24-207

Appeals: 23-12413-AA & 23-13392-AA

IN THE SUPREME COURT
OF THE UNITED STATES

Carlos A. Alonso Cano,
Fé Morejón Fernández,
Jany Alonso Morejón *Petitioners*

v.

245 C & C, LLC and
C.F.H. Group, L.L.C *Respondents*

On petition for a Writ of Certiorari
to the United States Court of Appeals
for the 11th Circuit, Atlanta, Georgia

PETITION FOR A WRIT OF CERTIORARI

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Pro Se Petitioners

QUESTIONS PRESENTED

1. - *Whether* any U.S. Federal Court, could prohibit an adult plaintiff from pro se representation in a civil case, when he/she has demonstrated the ability to do so, when he/she has done so in the past or when he/she decides to do so?

2. – *Whether* the 11th U.S. Court of Appeals (CA), erred by denying the Appellants-Plaintiffs' right to Pro SE representation in the District Court (DC), requested in the Motion (Document 44, 3/7/24) of the appeal case (No.: 23-12413)?

3. - *Whether* any U.S. Court of Appeals, has the power and should use its discretion and power at any time, during a civil case for civil rights violations, or during the appeal of an order or a judgment in such case, to take appropriate actions upon receiving a denounce from the Appellants-Plaintiffs of the likelihood that fraud upon the court have been committed, either by a court reporter or by a lawyer, paid by the Defendants, because they have provided the Plaintiffs and the courts with transcripts in which did not appear many of the declarations of the Plaintiffs made during their depositions and cross-examinations, in which were omitted many parts that affected the Defendants' arguments and case, and that the Plaintiffs could not specify in an "errata sheet" all the portions omitted, and "the Defendants did not fix the problem" after various orders of the DC to do it, which "only prejudiced and affected" the Plaintiffs, when they could not use those same transcripts to support their claims, to support their response to the motion for summary judgment and to support their statements during a bench trial.

And *whether,* should the CA order the DC to direct Defendants' counsel to provide the Plaintiffs, the DC and the CA with copies of each Zoom recording of the depositions and cross-examinations, pursuant the **Fed. R. Civ. P. 30(f)(3)**, so that, the Plaintiffs **can compare** the submitted transcripts with the Zoom recordings **before the Plaintiffs draft and file their Brief** in the CA?

4. – *Whether* the CA, erred by denying the Appellants-Plaintiffs' Motion (Document 45, 3/7/24) of the appeal case (No.: 23-12413)?

5. - *Whether* any U.S. Federal Court has the power and discretion at any time during a civil case, pursuant the **Canon 3B (6)** of the Code of Conduct for U. S. Judges, **to take appropriate actions**, upon receipt of reliable information indicating the likelihood, that a judicial employee's conduct contravened the Code of Conduct for Judicial Employees, or that a lawyer violated applicable rules of professional conduct?

6. - *Whether* the CA, has the power and discretion, at any time during the appeal of the case (No.: 23-12413), to order to the DC, to provide the CA with **the original color papers filed** by the Appellants-Plaintiffs in the DC, as part of the record on appeal, when our motion (Document 55, 3/18/24) **WAS UNOPPOSSED** by the Appellees-Defendants and *whether*, also should provide them, pursuant the FRAP 10(a)(1), the FRAP 10(e), FRAP 10(e)(3) and FRAP 11(e)?

7. - *Whether* the CA, erred by denying the Appellants-Plaintiffs' Motion (Document 56, 3/18/24)?

8. – *Whether* the CA, erred by telling Plaintiffs-Appellants that they could be sanctioned for submitting frivolous filings, without filing an opinion in which the court specified which filing they considered frivolous and without explaining how the court reached that conclusion ?

PARTIES TO THE PROCEEDING

Petitioners: Carlos A. Alonso Cano
Fé Morejón Fernández
Jany Alonso Morejón

Respondents: 245 C & C, LLC and CFH Group, LLC.

RELATED PROCEEDINGS

In State Courts of Florida:

- *245 C & C, LLC v. Carlos Alberto Alonso Cano and Fé Morejón Fernández.* No. 2018-000236-CC-21. Judgment entered June 20, 2019.
- *245 C&C LLC v. Carlos Alberto.* No. 2019-000208-AP-01. Opinion entered Sept. 3, 2020. Judgment entered Sept. 21, 2020. (Appellate Court of Florida).

In the 11th Cir. Courts of U.S.:

- *Carlos Alonso for Angie Alonso (Disabled) v. 245 C & C, LLC "Villas of Hialeah Apartments"* No. 18-cv- 20537-UU. Feb. 2, 2018. (11th Cir. Southern Dist. of FL).
- *Carlos A. Alonso Cano v. 245 C & C, LLC et al.* No. 19-cv-21045-CMA. Mar. 19, 2019. (11th Cir. Southern Dist. of FL).
- *Carlos A. Alonso Cano v. 245 C & C, LLC and CFH Group, LLC.* No. 19-cv-21826-JAL. May 6, 2019. Judgment entered July 20, 2023. (11th Cir. Southern Dist).
- *Carlos Alberto Alonso Cano,* Case No. 21-19589-LMI, (Chapter 13 Plan). U.S. Bankruptcy Court of the Southern District of Florida
- *Carlos Alonso Cano et al v. 245 C & C, LLC et al.* Consolidated appeals 23-12413-AA & 23-13392-AA. (11th Cir. Appellate Court, Atlanta, Georgia).

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Typographical errors found in the booklet examples:

1. – In **page** (**ii**), (line # 27) and in the **section III**, of pages (**vi & 33**), should say (**Doc. 55**, 3/18/24), **not** (Doc. **56**).

2. - In **page** (**xi**) **as this one**, was omitted the number "**ten**" (**10**) **between** each **FRAP** and **(e)**, as it is showed above, about **Rules**, mentioned in the (page # 31).

3. - In **page # 4**, (line # 16), should said "(DE 470, 6/1/21), (pg. **111**-113)" **not** (DE 470, 6/1/21), (pg. **11**-113).

4. – In **page # 15** (line # 11), should said "**HUD** investigation," **not** "**HID** investigation."

5 – In the **page # 39** (lines # 11 & 12), should said "to Marlein Garcia on (9/9/**16**)," **not** "to Marlein García on (9/9/**17**)."

PETITION FOR A WRIT OF CERTIORARI

The Appellants petition for a writ of certiorari to review the following order of the U.S. Court of Appeals for the 11th Circuit.

ORDER BELLOW

The order showed in the **App. E**, (pg. 64a) is reported at (**Doc. 69**) of the case **No. 23-12413-AA**

JURISDICTION

The 11th Court of Appeals entered this order on (4/23/24). This petition is timely filed on (8/20/24). Petitioners invokes this Court's jurisdiction under 28 U.S.C. § 1254(1) and 28 U.S.C. § 2101(e).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant the **62 Stat.**, ch. 646 (June 25, 1948), pursuant the **63 Stat**. 103 (May 24, 1949, ch. 139, § 91), and the code **28 U.S. C. § 1654**: "In all courts of the United States "the parties may plead and conduct their own cases personally" or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." Pursuant the Notes of the Advisory Committee on Rules—1979, and the **Rule 10(a)(1)**: "the original papers and exhibits filed in the district court constitute the record on appeal." See "THE CONSEQUENCES OF PERJURY AND RELATED CRIMES," by the "**House of Representatives, Committee on the Judiciary,**" Washington, DC, Tuesday, **December 1, 1998**, in which the CHAIRMAN **Hyde** in his opening statements, said:

> "**There is nothing just or fair in a double standard**. We make perjury, subornation of perjury, obstruction of justice, and witness tampering crimes because a judicial system can only succeed **if its procedures expose the truth**. If citizens are allowed "**to lie with impunity** or "**encourage other to tell false stories**," or "**hide evidence**," judges and juries "**cannot reach just results**." At that point, the courtroom becomes an arena for "**artful liars**" and the jury a mere focus group "**choosing between alternative fictions**." So for my friends who think that **perjury**, **lying**, and **deceit** are in some circumstances acceptable and undeserving of punishment, "**I respectfully disagree**" (**emphasis added**).

STATEMENT

Here, we will not attach some documents as an Appendix because it will make this book very voluminous and expensive, but we will mention parts of those documents and this court can easily find them in the cases that were mentioned here in the "*Related Proceedings*" section.

At different moments, in some cases mentioned in the section "*Related Proceedings*," **the Respondents, their witnesses and their lawyers have committed different forms of fraud on the court and fraud upon the court**, to deceive the judicial system, to obstruct the justice; to obstruct that we could present our case; and to prevail in those proceedings, including but not limited to:

(a) Vilma Hernandez (**Vilma**), the (Manager of Villas of Hialeah Apartments (**VOH**) and (**main witness of the respondents**), during the discovery period of the eviction case against the petitioners, provided as evidence "**forged legal documents**" with **misleading information in them**, in which **she added** handwritten statements "**to three different lease addendums**," after the petitioners signed them in their apartment, without the presence of Vilma or other person working for the respondents, and Carlos Alonso (**Carlos**) alone, returned those addendums to the leasing office, because Fe always signed any document in her apartment in which she was taking care of Angie Alonso (**Angie**), (Plaintiff, severe mental retarded & wheelchair dependent). And respondents' lawyer (**Mr. Lowenhaupt, Esq.**) presented those "**forged lease addendums**" as evidence during the eviction trial. In the case *Carlos Alonso et al v. 245 C & C, LLC el al.*, (**1:19-cv-21826-JAL**), in which you can **see the opinion of the judge Milena Abreu about Vilma** at (DE 26, 6/25/19),(pg. 4: 4-11) and see petitioners' motion to re-open the case **for fraud** under **Rule 60(b)(3)**, (DE 470, 6/1/21), (pg. 1 to 21 & 172 to 174 of 294).

(b) Without caring about the opinion of the judge Milena Abreu about Vilma, in the eviction trial, **Mrs. Langbein**, Esq. (respondents' lawyer here) "**once again**" presented as evidence in the case (**1:19-cv- 21826-JAL**), "**the same forged lease addendum**." See (DE 16-4, 6/11/19), (pg. 2, 16 & 17 of 17), Id.

c) But Mrs. Langbein, **never filed in that case**, the documents that **directly contradict the lease addendums that Vilma forged**. See them in (DE 470,

6/1/21), (pg. 172 to 177 of 294) Id, (**emphasis added**).

(d) The respondents, Vilma and Mr. Lowenhaupt, **withheld relevant evidences and never provided them to Mr. Christ Brochyus**, Esq. (petitioners' lawyer) during the eviction case against us. In case (1:19-cv-21826-JAL), see the (DE 470, 6/1/21),(pg. 108 to 110 of 294) and in USCA11 Case: 23-12413, see (Doc. 45-2, 9/7/24), (pg. 193 of 238)(**emphasis added**).

(e) Some of the relevant evidence that **were never provided to Mr. Brochyus** and he was unable to use them to defend us during the eviction case, are as follows:

(**The Air Conditioning's (A/C) maintenance work orders** showed in the (DE 470, 6/1/21),(pg. **111**- 113, 115-120, 132 & 133 of 294), of the case (1:19-cv-21826-JAL), because they:

(1) **directly contradict** the forged maintenance work orders presented by Vilma to the HUD investigator , see (DE 470),(pg. 10, 11 & 99 to 102 of 294);

(2) **contradict** Vilma's sworn affidavit signed on **10/31/17** and provided to the HUD investigator, see (DE 470),(pg. 88 of 294);

(3) because they would **demonstrate the perjury committed by Vilma during the eviction trial**, when she said "He's never been more than 24 hours without a/c," (DE 470),(pg. 139: 6-7 of 294) and when **she denied** that "the majority of the issues are surrounded by the A/C," see (**DE 470**),(pg. 82: 21-25 of 294), and also because it would demonstrate the

"**misrepresentations**" that Mr. Lowenhaupt **wrote in his letter** hand delivered to the HUD investigator on (**10/31/17**), saying:

> "Thus it can be seen that the Complainants' charge concerning ignoring HVAC problems because of any discriminatory intent **is indeed baseless**. Rather, major components were changed **almost immediately**." See (DE 470),(pg. 87:42-44 of 294),(**emphasis added**).

- **The letter written by Mr. Lowenhaupt** hand delivered the HUD investigator on (**10/31/17**), because:

(1) Its statement saying "However a few months into the tenancy.....Vilma Hernandez was made aware by Carlos Alonso that his son was indeed disabled," and "**A letter was provided by a medical provider to the management, at management request's which is included as Exhibit "J**,"(DE 470),(pg. 87: 3-8 of 294) and (DE 470),(pg. 98 of 294) **showing the medical letter describing Angie's disabilities that Carlos provided to Vilma** on September, 2012 **after Vilma requested it**, and presented by the petitioners during the eviction trial as **Exhibit 6**, would demonstrate that **Vilma committed perjury** during the eviction trial, by saying "**I don't know his afflictions**," (DE 470),(pg. 82:6 of 294), and **the perjury committed by Mr. Lowenhaupt** to the Hon. Judge Cohn, saying "**I object to that coming in. My client said they didn't get that letter**," see (DE 470),(pg. 85:2-14 of 294), (**emphasis added**).

(2) Its statement saying "**Mr. Alonso was never given a seven day notice to cure or asked to remove the generator**," see (DE 470),(pg. 94: 33-34 of 294), would demonstrate that **the Defendants and Vilma committed perjury during the eviction trial** since their statement "Plaintiff further alleges several lease violations occurred in September of 2017 concerning "**an authorized**" generator," see (DE 26, 6/25/19),(pg.1:13-14) because "the firefighters were who came to Villas of Hialeah, when the security guard Carlos Hernandez called the police on the tenant of Apt # 1316, ***but*** "**they claimed that they were not making anybody remove their generators at this time**," see (DE 470),(pg. 94: 36-37 of 294), which demonstrate that **Vilma and the respondents never saw the petitioners' generator running**.

- **The report written by the security guard Carlos Hernandez on (9/13/17)** at (**12:46 PM**), subject to (**9/12/17**), in which appeared petitioners' "**Apt. # 1301**" **without a generator**, see (DE 470),(pg. 95-96 of 294), because it would demonstrate that: (1) the security guard Carlos Hernandez and Vilma, **never saw petitioners' generator running**; (2) security called the police for tenant of **Apt # 1316** (**not for petitioners**), **see last line** in (DE 470),(pg. 95 of 294); therefore, **Vilma committed perjury** during the eviction trial and (3) **Mr. Lowenhaupt committed perjury in his letter**, written on (**10/31/17**) to the HUD investigator, by saying that "the respondents violated the lease by using a generator." (**emphasis added**).

- **The second (2nd) seven (7) day notice to cure**, showed in (DE 470),(pg. 145 of 294) which was dated on (**5/24/17**) and sent within five (5) months, see (DE 470),(pg. 144 of 294), to the tenant Mariela Hernandez (**who was a fabricated witness**) by respondents during the eviction trial against the petitioners, because it would demonstrate that:

  (1) Mariela violated the rules and regulations of VOH **twice** in a short period of time;

  (2) that Vilma (**with bad faith**), was protecting Mariela and **using her** as a witness against the petitioners;

  (3) that Mr. Brochyus (**never received**) and **could not use** the seven day notice to cure sent to Mariela on (**5/24/17**) to demonstrate that **the respondents discriminated and retaliated against the petitioners**, pursuant the **FL. Stat. 83.64**, because the respondents **terminated our lease** on (**9/26/17**), **only one day after sending them a seven day notice to cure** on (**9/25/17**), "instead of advising them, this was a fire code violation breach of any lease provision,"(DE 26, 5/25/19),(pg. 3: 3-8 of 6) and instead of **evicting Mariela**, pursuant the **FL. Stat. 83.56(2)(a)**, saying:

  > "If such noncompliance is of a nature that the tenant **should not be given an opportunity** to cure it or **if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months** of a written warning.... , **deliver a written notice of landlord's intent to terminate the rental agreement by reason thereof**,"

because Mariela, **violated the first notice to cure**, sent on (**1/9/17**), every day and up t (**5/24/17**) when she received the (**2nd**) notice to cure, violated the first notice to cure, and violated both notices up to (**7/21/18**), because her dogs continued barking constantly, and it was "**an ongoing problem that affected us**," and Carlos, repeatedly reported it to the respondents and to the police, without any good result because the inaction of Vilma, see (DE 470),(pg. 146 to 149 of 294), which **demonstrate a discriminatory and retaliatory intent and/or motive against us**, (**emphasis added**).

(f) The Petitioners, **prevailed in the eviction case**, but Mr. Lowenhaupt appealed. See (DE 92-3, 12/2/19) in the case (1:19-cv-21826-JAL).

(g) Although the Judge Milena Abreu concluded that "instead of advising them, this was a fire code violation or a breach of any lease provision, the property manager, Ms. Vilma Hernandez testified a 7 day Notice to Cure was issued on September 25, 2017, see Trial Exhibit, Plaintiff # 9,"(DE 26, 5/25/19), (pg. 3:3-8 of 6) in the "**Appellants' Brief**" drafted by Mrs. Langbein, appeal **No. 2019-208-AP-01** filed in the "Appellate Division of the 11th Judicial Circuit for the Miami Dade-County of Florida," in opinion of the petitioners, "**Mrs. Langbein committed fraud upon that court**," by "**misrepresenting**" in "**seven different occasions**" the "On 9/12/17, Vilma told Carlos that using a generator would violate the Florida Fire Prevention Code," ***because*** "**Vilma never testified that during the trial**," (**emphasis added**).

See Mrs. Brochyus' "**Appellees' Answer Brief**" (**pg. 28**), filed on (1/31/20) in case **No. 2019-208-AP-01**, showing the seven (7) times in which Mrs. Langbein "**misstated the record**" and "**mischaracterized Vilma' testimony on that trial**," (**emphasis added**).

(h) **In the appeal No.: 2019-208-AP-01**, of the eviction case, only two judges **committed the error** of reversing **the correct verdict** of the Judge Milena Abreu, ***but*** they never pay attention to the fact that **Vilma forged three different lease addendums**, that **she committed perjury at trial**, because they said: (1) "The successor judge determined that the Property Manager **was not trustworthy** and rejected not only her testimony, but all the other evidence submitted on behalf of the Landlord. It was error to do so," in case (No. 1-19-cv-21826-JAL), see the (DE 372-10, 11/16/20),(pg. 12:14-15 of 25) & (pg. 13:1 of 25); (2) these two judges also said "The Section 83.64(4) Fla. Stat. makes clear that there can be no retaliation absent a finding of discrimination, or that Tenants were treated differently than other tenant (Mariela Hernandez). No such finding of discrimination was made by the successor judge prior to determining that there was a pattern of retaliation by the Landlord, nor is such finding supported by the record," see (DE 372-10),(pg. 19:11-15 of 25) ***but*** Mr. Brochyus **could not argue discrimination** with respect to the tenant Mariela Hernandez, under **Section 83.64(4)** Fla. Stat., **because the respondents withheld all the relevant evidence mentioned above**, and these two judges **did not mention**, that in the trial record, Carlos said that on July, 2013

and on July, 2016, **after petitioners were various days without A/C** and **Angie was in great discomfort**, to accommodate Angie, Carlos asked Vilma **that her maintenance workers, fixed their A/C as soon as possible**, or Carlos will complaint against Vilma and her managers, in some state offices and even will go to the TV if it was necessary, **besides that Carlos also told Vilma that he will file a complaint with HUD**, as was done on June and on September of 2017, ***but*** Mr. Brochyus asked Carlos **not to mention it in the eviction trial, because it would be part of the federal case** against the respondents; (3) in their OPINION, these two judges, also "**misrepresented**"(DE 372-10),(pg. 20:1-3 of 25), of case (No. 1-19-cv-21826-JAL), that "Here, **while Alonso testified** that he was provided a notice that the use of a generator on his balcony post-hurricane Irma was a violation of the apartment complex rules," **which is totally false**, because: (1) they did not mention the trial transcript in which Carlos said it, (2) **Carlos never declared it**, and (3) the document received by the petitioners after the passage of Hurricane "Irma" "**did not have a date**" and "**did not mention the word**, "**generator**," as shows the (DE 92 -4, 12/2/19) and on (DE 106-2, 12/17/19), (pg. 4 of 4) of case (No. 1-19-cv-21826-JAL).

Therefore, these two judges **made such a reversible mistake**, because Ms. Langbein in his Appellants' Brief "**committed fraud upon the appellate court**" and "**misrepresented**" several times what was said during the eviction trial and,

because these two judges **did not review all the trial transcripts accurately** (**emphasis added**).

Proofs that these two judges, **were deceived by respondents**, **Vilma's and Mariela's perjuries** during the trial and because the respondents **withheld** from Mr. Brochyus, from those state and appeal courts and from us, **the letter of Mr. Lowenhaupt handed to the HUD investigator** on (10/31/17), and **the report of the security guard Carlos Hernandez**, dated on (9/13/17), are: (1) that these two judges said in the (DE 372-10),(pg. 21: 2-3 of 25) that "the fire department said that this was not safe and that the generators had to be removed" **which is totally false as already was demonstrated above**; and (2) when they said in (DE 372-10), (pg. 21:5-6 of 25) that "**This testimony was unrebutted**," which "**only**" occurred, because Mr. Brochyus was never provided with all the evidence mentioned above as withheld by them," which would have allowed him to refute respondents' misrepresentations and adequately defend our eviction case (**emphasis added**).

Finally, in (DE 372-10),(pg. 22 to 24 of 25), these two judges, **did not address correctly** respondents' 2nd and 3rd **affirmative defenses**: "The Landlord's Violation of "**Obligation of Good Faith**" and "**The Equitable Forfeiture Defense**" (**emphasis added**).

Therefore, based on all the above, in the opinion of the petitioners, "**if**" Mr. Brochyus had been provided with all the documents intentionally withheld by the respondents, **we would have prevailed for discrimination and retaliation in**

the eviction case, under the Fla. Stat. 83.64, and the respondents would **never have been able to reverse the correct verdict of the Judge Milena Abreu**, but they deceived those State and Appellate Courts and reversed it, because of the fraud committed on two state courts by the respondents and their witnesses; and upon two state courts by Mr. Lowenhaupt and by Mrs. Langbein respectively (**emphasis added**).

(J) **In addition to been victims of fraud during the eviction trial, during its appeal**, and **of a wrong eviction** during the COVID-19 pandemic, from the Apt. # 1301 of VOH, **in which we wanted to stay** because there **Angie was very well adapted and entertained all the time**, looking through the big glass door of his bedroom at the cars and people entering and leaving the property, where our daughters had many friends and school's partners living near, and where we had good neighbors which helped us and specifically Fe in the daily activities, but from 2021 we were forced to pay thousands of dollars to the respondents, for attorney fees and costs, through the bankruptcy case **No.: 21-19589-LMI**, (Chapter 13 Plan), filed by Carlos after we were "illegally evicted" and through which we already have paid ($ 32, 897.41) until present, of a total of ($ 69,855.01) with a monthly payment of ($ 1231.92).

But, the respondents and Mrs. Lngbein, also filed there, for ($ 275, 017. 74) on (11/1/21) and for ($ 416, 747. 51) up to (4/26/24) which are **FALSE CLAIMS**, pursuant **18 U.S.C. §§ 152, 157, and 3571**, by which **she should be fined up to**

($ 500,000), imprisoned for up to 5 years, or both, because: (1) at the moment those claims were entered in Bankruptcy, **neither the DC nor the CA, ordered us to pay the lawyer fees and costs included in those claims**, and (2) because we still are appealing the judgment of the DC.

(k) **Therefore**, in our opinion, by bringing those **false claims** to the bankruptcy court, Ms. Langbein **did so with bad faith and with the intent to harass us**, because **those lawyer's fees and costs requested** in her motion for summary judgment (**DE 364**, 11/16/20) **were not granted** with the ORDER (**DE 555**, 8/17/22), nor with the order (DE 678, 7/20/23) or with the judgment (**DE 679**, 7/20/23).

The DC's order (DE 696, 9/13/23) granting ($ 38,412.90) in taxable costs for respondents, **should not have been granted**, because we will appeal the the orders related to the motion for summary judgment, and other orders after the bench trial, and because it is contrary to the intentions of Congress, which said when it enacted the FHA, that attorneys' fees and costs should not be imposed against plaintiffs acting pro se litigants who sued because their civil and federal rights protected by the FHA were violated.

"The purpose of the Attorney's Fees Awards Act (42 U. S.C., Sect. 1988) is to ensure the effective enforcement of the civil rights laws **by making it financially feasible** to litigate civil rights violations. See *Dowdell v. City of Apopka*, supra, 698 F.2d at 1189. **And here**, respondents are not suing **but defending**, for violating

our civil rights protected by the FHA.

The Supreme Court in *Christiansburg* **cautioned that it is inappropriate** to apply "**hind sight logic**" to conclude that "**because the plaintiff did not ultimately prevail, his action must have been frivolous, unreasonable or without foundation**." Id, at 421, 98 S. Ct., at 700. As the Supreme Court in *Christiansburg* **emphasized**, the test **is not whether plaintiffs proceeded in subjective bad faith**, 434 U.S., at 412, 98 S. Ct. at 694. See *Burke v. Guiney*, 700 F.2d 767 772 (1st Cir. 1983), "**but whether admissible evidence existed to support Plaintiffs' claims**," which **is why we need the Zoom recordings**, to compare them with the transcripts provided, and prove that we said various dates and facts during our depositions, which should match with our affidavits and with our declarations during the bench trial (**emphasis added**).

Factual and Legal Background:

As have been demonstrated above, the respondents and their lawyers have been able to commit all kinds of discovery abuses and fraud to prevail in the eviction case, **and now in the Documents 45 & 73** of UACA 11 Case No.: 23-12413, we are denouncing that they have done so as well, by providing forged transcripts of our depositions and by refusing to provide the Zoom recordings to confront them with the transcripts that we received and with those that were filed in the DC and in the CA by Mrs. Langbein, because we know that many of our declarations in which we said the different dates and reasons, by which we were forced to request "again"

reasonable accommodations and modifications for Angie and his family, during 2016, during 2017 and specifically those that we requested "in writing," during the "conciliation process" that was requested by the respondents during the HUD investigation, see the (DE 430, 1/22/21), (pg. 23 to 25 of 245), all of which were "intentionally eliminated from the transcripts" with the goal to: (1) withheld relevant evidence, (2) to obstruct justice, (3) to allege that we did not make requests to accommodate Angie, within the two years statute of limitation, (4) to 'again" prevent us from being able to properly present our case in this federal court and in any appeal in the federal courts as already happened in the eviction case, (5) to mislead the judicial system "once again", (6) to prevail in the federal court, (7) and to request lawyers' fees and costs "once again" against us.

If the respondents and Mrs. Langbein, "**again**" are allowed in this case, to do all the fraud mentioned above, it will deeply harm us, because our appellate Brief will be deficient if we cannot use the Zoom recordings to demonstrate that the dates and some important facts and circumstantial evidence that we said during our depostions, coincide with the same information written in our affidavits, included in the USB filed with the (**DE 502**, 8/9/21), and with our declarations during the bench trial (**emphasis added**).

Therefore, it is necessary to order that the Zoom recordings also form part of the evidence, to which "we should have access before drafting our Brief to the CA," and both the DC and the CA also would have access to, before issuing a new verdict,

because "**we could not find all our declarations in those transcripts**," and after we provided reliable evidence proving that there are different transcripts and versions of our depositions, we are sure that "**they were intentionally forged**" and because among the orders that we will appeal, are the orders (**DE 555**, 8/17/22), (**DE 678 and 679**, 7/20/23).

Procedural Background

We filed different motions and documents in the DC, alleging that **the respondents have committed fraud** and that, Mrs. Langbein and/or the court reporter Mr. Elías Martínez, (both paid by the respondents), have committed **fraud upon the DC** by providing forged transcripts of our depositions and cross-examinations **in which Carlos always was present**. In the case (No.: 1-19-cv-21826-JAL), see the (DE 346, 10/20/22), (DE 358 & 358-1, 11/5/20), (DE 363, 11/12/20), (DE 370, 11/16/20), (DE 463 & 463-1, 4/7/21) and (DE 470 & 471, 6/1/21). The DC orders denying some of our motions, are in the (**DE 398**, 12/10/20), (DE 399, 12/10/20) and the (**DE 483**, 6/25/21) in which the DC **re-opened** the case "**only**" arguing that the petitioners were not informed about the rules governing summary judgment, **but without investigating the fraud we denounced under the Rule 60 (b)**, which we alleged in our motion at (DE 470, 6/1/21). **Also** see our letter to the Chief Judge, denouncing the above, is in the (DE 472, 3/6/21).

We know that **the real reasons for evicting us were discrimination and retaliation**, both under the FL. Stat. 83.64 and under the FHA, so we tried in this federal case to maintain the status quo, to protect Angie's health, well-being and to

keep him in the most suitable bedroom for him, in the Apt. # 1301 of VOH. We tried to maintain school bus arrangements for our two daughters and "**tried to stay the eviction**" during the COVID-19 pandemic, by filing the motion (DE 384, 11/20/20), ***but*** the Judge John J. O'Sullivan, **without jurisdiction and consent of the parties to rule on that motion**, pursuant the (**DE 46**, 7/30/19), denied our motion with the order (**DE 403**, 12/15/ 20) and the DC, in our opinion, "**also wrongly**" adopted its report and recommendation. See (**DE 410**, 12/30/20) showed in the **Appendix "A**" (pg. 1a) attached here.

REASONS FOR GRANTING THE PETITION

The decisions below are flatly inconsistent **with this Court's precedents** that will be explained in this Writ of Certiorari for each portion of the ORDER on review, and it deepens a split with the decisions taken in different U.S. Courts of Appeals with regard to the questions presented.

This Writ of Certiorari, should be granted because each portion of the decision below of the USCA11, is in conflict with the decision of another U.S. CA on the same important matter, see Rule 10(a).

The questions presented are important, and this case presents a vehicle to decide a correct path to be followed in the future by every Circuit Court of Appeal of the United States, when they are presented with these same questions, TO OBTAIN AN UNIFORMITY IN THEIR RULINGS.

This WRIT OF CERTIORARI, **also should be granted**, because the **fraud on the court** committed by the Appellees and the **fraud upon the court** committed by Mrs. Langbein, and their discovery abuses here, **are greater than those ones combined**, committed in *Hazel-Atlas Co. v. Hartford Co.* 322 U.S. 238 (5/15/44), and in *Talbot v. Foreclosure Connection, Inc.*, Case No. 2:18-cv-169, (7/29/20), described below (**emphasis added**).

I. REVIEW THE ORDER (Doc. 69, 4/23/24), DENYING OUR MOTION (Doc. 45, 3/7/24) TO COMPEL Mrs. Langbein, TO PRODUCE THE ZOOM RECORDINGS OF "ALL THE DEPOSITIONS"

A. The order below is flatly inconsistent with this Court's precedent in *Hazel-Atlas Co. v Hartford Co.* 322 U.S. 238 (May 15, 1944) when fraud was discovered or denounced

1. - There, this court stated that "Hazel commenced in the Circuit Court of Appeals this proceeding, wherein it appeared that Hartford, through application of an article purporting to have been written by a disinterested person, had perpetrated fraud in the Patent Office and in the Circuit Court of Appeals itself in the infringement suit."

2. - Upon review here of an order of the Circuit Court of Appeals denying relief, ***held***:

a) - Upon the record, the Circuit Court of Appeals: (1) **had the power and the duty** to vacate its 1932 judgment and (2) **to give the District Court Appropriate directions**, P. 247

b) - Even if Hazel failed to exercise due diligence **to uncover the fraud**, relief may

not be denied on that ground alone, since public interests are involved, P. 246.

c) - In the circumstances, Hartford **may not be heard** to dispute the effectiveness, nor to assert the truth of the article, P. 247.

3. - The Circuit Court of Appeals **is directed** to set aside its 1932 judgment, recall its 1932 mandate, **dismiss Hartford's appeal**, and to issue a mandate to the District Court **directing it to set aside its judgment** entered pursuant the 1932 mandate, **to reinstate its original judgment** denying relief to Hartford, **and to take such additional action as may be necessary and appropriate**, P. 150.

'137 F.2d 764, reversed.*239

4. - And MR. JUSTICE BLACK delivered the opinion of the Court.

> "This case involves the power, **upon proof that fraud was perpetrated on it by a successful litigant**, to vacate its own judgment entered at a prior term and **direct vacation of the District Courts' decree** entered pursuant to the Circuit Court of Appeal's mandate."

5. - Hazel contended that the Circuit Court of Appeals' judgment **had been obtained by fraud** and supported this charge with affidavits and exhibits.

6. - Surely **it cannot be** that preservation of the integrity of the judicial process must **always wait upon the diligence of litigants**. The public welfare demands that the agencies of public justice **be not so impotent** that they must always be **mute and helpless victims of deception and fraud**.

7. – Moreover, we need not decide whether, if the facts relating to the fraud were in dispute and difficult of ascertainment, the Circuit Court here **should have held hearings and decided the case**, or **should have sent it**

to the District Court for decision. Cf. *Art Metal Works, Inc. v. Abraham & Strauss, Inc.*, supra, Note 1, ***but*** the DC **failed to held a hearing** after petitioners' motions (**DE 358**, 11/5/20) and (**DE 470**, 6/1/21).

8. - Since the judgments of 1932 therefore **must be vacated**, **the case now stands in the same position as though Hartford's corruption had been exposed at the original trial**. Page 322 U. S. 251

9. - And Mr. JUSTICE ROBERTS, stated:

> "**No fraud is more odious than an attempt to subvert the administration of justice. The court is unanimous in condemning the transaction disclosed by this record**. Our problem is how best the wrong should be righted and the wrongdoers pursued. Respect for orderly methods of procedure is especially important in a case of this sort," and "**the resources of the law are ample to undo the wrong and to pursue the wrongdoer**, and to do both effectively with due regard to the established modes of procedure," and "**it is complained that members of the bar have knowingly participated in the fraud**. Remedies are available to purge recreant officers from the tribunals on whom the fraud was practiced," (**emphasis added**).

B. The decision bellow split with *Root Refining Co. v. Universal Oil Products Co.*, *Rozier v. Ford Motor Co.*, and *Talbot v. Foreclousure Connection Inc.* (U.S. Cir. Courts of Appeals)

10. - See, *Root Refining Co. v. Universal Oil Products Co.*, 169 F.2d 514 (3rd Cir. 1948), the court ruled "**The inherent power of a federal court to investigate whether a judgment was obtained by fraud is beyond question**. *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. No doubt, if the court finds **after a proper hearing** that fraud has been practiced upon it, or that **the very temple of justice has been defiled, the entire cost of the proceedings could justly be assessed against the guilty parties**.

11. - In *Rozier v. Ford Motor Co.* United States Court of Appeals, 573 F.2d 1332 (5th Cir. 1978), the reviewing court **examined whether the nondisclosure of certain information prevented the plaintiff from fully and fairly presenting her case**, and concluded that "**the disclosure of that information would have made a difference in the way plaintiff's counsel approached the case or prepared for trial**."

12. - See *Talbot v. Foreclosure Connection, Inc.*, No. 2:18-cv-169, 07-29-2020 (10th Cir. D. Utah). During a meeting on October 16, 2017 with Jason and Alicia Williams, David Garcia, and Ms. Talbot. Ms. Williams **recorded the conversation**. Because the meeting lasted for over two hours, the Chief Administrative Law Judge requested that the Company submit only relevant excerpts of the meeting. The Company then selected three segments, **and only those excerpts were admitted at the hearing**. It was through this process that Ms. Talbot learned that the meeting had been recorded.

When Ms. Talbot learned about the recording, **she requested that the defendants** "**provide her a copy**" and wrote an email saying "I do not want this new found evidence to slip away like so many other things do, or be corrupted, or changed." On (2/26/18), Ms. Talbot filed a **pro se Complaint**, which commenced the case. On (1/18/19), in response to a formal interrogatory, requesting information about any recordings involving Ms. Talbot,

The Defendants responded as follows:

> "As to recordings of meetings where Plaintiff was present, she was provided copies as well as the Utah Department of Workforce Services. **Same recordings were sent to the State for their investigation** and **a scheduled hearing related to Plaintiff's claim of unemployment benefits**. **The recordings were played** by the Administrative Law Judge, without objection from Talbot, at the hearing and she was able to listen to

> such. **The tapes were maintained pending the entire appeal process that Talbot initiated** and afterward there was no reason to maintain and such deleted."

Ms. Williams, stated that Ms. Talbot "acknowledge[d] she knew she was not going to make any overtime and that she wasn't making $ 25.00 an hour with her salary and she even says that is correct," ***but*** Ms. Williams' statement to DWS "**was misleading**" because, as discussed below, Ms. Talbot has asserted **on other portions of the full recording** that **she believed she would be receiving overtime**. The court stated that,

> "**Had Ms. Talbot been given the full recording, she could have submitted portions to show Ms. Williams was not forthright on the overtime Matter**.

When coupled with all the evidence previously provided, it supports that **Ms. Talbot persistently and continuously sought the recording**. The court also notes Defendants' purported production of the full recording ***runs contrary to their pattern of production***. Defendants **also withheld production of time and payroll records** until after this court ordered their production. See Order, ¶ 6 (ECF No. 69 at 4).

Discovery Abuses

The court stated "**Discovery is not supposed to be a shell game**, where the hidden ball is moved round and round **and only revealed after so many false guesses are made** and so much money is squandered." *Lee v. Max Int'l, LLC*, 638 F.3d 1318, 1322 (10th Cir. 2011). For reasons that are inexplicable, **neither Defendants nor Defendants' counsel** seem to recognize **how serious their discovery abuses are**. Only after the court informed Defendants they would be sanctioned, **did Defendants produce the recording**. Such production **does not excuse Defendants from sanctions because the fact remains "Defendants engaged in discovery abuses**." Thus, the Tenth Circuit has set forth the following factors for consideration **when a court determines if default is appropriate**: "'(1) the degree of actual prejudice to the [party]; (2) the amount of interference with the judicial process; (3) the culpability of the litigant; (4) whether the court warned the party in advance that dismissal of the action would be a likely sanction for non-compliance; and (5) the efficacy of lesser sanctions.'" Id. at 921 (quotations, citations, and alterations omitted).

Degree of Actual Prejudice

The Tenth Circuit has "**recognized prejudice from 'delay** and mounting attorney's fees.'" *Faircloth v. Hickenlooper*, 758 F. App'x 659, 662 (10th Cir. 2018) (quoting *Jones v. Thompson*, 996 F.2d 261, 264 (10th Cir. 1993)). **Both have occurred here due to Defendants' actions**.

Thus, while the prejudice is not as great as it would have been, **prejudice is still present** (**emphasis added**).

Amount of Interference with the Judicial Process

The court concluded that **Defendants' conduct resulted in substantial interference with the judicial process**. Although Defendants have now produced the recording, **the production occurred only after multiple requests for production**. Defendants **have abused the litigation process** significantly without any apparent acknowledgment **that their conduct was improper**. Defendants' briefing **attempts to divert the court through red herring arguments**, and if a claim or document contains "**false statements**, **responses** or **deliberate omissions**," **then willfulness is established**. Id. (citing Utah Admin. Code R994-406-401(1)(c)).

Thus, **if a document has a false statement** and the claimant **knew or should have known that the statement was incorrect**, one can be found **"liable for fraud**."

Degree of Culpability

To establish "**willfulness**, **bad faith**, or **some fault**," a moving party must prove discovery abuses by clear and convincing evidence. *Xyngular*, 890 F.3d at 873 (quotations and citation omitted). **Ms. Talbot has met this standard**. Defendants had clear notice **that the recording was relevant** to Ms. Talbot's wage claim. **She asked for the recording many times** so it could be submitted to the Labor

Commission on her wage claim. **She never did receive it for that proceeding**. **Relevant here**, (the petitioners, requested the Zoom recordings **SEVERAL TIMES**, ***but*** **never received them**, before answering the motion for summary judgment (DE 364, 11/16/20), **nor before the bench trial** or **before drafting our appellate Brief**. But Mrs. Langbein **recognized that**:

> "The court reporter did not control the Zoom recordings. **Appellees' counsel** set the Zoom conference, **maintained control of Zoom settings** and **used the recordings as notes**. See (Doc. 76, 5/8/24), (pg. 3 of 7), at the end of the **FN # 3**

Warning

The fourth factor requires consideration of whether Defendants had notice that dismissal was a possibility. Although this is a factor for consideration, the Tenth Circuit has "point[ed] out that **notice is not a prerequisite for dismissal** under *Ehrenhaus*." *Ecclesiastes* 9:10-11-12, *Inc. v. LMC Holding Co.*, 497 F.3d 1135, 1149 (10th Cir. 2007) (citations omitted). This means **dismissal or default judgment may occur** even "**without a specific warning**." *Id.* Nevertheless, "notice is an important element in the *Ehrenhaus* analysis." *Id.*

Adequacy of Lesser Sanctions

The court now addresses whether lesser sanctions **than default judgment** are appropriate. The court is mindful of "**the judicial system's strong preference to decide cases on the merits**." *Sanchez v. Beaver County Sheriff*, No. 2:18-cv-69, 2020 U.S. Dist. LEXIS 107853, at *3 (D. Utah June 18, 2020) (citing *DeBardeleben v. Quinlan*, 937 F.2d 502, 504 (10th Cir. 1991)).

Nevertheless, the discovery abuses in this case are unacceptable. **Counsel seems to be complicit** rather than acting in a manner to curtail such misconduct. Besides **withholding evidence**, Defendants and counsel **also have not been forthright with the court in affidavits and representations**. To this day, Defendants have not shown any awareness **that their conduct was wrong**. As stated before, "**Defendants' conduct is troubling**." **Sanctions are for the purpose of addressing a wrong and deterring future conduct**.

Accordingly, the court concludes the appropriate sanction in this case **is to enter default judgment on liability**. The court **also concludes counsel should be sanctioned** personally for his conduct as set forth below.

By imposing these sanctions, the court's purpose is "**to deter Defendants and counsel from withholding relevant evidence**," "**submitting sworn affidavits with false or misleading information in them**," and "**making arguments to the court or other tribunals that misrepresent facts and law**."

Here, the case has not been decided on the merits. Instead, **default judgment has been awarded as a sanction for Defendants' misconduct**.

Had Ms. Talbot proceeded to trial, however, **she may have prevailed** on her FLSA claim.

Sanction of Counsel

As discussed above, the conduct of Defendants' counsel also has been troubling. Not advising about a preservation letter, **submitting evidence and argument with misleading information**, and **failing to acknowledge the seriousness** of Defendants' misconduct "**are contrary to how counsel should conduct itself in a case**."

Conclusion

For the reasons stated above, the court **GRANTS Ms. Talbot's Motion for Sanctions** (ECF No. 56). The court specifically cautions Defendants and counsel **about the need for preservation** and **timely production of evidence**, **making careful and truthful representations to the court**, and **adherence to court orders**. By so specifying, this does not mean Defendants and counsel have not been warned about other litigation abuses.

Double Standard

In our opinion, the double standard mentioned in the (2nd) page here, (by CHAIRMAN Hyde), **occurred in our federal case**, when: (1) the Judge John J. O'Sullivan entered the order (**DE 398**, 12/10/20) denying to investigate the fraud denounced in our motion (DE 358, 11/5/20), (2) when the Judge Joan A. Lenard, re-opened the case (DE 483, 6/25/21) **without investigating the fraud under the Fed. R. Civ. P. 60(b)(3)**, denounced in (**DE 470**, 6/1/21), because "The inherent

power of a federal court to investigate whether a fraud occurred is beyond question." *Root Refining Co. V. Universal Oil Products Co.*, 169 F.2d 514 (3rd Cir. 1948) addressing *Hazel-Atlas Co. v. Hartford Empire Co.*, 322 U. S. 238, (May 15, 1944).

In Appellants' opinion, a double standard "**also occurred**" when: (1) the Hon. Mag. Judge John J. O'Sullivan, "**without jurisdiction and consent of the parties**," see case (1:19-cv-21826-JAL) and the (DE 46, 7/30/19) in (1:19-cv-21826-JAL), entered the recommendation (DE 751, 1/10/24), (2) also when the DC adopted it, see (DE 755, 1/30/24) and (3) when the CA entered the order (Doc. 36, 2/9/27) in the appeal case (No. 23-12413), because they granted Appellees' "**out of time**" motion (DE 713, 9/22/23), to "Require Appellants to Prepare, Pay for and File all Portions of the Trial Transcript" pursuant the **FRAP 10(b)(3)(C)** of a bench trial which should never have been entered, because **we always requested and were entitled to a jury trial pursuant the FHA**, see (DE 1, 5/6/19) and the (DE 92, 12/2/19). **But on the contrary**, the CA: (1) neither granted Appellants' motions (**Doc. 45**, 3/7/24) **requesting the Zoom recordings**, even after we provided (**238**) **Exhibits** with competent substantial evidence demonstrating that the Appellees and Mrs. Langbein committed discovery abuses and withheld relevant evidence; (2) double standard occurred when the CA did not grant our motion (Doc. 73, 4/29/24), requesting the Zoom recordings pursuant the **Fed. R. Civ. P. 30(f)(3)**, after we provided (275) pages of competent substantial and verifiable evidence **demonstrating that Mrs. Langbein is a dishonest lawyer who made many**

misrepresentations; (3) double standard occurred when the CA, **did not order** the DC to send to the CA the original "**in color papers**" filed by Carlos in the DC; (4) and when the CA, threatened us with sanctions, **without investigating the fraud we denounced and without filing an opinion** in which the CA explained which of our filings are frivolous and how they came to that conclusion.

II. REVIEW THE ORDER (Doc. 69), DENYING OUR MOTION (Doc. 56, 3/18/24) TO COMPEL THE DC, TO SUPPLEMENT THE RECORD ON APPEAL WITH THE ORIGINAL "COLOR PAPERS" WE FILED IN DC

A. The decision bellow split with FRAP 10(a)(1) see "Notes of the Advisory Committee" on Rules (3/26/09), eff. (12/01/09), and with the decisions of other U.S. Circuit Courts of Appeal.

In *United States of America v. David P. True*, No. 99-5111, (U. S. Court of App., 6th Cir., May 17, 2001), the court stated:

"The district court fully considered True's Hyde Amendment application on the basis of "the arguments of counsel and the record in this case." R.262. True appealed that decision; this Court will review it on that record under an abuse of discretion standard, see US Br. at 21-25; and briefing has been completed. The United States does not object to supplementing the record with the first documents- the government's motion regarding Longmire's sentence and the sentencing transcript.

At the time of True's Hyde Amendment application, these documents were part of the record in a related criminal proceeding before the same district judge who ruled on True's application, and in which the United States was represented by the same counsel who prosecuted True. Under the Federal rules of Appellate Procedure: The following items constitute the record on appeal: the original papers and exhibits filed in the district court proceedings. See, e. g. *United States v. Barrow*, 118 F.3d 482, 487-88 (6th Cir. 1997).

Rule 10(e) provides a remedy if some correction or modification of the record is necessary. Specifically, **Rule 10(e)(1)** provides that the district court is to settle "**any difference** . . . **about whether the record truly discloses what occurred in the district court**";

Rule 10(e)(2) allows the parties by stipulation, the district court, or the court of appeals to correct any material and accidental "omission or misstatement in the record" and **Rule 10(e)(3)** provides that "[a]all other questions as to the form and content of the record shall be presented to the court of appeals." The general rule, of course. Is that "only those matters that were in fact presented to the district court are considered part of the record on appeal." 16 A Charles Allan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3956.1, at 322 (1999). However, some courts of appeals hold that "**[i]n special circumstances** . . . **a court of appeals may permit supplementation of the record to add material not presented to the district court**." Id. at 349-51 (**emphasis added**) (citing cases granting to supplement the record).

The two cases on which True relies (Motion at 2), In re Capital Cities/ABC's Application, 913 F.2d 89, 97 (3d Cir.1990), and *United States v. Aulet*, 618 F.2d 182, 185-87 (2d Cir. 1980), support the proposition that some courts of appeals in some circumstances-pursuant to Rule 10(e) or **in the exercise of their authority supplemented the record on appeal** (**emphasis added**).

Our case has some differences with True, **but they are beneficially for us,** because they support this Writ of Certiorari for the following reasons:

a) - See our motion (**Doc. 56**, 3/18/24),(pg. 4 & 5),(**pt. # 10**), in which we requested that the CA to order the DC to file in the record for appeal the "**ORIGINAL**" exhibits included in the documents (**DE 430**, 1/12/21); (**DE 431**, 1/26/21); (**DE 447-1**, 3/15/21) and of (**DE 470**, 6/1/21) which were filed in the DC by Carlos as "Color **Exhibits**."

Therefore, **all of they were in the record**, **before the DC entered the orders** (**DE 555**, 8/17/22) and (**DE 678 & 679**, 7/20/23) that will be appealed in our Brief (**emphasis added**).

b) – Those "**ORIGINAL**" exhibits included in those documents, should appear "**in color**" in the record for appeal, **as they were filed by Carlos**, because in them, the CA would be able to see many details, that **will not be able to see** in their copies that were filed in "**black and white**" in the docket, because they are circumstantial evidences that support our claims in the Counts I and III of the SAC, and because they will be mentioned in our Brief to demonstrate that Appellees'

witnesses "**LIED AT STAND**" and committed "**PERJURY UNDER OATH**" during the bench trial (**emphasis added**).

c) – The CA erred, because our motion (**Doc. 56**) was "**UNOPPOSED**." See "Certificate of Conference" in USCA 11 (Doc. 56, 3/18/24),(pg. 8 of 13).

III. REVIEW THE ORDER (Doc. 69) DENYING OUR MOTION (Doc. 55, 3/18/24) "TO PROCEED PRO SE" IN THE DISTRICT COURT

A. The decision below is flatly inconsistent with this Court's precedents in *Godinez v. Moran*, 509 U.S. 389 (1933), in *Faretta v. California*, 422 U.S. 806, (1975); in *McKaskle v. Wiggins* 465 U.S. 168 (1984), with the 28 U.S.C. § 1654 and the 6th Amendment

a. In *Godinez v. Moran*, 509 U.S. 389, (1933) **in a certiorari** to the U.S. Court of Appeals for the (**9th Circuit**), No. 92-725, that was argued on (4/21/33), **the Supreme Court of U.S.**, on (6/24/33), **ruled that**: "**A person who is competent to stand trial is also competent to waive an attorney and proceed pro se**," (**emphasis added**).

b. See *Faretta v. California*, 422 U.S. 806 (1975), in a certiorari to the U.S. Court of Appeals for the (**9th Circuit**), No. 73-5772, that was argued on (11/19/74), and ruled on (6/30/75) **by the Supreme Court of U.S**. Antony Faretta, requested that **he be permitted to represent himself**.

But, the Supreme Court of U.S. granted certiorari, 415 U.S. 975, and:

VACATED AND REMANDED, because

"*In the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation*. Section 35 of the Judiciary Act of 1789, *1 Stat.* 73, 92, *enacted by the First Congress and signed by President Washington one day before the Sixth Amendment was proposed*, provided that "*in all the courts of the United States, the parties may plead and manage their own causes personally*" or *with the help of counsel*."

And "*this consensus is soundly premised. The right of self-representation finds support in the structure of the Sixth Amendment*, as well *as in the English and colonial jurisprudence from which the Amendment emerged*. The *Sixth Amendment*, when naturally read, *thus implies a right of self-representation*. This reading is reinforced by the Amendment's roots in English legal history. *The right is currently codified in 28 U.S.C. § 1654*.

This Court's past recognition of the right of self-representation, the federal court authority holding the right *to be of constitutional dimension*, and *the state constitutions* pointing to the right's *fundamental nature form a consensus not easily implored*.

> [T]he mere fact that a path is a beaten one," Mr. Justice Jackson once observed, "**is a persuasive reason for following it**." [Footnote 13]

c. Further, in *McKaskle v. Wiggins* 465 U.S. 168 (1984) **in a certiorari to the U.S. Court of Appeals** for the (**5th Circuit**), No. 82-1135, that was argued on (11/9/83), **the U.S. Supreme Court**, on (1/23/84), **ruled that**:

> "Even if the defendant successfully waives counsel, the court can provide a "standby counsel" **if the pro se defendant has actual control over the presentations of case to the jury, and the jury retains the belief the defendants is in charge of his own case**."

B. The decision bellow split with *United States v. Plattner*, 330 F. 2d 271 (2nd Circ. Mar. 31, 1964) and with other U.S. Courts of Appeals

In *U. S. v. Plattner*, the court ruled that:

> "The United States Courts of Appeals have repeatedly held that the right of self-representation is protected by the Bill of Rights."

The Court of Appeals for the Second Circuit emphasized that the Sixth Amendment grants the accused the rights of confrontation of compulsory process for witnesses in his favor, and of assistance of counsel as minimum procedural requirements in federal criminal prosecutions.

The right to the assistance of counsel, the court concluded, was intended to supplement the other rights of the defendant, **and not to impair** "**the absolute and primary right to conduct one's own defense in propria persona**." Id. at 274.

The court found support for its decision **in the language of the 1789 federal statute**; in the **28 U.S.C. § 1654**, and **in the many state constitutions** that expressly guarantee self-representation.

C. The decision bellow split with the DC's order (DE 126, 12/27/19), granting that Carlos and Fe could represent themselves as pro se litigants (emphasis added)

A long time ago and **for more than three** (3) **years**, the same U.S. Court of the Southern District of Florida authorized Carlos and Fe to litigate this case as **pro se**, since we requested it and were adults. See the (DE 126, 12/27/19) and the (DE 158, 2/7/20).

During those three years, we successfully drafted and filed in the DC, **450 documents**, we participated in various discovery hearings, survived **a motion for summary judgment** (**DE 364**, 11/16/20), in which respondents and Mrs. Langbein, **misrepresented facts and law** (**emphasis added**).

We also, re-opened the case (**DE 470**, 6/1/21) and (**DE 486**, 6/5/21), and continued litigating it, until the order (DE 575, 1/23/23) was entered by the DC.

Therefore, the CA **should have applied the same legal standard now**, for Carlos, Fe and Jany, who was already (22) years old at the time the order (**Doc. 69**, 4/23/24), was entered, since Jany was born in December, 2011 (**emphasis added**).

We will be prejudiced if we are not allowed to act pro se in the DC too, because:

(1) the Judge Joan A. Lenard, **already struck from the record** our (**DE 714**, 9/25/23) and (**DE 715**, 9/27/23);

(2) because Carlos and Fe, who were **who took most of the photos and recorded most of the videos** that were provided to Mrs. Langbein during discovery, **which we want to present and explain freely** during a JURY TRIAL when this case is reversed to the DC;

(3) to ask direct questions to every Appellees' witness, and

(4) refute the arguments and objections of Mrs. Langbein to our evidence, together with Mr. Dunlavy, **representing Angie and Katy**, and to exchange opinions and arguments **with him**, as **our standby counsel**, and/or **co-counsel**.

IV. Finally, this case is an ideal vehicle to provide guidance on the application of:

a) - The Bill of Rights and the Sixth Amendment, **granting us pro se representation**.

b) - The **Canon 3(B)(6)** of the Code of Conduct for United States Judges (**when fraud upon the court and discovery abuses are committed by Defendants' lawyer** are denounced by pro se Plaintiffs-Appellants **at any time** during the case.

c) - **To get uniformity in the rulings** of the different U.S. Circuit Courts of Appeals **in the questions presented**.

d) - To eliminate the DOUBLE STANDARD mentioned by the CHAIRMAN Hyde. See the (**pg. 2**) above.

e) – Carlos Alonso, **offers to be tested with a LIE DETECTOR** (if necessary) about what he requested to Tom Cabrerizo on (**8/4/16**), to Vilma Hernandez at the **beginning of March, 2017**, on (**3/29/17**), on (**4/7/17**), to Marlein Garcia on (**9/9/16**), and what he said to Mrs. Langbrein during his deposition (**emphasis added**).

CONCLUSION

Based on all the above, this petition should be granted.

Respectfully submitted on (8/20/24)

1. - Carlos A. Alonso Cano (individually, and for Angie and Katy) _____

2. – Fé Morejon Fernandez (individually) _____

3. – Jany Alonso Morejon (individually) _____

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