24-5918

No.----------

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RICKY KAMDEM-OUAFFO

Petitioner

v.

BALCHEM CORPORATION, GIDEON OENGA (In Personal capacity and in capacity with Balchem Corporation), BOB MINIGER (In Personal capacity and in capacity with Balchem Corporation), RENEE McCOMB (In Personal capacity and in capacity with Balchem Corporation), THEODORE HARRIS(In Personal capacity and in capacity with Balchem Corporation), JOHN KUEHNER (In Personal capacity and in capacity with Balchem Corporation), TRAVIS LARSEN (In Personal capacity and in capacity with Balchem Corporation), MICHAEL SESTRICK(In Personal capacity and in capacity with Balchem Corporation)

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE US COURT OF APPEALS FOR THE SECOND CIRCUIT (CASES No. 23-455 AND 23-458)

PETITION FOR A WRIT OF CERTIORARI

Ricky Kamdem-Ouaffo, Pro Se
86 Bayard Street No. 381
New Brunswick, NJ 08903
Tel: 1 732 763 8622
E-mail: rickykamer@gmail.com.

THE QUESTIONS PRESENTED FOR REVIEW

QUESTION I: Whether a federal court has Subject-Matter Jurisdiction under the Fed. R. Civ. P. Rule 6(b)(2) or any other federal law to "*Order, Adjudge, Decree*" or "*Affirm*" that a ten-months-after post-judgment motion pursuant to the Fed. R. Civ. P. Rule 60(b)(4) for "*Relief from a Judgment or Order*" is a "*Motion to Alter or Amend a Judgment*" pursuant to the Fed. R. Civ. P. Rule 59(e), and whether in so doing the inferior courts deprived Petitioner's fundamental constitutional rights.

QUESTION II: Whether it is a violation of Muslim Petitioner's First Amendment Freedoms of Religion when the inferior courts "*Order, Adjudge, Decree*" or "*Affirm*" that Petitioner's references and expression of his belief in the sacred teachings of Islam on sexual intercourse virginity, chastity, and purity until after marriage are "*Scatological*" meaning "*Excrements, Feces, Cacas, Poop, Shit*", "*Exotic*", "*Vulgar*", "*crude*", "*obscene*", "*inappropriate*", "*salacious*", "*indefensible*", "*foul*", "*Profane*", "*Misconduct*", and "*Frivolous.*"

QUESTION III: Whether it is violation of Muslim Petitioner's Fourth Amendment rights when federal Judges who are Subject Judges in Petitioner's complaints of Judicial Misconduct pursuant to 28 U.S.C. §§351-364 extrajudicially enlist third parties for an endeavor to surreptitiously make *"Physical Contact with*", kidnap, ambush, murder, and/or assassinate Petitioner in response to the said Judicial Misconduct Complaints.

LIST OF ALL PARTIES TO THE PROCEEDING

A. Petitioner

RICKY KAMDEM-OUAFFO

B. Respondents

1) BALCHEM CORPORATION.

2) GIDEON OENGA (In Personal capacity and in capacity with Balchem Corporation).

3) BOB MINIGER (In Personal capacity and in capacity with Balchem Corporation).

4) RENEE McCOMB (In Personal capacity and in capacity with Balchem Corporation).

5) THEODORE HARRIS(In Personal capacity and in capacity with Balchem Corporation).

6) JOHN KUEHNER (In Personal capacity and in capacity with Balchem Corporation).

7) TRAVIS LARSEN (In Personal capacity and in capacity with Balchem Corporation).

8) MICHAEL SESTRICK (In Personal capacity and in capacity with Balchem Corporation).

CORPORATE DISCLOSURE STATEMENT

Not Applicable. Petitioner is a natural human person.

LIST OF ALL PROCEEDINGS THAT ARE RELATED

1) Kamdem-Ouaffo v. Balchem Corporation et al, U.S. District Court Southern District of New York ("SDNY"), Case No. 7:17-cv-02810-PMH-PED.

2) Kamdem-Ouaffo v. Balchem Corporation et al, United States Court Of Appeals for the Second Circuit Case No. 21-653.

3) Kamdem-Ouaffo v. Balchem Corporation et al, U.S. District Court Southern District of New York ("SDNY"), Case No. 7:19-cv-09943-PMH.

4) Kamdem-Ouaffo v. Balchem Corporation et al, United States Court Of Appeals for the Second Circuit Case No. 23-458.

5) Complaint of Judicial Misconduct pursuant to 28 U.S.C. §§351-364, Docket Nos. 22-90052-jm, 22-90054-jm , 22-90202-jm, 22-90203-jm, 22-90204-jm, 22-90232-jm, 22-90233-jm, 22-90237-jm, 22-90238-jm, 22-90239-jm.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT TO CERTIORARI

The Petitioner respectfully prays that a Writ of Certiorari be issued to review the Opinions and Judgments below, some of which date back to the year 2016. The initial version of the Petition was shortened by half pursuant to the 24A339 ORDER.

I. OPINIONS AND ORDERS ENTERED IN THE CASE BY COURTS

A. In The United States Court Of Appeals For The Second Circuit ("USCA2") Case No. 23-455

The Docket Sheet for USCA2 Case No. 23-455 is included in the Appendix ("Appdx') Vol. 2, pp. 317 – 324 showing the summary of several Orders and Opinions entered in the case including the ones highlighted below:

(1) 23-455-[Dkt # 134-1] SUMMARY ORDER AND JUDGMENT (Appdx. Vol. 1, pp. 1-8).

(2) 23-455-[Dkt # 149] ORDER, Petition For Rehearing (Appdx. Vol. 1, p. 16).

(3) 23-455-[Dkt # 160] JUDGMENT MANDATE (Appdx. Vol. 1, p. 10).

B. In The United States Court Of Appeals For The Second Circuit ("USCA2") Case No. 21-458

The Docket Sheet for USCA2 CASE No. 23-458 is included in Appdx Vol. 2, pp. 562 – 568 from which the following which are highlighted:

(4) 21-458-[Dkt # 99] SUMMARY ORDER AND JUDGMENT (See Appdx. Vol. 1, p. 18).

(5) 21-458-[Dkt # 107] ORDER, petition for rehearing (See Appdx. Vol. 1, p. 24).

(6) 21-458-[Dkt # 115] JUDGMENT MANDATE (See Appdx. Vol. 1, p. 25)..

C. In The United States Court Of Appeals For The Second Circuit ("USCA2") Case No. 21-653

(7) 21-653-[Dkt # 147] ORDER DISMISSING APPEAL (Appdx. Vol. 1, p. 35).

(8) 21-653-[Dkt # 157] CERTIFIED ORDER AND MANDATE (See Appdx. Vol. 1, p. 37).

D. In The US District Court For The Southern District Of New York ("SDNY") Case No. 7:17-cv-02810-PMH-PED

The Docket Sheet for DISTRICT COURT CASE No. 7:17-cv-02810-PMH-PED is included in Appdx. Vol. 3, pp. 643 – 674 showing the summary of several Orders and Opinions entered in the case including the ones highlighted below:

(9) 7:17-cv-02810-[ECF # 36] OPINION AND ORDER: re: 28 MOTION to Dismiss.

(10) 7:17-cv-02810-[ECF # 48] ORDER.

(11) 7:17-cv-02810-[ECF # 56] MEMO ENDORSEMENT on re: 54 Letter.

(12) 7:17-cv-02810-[ECF # 82] MAGISTRATE JUDGE'S ORDER.

(13) 7:17-cv-02810-[ECF # 108] MEMORANDUM OPINION AND ORDER re: 88 LETTER MOTION.

(14) 7:17-cv-02810-[ECF # 130] ORDER re: 88 LETTER MOTION.

(15) 7:17-cv-02810-[ECF # 173] MAGISTRATE JUDGE'S ORDER

(16) 7:17-cv-02810-[ECF # 184] MEMORANDUM OPINION AND ORDER re: 175 MOTION PURS. TO THE FED.R.CIV.P. RULE 72(b)(2).

(17) 7:17-cv-02810-[ECF # 194] MAGISTRATE JUDGE'S ORDER.

(18) 7:17-cv-02810-[ECF # 213] ORDER TO DEFENDANTS.

(19) 7:17-cv-02810-[ECF # 225] REPORT AND RECOMMENDATION .

(20) 7:17-cv-02810-[ECF # 244] ORDER.

(21) 7:17-cv-02810-[ECF # 274] ORDER.

(22) 7:17-cv-02810-[ECF # 290] CHIEF JUDGE'S ORDER.

(23) 7:17-cv-02810-[ECF # 310] OPINION AND ORDER.

(24) 7:17-cv-02810-[ECF # 321] OPINION AND ORDER.

E. In The US District Court For The Southern District Of New York ("SDNY") Case No. 7:19-cv-09943-PMH

The Docket Sheet for DISTRICT COURT CASE No. 7:19-cv-09943-PMH is included in Appdx Vol. 5, pp. 1251 – 1262 showing the summary of several Orders and Opinions entered in the case including the ones highlighted below:

(25) 7:19-cv-09943-[ECF # 46] ORDER.

(26) 7:19-cv-09943-[ECF # 70] MEMORANDUM OPINION AND ORDER.

(27) 7:19-cv-09943-[ECF # 71] CLERK'S JUDGMENT.

(28) 7:19-cv-09943-[ECF # 92] OPINION AND ORDER.

II. STATEMENT OF THE BASIS FOR JURISDICTION IN THE SUPREME COURT

Pursuant to the Supreme Court's 24A339 ORDER Petitioner submits this one Petition for US Court of Appeals for the Second Circuit Case No. 23-455 (District Court Case No. 7:17-cv-02810-PMH-PED) and Case No. 23-458 (District Case No. 7:19-cv-09943-PMH).

The date on which the United States Court of Appeals for the Second Circuit ("USCA") Decided Case No. 23-455 was on March 26, 2024 by Summary Order. A copy of the Summary Order appears at Appendix Volume 1, pages 1 to 8 ("Appdx. Vol. 1, pp. 1- 8"). The date on which the United States Court of Appeals for the Second Circuit ("USCA") Decided Case No. 23-458 was on March 26, 2024 by Summary Order. A copy of the Summary Order appears at Appdx. Vol. 1, pp. 18- 23.

A timely petition for rehearing in Case No. 23-455 was denied by the United States Court of Appeals on 05/08/2024, and a copy of the order denying rehearing appears in Appdx. Vol. 1, p. 9. A timely petition for rehearing in Case No. 23-458 was denied by the United States Court of Appeals on 05/02//2024, and a copy of the order denying rehearing appears in Appdx. Vol. 1, p. 24.

On 10/09/2024, the Court granted Petitioner's Application No 24A339, setting the page limit of Petitioner's Combined Petition for the Second Circuit Cases No. 23-455 and 23-458 to 50 pages.

The jurisdiction of the Supreme Court is invoked under 28 U.S.C. §1254(1).

III. THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

A. The Fifth Amendment Of The Constitution (See Appdx. Vol. 1, p. 245).

B. The First Amendment Of The Constitution (See Appdx. Vol. 1, p. 246).

C. The Fourth Amendment Of The Constitution (See Appdx. Vol. 1, p. 247).

D. Article III Section 1 of the Constitution (See Appdx. Vol. 1, p. 250).

E. Federal Rule Civil Procedure Rule 60(b)(4) (See Appdx. Vol. 1, p. 267).

F. Federal Rule Civil procedure Rule 72(a) (See Appdx. Vol. 1, p. 268).

G. Federal Rule Civil procedure Rule 37(b) (See Appdx. Vol. 1, p. 259).

H. Federal Rule Civil procedure Rule 37(d) (See Appdx. Vol. 1, p. 260).

I. Federal Rule Civil procedure Rule 56 (See Appdx. Vol. 1, p. 263).

J. Federal Rule Civil procedure Rule 7 (See Appdx. Vol. 1, p. 257).

K. Federal Rule Civil procedure Rule 59(e) (See Appdx. Vol. 1, p. 266).

L. Federal Rule Civil procedure Rule 6 (See Appdx. Vol. 1, p. 255).

M. Federal Rule Of Appellate Procedure 40 (See Appdx. Vol. 5, p. 1537).

N. Federal Rule Of Appellate Procedure 35 (See Appdx. Vol. 1, p. 270).

O. 42 U.S.C. § 2000e-2: Unlawful employment practices ("EEOC Title VII") (See Appdx. Vol. 1, p. 297)

P. New Yok State Human Right Law ("NYSHRL") (See Appdx. Vol. 1, p. 303).

Q. 28 U.S.C. §360 – Disclosure of information (See Appdx. Vol. 1, p. 315).

R. SDNY Local Civil Rule 56.1 (See Appdx. Vol. 1, p. 280).

IV. STATEMENT OF THE CASE

A. Petitioner's Complaint Of Employment Discrimination/Retaliation Pursuant To Title VII Of The Equal Employment Opportunity Act – Basis Of The Federal Court Jurisdiction

Petitioner alleged in a First complaint filed in the US District Court for the Southern District of New York ("SDNY") under Docket No. 7:17-cv-02810-PMH-PED that Respondents violated Title VII of the Equal Employment Opportunity Act by committing employment discrimination based on Petitioner's Islamic religious belief and the practice thereof in the workplace during his prayer breaks (See Appdx. Vol. 3, pp. 742 – 815, Second Amended Complaint ("SAC")). Petitioner alleged that around mid-May of the year 2016, as the holy Islamic Month of Ramadan was approaching, Petitioner was bringing an Islamic head-covering hoodie attire to the workplace at Balchem Corporation which he would use during his prayer breaks at his cubicle. Respondents banned Petitioner's Islamic head-covering hoodie attire under threat of immediate termination should Petitioner bring such Islamic head-covering attire to Balchem Corporation again. For fear of suddenly losing his employment, the Muslim Petitioner complied with the ban (See Appdx. Vol. 1, pp. 39 – 46, Sections I(A)(1, 2, and 3), District Court OPINION; and Vol. 3, pp. 742 – 814, SAC). However, the Petitioner noticed that other employees would regularly bring some other variant of hoodie attires to the laboratory and no ban was placed on them. At the beginning of August 2016, Petitioner filed an employment

discrimination claim with the Equal Employment Opportunity Commission ("EEOC") and the New York State Division of Human Rights ("NYSHRD") (See Appdx. Vol. 1, pp. 50 – 53, Sections I(A)(6), OPINION). The Agencies then instructed the Petitioner to gather some evidence in support of his charge of employment discrimination. Accordingly, on or around 08/17/2016, some employees had brought their variants of hoodie attires to the laboratory and Petitioner took images of those hoodies with his cellular phone in order to support his employment discrimination charge that was pending before the EEOC and NYSHRD (See Appdx. Vol. 1, pp. 47 – 50, Sections I(A)(5), OPINION). Petitioner downloaded the pictures he had taken onto Balchem Corporation's computer network and forwarded copies of the same to Balchem Corporation's Human Resources along with a message expressing his grievances that his Islamic head-covering hoodie attire was banned from the facility while other employees were allowed to bring any other variant of hoodie attire to the facility. Respondents immediately summoned Petitioner to inform Petitioner that he was suspended indefinitely. Two days later Respondents called Petitioner on the same Petitioner's Cellular phone Petitioner had used to take images of hoodies and they informed Petitioner that he was terminated without severance (See Appdx. Vol. 1, pp. 47 – 50, 53 – 54 at Sections I(A)(5 and 7), OPINION; Appdx. Vol. 3, pp. 744 – 748, SAC).

In a subsequent Response to Petitioner's EEOC and NYSHRD Complaint, Respondents described the motives for their ban of Petitioner's Islamic head-covering hoodie attire as follows:

> "*Complainant was asked to stop wearing an unprofessional hooded sweatshirt, which he would wear with the hood cinched up around his face .... it is important to note that the manner in which Complainant wore the sweatshirt was problematic. By tightening the sweatshirt hood to his head, Complainant accentuated the unprofessional nature of the sweatshirt. Also, Complainant further displayed his unwillingness to communicate or work collegially with coworkers by seemingly limiting contact with his co-workers, an issue address in the PIP*" (See Appdx. Vol. 3, pp. 1544 aka [ECF # 24-3, p. 80]).

However, when the NYSHRD investigator asked Respondents to produce documents about Petitioner's performance evaluation and records of Petitioner's work, they refused to comply. As a result, the NYSHRD and the EEOC Dismissed Petitioner's Charges on ground of Administrative convenience and issued a Notice of Suit Rights to allow Petitioner to sue in a federal court. Subsequently, the Petitioner filed a timely lawsuit which was docketed as US District Court Case No. 7:17-cv-02810-PMH-PED (See Appdx. Vol. 1, pp. 223 - 231).

About a year after the termination of Petitioner's employment, Petitioner was still unemployed and in spite of having been called for interviews by potential employers, Respondents had refused to provide References to potential employers on Petitioner's behalf. The petitioner then learned that Respondents were recruiting new employees, including Petitioner's Senior Scientist position. The petitioner

reapplied for his position but was not called for interview. Petitioner filed a new agency level charge of unlawful employment discrimination against Respondents to allege Retaliatory refusal to rehire. The New York State Division of Human Rights ("NYSDHR") docketed Petitioner's new charge as Case No. 10192054, and EEOC Charge Number 16GB801267 (See Appdx. Vol. 1, p. 228). Upon Completion of Agency proceedings, the EEOC issued a Notice of Suit Rights on 08/01/2018 and for good cause shown extended the time to file a new Action with the said Notice of Suit Rights for 90 days upon the receipt of the EEOC Notice of time extension dated 07/23/2019 (See Appdx. Vol. 1, pp. 231 – 232). Accordingly, the Petitioner filed a second lawsuit at the US District Court for the Southern District of New York under Docket No. 7:19-cv-09943-PMH in which Petitioner alleged unlawful employment practice comprising of retaliatory refusal to rehire (See Appdx. Vol. 5, pp. 1430 – 1492, COMPLAINT). Upon filing the required Statement of Relatedness, the District Court accepted and declared Cases No. 7:19-cv-09943-PMH and 7:17-cv-02810-PMH-PED as "*Related*" (See Appdx. Vol. 5, p. 1253 at [ECF # 4]).

B. Relevant Procedural Facts

A Docket Sheet of the proceedings in US District Court Case No. 7:17-cv-02810-PMH-PED is included in Appdx. Vol. 3, pp. 643 – 674.

A Docket Sheet of the proceedings in US District Court Case No. 7:19-cv-09943-PMH is included in Appdx. Vol. 5, pp. 1251 – 1262.

The District Court Granted Petitioner to proceed with five Causes of Action pleaded in the 7:17-cv-02810-[ECF # 37] Second Amended Complaint ("SAC") including **COUNTS I and II** (Title VII Discrimination and Retaliation) against Balchem Corporation (See Court Order (See Appdx. Vol. 1, pp. 38 - 91 [ECF # 36, Order]; and pp. 92 – 114 [ECF # 48, Order]). However, the merits of Petitioner's Causes of Action that survived Respondents' earlier motions to Dismiss were never reached. The petitioner's complaint was improperly and unconstitutionally dismissed only on procedural grounds. Accordingly, Specific procedural facts are provided below from the Docket Sheets of SDNY Case # 7:17-cv-02810-PMH-PED and Case # 7:19-cv-09943-PMH. They are submitted under the QUESTIONS pertaining to the specific procedural law or rule for which they are deemed relevant.

1) QUESTION I

QUESTION I has two dimensions. The first dimension is a direct Subject-Matter Jurisdiction inquiry based upon the Fed. R. Civ. P. Rule 6(b)(2) concerning the power of a federal court to "*Order, Adjudge, Decree*" or "*Affirm*" that a ten-months-after post-judgment motion pursuant to the Fed. R. Civ. P. Rule 60(b)(4) for "*Relief from a Judgment or Order*" is a "*Motion to Alter or Amend a Judgment*" pursuant to the Fed. R. Civ. P. Rule 59(e). The second dimension is attempting to prompt the Supreme Court to conduct a review under the Fed. R. Civ. P. Rule 60(b)(4) of the Standards used by the inferior courts and the legal conclusions thereof on the federal

questions of law raised in Petitioner's Rule 60(b)(4) Motion, one of which was Jurisdictional under the Fed. R Civ. P. Rule 72(a), as well as the impacts of the inferior courts' actions on Petitioner's fundamental constitutional rights.

Accordingly, Petitioner has subdivided the procedural facts for QUESTION I into a few subsections, each of which supports one of the Jurisdictional or Procedural questions that arose from the unconstitutional actions of the inferior courts including their Denial of Petitioner's Rule 60(b)(4) Motion.

a) Facts Relevant To The Subject-Matter Jurisdiction Question Of Law Under The Federal Rule Of Civil Procedure Rule 6(b)(2)

(1) On 03/23/2021, the District Court issued an Order (See Appdx. Vol. 1, pp. 165 – 176) dismissing petitioner's complaint as sanctions under the Fed. R. Civ. P. Rule 37(b and d) stating that Petitioner had failed to comply with Magistrate Judge 7:17-cv-02810-[ECF # 194] Discovery Order issued on 10/01/2020 which was in itself an adjudication of a Discovery Motion filed by Respondents at 7:17-cv-02810-[ECF # 185] (See Appdx. Vol. 1, pp. 140 – 142 (Magistrate Judge's Order); and Vol. 4, pp. 1008 – 1010 (Respondents' Motion)).

(2) Ten (10) months after dismissal, on 01/09/2022, Petitioner filed a motion pursuant to the Fed. R. Civ. P. Rule 60(b)(4) for relief from the District Court's Dismissal Orders and the motion was Denied (See Appdx. Vol. 4, pp. 1200 – 1206).

(3) The US Court of Appeals stated in its Opinion that the District Court properly construed Petitioner's Rule 60(b)(4) Motion as a Motion under the Fed. R. Civ. P.

Rule 59(e) (See Appdx. Vol. 1, p. 4). In specific, the Court of Appeals stated the following in its Summary Orders:

> "**III. February 2023 Order** - The February 2023 Order denied Kamdem-Ouaffo's motion pursuant to Rule 59(a)(2) and Rule 60(b)(4), which the district court construed as pursuant to Rule 59(e), seeking reconsideration of the April 2022 Order. The denial of a "motion to alter or amend judgment under Rule 59(e) is reviewed for an abuse of discretion." *See Empresa Cubana del Tabaco v. Culbro Corp.*, 541 F.3d 476, 478 (2d Cir. 2008) (per curiam) (alteration adopted) (internal quotation marks and citation omitted)....." (See Appdx. Vol. 1, pp. 4 - 5).

(4) However, the Federal Rule of Civil Procedure Rule 6(b)(2) mandates the following: "*(2) Exceptions. A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).*" (See Appdx. Vol. 1, p. 256).

b) Facts Relevant To The Federal Question On The Standard Of Analysis And Of Appellate Review Applicable To The Federal Rule Of Civil Procedure Rule 60(b)(4) for "Relief from a Judgment or Order"

(5) Petitioner repeats and reiterates the Procedural Facts No. 1 to 4 at Section IV(B)(1)(a) above.

(6) Petitioner had filed a timely Objection on 10/12/2020, within 14 days' time limit of the Federal Rule of Civil Procedure Rule 72(a), against the Magistrate Judge's 7:17-cv-02810-[ECF # 194] Discovery Order and the Clerk docketed Petitioner's Objection on 10/13/2020 (See Appdx. Vol. 4, pp. 1012 – 1012 aka [ECF # 195] Rule 72(a) Objection)).

(7) Petitioner argued in his Opening Brief of his Rule 60(4) Motion as follows:

> "Plaintiff has argued all along that the Dismissal of his complaint violated the due process of law because without any Notice or hearing as required by the Due process of law, the District Court jumped over Plaintiff's Motions for Reconsideration (See ECF # 188) and over Plaintiff's Rule 72(a) Objections (See 17-cv-02810 [ECF # 195]) to the Magistrate Judge's Discovery Orders alleged to have been violated...
>
> A motion for Reconsideration of a District Court Order and a Rule 72(a) Motion are statutory motions..... Plaintiff therefore remains of the Opinion that the District Court [ECF # 244, 225, 108, 82] Orders were improper and unconstitutional.
>
> (See Appdx. Vol. 4, pp. 1202 – 1203, and 1205).

(8) Petitioner's Rule 72(a) Objection was never heard or ruled on by a District Court Judge to this date.

(9) On Appeal, the Court of Appeals issued a Summary Order for Appellate Case # 23-455, stating that it "***ORDERED, ADJUDGED, AND DECREED***" the use of standards of "*abuse discretion*" for a review of the District Court's Denial of Petitioner's Rule 60(b)(4) and that it "***AFFIRMED***" the District Court on under those standards of Review (See Appdx. Vol.1, pp. 1 - 6).

c) Facts Relevant To The Subject-Matter Jurisdiction And Procedural Questions Raised Under The Federal Rule Of Civil Procedure Rule 72(a) In The Petitioner's Rule 60(b)(4) Motion for "Relief from a Judgment or Order"

(10) Petitioner repeats and reiterates Procedural Facts 1 to 9 at Sections IV(B)(1)(a and b) above.

(11) In view of the uncertainty created by the Respondents' 7:17-cv-02810-[ECF # 185] surprising Letter Motion for Discovery, On the date of 09/28/2020 the

Petitioner also filed a "NOTICE OF MOTION FOR AN EXPEDITED RECONSIDERATION OF THE COURT'S [ECF # 184] ORDER..." (See Appdx. Vol. 5, pp. 1523 – 1532 aka 7:17-cv-02810-[ECF # No. 189, and 188]).

d) Facts Relevant To The Federal Question Raised Under Federal Rule Of Civil procedure Rule 56(d) Concerning Whether Sanctions For Dismissal Of Petitioner's Complaint Are Available To Respondents After The Filing By Petitioner Of A Motion For Summary Judgment Supported With Undisputed Material Facts Against Which Respondents Could Not Demonstrate The Existence Of A Genuine Dispute

(12) Petitioner repeats and reiterates Procedural Facts 1 to 11 at Sections IV(B)(1)(a, b, and c) above.

(13) Following the adjudication of Respondents' motion to dismiss, petitioner filed his first Application for Summary Judgment on 07/25/2019 at 7:17-cv-02810-[ECF # 54] APPLICATION FOR SUMMARY JUDGMENT which the District Court "*Denied without prejudice to renew following the conclusion of Mediation, If so necessary*" at 7:17-cv-02810-[ECF # 56] (See Appdx. Vol. 3, pp. 816 – 819 (Application); and p. 821 (Memo Endorsed)); (See Appdx. Vol. 1, p. 999 – 1007 ka [ECF # 134]); (See Appdx. Vol. 4, pp. 1082 – 1119).

(14) Petitioner subsequently renewed his Application and Motions for Summary Judgment along with the supported Undisputed Material Facts (See Appdx. Vol. 3, pp. 889 -893); (See Appdx. Vol. 3, pp. 889 – 932); (See Appdx. Vol. 3, pp. 932 – 935 aka [ECF # 104 And 105]); (See Appdx Vol. 4, pp. 989 – 997 aka [ECFs # 109, 110, 111]).

(15) Respondents Opposed Petitioner's Motion For Summary Judgment but did not file an Affidavit or a Declaration as Required by Rule 56(d) (See Apdx. Vol. 3, pp. 653 – 654 at [ECF # 91]); (See Appdx. Vol. 3, p. 663 at [ECF # 216]).

(16) On 05/13/2020 the Petitioner's 7:17-cv-02810-[ECF # 109, 110, and 111] Motion for summary Judgment was Denied without prejudice as follows:

> "Application denied without prejudice to renewal at the close of discovery. A revised case management and scheduling order with new discovery deadlines to be determined by Magistrate Judge Davison. **SO ORDERED."** (See Appdx. Vol. 1, p. 129 aka 7:17-cv-02810-[ECF # 112; See also Appdx. Vol. 1, p. 128 aka [ECF # 108, p. 3]])

(17) Whereas the District Court issued an Order at 7:17-cv-02810-[ECFs # 244] (See Appdx. Vol. 1, pp. 165 – 176]) Dismissing Petitioner's Complaint with prejudice, it neither Ruled on Petitioner's 7:17-cv-02810-[ECF # 195] (See Appdx. Vol. 4, pp. 1012 – 1012) Objection to Magistrate Judge's 7:17-cv-02810-[ECF# 194] Orders (See Appdx. Vol. 1, pp. 140 – 142) upon which it based its Order of Dismissal nor did it Rule on Petitioner's 7:17-cv-02810-[ECF # 208] Motion for Summary Judgment (See Appdx. Vol. 4, pp. 1082 – 1119).

e) Facts Relevant To The Federal Question Concerning The Validity And The Preclusive Effects In A Concurrent Lawsuit Of Court Orders That Are Premised Upon Violation Of The Subject-Matter Jurisdiction And Procedural Mandates Of The Fed. R. Civ. P. Rule 72(a)

(18) About a year after the termination on 08/22/2016 of Petitioner's employment by Respondents, Petitioner was still unemployed and having learned that Respondents were recruiting new employees, including for Petitioner's Senior

Scientist position. The petitioner reapplied for his position but was not called for interview.

(19) Petitioner filed a new agency level charge of unlawful employment discrimination against Respondents to allege Retaliatory refusal to rehire. The New York State Division of Human Rights ("NYSDHR") docketed Petitioner's new charge as Case No. 10192054, and EEOC Charge Number 16GB801267 (See Appdx. Vol. 1, p. 228).

(20) Subsequently, based upon a Notice of Suits Rights issued by the EEOC, Petitioner filed a second lawsuit at the Southern District of New York under Docket No. 7:19-cv-09943-PMH to allege unlawful employment practice comprising retaliatory refusal to rehire (See Appdx. Vol. 5, pp. 1430 – 1492).

(21) Subsequently, having dismissed Petitioner's Case No. 7:17-cv-02810-PMH-PED with prejudice, the District Court also Dismissed Petitioner's Case No. 7:19-cv-09943-PMH with prejudice under the doctrines of *Res Judicata* and duplicated litigation.

2) QUESTION II

(1) On or around August 17, 2016, petitioner used his cellular to take pictures of other employees' hoodie attires that were in the laboratory, and submitted the images to Balchem Corporation's Human Resources to challenge their discriminatory ban

of Petitioner's Islamic head-covering attire (See Appdx. Vol. 1, pp. 47 – 50, Section I(A)(5)).

(2) Respondents then immediately suspended Petitioner and terminated Petitioner's employment (See Appdx. Vol. 1, pp. 47 – 50, Section I(A)(5)).

(3) On 01/14/2020, US Judge Karas appointed Magistrate Judge Davison to preside over "*General Pretrial (includes scheduling, discovery, non-dispositive pretrial motions, and settlement)*" discovery proceedings (See Appdx. Vol. 3, p. 652 at [ECF # 75]).

(4) Petitioner served discovery demand on Respondents' lawyers, including Requests for Admission calculated in number to be about ninety two Requests for Admission per Respondent, Demand for document production, and Request for permission to enter to land to inspect documents and conduct discovery of electronically stored information.

(5) Petitioner's Requests for Admissions included a few questions on how Respondents would apply Balchem Corporation Video and Audio recording policies to a report by a sexually virgin, pure, and chaste Muslim employee of sexual harassment and/or rape in the workplace should the Muslim employee victim produce an audio or video recording in support of the complaint.

(6) Respondents' lawyers then proceeded to file a Letter Motion for discovery conference to seek a Court Order against Petitioner's discovery, specifically singling

out the few Requests Petitioners had formulated in order to assess how Balchem Corporation would apply its video recording policy to a work place report by a sexually virgin, pure, and chaste Muslim employee who would produce a video or an audio recording of an occurrence of sexual harassment and/or rape by a Balchem Corporation Manager (See Appdx. Vol. 3, p. 652 at [ECF # 71 and 79]).

(7) An example of such discovery requests was as follows:

> "**195)** Balchem Corporation's "*Video and Audio Recording Devices*" Policy does not apply to employees' personal phone or to locally or remotely controlled virginity/chastity monitoring/protection microchip device implanted in the employee's vagina, penis, mouth, nipple, breast, and/or anus for a religious purpose to continuously monitor/record the sound and images in the vicinity of the employee's private/personal sexual body parts, regardless of the make, brand, and/or audio or video recording capabilities of such a personal phone or virginity/chastity monitoring/protection microchip." (See Appdx. Vol. 3, p. 856, ¶195 aka 17-cv-02810-[ECF # 71-3]).

(8) On 01/ 29/2020 Magistrate Judge Davison held a discovery conference during which he characterized Muslim Petitioner as "*exotic*" and directed Respondents to NOT answer Petitioner's discovery. And After the conference, the Magistrate Judge memorialized the Orders issued during the conference and described an example of Petitioner's request for admission as quoted above as "*Vulgar*," "*Scatological*" meaning "*Excrement, Feces, Caca, Poop, Shit*" (See Appdx. Vol. 1, pp. 124 aka [ECF # 82] Order).

(9) On 02/10/2020, Petitioner's filed a Rule 72(a) Objection to "OBJECTIONS PURS. TO THE FED.R.CIV.P. RULE 72 TO THE MAGISTRATE JUDGE'S [ECF

#82] ORDER..." and specifically complained that the said Order violated Petitioner's right to First Amendment Freedoms of religion and of expression, but the motion was Denied (See Appdx. Vol. 1, pp. 874 – 887 aka [ECF # 84]; Appdx. Vol. 1, pp. 126 – 128).

(10) On 03/23/2021, the District Court dismissed Petitioner complaint and further characterized petitioner in which they judged that Petitioner's religious beliefs and continuing expression thereof *"crude", "obscene", "inappropriate", "salacious", "indefensible", "foul", "Profane", and "Misconduct"* (See 17-cv-02810 [DKT. NO. 244, p. 4, Footnote 4)].

(11) During Appeals Case # 21-653 (See Appdx. Vol. 3, p. 666 at [ECF # 245]), Petitioner presented a question on whether the District Court's characterization as *"Exotic", "Vulgar", "Scatological" meaning "Excrement/Feces/Caca/Poop", "crude", "obscene", "inappropriate", "salacious", "indefensible", "foul", "Profane", "Misconduct,"* of Petitioner's Islamic religious belief and expression thereof in sexual intercourse virginity, purity, and chastity until after marriage violated Petitioner's First Amendment Freedoms of Religion, Exercise and Expression thereof.

(12) The Court of Appeals dismissed petitioner's Appeal as stating "it is hereby ORDERED that the appeal is DISMISSED because it "*presents no arguably meritorious issue for our consideration." Pillay v. INS, 45 F.3d 14, 17 (2d Cir. 1995)*

(per curiam); see Neitzke v. Williams, 490 U.S. 319, 325 (1989)" (See Appdx. Vol. 1, p. 177).

(13) In the 23-455 Appeal, Petitioner again raised his question on the violation of his First Amendment rights with regard to characterizing petitioner's Islamic religious beliefs and expression thereof as "*Exotic*", "*Vulgar*", "*Scatological*" meaning "*Excrement/Feces/Caca/Poop*", "*crude*", "*obscene*", "*inappropriate*", "*salacious*", "*indefensible*", "*foul*", "*Profane*", *and* "*Misconduct.*" (See Appdx. Vol. 2, p. 417, ISSUE No. II; and pp. 468 – 470, Argument Point IX(B)).

3) QUESTION III

(1) Petitioner reiterates the statements of facts submitted above for QUESTION II.

(2) Around April 2022, Google sent Petitioner a notification that the US Court of Appeals for the Ninth Circuit had issued a new Opinion and Decision in the matter of In the matter of Fellowship of Christian Athletes ("FCA") v SJUSD BOE, Case # 22-15827 (9th Cir. 2022) aka *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. Of Educ. 46 F.4th 1075 (9th Cir. 2022)* (Herein after "FCA v. SJUSD BOE 46 F. 4th 1075 (9th Cir. 2022)"

(3) In the matter of FCA v. SJUSD BOE 46 F. 4th 1075 (9th Cir. 2022), teachers had characterized students' belief in sexual intercourse virginity and purity until after

marriage as "*Bullshit, Charlatans, Darkness, Ignorance.*" *Id* at 1083, 1084, and 1099.

(4) The US Court of Appeals for the Ninth Circuit held that such characterization of religious belief in sexual intercourse purity and virginity until after marriage was evidence of "*Stench Animus*" and violated the First Amendment of the Constitution of the United States, *Id* at 1099

(5) The petitioner reported the Decision of the Ninth Circuit to the Chief Judge of the US District Court for the Southern District of New York and requested a referral for ethics investigation. The Chief Judge responded and advised that Petitioner needed to file a Complaint of Judicial Misconduct (See Appdx. Vol. 1, p. 189 aka 7:17-cv-02810-[ECF # 290] Order).

(6) Acting on the Chief Judge's Order, Petitioner then filed his complaints of Judicial Misconducts with the Clerk of the US Court of Appeals for the Second Circuit against US Magistrate Judge Paul Davison, US Judge Philip M. Halpern, Second Circuit Judges Lohier, Cabranes, Lee for having characterized Petitioner's Islamic religious beliefs in sexual intercourse virginity, purity and chastity until after marriage as "*Scatological*" meaning "*Excrement/Feces/Caca/Poop*", "*Exotic*", "*Vulgar*", "*crude*", "*obscene*", "*inappropriate*", "*salacious*", "*indefensible*", "*foul*", "*Profane*", "*Misconduct*", and "*Frivolous*" (See Appdx. Vol. 1, pp. 124

(ECF # 82) Order, pp. 126 - 128 (ECF # 108) Order, pp. 168-169 (ECF # 244 (p. 4 Footnote 4)].

(7) Petitioner Complaints of Judicial Misconduct were docketed as 022-22-90052-jm, Etc....

(8) A couple of weeks after the filing by Petitioner of his complaints of Judicial Misconduct, petitioner received a phone call from a person named Charmaine who introduced herself as an Official form the Department of Justice ("DOJ") assigned to investigate Petitioner's Complaint of Judicial Misconduct (See Appdx. Vol. 2, pp. 502 – 521, Petitioner's AFFIDAVIT).

(9) Petitioner and Charmaine spoke for about one hour (See Appdx. Vol. 2, pp. 506 – 509, Petitioner's AFFIDAVIT ¶¶13 - 33).

(10) About two weeks after the call from Charmaine, Petitioner received another call from a Person who introduced himself as US Deputy Marshall Cerrato on an assignment to further investigate Petitioner's complaint of Judicial Misconduct. (See Appdx. Vol. 2, pp. 509 – 510, Petitioner's AFFIDAVIT ¶¶34 - 41).

(11) Petitioner and US Deputy Marshal Cerrato spoke for about one hour (See Appdx. Vol. 2, pp. 509 – 510, Petitioner's AFFIDAVIT ¶¶34 - 41)).

(12) Then US Deputy Marshal Cerrato informed Petition that they knew that Petitioner had been hiding from them because they were not able to find Petitioner at his domicile address (See Appdx. Vol. 2, p. 517, Petitioner's AFFIDAVIT ¶76).

(13) US Deputy Marshal Cerrato then urged that Petitioner had to disclose where he was staying and where Petitioner works or else he would obtain arrest warrants against petitioner (See Appdx. Vol. 2, p. 510, Petitioner's AFFIDAVIT ¶38).

(14) At that Point Petitioner informed him that he could not continue the phone call with him and that if he wished he could appear before the Judicial council to intervene in the pending Complaint of Judicial Misconduct (See Appdx. Vol. 2, p. 510, Petitioner's AFFIDAVIT ¶39).

(15) In fact, the US Deputy Marshal Cerrato was correct in stating that they were not able to find the Petitioner at his domicile address because Petitioner had moved from the address where he lived at the time of filing his complaint.

(16) Upon further review of the proceedings of complaint of Judicial Misconduct, Petitioner found that neither the Department Of Justice ("DOJ") nor the US Marshals have any role to play in a complaint of Judicial Misconduct.

(17) Petitioner made follow up to the phone number to the person named Charmaine who had called petitioner and introduced herself as the Department Of Justice ("DOJ"), but a receptionist picked up the phone and informed Petitioner that they were actually Rutgers University Behavioral Health Care ("RUBHC") and that Charmaine was a supervisor there.

(18) Petitioner left a message for Charmaine asking that she disclosed how she was able to get a copy of Petitioner complaint of Judicial Misconduct. But Charmaine never called back.

(19) Subsequently, the Chief Judge of the second circuit dismissed Petitioner's complaint of Judicial Misconduct and stated that Petitioner's complaint about violation of his first Amendment rights and cursing his Islamic religious belief was to be decided on the merits and that there was insufficient evidence to warrant further investigation (See Appdx. Vol. 1, pp. 233 - 241).

(20) The petitioner then contacted RUBHC again and was able to speak to two receptionist while recording the conversations (See Appdx. Vol. 2, pp. 511 – 512, Petitioner's AFFIDAVIT ¶¶47 – 54).

(21) The Petitioner also contacted the phone number of the leadership of RUBHC and left a voice message asking that they direct Charmaine to disclose how she was able to get a copy of Petitioner's complaint of Judicial Misconduct (See Appdx. Vol. 2, pp. 514 – 515, Petitioner's AFFIDAVIT ¶¶62 – 63).

(22) The RUBHC Leadership sent a person named Sharon to speak with petitioner, and during the conversation she revealed that they were contacted by "*someone*" and that they were trying to figure out how to make "*Physical Contact*" with Petitioner stating: "*Rutgers has a psychiatric program, we received call from we calls from, it could be from court.....If we've never made physical contact with you then at that*

point she didn't, she didn't find any cause to move forward." (See Appdx. Vol. 2, pp. 514 – 515, Petitioner's AFFIDAVIT ¶¶62 – 63) aka 21-455 [Dkt No. 90, p. 14, AFFIDAVIT ¶62]).

(23) Petitioner asked her who gave them to Petitioner's information but she did not respond.

(24) Petitioner also made a follow up call to US Deputy Marshal Cerrato who then disclosed that Copies of Petitioner Complaint of Judicial Misconduct was brought the US Marshals stating, "*it was brought to the United states Marshall service Sir.*" (See Appdx. Vol. 2, pp. 513, Petitioner's AFFIDAVIT ¶¶58 – 59) aka 21-455 [Dkt No. 99, p. 13, AFFIDAVIT ¶58])". But he declined to disclose any names.

(25) With the new information, Petitioner then made a motion in the 23-455 Appeal seeking an Order to compel information from RUBHC and USMS to produce information as to who provided them copies of Petitioner's complaint of Judicial Misconduct (See Appdx. Vol. 2, pp. 325– 410, 479 – 521 aka 21-455 [Dkt # 49, 63, and 90]). But the Motion was Denied (See Appdx. Vol. 1, p. 16 aka 21-455 [Dkt # 108]).

(26) Subsequently, in its Summary Order, the US Court of Appeals Characterized Petitioner's Motion pursuant to the Fourth Amendment and the allegations as "*his fanciful allegations of bias*" (See Appdx. Vol. 1, p. 5 aka 21-455 [Dkt # 134-1]).

V. ARGUMENTS AMPLIFYING THE REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

In the matter of *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 102 S. Ct. 2099 (1982), the Supreme Court explained the following:

> "."[T]he rule, springing from the nature and limits of the judicial power of the United States is inflexible and without exception, which requires this court, of its own motion, to deny its jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record." *Mansfield, C. L. M. R. Co.* v. *Swan*, 111 U.S. 379, 382 (1884)" *Id* at 701 – 702.

Accordingly, in light of the **flagrant and extremely harmful TRANSGRESSIONS and TRESPASSES** committed by the inferior courts with regard to the Jurisdictional Limitations and Mandates of Fed. R. Civ. P. Rules 6(b)(2) and 72(a), as shown above in the Relevant Procedural Facts Sections IV(B)(1)(a, b, and c), a Writ of Certiorari must be allowed at least for a Review of the Subject-Matter Jurisdiction of the federal courts under the Fed. R. Civ. P. Rules 6(b)(2) and 72(a). This initial argument is compelling in light of the inflexible limitation of Article III Section 2 of the Constitution on the jurisdiction of federal courts. Nevertheless further Arguments Amplifying the Reasons for allowing a Writ of Certiorari under the Standards of the Supreme Court Rule 10 are as follows:

A. QUESTION I

This question was formulated from the Court of Appeals' Summary Orders stating the following:

> **"UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the orders of the district court are **AFFIRMED**.....
>
> We review an order denying Rule 60 relief generally for abuse of discretion. *United Airlines, Inc. v. Brien*, 588 F.3d 158, 175 (2d Cir. 2009). We find no abuse of discretion in the district court's April 2022 Order.....
>
> **III. February 2023 Order** - The February 2023 Order denied Kamdem-Ouaffo's motion pursuant to Rule 59(a)(2) and Rule 60(b)(4), which the district court construed as pursuant to Rule 59(e), seeking reconsideration of the April 2022 Order...." (See Appdx. Vol. 1, pp. 1, 4 -5).

1) Arguments In Support Of Allowing A Writ Of Certiorari For A Review Under The Fed. R. Civ. P. Rule 6(b)(2) Of The Constitutional Question Regarding The Subject-Matter Jurisdiction Of The Federal Courts To "*Order, Adjudge, Decree*", Or "*Affirm*" That A Ten-Months-After Post-Judgment Motion For "*Relief from a Judgment or Order*" Pursuant To The Fed. R. Civ. P. Rule 60(b)(4) Is A "*Motion to Alter or Amend a Judgment*" Pursuant To The Fed. R. Civ. P. Rule 59(e)

The procedural facts in support of the Subject-Matter jurisdiction inquiry under Rule 6(b)(2) are set forth above in Section IV(B)(1)(a). The texts of the Fed. R. Civ. P. Rules 6(b)(2), 59(e), and 60(b)(4) are included in the Appdx Vol. 1, pp. 256 – 257, 266, and 267, respectively.

a) In Consideration Of Supreme Court Rule 10(a), A Review Under The Fed. R. Civ. P. Rule 6(b)(2) Of The Subject-Matter Jurisdiction Of Federal Courts Is An important Federal Question Of Constitutional Law Because Federal Courts Are Article III Courts Of Limited Jurisdiction

In *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 102 S. Ct. 2099 (1982), the Supreme Court explained the following:

"Subject-matter jurisdiction, then, is an Art. III as well as a statutory requirement; it functions as a restriction on federal power, and contributes to the characterization of the federal sovereign. Certain legal consequences directly follow from this. For example, no action of the parties can confer subject-matter jurisdiction upon a federal court. " *Id* at 701 – 702.

The Fed. R. Civ. P. Rule 6(b)(2) mandates the following: "*A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).*" And the Fed. Civ. P. Rule 59(e) mandates the following " *A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.*" An Order or a Decree of the inferior courts that Petitioner's Rule 60(b)(4) Motion which was filed ten (10) Months after the Judgment was a Rule 59(e) Motion violated the Jurisdictional limitations of the Fed. R. Civ. P. Rule 6(b)(2). Thus, the Supreme Court is "**REQUIRED**" by Article III of the Constitution to allow Certiorari on Petitioner's QUESTION I.

b) In Consideration Of Supreme Court Rule 10(a), A Writ Of Certiorari For A Review Under Rule 6(b)(2) Is Proper And REQUIRED Under Article III Section 2 Of The Constitution Because The Second Circuit's Decision To "Order, Adjudge, Decree" Or "Affirm" That A Ten-Months-After Post-Judgment Motion Pursuant To The Fed. R. Civ. P. Rule 60(b)(4) Is A Motion Pursuant To The Fed. R. Civ. P. Rule 59(e) Is In "Conflict With The Decision Of Another United States Court Of Appeals" Including The US Court of Appeals For The First, Fifth, Eleventh, And The Federal Circuits

Petitioner reiterates Argument V(A)(1)(a) above.

Several US Court of Appeals hold that the time limitation prescribed for Rule 59(e) cannot be enlarged by a Court. For example, in *Feinstein v. Moses*, 951 F.2d 16 (1st Cir. 1991), the US Court Of Appeals for the First Circuit stated "*It is well established*

that district courts lack power to enlarge the time for filing post-judgment motions for a new trial or motions to alter or amend the judgment (often referred to as motions for reconsideration," *Id* at 19. In *Haygood v. Quarterman*, 239 F. App'x 39 (5th Cir. 2007), the Fifth Circuit also stated "*As the Director concedes, the district court lacked the power to enlarge the time to file the Rule 59(e) motion. FED.R.CIV.P. 6(b).*" *Id* at 41. In *Progressive Indus., Inc. v. United States*, 888 F.3d 1248 (Fed. Cir. 2018), the Federal Circuit stated: "*But, even if the Claims Court intended to change the Rule 59(e) deadline with that statement, it would have lacked the authority to do so. According to RCFC 6(b)(2), "[t]he court must not extend the time to act under RCFC 52(b), 59(b), (d), and (e) , and 60(b)." RCFC 6(b)(2) (emphasis added).*"

c) ***In Consideration Of Supreme Court Rule 10(c), A Writ Of Certiorari For A Review Under Rule 6(b)(2) Is Proper And REQUIRED Under Article III Section 2 Of The Constitution Because The Question Regarding A Federal Court's Subject-Matter Jurisdiction To "Order, Adjudge, Decree" Or "Affirm" That A Ten-Months-After Post-Judgment Motion Pursuant To The Fed. R. Civ. P. Rule 60(b)(4) Is A Motion Under Fed. R. Civ. P. Rule 59(e) And The Jurisdiction To Extend The Time To File A Motion Under Rule 59(e) "Has Not Been, But Should Be, Settled By This Court"***

The **"Notes Of Advisory Committee On Rules - 1937" explained** that the purpose of the 1937 Amendment of the Rule 6(b) was to establish an unambiguous and reasonable date for the finality of a Judgment. The proposition that a ten-months-after post judgment Rule 60(b)(4) motion could be constructed as a Rule 59(e) must therefore be strongly rejected by the Supreme Court because if a Rule 60(b)(4)

motion filed ten (10) months after the challenged Judgment is construed as a Rule 59(e) motion, when then will the Judgment become final? After at least 10 months?

2) Argument In Support Of Allowing A Writ Of Certiorari For A Review Of The Constitutional Question Regarding The Standards Of Analysis And Of Appellate Review Applicable To The Fed. R. Civ. P. Rule 60(b)(4) Motions, And The Subject-Matter Jurisdiction Or Due Process Of Law Infirmities/Defects Affecting The Orders Of The Inferior Courts

The text of the Fed. R. Civ. P. Rule 60(b)(4) is included in the Appdx Vol. 1, p. 267. The procedural facts in support of the review of The Standard Of Analysis And Of Appellate Review Applicable To The Federal Rule Of Civil Procedure Rule 60(b)(4) jurisdictional inquiry are set forth above in Section IV(B)(1)(b).

In light of multidimensional nature of Rule 60(b)(4), it is Petitioner assessment that the court may grant certiorari for a review of the denial of a Rule 60(b)(4) motion if Petitioner proves that it is in the interest of the administration of Rule 60(b)(4) to do so with regard to the standards of analysis and of appellate review that must be used, or if petitioner proves that his motion raised federal questions of jurisdiction or of due process that qualify for Certiorari under the Supreme Court Rule 10.

a) A Writ Of Certiorari For QUESTION I Is Proper For A Review Of The Standards Of Analysis And Of Appellate Review Applicable To A Motion For "Relief from A Judgment Or Order" As Void Pursuant To The Fed. R. Civ. P. Rule 60(b)(4)

This issue is derived from the USCA2 Summary Order stating "*We review an order denying Rule 60 relief generally for abuse of discretion. United Airlines, Inc.*

v. Brien, 588 F.3d 158, 175 (2d Cir. 2009). We find no abuse of discretion in the district court's April 2022 Order" (See Appdx. Vol. 1, p. 4).

i. In Consideration Of Supreme Court Rule 10(a), The Standards Of Analysis And Of Appellate Review Of A District Court Order Denying A Motion For "*Relief From A Judgment Or Order*" As Void Under the Fed. R. Civ. P. Rule 60(b)(4) Is An Important Federal Question Of Constitutional Law Because Rule 60(b)(4) Provides Protection To The Due Process Clause Of The Fifth Amendment Of The Constitution Of The United States And To The Federal Form Of Government Which Separates Powers Based Upon The Concept Of Jurisdiction

In *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc., 572 U.S. 559 (2014)* the Supreme identified three categories of Standards of Review:

> "Traditionally, decisions on "questions of law" are "reviewable de novo," decisions on "questions of fact" are "reviewable for clear error," and decisions on "matters of discretion" are "reviewable for 'abuse of discretion.' " Pierce v. Underwood, 487 U. S. 552, 558 (1988)." See also *U.S. Bank Nat'l Ass'n v. Vill. at Lakeridge, LLC No. 15-1509 (U.S. Mar. 5, 2018)*).

The standard of review may be critical to the outcome of the case. *See Dickinson v. Zurko*, 527 U.S. 150, 152-61 (1999) ("*The upshot in terms of judicial review is some practical difference in outcome depending upon which standard is used.*").

ii. In Consideration Of Supreme Court Rule 10(a), A Writ Of Certiorari On The Standards Of Appellate Review Of The Inferior Cout's Orders Denying Petitioner's Motion Pursuant To The Fed. R. Civ. P. Rule 60(b)(4) For "*Relief from A Judgment Or Order*" As Void Is Proper Because The Second Circuit's Decision To Use The Standards Of "*Abuse Of Discretion*" Is In "*Conflict With The Decision Of Another United States Court Of Appeals*" Including The US Court of Appeals For The Ninth Circuit

The US Court of Appeals for the Ninth Circuit holds the following:

"We review, *de novo*, the denial of a motion to set aside a judgment pursuant to Rule 60(b)(4), because the question is a legal one. " (See *U.S. v. $277,000 U.S. Currency, 69 F.3d 1491 (9th Cir. 1995) at 1493).*

iii. In Consideration Of Supreme Court Rule 10(a), A Writ Of Certiorari On The Standards Of Appellate Review Of The District Court's Order Denying Petitioner's Motion Pursuant To The Fed. R. Civ. P. Rule 60(b)(4) For "*Relief from A Judgment Or Order*" As Void Is Proper Because The Second Circuit's Decision To Use The Standards Of "*Abuse Of Discretion*" "*Conflicts With A Decision By A State Court Of Last Resort*" Including The Montana Supreme Court

State Courts administer federal laws and federal courts administer State laws. So it is important that the Federal and State Courts have the same understanding of the meaning of a given standard of review and how it is applied in the administration of laws, otherwise there will be chaos among Federal and State Courts. In more than a dozen States, the provision of the State Civil Procedure allowing relief from a Judgment Or Order as void is also named Rule of Civil Procedure 60(b)(4). For example, in the State of Montana, the provision of the State Civil Procedure that provides Relief from a Judgement or Order as Void is named "M. R. Civ. P. 60(b)(4)". The Montana Supreme Court is the Court of Last Resort in the State of Montana. In the matter of *Reservation Operations Ctr. LLC v. Scottsdale Ins. Co.*, 391 Mont. 383, 419 P.3d 121, 2018 MT 128 (Mont. 2018), the Montana Supreme Court stated the following:

"Where the movant seeks relief under Rule 60(b)(4), on the ground the judgment is void, we review the district court's ruling de novo, as the determination that a judgment is or is not void is a conclusion of law."

In re Guardianship & Conservatorship of Anderson , 2009 MT 344, ¶ 8, 353 Mont. 139, 218 P.3d 1220 (citing *Essex* , ¶16)." *Id* at 385-386/

iv. In Consideration Of Supreme Court Rule 10(a), A Writ Of Certiorari On The Standards Of Appellate Review Of The District Court's Order Denying Petitioner's Motion Pursuant To The Fed. R. Civ. P. Rule 60(b)(4) For "*Relief from A Judgment Or Order*" As Void Is Proper Because The Second Circuit' Decision To Use The Standards Of "*Abuse Of Discretion*" "*Has So Far Departed From The Accepted And Usual Course Of Judicial Proceedings, Or Sanctioned Such A Departure By A Lower Court, As To Call For An Exercise Of This Court's Supervisory Power*"

The Petitioner reiterates the reasons for allowance set forth in Sections V(A)(2)(a)(i, ii, and iii) above. No other US Court Of Appeals uses the Standards of "*abuse of discretion*" for an Appellate review of the Denial by the District Court of a Motion for Relief from a Judgment or Order under Rule 60(b)(4).

v. In Consideration Of Supreme Court Rule 10(c), A Writ Of Certiorari On The Standards Of Appellate Review Applicable To The Fed. R. Civ. P. Rule 60(b)(4) Is Proper Because The Issue Is An Important Question Of Federal Law That "*Has Not Been, But Should Be, Settled By This Court*" And/Or The Second Circuit's Decision To Apply The Standards Of "*Abuse Of Discretion*" To Petitioner's Rule 60(b)(4) Motion "*Conflicts With Relevant Decisions Of This Court*"

The Petitioner reiterates the reasons for allowance set forth in Sections V(A)(2)(a)(i, ii, and iii) above. In *New York Times Co. v. Sullivan 376 U.S. 254 (1964),* the Supreme Court held that because the Appellate Review it conducted involved a constitutional right "*We must "make an independent examination of the whole record, Edwards v. South Carolina, 372 U.S. 229, 235, so as to assure ourselves that the judgment does not constitute a forbidden intrusion on the field of*

free expression." *Id* at 285. And In *Salve Regina College v. Russell 499 U.S. 225 (1991)*, the Supreme Court drew a line of separation between Deferential Review and Independent Review by stating that "*When de novo review is compelled, no form of appellate deference is acceptable,*" *Id* at 238. De Novo Review is Compelled when a Rule 60(b)(4) motion is filed because a Rule 60(b)(4) motion is a question of constitutional law which could be based either on Jurisdiction or procedures

b) A Writ Of Certiorari For QUESTION I Is Proper For A Review Of Subject-Matter Jurisdiction And Of Due Process Of Law Questions Under To The Fed. R. Civ. P. Rule 72(a) Regarding The Important Federal Question Of Law On The Fundamental Infirmities/Defects Affecting The Orders Of The Inferior Courts Dismissing Petitioner's Complaint On Ground Of Failure To Comply With A Magistrate Judge's Order Against Which A Timely Filed Objection Pursuant To Rule 72(a) Was Never Ruled Upon By A District Court Judge And Is Still Pending

The Operative Facts are those set forth above at Section IV(B)(1)(c):

i. In Consideration Of Supreme Court Rule 10(a), The Failure By The Inferior Courts To Comply With The Subject-Matter Jurisdiction And/Or The Procedural Mandates Of The Federal Rule Of Civil Procedure 72(a) Is An Important Federal Question, Even More So When The Inferior Courts Leveraged Their Failure To Cause The Improper And Unconstitutional Dismissal Of Petitioner's Well-Pleaded Complaint

The text of the Fifth Amendment of the constitution is provided in Appdx. Vol. 1, p. 245. In *Hagar v. Reclamation Dist., 111 U.S. 701, 708 (1884)*, the Supreme Court explained the Due Process of law as follows:

> "Due process of law is [process which], following the forms of law, is appropriate to the case and just to the parties affected. It must be pursued in the ordinary mode prescribed by law;.... Any legal

> proceeding enforced by public authority, whether sanctioned by age or custom or newly devised in the discretion of the legislative power, which regards and preserves these principles of liberty and justice, must be held to be due process of law." Id. at 708; *Accord*, Hurtado v. California, 110 U.S. 516, 537 (1884).

"*[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest.*" (See *Mathews v. Eldridge, 424 U.S. 319, 333 (1976). "Parties whose rights are to be affected are entitled to be heard." Baldwin v. Hale, 68 U.S. (1 Wall.) 223, 233 (1863).)* This right is a "*basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions*" (See *Fuentes v. Shevin, 407 U.S. 67, 80–81 (1972).*

ii. In Consideration Of Supreme Court Rule 10(a), A Writ Of Certiorari For A Review Of Subject-Matter Jurisdiction And Of The Due Process Of Law Under The Fed. R. Civ. P. Rule 72(a) Is Proper And REQUIRED Under Article III Section 2 Of The Constitution Because The Second Circuit's Decision To Affirm A District Court's Order Dismissing Petitioner's Complaint Based Upon A Theory Of Failure To Comply With A Magistrate Judge's Order Against Which A Timely Objection Filed By Petitioner Pursuant To The Fed. R. Civ. P. Rule 72(a) Has Never Been Ruled Upon By A District Court Judge Is In "*Conflict With The Decision Of*" The US Court Of Appeals For The Eight, Tenth, Third, And Fifth Circuits

The provision of the Fed. R. Civ. P. Rule 72(a) is included in Appendix Vol. 1. Pp. 268 – 269. Petitioner has constitutional Right to be heard on his Objection Pursuant To The Fed. R. Civ. P. Rule 72(a). Accordingly, in *Soliman v. Johanns*, 412 F.3d 920 (8th Cir. 2005), the Eight Circuit stated the following:

> "Upon a timely objection to a magistrate's order disposing of a nondispositive matter, a litigant is entitled to have the district court

"consider such objection and . . . modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a)." Id at 923.

Then in *Johnson v. Evans 473 F. App'x 786 (9th Cir. 2012)*, the Ninth Circuit stated the following:

"Federal Rule of Civil Procedure 72(a) requires a district court to consider any timely objections to a magistrate's order on a nondispositive motion and "modify or set aside any part of the order that is clearly erroneous or is contrary to law." It cautions that a party "may not assign as error" a defect not objected to in a timely manner. Because Johnson did not timely object to the magistrate's order in district court, he has forfeited his right to appellate review." Id at 3.

Several federal circuits have found that they lack jurisdiction to review District Court Orders which were predicated upon a Magistrate Judge's Order or issues dealt with in such a Magistrate Judge Order until such a time that a District Court Judge first Rules on timely filed Objections to the said Magistrate Judge Orders. For example, in *Hutchinson v. Pfeil, 105 F.3d 562 (10th Cir. 1997), cert. denied, 522 U.S. 914, 118 S.Ct. 298, 139 L.Ed.2d 230 (1997))*, the tenth Circuit stated the following:

"After the magistrate judge imposed the sanctions, Mr. Hutchinson sought reconsideration as required by 28 U.S.C. §636(b)(1)(A) and Fed. R. Civ. P. 72(a). Review of the magistrate judge's ruling is required by the district court when a party timely files written objections to that ruling, ... Properly filed objections resolved by the district court are a prerequisite to our review of a magistrate judge's order under Section(s) 636(b)(1)(A). Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991); Boyd Motors, Inc. v. Employers Ins. of Wausau, 880 F.2d 270, 271 (10th Cir. 1989) (per curiam); Niehaus, 793 F.2d at 1165. Because the district court has not yet ruled upon Mr.

Hutchinson's objections, we remand this issue to the district court for such a ruling." *Id* at 566.

Other circuits reached the same legal conclusions such as in *Flood v. Schaefer 439 F. App'x 179 (3d Cir. 2011), Savoy v. Stroughter*, No. 21-30170 (5th Cir. Mar. 8, 2022).

iii. In Consideration Of Supreme Court Rule 10(c), A Writ Of Certiorari For A Review Of Subject-Matter Jurisdiction And Of The Due Process Of Law Under The Fed. R. Civ. P. Rule 72(a) Is Proper Because The Important Federal Question Of Law Regarding US Court Of Appeals' Subject-Matter Jurisdiction Over A District Court's Order Dismissing A Complaint Based Upon A Theory Of Failure To Comply With A Magistrate Judge's Order Against Which A Timely Objection Filed By Petitioner Pursuant To The Fed. R. Civ. P. Rule 72(a) Has Never Been Ruled Upon By A District Court Judge "*Has Not Been, But Should Be, Settled By This Court*" And/Or The Second Circuit's Affirmance Of A District Dismissal Order Issued In Violation Of The Jurisdictional Mandate Of Rule 72(a) "*Conflicts With Relevant Decisions Of This Court*"

The Decision of the US Court of Appeals to predicate the Dismissal of Petitioner's Complaint upon a Magistrate Judge Order's against which a timely filed Rule 72(a) Motion was never adjudicated by a District Court Judge conflicts with *Mathews v. Eldridge, 424 U.S. 319, 333 (1976)* which stated *that "Parties whose rights are to be affected are entitled to be heard."* The Supreme Court explained that this right is a "*The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment . . . .*" (See *Fuentes v. Shevin, 407 U.S. 67, 80–81 (1972).*

c) A Writ Of Certiorari For QUESTION I Is Proper For A Review Of Substantive And Procedural Rights Under The Fed. R. Civ. P. Rule 56(d) Of The Important Federal Question Regarding The Availability To Respondents Of Discovery Sanctions Under The Fed. R. Civ. P. Rule 37 While Petitioner's Motion For Summary Judgment With The Accompanying Statements Of Undisputed Material Facts Were Pending In Court And No Affidavit Or Declaration Such As Mandated By The Fed. R. Civ. P. Rule 56(d) Was Made By The Non-Movant Respondents

Relevant Operative Facts are those set forth above at Section IV(B)(1)(d).

The text of the Fed. R. Civ. P. 56 (a and d) is included in the Appendix Vol. 1, pp. 263 – 265.

i. In Consideration Of Supreme Court Rule 10(a), A Writ Of Certiorari For A Review Of Substantive And Procedural Rights Under The Fed. R. Civ. P. Rule 56(d) Is Proper Because The Decision Of The Second Circuit To Grant Discovery Sanctions To Respondents Under The Fed. R. Civ. P. Rule 37 While Petitioner's Motion For Summary Judgment With The Accompanying Statements Of Undisputed Material Facts Were Pending In Court And No Affidavit Or Declaration Such As Mandated By The Fed. R. Civ. P. Rule 56(d) Was Made By Respondents Is In "*Conflict With The Decision Of Another United States Court Of Appeals*" Including The US Court Of Appeals For The Fifth, Third, D.C., Tenth, And First Circuits

The rulings of several US Courts of Appeals on this issue are unambiguous. For example, in *Mandawala v. Baptist Sch. of Health Professions, All Counts*, No. 23-50258 (5th Cir. Apr. 4, 2024), the Fifth Circuit stated the following:

> "*We have long held that "Rule 56 does not require that any discovery take place before summary judgment can be granted; if a party cannot adequately defend such a motion, Rule 56[(d)] is [the] remedy.*" ...the party opposing summary judgment "may not simply rely on vague assertions that additional discovery will produce needed, but unspecified, facts." Renfroe v. Parker, 974 F.3d 594, 600-01 (5th Cir.

2020) (quoting Am. Fam. Life Assurance Co. of Columbus v. Biles, 714 F.3d 887, 894 (5th Cir. 2013))"

In Shelton v. Bledsoe 775 F.3d 554 (3d Cir. 2015), the Third Circuit Stated:

> "Summary judgment may also be granted if the Rule 56(d) declaration is inadequate. *See Koplove v. Ford Motor Co.,* 795 F.2d 15, 18 (3d Cir.1986) (finding the affidavit insufficient because it did not specify what discovery was needed or why it had not previously been secured). An adequate affidavit or declaration specifies "what particular information that is sought; how, if disclosed, it would preclude summary judgment; and why it has not been previously obtained." *Dowling,* 855 F.2d at 140 (citing *Hancock Indus. v. Schaeffer,* 811 F.2d 225, 229–30 (3d Cir.1987))." *Id* at 568.

Similar legal conclusions were issued in *United States ex rel. Folliard v. Gov't Acquisitions, Inc.*, 764 F.3d 19 (D.C. Cir. 2014), *Fed. Deposit Ins. Corp. v. Arciero*, 741 F.3d 1111 (10th Cir. 2013), *Rivera-Almodóvar v. Instituto Socioeconómico Comunitario, Inc.*, 730 F.3d 23 (1st Cir. 2013).

ii. In Consideration Of Supreme Court 10(c), The Important Federal Question Of Law Regarding The Availability To Respondents Of Discovery And Of Sanctions Under The Fed. R. Civ. P. Rule 37 For Unspecified Discovery Questions While Petitioner's Motion For Summary Judgment Supported With Statements Of Undisputed Material Facts Were Pending In Court "*Has Not Been, But Should Be, Settled By This Court*" And/Or Otherwise The Second Circuit Decision On The Issue "*Conflicts With Relevant Decisions Of This Court*"

In *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986), the Supreme Court held the following:

> "Under Rule 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." .... In such a situation, *323 there can be "no genuine

> issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." Id at 322-323.

The Supreme reiterated the same ruling in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505 (1986), stating that "*the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported *248 motion for summary judgment; the requirement is that there be no genuine issue of material fact.*" Id at 247-248. Thus, Respondents had no right to further discovery and much less any sanctions under Rule 37 because Respondents failed to prove the existence of genuine issue and did not show under Rule 56(d) that they had need for a specified discovery..

d) A Writ Of Certiorari For QUESTION I Is Proper For A Review Of The Important Federal Question Regarding Whether Court Orders That Were Premised Upon A Violation Of The Jurisdictional And Procedural Mandates Of The Fed. R. Civ. P. Rule 72(a) Have Any The Validity And/Or Preclusive Effects In A Concurrent Lawsuit

Relevant Operative Facts are those set forth above at Section IV(B)(1)(e). Relevant Federal and New York State Statutes are 42 U.S.C. §2000e-2 – "Unlawful employment practices" (See Appdx. Vol. 1, pp. 297 – 302), New Yok State Human Right Law ("NYSHRL") (See Appdx. Vol. 1, pp. 303 – 314).

i. In Consideration Of Supreme Court Rule 10(a), A Writ Of Certiorari For A Review Of QUESTION I Is Proper Because The Second Circuit's Decision To Preclude Petitioner's 7:19-cv-09943-PMH Action Based Upon District Court Orders Issued In The Petitioner's 7:17-cv-02810-PMH-PED Action In Violation Of The Jurisdictional And Procedural Mandates Of The Fed. R. Civ. P. Rule 72(a) "*Conflicts With A Decision By A State Court Of Last Resort*" Including The Colorado Supreme Court

In *Stubbs v. McGillis, 44 Colo. 138, 96 P. 1005, 18 L.R.A.,N.S., 405, 130 Am. St. Rep. 116,* the Colorado Supreme Court held the following:

> "*A void judgment is a simulated judgment devoid of any potency because of jurisdictional defects only, in the court rendering it. Defect of jurisdiction may relate to a party or parties, the subject matter, the cause of action, the question to be determined, or the relief to be granted. A judgment entered where such defect exists has neither life nor incipience, and *1119 a court is impuissant to invest it with even a fleeting spark of vitality, but can only determine it to be what it is a nothing, a nullity. Being naught, it may be attacked directly or collaterally at any time.*""

District Court's Dismissal Orders issued in the Petitioner's 7:17-cv-02810-PMH-PED Action in violation of the jurisdictional and procedural mandates of the Fed. R. Civ. P. Rule 72(a) do not have the jurisdictional power to support the dismissal Petitioner's 7:19-cv-09943-PMH Action with any preclusion doctrine.

ii. In Consideration Of Supreme Court Rule 10(c), A Writ Of Certiorari For A Review Of QUESTION I Under The Precedent Of The Supreme Court Is Proper Because The Use By The Second Circuit Of District Court Orders Issued In The Petitioner's 7:17-cv-02810-PMH-PED Action In Violation Of The Jurisdictional And Procedural Mandates Of The Fed. R. Civ. P. Rule 72(a) To Preclude Petitioner's 7:19-cv-09943-PMH Action Conflicts With *United Student Aid Funds v. Espinosa U.S. 559 U.S. 260 (2010)*

Petitioner reiterates and resubmits Sections V(A)(2)(b and c) above.

In United Student Aid Funds v. Espinosa U.S. 559 U.S. 260 (2010) the Supreme Court stated the following: "*A void judgment is a legal ity..... in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard....*" *Id* at 270-271. As shown above, the District Court's 7:17-cv-02810-[ECF # 244] ORDER was jurisdictionally and procedurally defective, it is a "*legal ity*" and being Void it cannot support any legal doctrine for the benefit or at the detriment of any party to a litigation.

iii. In Consideration Of Supreme Court Rule 10(c), A Writ Of Certiorari For A Review Of QUESTION I Under The Precedent Of The Supreme Court Is Proper Because The Use By The Second Circuit Of District Court Orders Issued In The Petitioner's 7:17-cv-02810-PMH-PED Action In Violation Of The Jurisdictional And Procedural Mandates Of The Fed. R. Civ. P. Rule 72(a) To Preclude Petitioner's 7:19-cv-09943-PMH Action Conflicts With *Robinson v. Shell Oil Co., 519 U.S. 337 (1997)*

42 U.S.C. §2000e-2(a)(1) and NY EXC §§296(1)(a) differentiate between the materially adverse employment actions comprising of "*to refuse to hire or employ*" and the materially adverse employment action comprising of "*to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment*" (See Appdx. Vol., 1, pp. 297 and 307). With regard to materially adverse employment actions that occurred after an employee has been terminated, the Supreme Court decided the following in *Robinson v. Shell Oil Co., 519 U.S. 337 (1997)*:

> The "*... exclusion of former employees from the protection of § 704(a) would undermine the effectiveness of Title VII by allowing the threat of postemployment retaliation to deter victims of discrimination from complaining to the EEOC, and would provide a perverse incentive for employers to fire employees who might bring Title VII claims ... The EEOC quite persuasively maintains that it would be destructive of this purpose of the antiretaliation provision for an employer to be able to retaliate with impunity against an entire class of acts under Title VII - for example, complaints regarding discriminatory termination. We agree with these contentions and find that they support the inclusive interpretation of "employees" in § 704(a) that is already suggested by the broader context of Title VII." bring Title VII claims....*" *Id* at 346.

Accordingly, under *Robinson v. Shell Oil Co., 519 U.S. 337 (1997),* the US Court of Appeals for the Second Circuit does not have the power to Dismiss Petitioner's 7:19-cv-09943 Action as duplicative of Petitioner's 7:17-cv-02810 Action, especially because the materially adverse employment action alleged in the Petitioner's 7:19-cv-09943 Action comprised of "*refusal to rehire*" which occurred after the Petitioner's employment was terminated by the Respondents (See Appdx Vol. 5, pp. 1430 – 1493).

B. QUESTION II

Relevant Operative Facts are those set forth above at Section IV(B)(2).

Petitioner's First Amendment Question was presented in the 21-653 Appeal which the US Court of Appeals dismissed as Frivolous. In the 23-455 Appeal, the Court of Appeals reiterated that the 21-653 Appeal was dismissed as "*Frivolous*": "*After the first lawsuit had been resolved on the merits - and we dismissed Kamdem-Ouaffo's appeal as frivolous, see 2d Cir. 21-653, doc. 157 - the district court*

dismissed the instant case as either duplicative of the first or barred by claim preclusion... " (See Appdx. Vol.1, p. 26).

1) In Consideration Of Supreme Court Rule 10(a), A Writ Of Certiorari For QUESTION II Is Proper Because Religious Beliefs In Sexual Intercourse Virginity, Purity, And Chastity Until After Marriage Is An Important Matter Of Constitutional Law Under The First Amendment, Not Only In Islam, But Also In Traditions Of Divinities That Existed Prior To The Foundation Of Islam By The Holy Prophet, Including In Judaism, In The Roman Catholic And The Christian Churches

Religious beliefs in Sexual Intercourse Virginity, Purity, And Chastity until after Marriage is shared by the three main monotheistic religions in the United States, namely from the oldest to the youngest Judaism, Christianity, and Islam. The following public domain texts are the foundations of monotheist religious beliefs in Sexual Intercourse Virginity, Purity, And Chastity until after Marriage

a) In The Torah "Deuteronomy 22:13 – 29" By Reform Judaism. Org

A public domain translation of the Torah's text on religious belief in sexual intercourse virginity and the need to have evidence in proof of the same when necessary is provided in Appdx. Vol. 5, p. 1522, an excerpt of which is as follows;

> **13]** A householder marries a woman and cohabits with her. Then he takes an aversion to her **14]** and makes up charges against her and defames her, saying, "This is the party I married; but when I approached her, I found that she was not a virgin." **15]** In such a case, the girl's father and mother shall produce the evidence of the girl's virginity before the elders of the town at the gate. **16]** And the girl's father shall say to the elders, "To this party I gave my own daughter to wife, but he has taken an aversion to her; **17]** so he has made up charges, saying, 'I did not find your daughter a virgin.' But here is the evidence of my

daughter's virginity!" And they shall spread out the cloth before the elders of the town..."

https://reformjudaism.org/learning/torah-study/text/ki-teitzei

b) In The New American Bible (Revised Edition) (NABRE) By Confraternity of Christian Doctrine, Inc., Washington, DC,

i. Deuteronomy 22:13 – 29

A public domain translation of the Roman Catholic and Christian Bible text on religious belief in sexual intercourse virginity a is provided in Appdx. Vol. 5, p. 1513 – 1514, an excerpt of which is as follows:

> " [13] If a man, after marrying a woman and having relations with her, comes to dislike her, [14] and accuses her of misconduct and slanders her by saying, "I married this woman, but when I approached her I did not find evidence of her virginity," [15] the father and mother of the young woman shall take the evidence of her virginity[b] and bring it to the elders at the city gate. [16] There the father of the young woman shall say.... But here is the evidence of my daughter's virginity!" And they shall spread out the cloth before the elders of the city..."

A public domain translation of the Roman Catholic and Christian Bible text on religious belief generally understood as teaching sexual intercourse virginity, purity, chastity until after marriage is also provided in Appdx. Vol. 5, p. 1518 – 1519.

c) In The Holy Quran, Shakir Translation

A public domain translation of the Holy Quran text on religious belief generally understood as teaching sexual intercourse virginity, purity, and chastity until after marriage is provided in Appdx. Vol. 5, p. 1516:

> {17:32} and go not nigh to fornication; surely it is an indecency and an evil way.

{24:30} Say to the believing men that they cast down their looks and guard their private parts; that is purer for them; surely Allah is Aware of what they do.
{24:31} And say to the believing women that they cast down their looks and guard their private parts and do not display their ornaments except....and turn to Allah all of you, O believers! So that you may be successful...."

2) In Consideration Of Supreme Court Rule 10(a), A Writ Of Certiorari For QUESTION II Is Proper Because The Characterization By The Inferior Courts Of Petitioner's Islamic Religious Belief In Sexual Intercourse Virginity, Purity, And Chastity And Petitioner's Expression Thereof As *"Scatological"* meaning *"Excrement, Feces, Caca, Poop"*, *"Exotic"*, *"Vulgar"*, "Crude", *"Obscene"*, *"Inappropriate"*, *"Salacious"*, *"Indefensible"*, *"Foul"*, *"Profane"*, *"Misconduct"*, and *'Frivolous"* Is In *"Conflict With The Decision Of Another United States Court Of Appeals"* Including The US Court of Appeals For The Ninth Circuit Who Determined That Such Characterization Of A Religious Belief Was A *"Stench Animus"*

In the matter of *Fellowship of Christian Athletes ("FCA") v. San Jose Unified Sch. Dist. Bd. of Educ.*, 46 F.4th 1075 (9th Cir. 2022), and *Fellowship of Christian Athletes v. Bd. of Educ. 82 F.4th 664 (9th Cir. 2023) (EN BANC)*, the US Court Of Appeals for the Ninth Circuit held that the characterization by school officers of the FCA students religious belief in Sexual Intercourse Virginity And Purity Until After Marriage and the expression thereof as "*Bullshit, Charlatans, Darkness, Ignorance*" was a violation of the FCA students' First Amendment Rights

Muslim communities worldwide attach even a greater importance to the issue of sexual intercourse virginity and purity until after marriage:

> "*Preserving female virginity until marriage is still emphasised by society, and pre-marital sexual activity or pregnancies are greatly*

feared.... If a girl is known to have had pre-marital sex, the social status of the whole family is affected. As a result, marriage will become difficult for the girl and she may become unmarriageable, or will be married to a widower or very much older man. Further, this will also affect the marriage chances of the adolescent girl's sisters, if there are any (Caldwell et al., 1998)." (See Appdx. Vol. 4, p. 1144, 17-cv-02810 [DKT NO. 247-1, p. 25].

3) In Consideration Of Supreme Court Rule 10(a), A Writ Of Certiorari For QUESTION II Is Proper Because The Characterization By The Inferior Courts Of Petitioner's Islamic Religious Belief In Sexual Intercourse Virginity, Purity, And Chastity And Petitioner's Expression Thereof As *"Scatological" meaning "Excrement, Feces, Caca, Poop, Shit", "Exotic", "Vulgar", "Crude", "Obscene", "Inappropriate", "Salacious", "Indefensible", "Foul", "Profane", "Misconduct",* and *Frivolous" "Conflicts With A Decision By A State Court Of Last Resort"* Including The Supreme Court Of New Jersey

A question similar to Petitioner's on the sexual intercourse virginity, purity and chastity until after marriage was Presented to the Supreme Court of New Jersey in the matter of *Crisitello v. St. Theresa Sch. 255 N.J. 200 (N.J. 2023) [Victoria Crisitello v. St. Theresa School (A-63-20) (085213)].* In that matter, the Supreme Court of New Jersey noted the following:

> "St. Theresa's also provided a certification from Deacon John J. McKenna, which explained that [o]ne of the tenets of the Roman Catholic Church is that sex outside of the institution of marriage is forbidden. To engage in sex outside of marriage is a sin. It is not consistent with the discipline, norms and teachings of the Roman Catholic Church, i.e. it violates the religious tenets of the Catholic Church." Id at 225 (See 23-455-[Dkt. No. 90, p. 53]).

The Supreme Court of NJ determined that the termination of Crisitello's employment for violating the said "*agreement*" was covered by "*religious tenet exception*" (See 23-455-[Dkt. No. 90, pp. 28 -29):

"Last, the court found that the First Amendment barred Crisitello's claims, even if the LAD's religious tenets exception did not apply, because secular court involvement here would be an unconstitutional entanglement with religious affairs." Id at 211.

"The religious tenets exception allowed St. Theresa's to require its employees, as a condition of employment, to abide by Catholic law, including that they abstain from premarital sex...In other words, St. Theresa's required adherence to Catholic law, and Crisitello knowingly violated Catholic law." *Id* at 224-225.

4) In Consideration Of Supreme Court Rule 10(c), A Writ Of Certiorari For QUESTION II Is Proper Because The Important Question Of Federal Law Regarding The Constitutional Status Of Religious Beliefs In Sexual Intercourse Virginity, Purity, And Chastity Until After Marriage "*Has Not Been, But Should Be, Settled By This Court*" And/Or Because The District Court And The Second Circuit's Curses On Such Islamic Beliefs "*Conflicts With Relevant Decisions Of This Court*"

The inferior court's characterization of Petitioner's religious beliefs in sexual intercourse virginity, purity, and chastity until after marriage echoed the comments condemned by the Court in Lukumi and Masterpiece Cakeshop. See *Lukumi, 508 U.S. at 541-42, 113 S.Ct. 2217* (noting comments by city officials describing Santeria as "*foolishness*," "*an abomination,*" and "*abhorrent*"); *Masterpiece Cakeshop, 138 S. Ct. at 1729* (noting comments by Commission members describing the baker's religious beliefs as "*despicable*" and comparing them to "*defenses of slavery and the Holocaust*").

C. QUESTION III

This Question was formulated from the Court of Appeals Summary Orders stating the following:

> "**IV. Motion to Disqualify** .....The grounds that Kamdem-Ouaffo cited in support of his recusal motion were that the magistrate judge and the district judge were biased against him and that they were involved in a conspiracy against him, involving persons posing as attorneys from the United States Department of Justice and officers of the U.S. Marshals Service "plotting [his] kidnapping and murder, and/or [his] ambush and assassination." 7:17-cv-02810-PMH-PED, doc. 313 at 2....Kamdem-Ouaffo's motion has provided no basis in law or fact to support his fanciful allegations of bias (See Appdx. Vol. 1, p. 5)

Relevant Operative Facts are those set forth above at Section IV(B)(3). The text of the Fourth Amendment is included in Appendix Vol. 1, p. 247. QUESTION III should be construed to include: **1)**- whether it is a crime to be Muslim, a Muslim Convert, or a friend of a Muslim in the United States of America, and **2)**- Whether the Subject Judges ought to be disqualified from Muslim Petitioner's cases.

1) In Consideration Of Supreme Court Rule 10(c), A Writ Of Certiorari For QUESTION III Is Proper Because The Important Question Of Federal Law Regarding The Constitutional Status Of Islam, Constitutional Equality And Protections For Muslims, Islamic Converts, And Friends Of Muslims *"Has Not Been, But Should Be, Settled By This Court"* Especially So In Light The Emergence Of Religious Persecutions Such As Illustrated In The Actions Of The Judges Subject Of Petitioner's Misconduct Complaints

With regard to Muslim Petitioner's Motion Pursuant to the Fourth Amendment of the Constitution of the United States (See Appdx. Vol. 2, pp. 325 – 410, 480 – 521), the US Court of Appeals for the Second Circuit stated that "*Kamdem-Ouaffo's motion has provided no basis in law or fact to support his fanciful allegations of bias*" (See Appdx. Vol. 1, p. 5). In the matter of *Neitzke v. Williams, 490 U.S. 319, 109 S. Ct. 1827 (1989)*, the Supreme Court developed and applied the concept of

"*frivolous*" Claims/Complaint and stated the following: " *As the Courts of Appeals have recognized, § 1915(d)'s term "frivolous," when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation.*" *Id* at 325. The characterization by the Second Circuit of Petitioner's Motion pursuant to the Fourth Amendment as "*Fanciful*" is obviously based on their presumption that because Petitioner is a Muslim, Petitioner therefore has no right to file a Complaint of Judicial Misconduct and that Muslim Petitioner has no "*right to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures*" as provided by the Fourth Amendment of the Constitution of the United States. Otherwise Petitioner's allegations are supported with evidence including recorded conversations with RUBHC and US Deputy Marshal Cerrato. Thus, it cannot be said that Petitioner had imagined a story against Subject Judges.

VI. CONCLUSION AND REQUEST FOR RELIEF

The Limitations of Article III Section 2 of the Constitution on the jurisdiction of federal courts REQUIRE that a writ of certiorari should be allowed in a case like this one where the inferior courts committed such **flagrant** and **harmful** Jurisdictional **TRANSGRESSIONS** and **TRESPASSES** as openly violating the Jurisdictional Limitations and Mandates of the Fed. R. Civ. P. Rules 6(b)(2) and 72(a).

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Ricky Kamdem-Ouaffo, Pro Se
86 Bayard Street No. 381
New Brunswick, NJ 08903
Tel: 1 732 763 8622. **E-mail:** rickykamer@gmail.com.