ORIGINAL

No. 23 – 596

In the Supreme Court of the United States

YOSEPH YADESSA KENNO,
Petitioner,

v.

COLORADO GOVERNOR'S OFFICE OF INFORMATION TECHNOLOGY, ET AL.,
Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

1. Whether the Lower Courts violated Supreme Court precedents governing pro se pleading by construing my pro se Rule 59(a) motion expressly seeking a new trial, as a motion to alter or amend judgment under Rule 59(e), based solely on the motion's title.

2. Whether the Tenth Circuit's affirmation of the District Court's failure to apply any discernable Rule 59(a) standards to my Rule 59(a) motion: (a) deprives other pro se litigants of Rule 59(a)'s intended protections, (b) creates a circuit split, (c) exacerbates an existing circuit split.

3. Whether deliberately withheld evidence produced after a non-jury trial, but before final judgement, qualify as newly discovered evidence for the purposes of Rule 59(a) or (e) motions, when the disclosures occur subsequent to the District Court's post-trial decision(s) denying the admission of any newly discovered evidence.

4. Whether the District Court imposed unreasonable burdens under Rule 59(e) by faulting me for not moving to reopen the record to admit newly discovered evidence after trial, when the District Court itself had categorically barred the admission of newly discovered evidence.

5. When a governmental entity defendant deliberately conceals the existence of highly probative electronic evidence until after trial, and then refuses to disclose this evidence, at what point does withholding such vital digitized materials infringe upon a litigant's constitutional due process rights, and necessitate a new trial in the pursuit of justice?

6. Whether the District Court's one-sided discovery rulings denying my expert meaningful access to Respondents' electronic records while allowing Respondents' experts unfettered access to mirror images of my personal devices

violated my due process rights.

7. Whether the District Court abused its discretion by disregarding Respondents' spoliation of evidence while imposing an unprecedented Rule 37(c) sanction against me for disclosing evidence that the District Court itself determined was compelling.

Parties To The Proceeding

I, Yoseph Yadessa Kenno, was the plaintiff in the District Court and appellant in the Tenth Circuit.

Respondents Colorado's Governor's Office of Information Technology, Lyubov Logacheva, Bob McIntyre, and Don Wisdom were defendants in the District Court and appellees on appeal.

Corporate Disclosure Statement

I have no corporate affiliations.

Related Cases

Kenno v. Colorado Governor's Office of Information Technology, No. 1:19-cv-00165-MEH, U.S. District Court for the District of Colorado. Judgment entered on July 2, 2021.

Kenno v. Colorado Governor's Office of Information Technology, Nos. 21-1353 & 21-1434, U.S. Court of Appeals for the Tenth Circuit. Judgment entered on April 17, 2023.

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No. 23 – ____

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I, Yoseph Yadessa Kenno, appearing pro se, respectfully petition this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

Opinions Below

The opinions of the Tenth Circuit court of appeals (App., *infra,* 2a – 29a, 30a) are not published in the Federal Supplement, but the opinion in App., *infra,* 2a – 29a is available at 2023 WL 2967692. The opinions of the District Court (App., *infra,* 30a – 30a, 42a – 81a,) are not published in the Federal Supplement but are available at 2021 WL 4170461 and 2021 WL 2682619, respectively.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C.

1254(1). The Tenth Circuit entered judgment on April 17, 2023. App, *infra,* 2a. My petition for rehearing en banc was denied on May 15, 2023. App., *infra,* 30a. On July 28, 2023, Justice Gorsuch extended the time to file my Petition For A Writ of Certiorari to October 12, 2023. Though I timely filed my Petition, on October 18, 2023, I received a letter from this Court directing me to make corrections, pursuant to this Court's Rules 12.2, 14.1(i), 33.2, 39, and to refile my Petition by December 15, 2023.

Constitutional Provisions Involved

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law."

Statutory Provisions Involved

Federal Rules of Civil Procedure 37 states in relevant part:

(c) (1) If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.

Federal Rules of Civil Procedure 59 states in relevant part:

(a) The court may, on motion, grant a new trial on all or some of the issues—and to any party—after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(e) A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Statement

Introduction

I was employed by Respondent, Colorado's Governor's Office of Information Technology ("OIT"), from January 2017 to December 2018. App., *infra*, 3a. In January 2019, I initiated a lawsuit against OIT and certain OIT employees ("Respondents"), claiming violations of my rights under the Civil Rights Act of 1964, 42 U.S.C. § 1981, and 42 U.S.C. § 1983 through unlawful discrimination, retaliation, and due process breaches. D. Ct. Doc. 71.

My claims arose from issues involving a Health Savings Account ("HSA"). *Id*, at 5 – 6. As a job benefit, HSAs authorize employers to deduct pre-tax funds from employees' paychecks that are directed into a designated savings account, allowing employees to utilize the accrued amount for qualified medical expenses. 26 U.S.C. § 223. In my case, deductions from my paychecks weren't getting deposited into my HSA, prompting a protracted resolution process. App., *infra*, 45a. After nine months of seeking resolution, on March 19 and 20, 2018, I emailed my supervisor, Respondent Lyubov Logacheva, expressing that the unresolved issues with my HSA amounted to discrimination ("HSA emails"). D. Ct. Doc. 109, at 5 – 6. In April 2018, Ms. Logacheva used my discrimination complaint regarding my HSA as an example of poor communication in my annual performance evaluation. *Id*, at 6 – 7. On June 11, 2018, Ms. Logacheva initiated a performance improvement plan ("PIP") based partly on my HSA discrimination complaint. *Id*, at 8. Subsequently, I filed discrimination charges with the Colorado Civil Rights Division ("CCRD"). App., *infra*, 43a. On July 10, 2018, one-month after I was given a PIP, I was subjected to an administrative leave—marking the culmination of my employment with OIT. App., *infra*, 48a.

Pre-trial proceedings

When litigation started, Respondents initiated a motion for sanctions, asserting that the HSA emails were fabricated. D. Ct. Doc. 101, at 6 – 12. Respondents contended that a version of the HSA emails that I allegedly provided to the CCRD raised suspicions. App., *infra,* 42a. Further advancing their arguments, Respondents provided a sworn statement from a CCRD investigator, Ms. Megan Bench, claiming inaccuracies in the recipient designation of the HSA emails I allegedly provided to her. App., *infra,* 7a. Additionally, Respondents alleged that I tampered an audio recording with a co-worker. D. Ct. Doc. 101, at 15 – 16.

I denied Respondents' allegations. D. Ct. Doc. 109. I argued that the documents Respondents have alleged were fabricated and manipulated originated from disclosures provided by the Respondents themselves, pursuant to the Colorado State Personnel Board Rule 6-10.[1] App., *infra,* 48a ¶ 37, 71a. This rule obliges state agencies to inform employees facing potential disciplinary actions of the reasons and underlying sources, prior to termination. Colo. Code Regs. § 800-6. Accordingly, while on administrative leave and anticipating potential dismissal, I sought emails from OIT to address their reasons for termination. On August 3, 2018, Mr. John Bartley, OIT's Senior HR employee, provided me with various documents, including emails and audio recordings via a Google Drive[2] folder ("August 2018 Disclosures"). App., *infra,* 48a ¶ 38. See also D. Ct. Doc 235, Exhibit 3 at 17:13 – 16. After termination, my access to the August 2018 Disclosures continued into the lawsuit's

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[1] Before initiating a lawsuit in federal court, I appealed my termination to the Colorado State Personnel Board. D. Ct. Doc 71, at 18 – 27.

[2] Cloud-based storage of files from Google.

discovery stage, at which point, I relayed the contested documents from the August 2018 Disclosures to my attorneys. D. Ct. Doc 116, at 17:15 – 21. However, once the Respondents discerned the origin of the alleged fabricated documents, they terminated my access to the August 2018 Disclosures. D. Ct. Doc 172, Exhibit 2, at 10 & n.24 ("...access to the link Mr. Bartley had shared was removed"). Simultaneously, Respondents argued that the HSA emails and the audio recording with my coworker were not disclosed in the August 2018 Disclosures. *Id.*

Deprived of the August 2018 Disclosures, my claims and defenses pivoted on computers issued to me and Ms. Logacheva by OIT. D. Ct. Doc 164, at116 – 120. Most critical was my OIT-issued laptop, which housed pertinent emails and audio recordings, including all documents from the August 2018 Disclosures. D. Ct. Doc 164, at 98. The critical nature of the files stored on my OIT issued laptop were evident, in that, when Respondents sought access to my personal devices during discovery, they cited documents backed-up from my OIT-issued laptop. D. Ct. Doc 66, at 1. Thus, acknowledging the evidentiary import, my OIT-issued laptop was initially preserved in a "secure drawer" upon its return to OIT. D. Ct. Doc 235, Exhibit 6 at 86:23 – 25. However, when Respondents became aware of the evidence stored therein, they either erased and/or shredded the hard drives of those computers. D. Ct. Doc 109, Exhibit 12. Notably, this action stood in contrast to Respondents' previous routine practice of preserving computers issued to former employees who had initiated lawsuits. D. Ct. Doc 164, at 155 – 156.

Despite destroying relevant computers, Respondents argued that OIT's Google Vault system[3] had preserved all emails sent and received throughout my employment. D. Ct. Doc 148, at 235 ¶ 3. Additionally, Respondents asserted that OIT's Google Vault had preserved OIT-issued Google Drives, which, according to Respondents, safeguards relevant documents that might otherwise be vulnerable to deletion from employees' computers. D. Ct. Doc 164, at 113 – 114. Respondents supported this assertion with a deposition, conducted pursuant to Colorado Rules of Civil Procedure 30(b)(6), stating that OIT's Google Vault had preserved OIT-issued Google Drives of at least 11 employees, including mine. D. Ct. Doc 148, at 47.

Indeed, OIT-issued Google Drives contained crucial evidence due to explicit instructions given by OIT officials directing employees to save relevant documents for this lawsuit therein. D. Ct. Doc 148, at 182. See also D. Ct. Doc 235, Exhibit 6 at 90:24 – 91:25. Hence, my OIT-issued Google Drive housed over 170,000 emails and 3,000 documents. D. Ct. Doc 148, at 192 ¶ 3. Consequently, Respondents posited that the preservation of OIT-issued Google Drives within OIT's Google Vault would offer a parallel trove of relevant material. D. Ct. Doc 164, at 113 – 114. Concurrently, however, Respondents claimed the OIT-issued Google Drives that were supposedly preserved in OIT's Google Vault did not contain the HSA emails, and further denied possessing any audio recordings. D. Ct. Doc 148, at 235 ¶ 3. See also D. Ct. Doc 176, at 401:18 – 19. Respondents also denied the existence of automatic email deletion mechanism in OIT's

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[3] Google Vault is a cloud-based information governance and eDiscovery platform. App., *infra,* 43a – 44a.

Google Vault. App., *infra,* 43a.

To counter Respondents' allegations and verify their assertions, per my expert's affidavit found in D. Ct. Doc 109, Exhibit 13, I diligently strived to obtain direct access into OIT's Google Vault and its associated audit logs during discovery. However, Respondents opposed all of my discovery efforts. D. Ct. Doc 164, at 60, 62, 63, 77, 86, 106, 107. Concurrently, Respondents raised new allegations of misconduct against me by claiming that I had hacked into OIT's Google Vault and orchestrated the planting of emails using a fraudulent domain. D. Ct. Doc 187, Exhibit 14, at 2 ¶ 4. See also D. Ct. Doc 235, Exhibit 4, at 6:13 – 7:2. After hearing Respondents' newest allegation, the Colorado State Personnel Board denied my discovery motions to inspect OIT's Google Vault. *Id,* at 33:12 – 13. Left with few alternatives, I then sought the District Court's intervention to facilitate forensic examination of OIT's Google Vault.[4] D. Ct. Doc 113, Doc 116, Doc 159.

Despite being represented at the time, I took it upon myself to beseech the District Court to authorize direct access for my expert to conduct a forensic examination of OIT's Google Vault. D. Ct. Doc 159, at 25:20 – 26:4. My primary aim in seeking forensically examination of OIT's Google Vault was to locate and examine the August 2018 Disclosures. D. Ct. Doc 116 at 17:15 – 18:16. Additionally, I wanted my expert to directly inspect email accounts and Google Drives issued to me and Ms. Logacheva. D. Ct. Doc 148, at 49 and 86. Furthermore, direct examination was crucial because Google Vault preserves email drafts, which

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[4] The District Court's rules don't allow the filing of Motions to Compel unless leave is granted. D. Ct. Doc 69. Rather, litigants must request discovery hearings. *Id.*

will explain the various versions of the HSA emails. App., *infra,* 17a. However, the District Court denied all of my pre-trial discovery motions. App., *infra,* 18a ("the district court ruled...Kenno's expert could not access the Google Vault..."). In the end, I resorted to pleading with the Respondents. D. Ct. Doc 149, Exhibit 3, at 00:25:26 – 00:26:52.

Despite denying all of my pre-trial discovery motions, the District Court hinted at the possibility of considering future discovery motions regarding OIT's Google Vault. D. Ct. Doc 116, at 26:24 – 27:2. Consequently, during the hearing on Respondents' sanctions motion, my attorney asked the District Court if it would admit newly discovered evidence post-trial, if a subpoena served on Google produces concealed evidence. D. Ct. Doc 176, at 422:11 – 17. Initially, the District Court indicated a positive stance. *Id,* at 422:18 – 20. As such, after serving a subpoena, when Google sought Respondents' consent pursuant to the Stored Communications Act, which Respondents refused to provide (D. Ct. Doc 188, at 75 – 83), my attorney moved for an additional discovery hearing before the District Court. D. Ct. Doc 159. During a subsequent discovery hearing, the District Court reversed its earlier stance about admitting newly discovered evidence after trial. *Id,* at 54:8. Unfortunately, the aforementioned inexplicable reversal on an earlier decision was not an isolated occurrence for the District Court in this case.

For example, before trial on Respondents' sanctions motion, the District Court was open to appointing an independent master to handle discovery disputes regarding OIT's Google Vault. D. Ct. Doc 116, at 25:10 – 12. However, when I expressed interest in the Court's offer to appoint an independent master, the District Court reversed course and denied my motion. D. Ct. Doc 159, at 29:17 – 18. Notably, this decision contrasted with the District Court's practice of appointing an independent master to address

discovery disputes in similar cases to mine. See EEOC v. Original-HoncyBaked Ham Co., No. 11-cv-02560-MSK-MEH, D. Colo. Nov. 7, 2012.

Ultimately, the District Court's denials of my pre-trial discovery motions starkly contrasted with its decisions on Respondents' discovery motion, where they sought access to my personal devices (D. Ct. Doc 66), after which, the District Court granted carte blanche access to all files on mirror-images of my family's laptop and personal cellphone. D. Ct. Doc 201, at 25:17 – 18 ("pull off whatever they pull off"). The District Court did so despite vehement objections from my attorneys. *Id*, at 1 – 11.

During the trial on Respondents sanctions motion, the District Court's repeated denials of my discovery motions enabled Respondents to use cherry-picked documents from OIT's Google Vault. D. Ct. Doc 175 at 129:19 – 130:3. Meanwhile, I had no one to testify on my behalf regarding OIT's Google Vault, or the contents therein. See my Opening Brief, Pet. C.A. Br., Kenno v OIT et al., No. 21-1434, Tenth Circuit (Filed on February 25, 2022), at 20 ¶ 2. Yet, in deciding Respondents' sanctions motion, the District Court heavily relied on OIT's Google Vault to dismiss my claims. App., *infra,* at 43a – 44a, 73a – 73a.

Post-trial proceedings

After trial on Respondents' sanctions motion, it was revealed that the District Court's pre-trial discovery decisions had emboldened Respondents to withhold vital evidence. D. Ct. Doc 150. Remarkably, upon being apprised of Respondents' actions in withholding relevant evidence, during the course of two separate post-trial hearings, the District Court decided that none of Respondents' willfully concealed evidence would factor into its decision on their sanctions motion; nor would any of it be admitted. D. Ct. Doc 133, at 24:15. See also D. Ct. Doc 159, at 54:8. This decision was

made over objections lodged by my attorney. *Id*, at 54:18 – 55:2. Moreover, the District Court pre-emptively determined that Respondents' concealed evidence would be inconsequential, and that no-one was conspiring against me. D. Ct. Doc 133, at 16 – 20. Consequently, following the dismissal of my claims, I timely filed a pro se Rule 59(a) motion. D. Ct. Doc 148 (amended in Doc 150).

In my Rule 59(a) motion, I highlighted the newly discovered evidence that Respondents withheld, thus causing the District Court to rely on the testimony and sworn statements of key witnesses for the Respondents in dismissing my claims. *Id*, at 1. Among the key witnesses the District Court heavily relied-upon was Mr. Lilo Santos, OIT's Director of Google Operations. App., *infra*, 43a – 44a, 52a – 53a, 62a – 63a. During the trial, Mr. Santos testified that all emails I sent and received while I was employed by OIT have been preserved in OIT's Google Vault. D. Ct. Doc 175, at 192:4 – 12 and 213:6 – 22. See also D. Ct. Doc 148, at 235 ¶ 3. Specifically, Mr. Santos identified "Kenno 6-15-2018" as the binding Google Vault Matter[5] designated to preserve emails. D. Ct. Doc 148 at 38. See also D. Ct. Doc 175 at 202:11 – 12 (a replay of Mr. Santos' searches inside of "Kenno 6-15-2018").

Given the critical nature of "Kenno 6-15-2018," before the trial, Respondents produced blank audit logs from OIT's Google Vault. App., *infra*, 19a. The Respondents then used the blank audit logs to assert the absence of tampering in "Kenno 6-15-2018." D. Ct. Doc 235, Exhibit 1, at 253:5 – 8. However, when Respondents disclosed the concealed audit logs for "Kenno 6-15-2018," it showed Mr. Santos had

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[5] Google Vault Matters are designated repositories of emails, documents, and instant messages.

falsified "Kenno 6-15-2018," by backdating it, in order to create the appearance that all of my OIT emails, as well as Ms. Logacheva's, had been preserved. D. Ct. Doc 150, at 3. Apparently, by Respondents' post-trial admissions, before being fraudulently backdated, "Kenno 6-15-2018" had only preserved emails between May 31 and June 15, 2018, which did not include the HSA emails sent in March 2018. D. Ct. Doc 153, at 7. Most shocking of all, Mr. Santos falsified "Kenno 6-15-2018" on the advice of Respondents' counsels.[6] D. Ct. Doc 153, at 9 & n.5.

The withheld audit logs for "Kenno 6-15-2018" further showed that Mr. Santos had committed perjury concerning preservation of OIT-issued Google Drives. D. Ct. Doc 150, at 11. *Supra,* at 6 (discussing the critical nature of OIT-issued Google Drives). Specifically, in a pre-trial 30(b)(6) deposition, Mr. Santos identified "Kenno 6-15-2018" as the binding Google Vault Matter designated to preserve OIT-issued Google Drives, in addition to emails. D. Ct. Doc 148 at 38. Yet, by Respondents post-trial admissions, "Kenno 6-15-2018" did not preserve any OIT-issued Google Drives. D. Ct. Doc 133, at 10:9 – 11. Furthermore, disclosures of additional concealed audit logs showed Mr. Santos had withheld the existence of another Google Vault Matter, one he himself created. *Id,* at 9:6 – 23. See also D. Ct. Doc 150, at 11 ¶ 80. Most disturbingly, during 30(b)(6) depositions, while falsely maintaining "Kenno 6-15-2018" was the only Google Vault Matter, Mr. Santos was simultaneously conducting searches inside of yet another undisclosed Google

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[6] I've since filed complaints for disbarment against Respondents' counsels. D. Ct. Doc 235, Exhibit 7. Respondents' counsels' retaliation can be seen in D. Ct. Doc 235, Exhibit 8.

Vault Matter. D. Ct. Doc 153, Exhibit C, Rows 51 – 64.

Regrettably, the discrepancies also extended to Mr. Santos testimony about a fraudulent domain that was allegedly used to plant emails into OIT's Google Vault. D. Ct. Doc 175, at 197:3 – 201:8. Prior to trial, Google identified Mr. Santos as the owner of the fraudulent domain. D. Ct. Doc 148, at 145. Despite this revelation, in a sworn affidavit, Mr. Santos denied any knowledge. App., *infra,* 15a. See also D. Ct. Doc 101, Exhibit 16. Mr. Santos claimed ignorance about emails from the fraudulent domain, until after I allegedly implicated myself by requesting searches with unrestricted date range on December 9, 2020. *Id,* at 2. Yet, the concealed audit logs from "Kenno 6-15-2018" revealed that Mr. Santos had conducted at least two searches with unrestricted date range on December 4, 2020 (five days prior to December 9), which meant Mr. Santos' claimed ignorance about emails from the fraudulent domain could not possibly be true.[7] D. Ct. Doc 148, Exhibit 2, Rows 2996 – 3002.

The concealed audit logs for "Kenno 6-15-2018" further uncovered that the fraudulent domain was created just one day before Mr. Santos falsified "Kenno 6-15-2018." D. Ct. Doc 148, at 146 (showing the fraudulent domain was created on November 18, 2020, versus D. Ct. Doc 148, Exhibit 2, Rows 2979 – 2980, showing Mr. Santos falsified "Kenno

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[7] Mr. Santos also testified that he did not have any knowledge of the HSA emails until December 9, 2020. App., *infra,* 61a. See also D. Ct. Doc 148, at 275 – 276. However, the concealed audit logs for "Kenno 6-15-2018" showed that Mr. Santos had knowledge of the HSA emails as early as February 2020, evidenced by his searches using the phrase "HSA." D. Ct. Doc 148, Exhibit 2, Rows 2880, 2884, 2884, 2885, 2889, 2892, 2894, 2898, 2900, 2902.

6-15-2018" the next day, on November 19). See also D. Ct. Doc 133, at 15:5 – 8.

After the dismissal of my claims, Respondents disclosed more withheld audit logs that showed, around the time emails were allegedly sent from a fraudulent domain, Mr. Santos was observed as the last individual who accessed my OIT-issued Google Drive. D. Ct. Doc 188, at 218, last row. As previously mentioned, my OIT-issued Google Drive was a critical source of evidence, holding over 170,000 emails. *Supra,* at 6. The substantial data stored therein amounted to 124 Gigabytes. D. Ct. Doc 148, at 192 ¶ 3. Shortly after Mr. Santos accessed my OIT-issued Google Drive, all of the over 170,000 emails therein were anonymously deleted. D. Ct. Doc 188, at 211 – 217. Further post-trial examinations of my OIT-issued Google Drive revealed a drastic reduction in size, from 124 to a mere 5 Gigabytes. D. Ct. Doc 133, at 25:10 – 16. Alarmingly, Respondents disclosed this significant detail solely due to the District Court's assurances that it would not adversely affect its decision on their sanctions motion. D. Ct. Doc 133, at 15:12 – 13. Yet, the District Court relied exclusively upon Mr. Santos' one-person investigation regarding Respondents' allegations pertaining to the fraudulent domain in dismissing my claims. D. Ct. Doc 175, at 197:1 – 201:10.

Mr. Santos was not the only key witness that the District Court relied upon in dismissing my claims. The other key witness was Mr. James Karlin.[8] Prior to trial, Mr. Karlin produced blank Google Vault audit logs. App., *infra,* 19a. For the trial, Mr. Karlin's sworn statement asserted that

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[8] Mr. Santos and Mr. Karlin had SuperAdmin privilege – unparalleled administrative control – into OIT's Google Vault. D. Ct. Doc 148, at 34. My expert had no access.

Respondents lacked a mechanism to automatically delete emails. App., *infra,* 43a – 44a. However, after dismissal of my claims, Respondents unveiled additional concealed audit logs. D. Ct. Doc 166, Exhibit 3. These logs showed Respondents' practice of automatically deleting emails started in 2012. *Id,* at Rows 428, 458, 490. Moreover, the same logs revealed that OIT's very-first automatic email deletion policy from 2012 was implemented by Mr. Karlin himself. D. Ct. Doc 166, Exhibit 3, Rows 42 – 43. Furthermore, an email Respondents withheld during trial showed OIT's spokesperson confirming OIT's practice of automatically deleting emails. D. Ct. Doc 172, Exhibit 3. See also D. Ct. Doc 148, Exhibit 7 and D. Ct. Doc 166, Exhibit 70. Yet, the evidence Respondents concealed only gets worse from here.

During the pendency of my Rule 59(a) motion, Respondents admitted to concealing over 2,700 Google Vault Matters. D. Ct. Doc 164, at 162. Within these covertly held Google Vault Matters,[9] a trove of audio recordings that were originally saved to my OIT-issued Google Drive were discovered. D. Ct. Doc 138-2, at 40 – 42. The discovery of audio recordings in Respondents' custody and control contradicted Respondents' categorical denials of possessing audio recordings during trial. D. Ct. Doc 176, at 401:18 – 19. Further scrutiny into these undisclosed Google Vault Matters unearthed additional audio recordings showing my engagements with the State Benefits Office concerning my

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[9] During trial, Respondents produced what they claimed was the last HSA email, sent on March 2, 2018. App., *infra,* 46a. However, searches of "Kenno 6-15-2018" did not locate any emails from March 2, 2018. D. Ct. Doc 134, Exhibit AAA. The March 2, 2018 email was likely located in one of the 2,700 Google Vault Matters concealed by Respondents, which could've also preserved the March 19 and 20, 2018 HSA emails.

HSA – central to the Respondents' allegations that the HSA emails were fabricated. D. Ct. Doc 138-2, at 40. Yet, during the trial, the District Court struck my testimony about audio recordings saved in my OIT-issued Google Drive. D. Ct. Doc 176, at 399:5 – 7 and 401:25.[10]

Despite irrefutable evidence that Respondents had knowingly falsified evidence, committed perjury, withheld relevant evidence, and intentionally tampered with my access to the August 2018 Disclosures, the District Court denied all of my pro se post-trial discovery motions. D. Ct. Doc 190, at 2. My post-trial discovery motions sought relevant audit logs concerning the over 2,700 concealed Google Vault Matters, and related audit logs, which would reveal Mr. Santos' activities related to the fraudulent domain, such as other searches he had conducted prior to December 9, 2020. D. Ct. Doc 157. See also D. Ct. Doc 186. The perplexing nature of the District Court's denials of my post-trial discovery motions is that the District Court had previously ordered the Respondents to produce audit logs from OIT's Google Vault. D. Ct. Doc 128. But the District Court did so before it realized their relevance, which would later be revealed in my Rule 59(a) motion. D. Ct. Doc 150. After my Rule 59(a) motion was filed, underscoring the relevant nature of OIT's Google Vault audit logs, while exposing Respondents'

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[10] During discovery, Respondents denied possessing video recordings that were saved in my OIT-issued Google Drive, including a video where Ms. Logacheva told me to "segregate yourself." D. Ct. Doc 148, at 218 ¶ 1 and at 233 ¶ 4. Then, Respondents alleged that a copy of that video, which I disclosed during discovery, was fabricated. D. Ct. Doc 134, Exhibit FF, at 4. After trial, when Respondents were forced by the District Court to show me the contents of my OIT-issued Google Drive, the same exact video was found in Respondents' custody and control. D. Ct. Doc 149, Exhibit 27.

maleficence, the District Court reversed course and denied disclosure of any more audit logs that could threaten its dismissal order of my claims. D. Ct. Doc 157. The District Court was so adamant about not allowing me equal access to any more audit logs from OIT's Google Vault that it denied my pro se post-trial discovery motion, where I had argued Respondents' audit logs are public documents and therefore should be disclosed, as a "third bite of the apple," effectively denying me access to public records. D. Ct. Doc 190, at 2.

Furthermore, when denying all of my post-trial discovery motions, the District Court's strayed from its routine practice of scheduling a discovery hearing right after discovery disputes arise, as provided in D. Ct. Doc 69. Speifically, upon receiving a post-trial request for a discovery hearing from me concerning the over 2,700 concealed Google Vault Matters, the District Court decided "Any new request for relief from the Court [regarding my discovery disputes] must be in the form of a motion." D. Ct. Doc 145. This special treatment was applicable only to me and me alone, and no other parties in any other case before the same District Court received such a disparate treatment. In contrast, when Respondents filed a post-trial discovery motion, as shown in D. Ct. Doc 219, the District Court promptly scheduled a discovery hearing. D. Ct. Doc 226.

Notwithstanding the overwhelming evidence of record proving the District Court itself obstructed my access to material evidence exposing the truth regarding Respondents' allegations, when denying my Rule 59(a) motion, the District Court shifted the blame. D. Ct. Doc 168, at 4 – 5. The District Court declared that I should have somehow known about Respondents' concealed evidence before the trial on Respondents' sanctions motion even began – an impossible feat since the District Court itself had blocked access to that crucial evidence. *Supra* at 8. Notably, before

trial, my expert expressly requested direct access to OIT's Google Vault to acquire the very audit logs the Respondents hid by producing blank audit logs (D. Ct. Doc 113, at 3:21 – 24), which the District Court denied. App., *infra,* 18a.

Moreover, when denying my pro se Rule 59(a) motion, the District Court erroneously held it to a higher standard by misinterpreting my motion as a motion seeking relief under Rule 59(e) – a motion I never presented. Pet. C.A. Br., at 3. Rather than evaluating the detailed arguments within my Rule 59(a) motion, which articulated the basis for a new trial, the District Court got fixated on the motion's title. App., *infra,* 17a – 34a. Nevertheless, in deciding my Rule 59(a) motion, the District Court deemed only one newly discovered piece of evidence merited reconsideration of its dismissal – a phone recording with Ms. Bench (another key witness for the Respondents). App., *infra,* 39a & n.30.

Indeed, Respondents' victory would not have been possible without Ms. Bench.[11] More specifically, Ms. Bench voluntarily provided an affidavit claiming that I told her my first protected activity was May 18, 2018, not March 18, 2018, during a three-hours long phone conversation ("CCRD recording"). App., *infra,* 50a – 51a. See also App., *infra,* 10a & n.16. In particular, Ms. Bench stated that I told her "...the discrimination complaint had a typo and should have said May 2018, not March 2018." D. Ct. Doc 134, Exhibit EE, at 2 ¶ 5. When the CCRD recording emerged, it provided key insights into Ms. Bench's credibility, showing Ms. Bench had not told the truth. D. Ct. Doc 187, at 2 – 3. Furthermore, the CCRD recording shed light on the audio

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[11] It is unprecedented for a State to utilize its Civil Rights Division, responsible for enforcing anti-discrimination Statues, in a manner advantageous to the State, as observed in this case.

recording that Respondents accused me of tampering, by offering an authentic rendition of my voice from that occasion. *Id,* at 3 – 4. However, upon presenting the CCRD recording to the District Court, despite its prior decision, the District Court reversed course and levied a Rule 37(c) sanction sua sponte against me for disclosing the CCRD recording. D. Ct. Doc 190, at 4. Regrettably, this marked yet another instance where the District Court's stance shifted to my detriment.

Notwithstanding the District Court's shifting stances, evidence continues to emerge contradicting Respondents' allegations against me. Notably, Ms. Bench's affidavit mentioned an email I sent her allegedly containing the HSA emails with erroneous recipient data, which was produced by the Respondents during trial. App., *infra,* 50a. However, findings by two private investigators determined that Ms. Bench's aforementioned email does not exist. D. Ct. Doc 235, Exhibit 9 and Exhibit 10.

On appeal, the Tenth Circuit affirmed all of the District Court's confounding decisions. App., *infra,* 2a – 29a. The one notable affirmation involved the District Court's decision to deny the admissions of newly discovered evidence after trial. App., *infra,* 24a. According to the Tenth Circuit:

> *"after the court stated it was not going to open up the record, the court immediately added that we also going to ... have Mr. Kenno satisfy himself that there's nothing strange ... and people aren't conspiring behind his back... [thus indicating] the court was open to a good-faith motion to reopen the record." Ibid.*

Yet, the aforementioned hearing, which the Tenth Circuit concluded showed the District Court's openness to admit newly discovered evidence after trial, was labeled by the District Court as a "I-don't-want-to-hear-about-this-again [hear]ing." D. Ct. Doc 159, at 27:18 – 21.

Reasons For Granting This Petition

I. The Tenth Circuit's Affirmation of The District Court's Decisions on My Pro Se Rule 59(a) Motion Has Deprived Pro Se Litigants of Rule 59(a)'s Protections, While Creating a Circuit Split, And Violating This Court's Precedents.

a. This Court's Precedents Governing Pro Se Pleadings And The Proper Construction of Post-Trial Motions Were Violated in Deciding My Rule 59(a) Motion.

This Court has consistently held that Lower Courts must liberally construe pro se pleadings. This bedrock principle has been clearly articulated in Erickson v. Pardus, 551 U.S. 89, 94 (2007), where this Court held pro se motions, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." See also Hughes v. Rowe, 449 U.S. 5, 9-10 (1980); Haines v. Kerner, 404 U.S. 519, 520 (1972); Boag v. MacDougall, 454 U.S. 364, 365 (1982).

Here, the District Court failed to liberally construe my pro se Rule 59(a) motion by erroneously applying the standard governing Rule 59(e) motions. See my Petition for Rehearing En Banc, Pet. Reh'g En Banc, Kenno v. OIT et al., No. 21-1434 (10th Cir. May 1, 2023), at 5 – 7. *Supra,* at 17.

However, my Rule 59(a) motion did not wait to be liberally construed. Rather, it explicitly spelled out the applicable legal standard for post-trial motions seeking a new trial on its very first page, by citing Rule 59(a)(1) verbatim: "for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States." D. Ct. Doc 150, at 1. Furthermore, I diligently ensured the District Court was fully aware that the wrong standard of review had been applied, as demonstrated in D. Ct. Doc 187, at 9 – 10. D. Ct. Doc 190, at 3. Yet, in deciding my appeal, the Tenth Circuit disregarded the District Court's lack of liberal construction of my pro se Rule 59(a)

and affirmed. App., *infra,* 22a. See also Pet. Reh'g En Banc, Kenno v OIT, at 5 – 7. Such outcome-determinative defiance of binding precedents necessitates review by this Court.

Further highlighting the need for this Court's review is the Lower Courts' treatment of my pro se Rule 59(a) motion, solely based on its title. In Castro v. U.S., 540 U.S. 375 (2003), this Court underscored the importance of accurately classifying pro se motions to ensure the application of the proper legal standards, emphasizing the critical nature of discerning a motion's true intent rather than relying solely on its title. Moreover, the seminal decision in Gonzalez v. Crosby, 545 U.S. 524, 531-32 (2005) held that a motion's substance – not its title – should guide a court's interpretation of said motion.

Here, despite my Rule 59(a) motion distinctly seeking a new trial based on previously concealed evidence and making no mention of a Rule 59(e) relief, the District Court applied Rule 59(e) standards by focusing solely on the word "reconsideration" in the motion's title. *Supra,* at 17. On appeal, the District Court's failure in applying the correct standard was so obvious that the Respondents did not dispute it. See Respondents' Brief, Resp. C.A. Br., Kenno v OIT et al., No. 21-1434, Tenth Circuit (Filed on May 9, 2022), at 61. ("any error by the district court was harmless"). Yet, the Tenth Circuit ignored the District Court's undisputed error, and affirmed. Such blatant departure from this Court's established doctrine on how motions should be construed necessitates review.

b. The District Court Disregarded Rule 59(a)'s Explicit Standard for New Trial Motions, And The Tenth Circuit Inexplicably Affirmed This Critical Error.

Rule 59(a)(2) expressly states that a Court may "open the judgment..., take additional testimony, amend findings

of fact and conclusions of law or make new ones, and direct...a new judgment" after a nonjury trial. Furthermore, the advisory committee notes confirm that Rule 59(a), not Rule 59(e), governs motions seeking a new trial based on newly discovered evidence, unavailable until after trial. Thus, when a District Court's denial of a Rule 59(a) motion is based on the wrong standard, federal appellate courts consistently maintain that such a treatment constitutes a reversible error. For example, in Mejia v. Cook County, 650 F.3d 631, 7th Cir. (2011), the Seventh Circuit found the district court erred by applying an incorrect legal standard. In United States v. Kelly, 663 F. App'x 222, 3d Cir. (2016), the Third Circuit determined that the District Court's erroneous use of a stricter standard constituted reversible error. Similarly, the Tenth Circuit has previously remanded cases for adjudication under Rule 59(a) when a District Court applies the wrong standard to a Rule 59(a) motion. Henning v. Union Pacific R. Co., 530 F.3d 1206, 10th Cir. (2008).

Yet, despite my explicit citation to *Henning* in my opening brief, as found in Pet. C.A. Br., at 3, highlighting the District Court's failure to apply any discernible Rule 59(a) standard to my Rule 59(a) motion, the Tenth Circuit declined to remand back to the District Court. *Supra,* at 17. Furthermore, the Tenth Circuit failed to conduct a de novo analysis, as dictated by *Henning*. The Tenth Circuit's affirmation of the District Court's error contradicting Rule 59(a)'s unambiguous text, as well as its failure to conduct a de novo review, warrants review by this Court.

c. The Tenth Circuit's Affirmation Concerning The Applicable Standards for Rule 59(a) Motions Based on Newly Discovered Evidence Creates a Circuit Split And Exacerbates An Existing Split.

As it relates to post-trial motions seeking a new trial based newly discovered evidence after trial, in Jacobs v.

Tempur-Pedic Int'l, Inc., 626 F.3d 1327, 1344, 11th Cir. (2010) the Eleventh Circuit held:

> *"to present newly discovered evidence after a nonjury trial...Rule 59(e) is the wrong vehicle. Indeed, Rule 59(a)(2) specifically allows a District Court to open the judgment..., amend its findings of fact and conclusions of law, and enter a new judgment."*

Similarly, the Third Circuit in de la Fuente v. Central Electric Cooperative, Inc., 703 F.2d 63, 65 n.3 (3d Cir. 1983) held "Although plaintiffs did not specifically denominate their post-trial motion as a Rule 59 motion, under the Federal Rules a motion for new trial is encompassed within Rule 59(a)," citing Browder v. Director, Department of Corrections, 434 U.S. 257, 261 n. 5, 98 S.Ct. 556, 559 n. 5, 54 L.Ed.2d 521 (1978).

Here, by affirming the erroneous application of Rule 59(e) standards to my Rule 59(a) motion, the Tenth Circuit created a split, thereby depriving pro se litigants of Rule 59(a)'s intended flexible standard. Furthermore, the Tenth Circuit's affirmation, based solely on my motion's passing reference to "reconsideration" in its title – even though merits arguments are clearly permitted when paired with a proper Rule 59(a) request – enabled an end-run around Rule 59(a)'s intended purpose. In so doing, the Tenth Circuit exacerbated an already extensive 3 – 1 circuit split, where the Eleventh Circuit properly follows *Gonzalez* in assessing substance over captions. Mays v. U.S. Postal Serv., 122 F.3d 43, 11th Cir. (1997).

Only this Court can resolve these conflicts over the proper characterization of Rule 59(a) motions presenting newly discovered evidence after a trial, in order to provide definitive guidance before this divide becomes permanently calcified to the detriment of countless other pro se litigants

seeking Rule 59(a)'s protections.

II. The District Court Imposed Unreasonable Burden by Making Contradictory Demands, While Disregarding Respondents' Maleficence.

a. The District Court's Contradictory Demands Created Incoherent Catch-22.

In denying my Rule 59(a) motion, the District Court insisted that I should have moved to reopen the record to admit the post-trial newly discovered evidence, originally concealed by Respondents, before judgment was issued. App., *infra,* 35a. Yet, through its own unequivocal decisions, the District Court had barred me from bringing such motions not once, but twice. D. Ct. Doc 159, at 54:8 (the first time). D. Ct. Doc 133, at 24:15 – 16 (the second time). The District Court was so adamant about not reopening the record, it labeled the second post-trial hearing, where the District Court refused to reopen the record for the second time, as a "I-don't-want-to-hear-about-this-again [hear]ing." D. Ct. Doc 159, at 27:18 – 21. The District Court then unreasonably blamed me for not moving to admit newly discovered evidence sooner – an incoherent Catch-22 that defies logic. Moreover, the District Court's contradictory demands violated at least two precedents of this Court. In Knick v. Township of Scott, 139 S. Ct. 2162, 2167 (2019), this Court overruled a prior case that had created a Catch-22 for landowners seeking redress for Fifth Amendment violations. In Oganov v. American Family Ins. Group, 767 N.W.2d 21, 26 (Minn. 2009), this Court reversed a ruling that created an illogical Catch-22 for the plaintiff, finding that the statute of limitations for a UM claim should not begin to run on the date of the accident when the claim does not exist at the time of the accident.

Even more bizarre is the District Court's conclusions that I was "on notice" regarding the Google Vault audit logs

concealed by Respondents (App., *infra,* 35a), when Respondents produced blank ones – a detail I could not have been privy to, particularly since the District Court had denied all of my pre-trial discovery motions for direct expert access into OIT's Google Vault. *Supra,* at 8. Compounding the inconsistency, when I later brought my awareness of more concealed audit logs to the District Court's attention in my post-trial discovery motions, and requested access, the District Court paradoxically denied me the very access it contended I should have already possessed. *Supra,* at 15. Such contradictions in the District Court's rulings underscore the broader issue illuminated by Youngblood v. West Virginia, 547 U.S. 867 (2006): the challenge of ascertaining genuine notice amidst institutional barriers, especially when deliberately set by those intent on hiding the truth. As the Third Circuit held in Parham v. Johnson, 126 F.3d 454, 3d Cir. (1997), contradictory demands imposed on pro se litigants are incompatible with due process and constitute an abuse of discretion. Just as the plaintiffs in those cases faced unfair paradoxes due to the courts' contradictory rulings, I faced an unreasonable Catch-22 in this case that prevented me from complying with the very procedure that the District Court insisted I should have followed.

At its core, this case presents a broader, contemporary challenge, one emblematic of our digital era: how should our Courts reconcile the nuances of concealed digital evidence with the timeless principles of justice, especially when such concealment is unearthed post-trial? While cases like Schlup v. Delo, 513 U.S. 298 (1995) touch upon the implications of new evidence, Riley v. California, 573 U.S. 373 (2014) grapples with the challenges of digital evidence in modern jurisprudence. In presenting this matter before this Court, my appeal transcends the immediate facts at hand. It beckons for a resolution that aligns our justice system with the realities and complexities of the digital

age, ensuring that concealed digital evidence does not hinder the pursuit of justice. Carpenter v. United States, 138 S. Ct. 2206 (2018) exemplifies the Court's approach to the digital age. This case offers an unparalleled opportunity for this Court to set a precedent in an ever-evolving digital landscape.

b. The District Court's Determination That Concealed Evidence Disclosed After Trial Did Not Qualify as Newly Discovered Evidence Under Rule 59(e) Warrants Reversal.

Undoubtedly, the foundation of our justice system rests on the equitable and transparent adjudication of evidence, as underscored by the seminal decision in Brady v. Maryland, 373 U.S. 83 (1963). Strickler v. Greene, 527 U.S. 263 (1999) further delineates the duty to disclose material evidence. The purposeful concealment of essential documents transcends mere evidentiary concerns. It epitomizes the systemic hurdles civil litigants face when seeking justice against governmental entities adept at obfuscating the truth. In the context of this case, the District Court's treatment of Respondents' concealed evidence seemed as if *Brady* and *Strickler* were never decided. Despite irrefutable proof that Respondents knowingly presented falsified evidence and perjured testimony, before and during trial (*Supra,* at 10 – 13), the District Court rewarded such egregious misconduct by erroneously using Rule 59(e) as the governing standard to my Rule 59(a) motion. *Supra,* at 15 – 17.

Even if we entertain the notion that Rule 59(e) was the correct standard for my Rule 59(a) motion, the concealed documents undeniably qualify as newly discovered evidence under Rule 59(e), because they were obtained after trial. As articulated in Mays v. United States Postal Service, 122 F.3d 43, 46 n.6 (11th Cir. 1997), "on a motion to reconsider, a party is obliged to show... evidence was newly discovered or unknown to it until *after the hearing*..."

(emphasis added). This principle is echoed in Morgan v. Harris Trust Sav. Bank of Chicago, 867 F.2d 1023, 1028 (7th Cir. 1989), and Engelhard Indus. v. Research Instrumental Corp., 324 F.2d 347, 352 (9th Cir. 1963), cert. denied, 377 U.S. 923, 84 S.Ct. 1220, 12 L.Ed.2d 215 (1964). Yet, in this case, the District Court shifted the goal-post further by insisting that newly discovered evidence, submitted as part of a Rule 59(e) motion, must be uncovered after judgment, as opposed to after trial. App., *infra,* 35a. However, even after shifting the goal-post, the District Court ignored newly discovered evidence uncovered after judgment, including over 2,700 Google Vault Matters, crucial for preserving thousands of documents initially saved to my OIT-issued Google Drive, as well as more Google Vault audit logs. *Supra,* at 6. See also *Supra,* at 14 & n.9.

Nevertheless, if the District Court's analysis on newly discovered evidence, disclosed after trial but before judgement, was to stand scrutiny, as it did before the Tenth Circuit, given the District Court's decisions to deny the admission of newly discovered evidence after trial, twice (*Supra,* at 23), litigants would forever be deprived of evidence purposely withheld by their opponents, if the evidence is produced after trial, shortly before dispositive judgements are issued. In the inverse, the District Court's reasoning encourages gamesmanship, where litigants will be incentivized to withhold damaging evidence until after trial, only to disclose them just before judgement, so as to render the withheld evidence useless. Such a standard sanction's injustice, by constructing formidable barriers for individuals like me challenging governmental misconduct. It is my earnest plea that this Court does not allow such reasoning to endure, as it represents an overreach demanding redress.

III. The District Court's One-Sided Discovery Rulings Violated My Due Process Rights, While the Dismissal Order Ignored Respondents' Spoliation of Evidence.

a. The District Court Restricted Equal Access To Essential Evidence.

The imperative for this Court's review stems from the District Court's repeated denial of my pre-trial discovery motions for direct expert access into OIT's Google Vault records (*Supra,* at 8), while granting Respondents' experts unrestrained access to mirror images of my personal devices. *Supra,* at 9. After obstructing meaningful third-party verification, the District Court exhibited undue reliance on Respondents' self-conducted searches of contested Google Vault records, using them as a foundation to resolve accusations against me. *Id.* Then, despite inconsistencies highlighted in my Rule 59(a) motion concerning OIT's Google Vault, the District Court's critical stance to my discovery motions intensified when deciding my post-trial pro se discovery motions, all of which were summarily denied by the District Court. *Supra,* at 15. Moreover, my pro se post-trial discovery motions were assessed with an intensity inconsistent with the recommendations in *Erickson, Hughes, Haines,* and *Boag.*

Perhaps the worst discovery denial involved the August 2018 Disclosures. *Supra,* at 4. I considered the August 2018 Disclosures the backbone of my defense to Respondents' allegations. Pet. C.A. Br., Kenno v. OIT, at 14 – 16. Yet, after denying me access to the backbone of my defense (*Supra,* at 8, also D. Ct. Doc 116, at 24:3 – 5), while dismissing my claims, the District Court concluded that the August 2018 Disclosure did not contain the disputed records (App., *infra,* 71a), even though Respondents' witness, Mr. Bartley, the person who provided the August 2018 Disclosure, did not dispute the contents therein. D. Ct. Doc 235, Exhibit 3 at

17:13 – 16.

The essence of justice, as emphasized in Wardius v. Oregon, 412 U.S. 470 (1973), predicates on a balanced field of play, especially when governmental bodies levy grave accusations, based primarily on their unverified internal searches of disputed records. The erosion of confidence in a just system that yields such disparate outcomes is swift and inevitable. The Tenth Circuit affirmation of the District Court's discovery denials (App., *infra,* 19a), particularly for my pro se post-trial discovery into materials pinpointing Respondents' evidence concealment (App., *infra,* 25a – 26a), further runs counter to the principles set forth in *Wardius*. Our judicial system demands consistent and impartial scrutiny to shield parties from unwarranted concealment of government-held information. Anders v. California, 386 U.S. 738 (1967) reiterates the duty of the judiciary to ensure that every litigant, especially those without formal legal training, are provided a genuine opportunity to defend their case. The disparities in my case not only diverge from the equitable benchmarks set by *Anders* but also challenge the foundational principles of justice. Furthermore, the outcome of biased discovery proceedings in this case poses stark violations of due process. This Court's intervention is paramount to guarantee foundational fairness for pro se litigants in my position.

b. The District Court Ignored Respondents' Brazen Spoliation of Evidence While Imposing Rule 37(c) Sanctions Against Me.

Post my initiation of this lawsuit, Respondents engaged in unabashed acts of evidence obliteration bearing stark relevance to my claims. *Supra,* at 5. In a calculated move, my OIT-issued laptop housing invaluable files was conveniently discarded when I sought its forensic evaluation, after initially being preserved in a "secure drawer." *Ibid.* The hard drives on Ms. Logacheva's computers were shredded.

D. Ct. Doc 109, Exhibit 12. Moreover, Respondents obliterated over 170,000 of my work emails and 3,000 documents, that they had previously vouched were secure in my OIT-issued Google Drive. *Supra,* at 6 and 13. Furthermore, Respondents intentionally removed access from the backbone of my defense, August 2018 Disclosures. *Supra,* at 5. Additionally, the elusive status of Ms. Bench's emails, corroborated by private investigators, further underscores the pervasive evidence tampering undertaken by the Respondents. *Supra,* at 18.

Respondents' methodical destruction, when juxtaposed with the deliberate obfuscation of essential evidence, indisputably hindered my ability to fortify my claims and defenses. Yet, with undeniable evidence of the Respondents' deliberate destruction of relevant evidence, acts which fall under the umbrella of spoliation as seen in Leon v. IDX Systems Corp., 464 F.3d 951 (9th Cir. 2006), the District Court displayed a conspicuous indifference towards Respondents' malevolent actions. But the District Court opted to levy an unprecedented Rule 37(c) sanction on me for disclosing the CCRD recording – the very evidence the District Court determined merited reconsideration. *Supra,* at 18. Despite minor delays, which were exacerbated by the COVID pandemic, I dutifully furnished the CCRD recording. Conversely, Respondents irrevocably denied me access to invaluable data on my OIT-issued devices, documents saved in my OIT-issued Google Drive, access to the August 2018 Disclosures and over 2,700 Google Vault Matters. Yet, the District Court's alarming oversight concerning the misconduct orchestrated by the Respondents is a poignant testament to judicial disparity, infringing upon due process rights as depicted in Roadway Express, Inc. v. Piper, 447 U.S. 752 (1980).

Furthermore, the District Court displayed a manifest reluctance to recognize, let alone censure, Respondents'

contempt, as they audaciously demanded a staggering sum of over $100,000 (D. Ct. Doc 164, at 162), for the disclosure of crucial Google Vault audit logs, while flagrantly defying the District Court's directives to do so. D. Ct. Doc 155. See also D. Ct. Doc 157. Then, when the tables turned and Respondents filed a motion to hold me in contempt regarding their post-trial discovery requests, the District Court acted with alacrity to address Respondents' post-trial contempt motion. D. Ct. Doc. 222. Such treatment echoes the stark biases observed in Haeger v. Goodyear Tire & Rubber Co., 137 S.Ct. 1178 (2017). The District Court's willful apathy towards this glaring bias warrants comprehensive judicial scrutiny.

On appeal, while giving cursory recognition to my spoliation arguments, inside of a footnote, the Tenth Circuit's affirmation evaded confronting the District Court's failures in addressing Respondents' egregious evidence tampering and destruction. App., *infra,* 17a & n.21. The Tenth Circuit's resonating silence on such cardinal issues is deeply unsettling, necessitating intervention by this Court.

IV. The District Court's Attorneys' Fees Award Overlooked Respondents' Litigation Misconduct

In imposing sanctions exceeding $300,000 in favor of the Respondents, the District Court grounded its judgment on my alleged bad-faith in this litigation. Yet, pivotal evidence concealed by the Respondents. which unmasked egregious actions – namely falsifying evidence, perjury, the deliberate destruction of evidence, the tampering of access to crucial evidence, all of which were discussed in D. Ct. Doc. 172, were ignored by the District Court. D. Ct. Doc. 177. See Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944) (discussing the implications of fraudulent practices in litigation).

The District Court's record, unfortunately, is marred by

its consistent refusals to grant my well-founded discovery motions, thus casting doubt upon any assertion that, solely, my actions were improper. Anderson v. City of Bessemer, 470 U.S. 564 (1985) (emphasizing the critical role of a complete record in judicial determinations). Subjecting me to such asymmetrical and financially crippling sanctions, particularly without considering the merits of my Rule 59(a) contentions, unmistakably infringes upon my due process rights. Mathews v. Eldridge, 424 U.S. 319 (1976) (setting forth the due process analysis in the context of individual rights).

Given the backdrop of dismissed discrimination allegations, comprehensive evidence pointing to State malfeasance, and the looming threat of debilitating financial sanctions following the obstruction of Rule 59(a) relief on my timely submission, this matter offers an unparalleled occasion for this Court's scrutiny. I respectfully urge the Court's intervention to prevent an endorsement of such blatant injustice.

V. Recent Stay Order Issued On The Appeal Pertaining To My State Claims Underscores The Need for Review By This Court.

The Colorado Court of Appeals ("COA") recently entered an order staying its decision on a separate appeal I had filed in that Court, emanating from the Colorado State Personnel Board's dismissal of my State claims, pending this Court's disposition of my federal claims. D. Ct. Doc 235, Exhibit 11. The COA recognized that the Tenth Circuit's affirmation is not yet final while my Petition For Writ of Certiorari is pending with this Court. *Id.* Thus, the COA's order implicitly acknowledged that some of the issues I had raised in that Court would be directly impacted by the ruling of this Court. Such a ruling highlights the exceptional importance of my arguments now before this Court. The

validity of my federal claims will likely shape COA's adjudication of my parallel State law claims. Moreover, COA's stay order underscores the relevance of the federal questions presented herein. Thus, I respectfully request a thorough review of my Petition so that State court proceedings may eventually benefit from authoritative clarity given by this Court.

Conclusion

This case represents an urgent call for this Court to intervene, rectify grave injustice, and restore nationwide faith that the judiciary remains capable of delivering impartial justice to all. The time is now to reinforce reasonable limits on judicial discretion, reinvigorate access to justice when asserting civil rights violations against government entities. Therefore, I respectfully request that this Court grant my Petition For Writ of Certiorari to restore fundamental fairness and access to justice.

Respectfully submitted,

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Dated: Thursday, November 30, 2023