1154 (2019) (" Substantial evidence, this Court has said, is more than a mere scintilla."). *Emphasis added.*

Before I alleged "fraud upon the court," I had experienced biasness from Respondent Robreno which, his actions prompted me to file for mandamus with the Third Circuit COA twice. Respondent also, would apply inapplicable case law to my arguments and, find in favor of Respondent Vogin so that I would obtain the most insignificant amount of relief. For example, Respondent Vogin's clients didn't have a defense for my altercations with the repossessing agent employed by them, however, in order to deprive me of relief, Respondent Robreno refused to apply a liberal construction to my argument. The matter in which I am referring to is, the second repossession that took place in 2018, where the repossession agent came back for the second repo with a second person. I alleged, he brought the second person along not to help with towing the car but, in the event another altercation was to take place, while the law is such a repossession is prohibited.

Just reviewing the cumulation of Respondent Robreno's action, absent the "fraud upon the court" calls into question, whether Respondent Robreno should have recused himself. As that is an issue different than, the reason I am petitioning the Court for it still should be noted as, part of Respondents Robreno and Vogin's scheme to cheat the public out of the substance of justice. And then to want to delay a review of whether "fraud upon the court" was committed, stating that, he was committing the matter to a jury for decision shows, evasive conduct. Fraud upon the court is a matter which calls for immediate review, what perspective would a jury have if, the court itself allowed the matter to proceed with the party accused of such? Probably where the court didn't take action, a jury may believe the "fraud upon the court" was harmless or, didn't have any major impact on the central matter. And where it may seem, I ultimately prevailed on the issue of failing to affix and provide a Buyer's Guide, such is a false show of justice. I alleged inadequate warnings which made my purchase defective, also, since the arbitrators found violations of my UTPCPL claims, it as well meant the used car was represented other than what it actually was. See

73 P.S. §§201-2(4)(vii) which states:

> "Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;"

I was awarded $1,350.00 for the violation of both of my UTPCPL claims and for the 2017 unlawful repossession or, first unlawful repossession. At the arbitration, I had to argue issues which should have been resolved in my favor at summary judgment, had Respondent Robreno not accepted the false affidavit. By not going beyond the false allegation and ascertaining whether, actual evidence of the Buyer's Guide existed, I was tied down having to prove, what should not have been an issue at the arbitration. There are other instances in which, the matter was impaired and being stacked in favor of Respondent Vogin, which is why I pray this Court grant the writ and thoroughly review the record. Vogin's clients are still in possession of my property, if the car was defective then it was of another quality and, I should have received a refund for all money I've paid. $1,350.00 was a major injustice. Just as Respondent Robreno's finding that, the three-day mailing rule didn't apply to me, mailing my rejection of the arbitration award. The revised new mailing rule, was only meant to apply to those who did their mailing electronically and, I expressed I didn't want to be bound by electronic filing.

I sought on numerous occasions to have Respondent Robreno realize, there was no evidence to support the Buyer's Guide defense; I filed, a motion for judgment on the pleadings which was denied. Certainly, Respondent Robreno was well aware, at least by the time I filed for summary judgment, there was no evidence of the FTC Buyer's Guide. As well as, documents Respondent Vogin clients believed substituted the Buyer's Guide didn't amount to a legitimate defense. The affidavit didn't attest to substitute documents, it attested to Vogin's clients having affixed the FTC Buyer's Guide, which implies they had actual proof of said document. Nevertheless, Respondent Robreno intentionally allowed the continuous delaying of the matter to see to it that, my damages got reduced to as minimal an amount as possible. Also, where Respondent Robreno construed the Buyer's Guide other than by what the Federal Trade Commission intended, eviscerated the purpose of **16 C.F.R. 455**. Moreover, the affiant was not an eyewitness when I came onto the lot to see what vehicle I would purchase, this shows he couldn't know if an FTC Buyer's Guide was affixed. See **Colman v. Grandma's Place, Inc**, 63 So.3d 929, 932 (Fla. 4th DCA 2011). Still, Respondent Robreno instead of holding Respondent Vogin clients to their proof, he enabled the truth to be evaded as if the court wasn't capable of going beyond the pleadings. Ultimately, the arbitration panel in one day found that, there was no evidence to deny my UTPCPL claims, which means the Buyer's Guide claim should have been granted. It is also unclear, why I never received my property (2007 Lexus ES 350)

back, UTPCPL violations were found and my property wasn't returned. There is no lawful justification for these actions, it was Respondents Robreno and Vogin's scheme to deliberately delay the matter that I might suffer a hardship (eviction).

By making it appear the court had valid reasons to deny my filings, while from the beginning my claims were supported by the law and the facts, defrauded the judicial system. See **Rita v. United States**, 551 U.S. 338, 358 (2007) ("Judicial decisions are reasoned decisions. Confidence in a judge's use of reason underlies the public's trust in the judicial institution."); **McMunn v. Memorial Sloan-Kettering Cancer Center**, 191 F. Supp. 2d 440, 445 (S.D.N.Y. 2002) ("a fraud upon the court occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense."); **Hazel-Atlas Glass Co. v. Hartford Empire Co.**, 322 U.S. 238, 245-46 (1944) ("deliberately planned scheme to present fraudulent evidence constitutes fraud upon the court."). *Emphasis added.* Respondent Robreno, made a knowing decision to purposely delay the matter, wastefully mishandled judicial resources (arbitration hearing) and, time which impaired the presentation of my civil case.

2. WHERE JUDGE EDUARDO ROBRENO KNOWINGLY INTERFERED WITH THE ADMINISTRATIVE PROCESS TO KEEP ME FROM EXPOSING RESPONDENTS (VOGIN AND ROBRENO'S) AGREEMENT TO CAUSE THE IMPARTIAL FUNCTION OF THE JUDICIARY TO BE CORRUPTED

It is established that, a Judge has no power to interfere with, the administrative filing of legal papers presented by a party unless, there is a lawful reason for such. Where Respondent Robreno, despite seeing he was an adverse party to my preliminary injunction, fashioned a reason in order to retain jurisdiction of my filing instead of, returning my filing to the clerk's office. Had my filing been allowed to go through the appropriate administrative channels for the assignment of civil cases, clearly it would have been assigned to a court other than Respondent Robreno's. And no valid reason existed for the clerks to exercise discretion and, decide to file my injunction in connection with my C.A. No. 19-4159. Respondent Robreno being alerted of my preliminary injunction by way of being served with such, directed the clerks to docket my complaint under Civ. Act. No. 19-4159. See

Eliahu v. Jewish Agency for Isr., 919 F.3d 709, 714 (2nd Cir. 2019) ("absent extraordinary circumstances, such as a demonstrated history of frivolous and vexatious litigation, a court has no power to prevent parties from filing legal documents authorized by the federal rules.").

In a footnote, Respondent Robreno claimed I was really trying to file a recusal motion which, a recusal and an injunction are similar but, an injunction can be filed together with an independent action. A recusal motion cannot be filed until a mandatory obligation or right is found to exist, while an injunction is discretionary. Even still, it was not Respondent Robreno's place to determine how my filing should be designated. However, in order to shield the "fraud upon the court" the matter needed to remain under his jurisdiction; further, there was no consideration of whether I was under a filing restriction. Whatever the case, it was clear, my matter wasn't going to be allowed to be reviewed by a Judge other than Respondent Robreno. Although, an obligation existed which required Robreno to determine, whether my injunction went through the proper channels and was properly before him, if not, his actions amounted to judicial misconduct. No reasonable legal explanation is provided as to why, my matter should be construed as, a recusal motion as opposed to an injunction. Especially given, the claim involves not only himself but, also, opposing counsel where a recusal motion is addressed only to a Judge. Clearly, my injunction wasn't a recusal motion.

And it was made plain in the injunction that, Respondent Robreno would be implicated in, the "fraud upon the court" claim; the tone of my allegation should have put him on notice it wasn't a request for recusal. See **Code of Conduct for United States Judges: 3 (B)** *Administrative Responsibilities-*

> **(1)** "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:
>
> **(d)** the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is:
>
> **(i)** *a party to the proceeding, or an officer, director, or trustee of a party*;
>
> **(ii)** acting as a lawyer in the proceeding;
>
> **(iii)** *known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or*
>
> **(iv)** *to the judge's knowledge likely to be a material witness in the proceeding.*"

Respondent Robreno could have, applied a liberal construction to my injunction and, interpreted it in a broader sense than a disguised motion for recusal. See **Thomas-Warner v. City of Phila.**, No. 11-5854, 2011 WL 6371956, at *4 (E.D. Pa. Dec. 20, 2011) ("Thus, even if a pro se plaintiff's claims are not set out in the clearest fashion, the Court is obligated to discern all the possible claims that the Plaintiff may be alleging."). Such action, however, would only be appropriate if the court actually had lawful jurisdiction of the matter, not having moved through the normal channels of assignment such jurisdiction was absent. By keeping my filing from being assigned to a courtroom, other than Respondent Robreno's courtroom, I was denied substantial due process; I had the right to an impartial tribunal. See **United States v. Sciuto**, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause."). Also, as clerks of the court know, they do not possess discretion to file as they see fit, filings submitted for docketing by party litigants. What then would cause federal court clerks, to interfere with my filing for an injunction against Respondent Robreno, given they have no personal stake in the matter being assigned to a different courtroom. And, even if the clerks were acting of their own accord, Respondent Robreno wasn't required to retain my injunction filing as, he knew how it made it to his courtroom. That is, as a claim that should have been interpreted and filed as an independent matter, but being there was no review on my motion by way of fraud, it remained unacted upon. Procedurally, this had the effect of nullifying the courts "inherent powers" they possess, when the court needs to address without delay, conduct which defiles the judicial integrity. See **Weese v. Schukman**, 98 F.3d 542, 552 (10th Cir. 1996) ("It is thus fraud where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function — thus where the impartial functions of the court have been directly corrupted."). *Emphasis added.*

Therefore, intentionally not recognizing for corrupt reasons, my filing which designated Robreno as a defendant and, not a respondent made known his purpose. Likewise, I only sought to enjoin Respondent Robreno from presiding over, the "fraud upon the court" claim, so truly, it couldn't be labeled as a recusal motion. There was obstruction regarding, me trying to file an independent "fraud upon the court" action, which without actually having been filed, it was nothing to base a recusal motion on. It is unfortunate that, as a pro se litigant trying to keep within the bounds of the law and, federal rules of civil procedure I would face such conduct by officers of the court. Painstakingly, their conduct showed a persistent display of disregard for my rights, the integrity of the courts and, the respect owed to the public trust. In this matter, this Court's intervention is necessary as the circumstance of judicial interference which amounted to judicial misconduct, particularly during a civil trial undermined the truth-finding process.

Certainly, the cornerstone of our legal system is the guarantee of due process, ensuring that all parties are treated fairly and impartially. Judicial misconduct, such as bias or prejudgment by the presiding judge, denies litigants their right to a fair trial ultimately compromising the pursuit of justice. Thus, it becomes imperative for a higher court to intervene and, rectify the situation to protect the fundamental principles of due process which have been impaired. See **Caperton v. AT Massey Coal Co., Inc.**, 129 S.Ct. 2252, 2259 (2009) ("It is axiomatic that a fair trial in a fair tribunal is a basic requirement of due process."). The actions of an errant judge must be, remedied to ensure that, decisions are made in accordance with the law and, not influenced by personal beliefs or extraneous considerations. It cannot be said, Respondent Robreno's actions were based on conduct upholding the rule of law or, safeguarding the perception of impartiality. Especially, when Robreno exhibited biasness, failed to allow proper presentation of evidence and, restricted the rights that afford protection during trial proceedings. Again, being already at a disadvantage as a layman, and then to have "fraud upon the court" and "judicial misconduct" infect the trial, makes for a grave miscarriage of justice. It is therefore crucial, this Court intervene and uphold the rule of law which reinforces the principle that, no man is above the law not even a judge. ***Id.*** The erosion of the public trust, is corrected by not only seeing to it that justice be done, but also, when justice is seen to be done. See **In re Murchison**, 349 U.S. 133, 136 (1955) ("justice must satisfy the appearance of justice."). If, Respondent Robreno is free to do as he pleases, without resort to applicable law in accordance with the facts and, regardless of limited judicial authority the Federal Rules of Civil Procedure are for naught. *Emphasis added.*

What shall become of the right to an impartial trial where, a judge can conspire with an attorney in furtherance of an agreement to do the other party harm through fraud. And when the parties guilty of such unethical and, corrupt conduct shield their unlawful acts from, the discovery of a reviewing court. Presumptively, the intent was to, also, interfere with the higher courts' jurisdiction which as a result, forever seals the injured party's fate. This is what transpired but clearly, it is not what this Court should allow, where no reason existed for the clerk or the court to obstruct my filing. I expressed it was to be filed as an independent action where, the clerk told me there was no error in filing my injunction in connection with my C.A. No. 19-4159. Since my motion requesting Robreno to, liberally construe it as a **FRCP Rule** 60 (d)(3) motion wasn't acted on, I sought by injunction to stop Robreno from combining all the matters under one hearing. The issues were too complicated to be adjudicated within, a hearing designed to address Respondent Vogin's, motion to strike my arbitration rejection letter. As well as, both matters were addressing serious concerns pertaining the proceedings possibly being compromised. Also, where the

conduct may have been meant to block my chances of, establishing monetary damages that could've initiated an early settlement. See **Pfizer v. Lord**, 456 F.2d 532, 539 (8th Cir. 1972) ("The trial judge in a federal court is not a mere presiding officer. It is his function to conduct the trial in an orderly way with a view to eliciting the truth, and to attaining justice between the parties. It is his duty to see that the issues are not obscured, that the trial is conducted in a proper manner, and that the testimony is not misunderstood by the jury, to check counsel in any effort to obtain an undue advantage or to distort the evidence.").

Respondent Robreno, did not possess the authority to interpret my injunction as a recusal motion without, allowing me to interject what my intentions were behind, filing the injunction. Moreover, Respondent Robreno refused to exercise this same authority of applying, a liberal construction to my other motion, not construing it as a **Fed. R. Civ. Pro., Rule** 60 (d)(3) motion. Respondent Robreno neither provided a ruling concerning the merits of either the "fraud upon the court" claim or, the preliminary injunction, which in turn denied me due process. See **Garner v. Louisiana**, 368 U.S. 157, 173 (1961) ("there is no way by which an appellate court may review the facts and law of a case and intelligently decide whether the findings of the lower court are supported by the evidence where that evidence is unknown. Such an assumption would be a denial of due process."). *Emphasis added.*

In summary, when a court commits judicial misconduct during a civil trial, the intervention of a higher court becomes necessary to preserve due process, maintain the appearance of justice, protect individual rights, correct procedural irregularities, and uphold the rule of law. By rectifying the misconduct and ensuring a fair resolution of the proceedings, the higher court plays a pivotal role in restoring justice and maintaining the public's confidence in the legal system.

C. NO ADEQUATE REMEDY AT LAW

Fraud on the court is analogous to the adage, "***Cheating is a choice, not a mistake***." Inherently this court and all courts established by Act of Congress may, issue all writs necessary or appropriate in aid of their respective jurisdiction and, agreeable to the usages and principles of law. See **28 U.S.C. § 1651(a)**. Such power of the All Writs Act (AWA) is said to be exercised only under limited circumstances, like when an appeal is an inadequate remedy. See **Ex parte Fahey**, 332 U.S. 258, 260 (1947) ("These remedies should be resorted to only where appeal is a clearly inadequate remedy. We are unwilling to utilize them as a substitute for appeal. As extraordinary remedies, they are reserved for really extraordinary causes."). Also, where petitioners have no other remedies and when subordinate courts

usurp judicial power which removes accountability and the proper functioning of the judicial system. This matter reflects Respondents disobeying the clauses of natural justice plus, their violation of fundamental rights, which are the types of circumstances the AWA is meant to address. See **United States v. New York Telephone Co.**, 434 U.S. 159, 172-173 (1977) ("unless appropriately confined by Congress, a federal court may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it."); **Harris v. Nelson**, 394 U.S. 286, 299 (1969) ("the courts may fashion appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial usage. Where their duties require it, this is the inescapable obligation of the courts. Their authority is expressly confirmed in the All Writs Act, **28 U.S.C. § 1651**. This statute has served since its inclusion, in substance, in the original Judiciary Act as a "legislatively approved source of procedural instruments designed to achieve the rational ends of law.").

The 5th Circuit in **In re McBryde** had the occasion to address, among other things, when there is interference in the judicial process by means other than, the ordinary process intended through its due course. The court analyzed the issue of when, a judge disrupts the normal procedures set in place, as well as, whether the AWA could issue absent a conferred statutory jurisdiction. In the latter the court concluded that, it lacked authority to issue a preemptory writ, as to the former question the court declared that it was, an issue within the limits of the AWA. See **In re McBryde**, 117 F.3d 208, 223 (5th Cir. 1997) ("Nevertheless, his interest in deciding those cases free from the specter of interference, except by the ordinary process of appellate review, is one that Congress might constitutionally recognize and protect without running afoul of the limits of Article III."). Without the issuance the extraordinary writ of prohibition, I have no other adequate remedy, the ordinary course has been breached and encroached upon. And, despite the fact that, the AWA is not a substitute for an appeal; it empowers courts to probe into both present and, future proceedings as well as previously issued judgments. It is Respondents hope that, their scheme of interfering with, the orderly and effective functioning of the court will go uninvestigated or corrected. However, their conduct can only evade review if, the matter doesn't meet the requirements to issue the writ under the AWA or, this Court's historic inherent powers. Given I wasn't the only one affected, but so was the justice system, and the public, I believe it is incumbent upon this Court to issue the writ.

The reasons I am petitioning this Court to investigate are, the unlawful intentional acts by officers of the court, aimed at defrauding the core of the justice system. It was a plan to subject me to arbitration, and it was a plan to deny my arbitration award rejection, the new rule didn't apply to everybody only those filing by electronic means. First, my use of the PACER system was suspended which limited me to, having to physically go to the courthouse and view documents and file motions. Secondly, I objected to

being held to the means of electronic filing, I was still going to the courthouse to docket my filings. Third, the three-day mail rule still applies to documents, sent by First Class U.S. Postal Mail, but as throughout the proceedings, Robreno found in favor of Respondent Vogin. Still, it doesn't appear that, an appeal which addresses errors made under faulty legal determinations, makes an adequate remedy for intentional fraud. Moreover, I petitioned the Third Circuit court of appeals for mandamus relief, which they denied, yet, I'm now having to petition this Court concerning biasness I previously alleged. I don't feel my petitioning the Third Circuit would be free from prejudice, especially after experiencing, the clerks of court exercising discretion in docketing my filing. Unfortunately, I do not believe I can get impartiality in the related proceedings, if remanded back to the Third Circuit to proceed. I have faced many obstacles in the past with my filings at 601 Market St., Phila., PA 19106, and it would trouble me having to litigate in this same federal courthouse.

Whether a remedy is considered available where, the integrity of the court was defiled and where, had I filed there first instead of in the U.S. Supreme Court, my matter would have probably been obstructed again. Where by way of judicial misconduct and "fraud upon the court," my civil case was unreasonably delayed plus, made to seem as if my claims had no merit. At every instance, Respondent Robreno stalled relief for meritorious claims through purposely applying inapplicable law and, accepting false evidence. Respondent Robreno purposely didn't investigate the "fraud upon the court claim" as he knew he was going to grant Respondent Vogin's motion to strike. In granting Respondent Vogin's motion to strike, this resultingly extinguished my right of appeal because allegedly, I didn't act within thirty days. Legally, there wasn't any reason to leave, the "fraud upon the court" claim for the jury, which makes clear Respondent Robreno's awareness of such fraud. Neither is this allegation farfetched where, Respondent Robreno allowed Defendants to both falsely allege, they had evidence and then alleged, their lack of such evidence was harmless. Consequently, my having already undergone an unreasonable delay, subjection to further delay where there has been intentional fraud, equates to continuing the fraud. And why should this matter now, be made to go through, the normal channels when, the normal functioning of the proceedings were sabotaged. See **Root Roofing Co. . v. Universal Oil Products Co.,** 169 F.2d 514, 522 (3d Cir. 1948) ("It would, moreover, be to say that even in a case where the alleged fraud was on the Circuit Court itself, the relevant facts as to the fraud were agreed upon by the litigants, and the Circuit Court concluded relief must be granted, that Court nevertheless must send the case to the District Court for decision. Nothing in reason or precedent requires such a cumbersome and dilatory procedure."). *Emphasis added.*

Even though there is not an appeal pending in this matter, such doesn't deprive the Court of issuing the writ. In protecting the fundamental rights of petitioner, and keeping central the judicial authority to resolve and settle disputes, the jurisdiction of this Court remains effective. Which is the aim and purpose of the AWA, while being eliminated are methods that unlawfully frustrate, use of the AWA. The process the writ of prohibition is concerned with is, ensuring a matter can progress from the lower courts, to the U.S. Supreme Court. Whereas, here, in the present matter, this Court's jurisdiction being usurped by reason of the Respondents unlawful conduct should trigger the AWA. Being a pro se litigant without, the aid of an attorney, creates a sizable hurdle whereby I've been wrongfully forced into, seeking issuance of a prohibition. Such a situation unfairly burdens me as the pleading requirements set for invoking the AWA differs drastically from seeking direct review. Yet, even when that direct review is not of the present moment, the AWA can still be available. See **FTC v. Dean Foods Co.**, 384 U.S. 597, 603 (1966) ("Chief Justice Stone stated that the authority of the appellate court is not confined to the issuance of writs in aid of a jurisdiction already acquired by appeal, but extends to those cases which are within its appellate jurisdiction although no appeal has been perfected."). *Emphasis added.*

Moreover, it doesn't serve or promote the interest of justice if, the misconduct Respondents committed deprives the judicial system of achieving its intended goal. And despite the fact that, it may displease the courts to have a judge become a Defendant or Respondent, certain conduct justifies such. Being it was a scheme to cause me anguish and, attempting to hide such from collateral review, qualifies this as a miscarriage of justice. I would have filed this petition for an AWA sooner, however, dealing with an eviction caused me and my wife numerous problems. Consequently, the perception painted for the public that, although officers of the court committed fraud, there exist no power for redress runs afoul. Therefore, it is my prayer this Court exercise its discretion, and restore the important fundamental framework that great law is built upon. A number of serious issues remain unreviewed in this system, which is supposed to be known for, providing fair constitutional decisions. Or, are pro se litigants not entitled to, all the available safeguards in place to protect the integrity of the judicial system. Certainly, such a question deserves an answer by this Court, where there was never any logical reason given for the actions of Respondents. See **Chambers v. Nasco, Inc.**, 501 U.S. 32, 43 (1991) ("It has long been understood that certain implied powers must necessarily result to our Courts of justice from the nature of their institution, powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others."); **Klay v. United Healthgroup, Inc.**, 376 F.3d 1092, 1100 (11th Cir. 2004) ("Thus, while a party must state a claim to obtain a traditional injunction, there is no such requirement to obtain an All Writs Act injunction — it must simply point to some ongoing proceeding, or some past order or judgment, the integrity of which is being

threatened by some action or behavior.").

Even if Respondents allege, no proceedings are before any court, let us be clear that "fraud upon the court" and, "judicial misconduct" are the reasons for this. Plus, notwithstanding that it may appear, the proceedings were ended at my behest, which is unquestionably exactly what Respondents want this Court to believe. The question then would be, with my matter being ended May 24, 2023, could this Court exercise jurisdiction and grant my request for the AWA. It is my position, the Court does have the authority to issue the writ and look beyond the dismissal of the matter, especially under the circumstances presently before the Court. Whether this Court will, exercise its discretion, is entirely within whatever limits are imposed by the Courts inherent powers, as well as the AWA. See **In re Tennant**, 359 F.3d 523, 529 (D.C. Cir. 2004) ("Once there has been a proceeding of some kind instituted before an agency or court that might lead to an appeal, it makes sense to speak of the matter as being within our appellate jurisdiction — however prospective or potential that jurisdiction might be."). *Emphasis added.*

CONCLUSION

Matters not in conformity with the rule of law and which are not free from fraud and judicial misconduct, precisely are, the kinds of extraordinary situations the AWA proposes to confront therefore; if Respondent Vogin is guilty of fraud upon the court, and Respondent Robreno is guilty of judicial misconduct, why should the matter be subjected to a lengthy appeal process where relief is clear and, the integrity of the court and the trust of the public including my fundamental right to a fair civil trial needs to be restored requiring the Court to address the miscarriage of justice through issuing a Writ of Prohibition.