23-6450

No. _____

ORIGINAL

FILED
DEC 20 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ALFRED C. DIZON - PETITIONER

(PRO-SE LITIGANT)

vs.

VECTRUS SYSTEMS CORPORATION - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS (5TH CIRCUIT) NEW ORLEANS, LA.

PETITION FOR A WRIT OF CERTIORARI

The petitioner ask leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed in "*forma pauperis*" and also to file leave "*to proceed as a veteran*".

ALFRED C. DIZON

5333 NORTHVIEW DRIVE

WICHITA FALLS, TEXAS 76306-1458

(940) 337 9318

QUESTION(S) PRESENTED

Where Defense Counsels and the Lower Court blatantly violate, and ignore Federal Rule of Civil Procedures, Precepts, and Statutes in handling Appellant's case. 1st, where both parties took full advantage of (Pro-Se) Appellant's little knowledge of the law. From Defense party, blatantly not providing Appellant's request, for "*production of documents*" in their possession (which was requested early in the process and in good faith) but to no avail. 2nd, the Lower Court shunning/disregarding totally "*excluding*" Appellant's proffered exhibits/direct evidence in defense of Appellant's case, prohibiting its merits to be fairly judged. 3rd, in addition, Lower Court "*depriving*"Appellant of his Constitutional/Amendment rights under "*due process of law*", *called* "<u>*Due Process Violation*</u>" - is when governmental actors violate and frustrate the fairness of proceedings, or when a judge is biased against a party in a civil action. Appellant is asking the question of whether the government's "*deprivation*" (of due process) is/ was justified by a sufficient purpose?

Under what circumstances or process should a Pro-Se Appellant "request" in order for him to be provided "Right to Due Process of Law?", "Right to a Fair, Impartial Jury Trial?", thereby purging the taint from depriving Appellant's Constitutional Rights, that have been violated.

TABLE OF AUTHORITIES CITED

CASES: **Page Number**

CONSTITUTIONAL PROVISIONS

STATUTES:

OTHERS:

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Littler Mendelson P.C.
2001 Ross Avenue
Suite 1500, Lock Box 116
Dallas, Texas 75201-2931
Telephone: (214) 880-8100

Sandy Travers (Lead Defense Counsel)
stravers@littler.com.
Telephone: (214) 880-8100

Ross G. Reyes (Assistant Defense Counsel)
rgreyes@littler.com,
Telephone: (214) 880-8100

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OPINIONS BELOW

In regards to Appellant's Case Number *23-10734, Dizon v. Vectrus System Corporation,* U.S. Court of Appeals, Date filed*: November 14, 2023, "Unpublished Order" - For want of Jurisdiction,* and in accordance to Rule 14. 1(d)(e) Appellant is requesting this higher court to review said case. Since my 7th Amendment (Right to a fair Trial) was violated, and no actual court hearing ever took place, because it was never allowed/granted by the lower district court of Northern Texas to occur. Therefore, the "*final judgment*" regarding Appellant's Case (*No. 23-10734*) by the Texas Northern District Court is in question.

Wherein, "*Exclusion of Evidence*" *and* "*Preponderance of Evidence*" in light of the truth, the evidence, and the law was blatantly and totally disregarded intentionally" at "*judge's own discretion*". How can one deduce, or draw a logical and sound conclusion if Appellant's proffered evidences/exhibits were prohibited from being presented or heard? (Not giving Appellant any chance to present/prove his case?) in a court setting.

If Appellant's exhibits/direct evidences are taken out of the equation and prohibited from being presented to prove, or defend his case, to convince a judge and jury (to see the big picture?) Therefore, it is fair to deduce, by logical reasoning, it shows a clear plain injustice to Appellant.

In addition, "*excluding pertinent exhibits or evidences*" at "judges own discretion" also shows a clear "*Abuse of Discretion*"/"*Abuse of Power*" on the part of the tending magistrate and concurring judge, and the "*Error in Excluding Evidence*" is inevitable grave damage to Appellant's defense in regards to his case.

JURISDICTION

Since the Appellate Court had issued an "*unpublished order*" regarding regarding my "*Case No. 23-10734*" for "*want or lack of jurisdiction*" Therefore, Appellant is humbly requesting this high court to please accept, direct, or refer Appellant's case to the appropriate circuit or court under whose jurisdiction can appropriately adjudicate Appellant's case (Cause No. 23-10734). And Appellant is also humbly requesting this high court to grant Appellant the satisfaction to present, and prove his case (in a court setting) as allowed or dictated by law. Thus, satisfying due process of law, as well as, his Constitutional/Amendment Rights of being provided the "*Right to Due Process of Law*" and the "*Right to a Fair, Impartial Jury Trial or Hearing*".

CONSTITUTIONAL / STATUTORY PROVISIONS INVOLVED

Constitutional Amendments:

United States Constitution, Amendment V:

Right to due process of Law, *The right to a Fair Trial*... The 5th amendments due process Clause also applies to federal government's conduct. It is also the requirement that the government cannot deprive a person of their freedom or property without going through the court system. Fifth Amendment due process is separate from, although similar to, due process under the Fourteenth Amendment.

United States Constitution, Amendment VII:

Protects the Rights for Citizens to have a Jury Trial in federal Courts with civil cases where the claim exceeds a certain dollar value. It also prohibits judges in these trials from overruling facts revealed by the jury.

It also provides protection for Civil Cases, or Lawsuits - legal disputes, based on disagreements between people or businesses, *have a right to be decided by a jury in federal court.*

United States Constitution, Amendment XIV: ("Equal Protection of the Laws")

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

Statutes and Rules

* In accordance to FRCP Rule 26 "Duty to Disclose" in which in U.S. legal procedure "each party to a lawsuit has the *duty to disclose* certain information", such as names, and addresses of witnesses, and "*copies of any documents*" that he/she intends to use as evidence, to the opposing party or to prove his case. If party fails to make disclosure required by Rule 26 (a), any other party may move to compel disclosure and for appropriate

reasons.

An issue the Court should have sanctioned the other party to produce (by law). In where evidence requested were "relevant", "reasonable" to the claims, and are also "proportional/competent" to the needs of the case; and requested evidence can make the difference between hampering Appellant to prove his/her case, or preventing or avoiding an amicable settlement. Because in Civil cases "the Plaintiff/Appellant has the burden of proving his/her case" by "*Preponderance of the Evidence*" which means the Appellant merely needs to show that the fact in dispute is more likely than not!" and if requested discovery is "*not produced or provided*" at the request of the Appellant, thus the Appellant has no way of presenting his case to convince a judge or jury to adjudicate said case (which is a "*clear injustice*" especially to a Pro-Se Litigant/Appellant).

* According to FRCP Rule 9. 180(f) (2) states that a Party may direct that the record include such evidence if the evidence was proffered and that "*exclusion*" of all evidence/exhibits is a "*major issue on appeal*".

* Under Title 18 U.S.C. Section 401 and 402 (Violation of Defendant to Produce Documents) in which request for documents were under Defendant's control and possession, and were bound by law for them to produce, in which documents are subject to a claim of privilege, as trial

preparation materials of Appellant.

"Subpoena to Produce Documents" were requested early in the process, and were also requested in "*good faith*", since request was shunned and documents were never provided, Appellant eventually requested documents "*officially and legally in writing*" but still to no avail. Ignoring such request is regarded as "contempt of court", as stated on Form AO 88B (Rev. 12/13), wherein documents were "*legally stamped*" by the U.S. Northern District Clerk's Court of Texas, but still to no avail... (Documents were never produced or provided by Defense party at all).

* FRCP Rule 61 - ("Error in Excluding Evidence") Evidence/Exhibits proffered by Appellant. Because adjudications of cases should be based on "Preponderance of the Evidence": where "*Adjudications of cases should be based on facts (evidence proffered) of the dispute, rather than on the formalities of pleading*" (on substance rather than on procedures). Which is a transparent "Abuse of Discretion" or "Abuse of Power"on the part of the judge/s in excluding pertinent, ("3-*three prong Standards to accept Evidence/s"*) standards of "*reliability*", "*relevancy*", and "*proportionality/ competent*" materials of evidences/exhibits proffered by Appellant were all met/satisfied.

* FRCP Rule 401 - "Relevance" - evidence having any tendency to make

the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. (To help prove or disprove fact!)

* Under "FRCP Rule-56 (d)", When facts are unavailable to the requesting Appellant/Movant, If Defense/Non-movant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition the court may:

1.) Defer considering the motion or deny it;

2.) Allow time to obtain affidavits or declarations or to take discovery ; or

3.) issue any appropriate order.

* According to "FRCP Rule-56 (h)" FRCP, Affidavit, or Declaration submitted in "Bad Faith" or "Solely for Delay" the court after notice and a reasonable time to respond - may order the other party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. "An offending Party or Attorney may also be held in Contempt of Court, or *subjected to other appropriate sanctions*", or that the trial court may/may not deny summary judgment in a case in which there is a reason to believe that the better course would be to proceed to a "*Full Trial*". Which shows that the Appellant is entitled to: in which the court must determine the legal consequences of these facts and permissible inferences

from not complying to production of documents requested by the Appellant

STATEMENT OF THE CASE

This is an action under Title VII of the Civil Rights Act of 1964, as amended. Pro-Se Litigant (Mr. Alfred Dizon) a 24-year plus, U.S. Air Force Retired ("*Disabled*")Veteran with Service-Connected-Disabilities acquired during his active tour-of-duty, residing in Wichita Falls, Texas, who was discriminated by Defendant (Vectrus Systems Corp.) on the basis of his race, and national origin, and further retaliated against Appellant for complaining of discrimination and filing a charge of discrimination.

A. Factual Background

Appellant (Mr. Dizon) was employed by Defendant (Vectrus Systems Corporation) in October of 2018 as an Engineering Tech-IV (Structural Inspector) on their Sheppard AFB's contract, a role Appellant completed until his wrongful termination on on April 19, 2021.

During his employment with Defendant, Appellant met the legitimate expectations to perform his job duties as an inspector in monitoring contracted companies. Appellant maintained a positive work relationship with his fellow engineering inspectors, and always acted professionally with fellow employees and contractors he supervised. Although he was known to use an authoritative tone at work, Appellant

never communicated inappropriately with fellow employees or customers.

On June 25, 2019, a third party contracting company, AOC Environmental Company ("AOC"), requested that Appellant be reassigned from its project/s (3-each projects) after AOC received numerous write-ups, under his authority. Appellant issued write-ups to AOC due to their continuous failure to meet the (government) quality standards listed in their contract with Defendant. Appellant was removed from the project by his then supervisor, Robert Baumer, without an adequate and proper investigation of the incident or the rationale behind Appellant's inspection decisions. The only apparent reason Appellant could "*deduce*" is because supervisor Mr. Baumer's (ex-Father-in-Law worked under AOC Company as a "Lead, Work Superintendent" on one of AOC's 3-projects supervised by Appellant).

Beginning on or around November 30, 2020, Appellant began receiving disciplinary actions from his new supervisor, Phillip Lujan. Mr. Lujan treated Appellant less favorably than Mr. Lujan treated other engineering inspectors. The other engineering, Timothy Shepard and Lewis Kennemer are Caucasian males and performed the same job duties as Appellant.

Mr. Lujan penalized Appellant for issues that all inspectors in

Appellant's position were experiencing, such as backlogged administrative work. Mr. Lujan did not penalize Mr. Shepard and Mr. Kennemer although they were experiencing the same issue/s.

Mr. Lujan singled out Appellant and reprimanded him about work policy and activity changes but did not address Appellant's fellow inspector engineers who were white. Appellant is Filipino. Additionally, Mr. Lujan excluded Appellant from meetings, which made it very difficult to determine the accuracy of inspector task. Mr. Lujan did not support Appellant by thoroughly investigating the rationale behind inspector decisions, especially when handling issues with a third party contracting company, AOC.

Mr. Lujan failed to provide reasons for Appellant's disciplinary action when Appellant asked, and failed to give Appellant a copy of an Official Written Complaint, as required by the Collective Bargaining Agreement ("CBA").

Appellant was also denied the opportunity to attend "*Training or Recertification for his Asbestos Contractor/Supervisor Course*" from Texas Department of Health Certifications, despite Appellant's persistent request.

On December 4, 2020, Appellant returned to the office after an inspection at approximately 12:45 p.m. Since the inspection took longer

than expected, the Appellant took a late lunch. When Appellant began eating, Mr. Lujan demanded that Appellant attend a meeting that was only called an hour before. Mr. Lujan persisted that Appellant attend the meeting although Plaintiff told Mr. Lujan that he would not be ready for the meeting in time because he still had to eat his lunch. When Mr. Lujan continued to persist, Plaintiff told Mr. Lujan that forcing him to forego his lunch was a violation of his CBA.

On December 16, 2020, Plaintiff filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission based on the discrimination he faced because of his race and national origin.

On April 19, 2021, Appellant was terminated as a result of wrongful termination because of his race and national origin and for complaining about Mr. Lujan and filing a Charge of Discrimination.

As described above, Defendant discriminated against Appellant on his race and national origin, and retaliated against him for engaging in protected activity.

B. Analysis of Racial and National Origin Discrimination, Retaliation, and the use of Pretext in illegal termination of Appellant.

1.) "Race and National Origin Discrimination"

To establish a prima facie case of discrimination based on race or national origin, Claimant must show that: (1) he was of a protected class,

(2) he was meeting Respondent's legitimate expectations, (3) he suffered an adverse employment action, and (4) persons outside the class with equal or lesser qualification were treated more favorably. *See "McDonell Douglas Corp. v. Green"* 411 U.S. 792, 802-804 (1973).

First, it is undisputed that Appellant is a member of the protected class.

Second, claimant was meeting Respondent's legitimate expectations to perform his inspection duties and monitor the activities of the contracted companies. Claimant followed all protocols, including issuing write-ups to the contracted companies whose contractors failed to satisfy compliance standards. Appellant has been known to use an authoritative tone during work discussions; however, he has never acted unprofessionally with his fellow employees or the contractors he supervised. Appellant had positive work relationships with his fellow engineering inspectors. Appellant and his coworkers were supportive of one another, and if a coworker had to take emergency leave, Appellant would complete their inspector duties as needed.

Third, Appellant suffered an adverse employment action. Mr. Lujan failed to investigate grievances communicated by the Appellant, as required Under his supervisory role. Instead, if an issue arose, Mr. Lujan immediately penalized Claimant with disciplinary actions. For each of the

disciplinary actions Appellant received, he requested "*Official Written Complaints*" (from both supervisor's in which both refused to provide) to ensure Appellant understood what infractions or violations he allegedly committed (in order to not make the same mistake again in the future). But, Mr. Baumer/Mr. Lujan refused to comply with his request, which is a direct violation of his "*Collective Bargaining Agreement*" Rights (CBA). This prevented Appellant from fully understanding the issues hand and preventing them in the future. Appellant was also denied the one hour lunch break listed in his contract, in which supervisor, Mr. Lujan himself initiated, drafted, and signed as a binding contract (with Appellant) thus, hindering Appellant's right to a legitimate lunch break. Appellant even turned-in grievances of other employees to see if those would be taken seriously, all which were ignored like Appellant's grievances. Finally, the Appellant was fired.

Fourth, persons outside the class with equal or lesser qualification were treated more favorably. These include two fellow engineering inspectors, Timothy Shepard and Lewis Kennemer, both of whom were caucasian males. Appellant's supervisor, Mr. Lujan targeted and penalized Appellant for issues all inspector were experiencing, such as backlogged of administrative work. Mr. Lujan excluded Appellant from meetings, which

made it impossible for Mr. Lujan to determine the accuracy of Appellant's inspector tasks. Mr. Lujan only admonished Appellant behind doors, instead of addressing all three inspectors, regarding work policy and activity changes. Mr. Lujan failed to explain to Appellant why he was singled-out when asked directly (by Appellant).

Appellant has set forth a prima facie case of race and national origin discrimination. Appellant preformed his inspector duties to the best of his abilities, despite a lack of support from his supervisors and other employees, even after receiving unfounded disciplinary action. Defendant did not have a legitimate business reason to terminate Appellant.

2.) "Retaliation"

To establish a prima facie case of retaliation, an employee must show: (1) he engaged in an activity protected by the Texas Commission on Human Rights Act [TCHRA], (2) he experienced a material adverse employment action, and (3) a casual link exists between the protected activity and the adverse action. *See Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53 , 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006).

First, Appellant lawfully practiced his right to file a Discrimination Charge on December 16, 2020, an activity protected by the TCHRA.

Second, Appellant experienced materially adverse employment action

through unfounded disciplinary actions and his subsequent employment termination. These actions, conducted by Mr. Lujan, were taken inappropriately, and targeted at Appellant alone.

Third, a casual link does exist between the protected activity and adverse action, because the retaliatory behavior increased after Appellant filed the Charge of Discrimination. Therefore, Appellant meets the requirements for case of Retaliation.

3.) "Pretext"

Defendant proffered evidence in support of its "legitimate non-discriminatory reason" to terminate Appellant; however the evidence clearly shows that Defendant did not have a legitimate business reason to terminate Appellant, and Defendant intentionally discriminated against him. *See Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 142 (2000).

First, the disciplinary actions Appellant received were unsubstantiated, Appellant was not made aware of reasoning behind the disciplinary actions, as required by his CBA Rights. Appellant's supervisor failed to support appellant by thoroughly investigating the rationale behind his inspector's decisions, particularly when handling issues with the third party contracting company AOC. Therefore, Defendant had no legitimate

business reason to terminate Appellant.

Second, Appellant's fellow engineering inspectors, two Caucasian males were not placed under the same level of scrutiny as Appellant. These inspectors were of equal or lesser standing in comparison to Appellant and did not obtain repeated disciplinary actions despite their similar behavior. Respondent used the disciplinary actions to justify terminating Appellant. Respondent intentionally discriminated against Appellant.

In Closure, Defendant intentionally and wrongfully discriminated against Appellant based on his race and national origin. Appellant performed to the best of his ability and maintained a professional behavior while in the workplace. Defendant failed to investigate Appellant's version of events during the multiple disciplinary actions taken. Defendant impeded on his employee and personal rights by discriminating against him based on his race and national origin through unprofessional conduct targeted only at Appellant. Defendant retaliated against Appellant after he exercised his right to report said discrimination.

Appellant has set forth both prima facie case of race and national origin discrimination and retaliation. Defendant cannot discriminate and retaliate against its employees and then create a retroactive reason as to why it terminated Appellant to create a legitimate business reason. As

clearly shown above. Appellant has provided ample evidence to support his position. Appellant claims were not erroneously alleged, are with merit, and should not be dismissed.

Direct Appeal

On direct appeal, Appellant's reason in requesting writ of certiorari regarding Case No. 23-10734, is to review Texas' Northern District's "Deprivation of Appellant's Constitutional/Amendment Rights", and to review/remedy the Court of Appeal's issuance of "*Unpublished Order*" for "*Want of Jurisdiction*". Appellant is requesting that this high court to please take, accept, refer, or forward Appellant's case (No. 23-10734) to the proper/appropriate circuit/court that falls within said court's jurisdiction to properly adjudicate Appellant's case.

Discrimination and Retaliation under Title VII of the Civil Rights Act of 1964, as amended

Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

As described above, Plaintiff was terminated, because of his race and national origin. Defendant also "*retaliated*" against Appellant by terminating him when he complained of discriminatory treatment in the workplace and filed a charge of discrimination.

Plaintiff was also forced to work in a racially hostile work

environment.

Defendant violated Title VII of the civil Rights Act of 1964.

Defendant's violation of Title VII of the Civil Rights Act of 1964 has directly and approximately caused damage to Plaintiff, for which he hereby sued Defendant.

REASON FOR GRANTING WRIT

A. To avoid erroneous deprivation of Appellant's "*Constitutional, and Amendment Rights*" as a law abiding citizen, this court should review, clarify, justify the lower court's denial of Appellant's Right to Procedural Due Process of : "*Right to a Jury Trial*" and his "*Right to an Impartial Hearing", and Right to Present Evidence*" necessary to establish a Constitutional claim.

The Due Process Clause of the Fourteenth Amendment guarantees every litigant the right "*to present his/her case and have its merits fairly judged.*" "*Logan v. Zimmerman Brush Co. (1982)*". As the brief exclaims, this right must include the right to present evidence necessary to establish a constitutional claim.

B. To rid of overly used paradigm by Judge's of "Error in Excluding Evidence" *under FRCP-61* where Judges blatantly, and totally disregard pertinent facts (i.e. evidences/exhibits) proffered by Plaintiffs/Appellants, in which "adjudications of said cases should be based on the facts (evidences proffered) of the dispute, rather than on the formalities of pleading" ("*substance rather than on procedures*"), and not basing their "*final judgment*" on a well-written summary judgment of a seasoned lawyer/attorney versus a Pro-se Litigant who has the slightest idea of writing a summary judgment...

Under "Plain Error Rule of Evidence" FRCP 61 under plain error review, Appellant has the burden of demonstrating that: (1) there was error, (2) the error was clear and obvious, and (3) the error materially prejudiced a substantial right of the Appellant; and for an appellate court to grant relief under this test, because all three prongs/ standards of accepting evidences were met: 1.) *Relevance* 2.) *Reliability*, and 3.) *Competency/Proportionality* of Materials were met, and exhibits had merit.

C. Plus, to expose the truth that the Defense party utilized "*prefix*" in illegally/unlawfully terminating Appellant (in which "*by law*" is illegal and unlawful termination) in order for Appellant to reveal the truth, and for justice to prevail, and to convince judge and jury by debunking all false claims, and unsupported allegations (against appellant) if an actual full trial is granted Appellant by this high court.

Under Rule 41 B of the Federal Rule of Civil Procedures, allows a court to dismiss an action *sua sponte* (of judge's own accord) for failure to prosecute or "*for failure to comply*" with the federal rules or any court order.

CONCLUSION

Because violation of the Constitution should be considered a vital point, it is a precedent fraught with danger to the people/country, for when one (judges) begins to stretch their power beyond the limits of the

Constitution, there is no limit to it, and no security for the people.

Because the Constitution to be worth anything, must be held sacred, rigidly observed in all its provisions, the man (judge) who wields power and misinterprets the Constitution is more dangerous, the more honest he is.

For the foregoing reasons, Appellant (Mr. Dizon) respectfully request this High Court to issue a Writ of Certiorari to Appellant's Case (No. 23-10734) "*Dizon v. Vectrus Systems Corporation*" and to review the "*final judgment*" issued by Northern District of Texas' (7th District) in violation of FRCP 61 ("Error in Excluding Evidence") in totally excluding Appellant's proffered direct evidence/exhibits in defense of his case and prohibiting its merits to be fairly judged; See: "*Logan v. Zimmerman Brush Co. (1982)*".

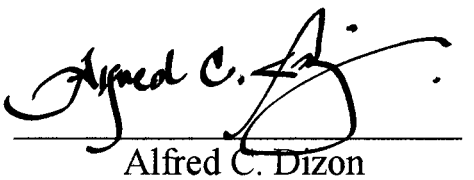
Appellant also request this High Court to summon Defendant, Vectrus Systems Corporation, to appear, and answer and upon trial, enter judgment against Defendant for the Causes of Action set forth above; awarding Appellant Restitution, Damages, and Equitable Remedies (i.e. actual damages, stress and anxiety, statutory relief, punitive damages, court and administrative costs, and prejudgment and post-judgment interest, along with such other and further relief which Appellant may show himself to be lawfully entitled, in law or in equity.

Appellant will wholeheartedly accept the adjudication or final judgment of a jury panel and will "*rest his case*", that's if the honorable judges of this Supreme Court would bless, and grant Appellant an initial and schedule an actual open "full hearing" in the near future to take place.

"So help me God"

DATED this 5th day of January 2024.

Respectfully submitted,



Alfred C. Dizon
(Pro-Se Litigant)