

24-6711

No.

IN THE SUPREME COURT OF THE UNITED STATES

JACKSON, KRIS CHAPTER

Petitioner,

vs

Santander Consumer USA, Inc., T.E.N. Investments, Inc., Marion Battaglia, Stephanie Anne Turner, Angela Lewitzke, Robert Hellweg, Kayce Jones, Ronald Meyer, Kraft Tool, and Soave Automotive Group, Inc. et al. (Respondents on review).

Respondent(s)

On Petition for Writ Of Certiorari
To The Kansas Supreme Court
& Kansas Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

ORIGINAL

FILED
FEB 20 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Jackson Kris, Chapter (Pro Se)
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February 20, 2025

QUESTIONS PRESENTED

- (1) Petition to review a "constitutional question". Petitioner contends that the lower court's decision has incorrectly interpreted or applied a provision of the U.S. Constitution, 14th Amendment to due process raising a significant legal issue that needs clarification from the highest court to ensure consistent application across different jurisdictions; essentially requesting the Supreme Court to decide whether a law or action by a lower court aligns with the Constitution.
- (2) The Due Process Clause provides that no person may be deprived of life, liberty, or property without due process of law. Due process requires notice, an opportunity to be heard, and an unbiased decision-maker. A hearing that meets due process standards must ordinarily be held prior to the deprivation.
- (3) Is a deprivation order immediately/automatically appealable prior to a final judgment in the case?
- (4) Is a deprivation order a final order and automatically appealable?
- (5) Is an order or judgment immediately appealable that is not in compliance with the 14th Amendment right to due process, or when the order has a constitutional deficiency of the post-deprivation process?
- (6) Is the order immediately/ automatically appealable, which takes away your right to file court documents or enter into a courthouse/ court office?
- (7) Whether an appeals court denies a plaintiff's right to appeal a restrictive filing order/ confinement order during a critical stage of proceedings violates the Fourteenth Amendment's Due Process Clause.

(8) Disagreement Among Lower Courts: The majority of lower Courts have decisions that an appeal can be automatically taken from restrictive filing orders/vexatious litigant orders. Laws should be applied uniformly in the United States. If decisions in lower courts conflict, then the Supreme Court may issue a decision applicable to all the courts.

(9) Reversible Legal Error: Was the Lower Court decision not to allow the Petitioner to appeal a vexatious litigant order, confinement order, or restrictive filing order incorrect?

(10) Whether a lower court's decision on an important matter conflicts with a decision of another lower court.

(11) Whether the court of appeal's decision is far departed from the accepted and usual course of judicial proceedings.

(12) Whether the state court has decided an important federal question in a way that conflicts with another state court or a federal court.

(13) Whether state court or a United States court of appeals has decided an important question of first impression that should be settled by the Supreme Court.

(14) Whether a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or 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.

(15) Whether a state court of last resort has decided an important federal question in a way that conflicts with the

decision of another state court of last resort or of a United States court of appeals.

(16) Whether a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

(17) Whether the United States Supreme Court to weigh in on the split of state and federal courts split of authority as to whether a vexatious litigant order is automatically/immediately an appealable order.

(18) Whether the decision of the Kansas Appeals Court as and Kansas Supreme Court would conflict with another decision by another federal or state appellant court.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Jackson, Kris Chapter, petitioner on review, was the movant appellant below.

The Kansas Court of Appeals, Kansas Supreme Court, and Johnsons County District Court, Soave Automotive Group, Inc., T.E.N. Investments, Inc., Marion Battaglia, Stephanie Anne Turner, Angela Lewitzke, Robert Hellweg, Kayce Jones, Ronald Meyer, Kraft Tool, and Santander Consumer USA, Inc. respondents on review.

Parties who are a Corporation:

Santander Consumer USA Inc, Soave Automotive Group and T.E.N. Investments Inc.

**STATEMENT OF DIRECTLY RELATED
PROCEEDINGS
(RULE 14.1(B) STATEMENT)**

This case arises from the following proceedings in the Johnson County District Court of Kansas, Court of Appeals of Kansas, and Kansas Supreme Court.

Johnson County District Court of Kansas Kris Chapter Jackson vs. Soave Automotive Group., et al., (Case No. 22-CV-000108)

Court of Appeals of Kansas Kris Chapter Jackson vs. Soave Automotive Group., et al. (Appellant Case No. 126965)

Kansas Supreme Court Kris Chapter Jackson vs. Soave Automotive Group., et al. (Appellant Case No. 126965)

Kris Chapter Jackson vs. Rhoda Mason et al. (United States Kansas Federal Court District of Kansas (Kansas City) Case number 2:23-CV-02464-DDC-ADM

Kris Chapter Jackson vs. Rhoda Mason et al. 10th Circuit Court of Appeals Case number 24-3131

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PETITION FOR WRIT OF CERTIORARI

Jackson, Kris Chapter (Herein "Petitioner") respectfully petitions for a writ certiorari to review the orders and opinion of the Johnson County District Court State of Kansas, Kansas Court of Appeals opinion, and Kansas Supreme Court denial of petition for review.

OPINION AND ORDERS BELOW

The opinion of the Kansas Supreme Court, Kansas Court of Appeal, and restrictive filing orders of the Johnson County District Court State of Kansas are reproduced in the appendix to this petition. The orders and opinions are unpublished and are reproduced at Pet. App. A, 1a; Pet. App. B, 6a; Pet. App. C, 24a; Pet. App. D, 43a; Pet. App. E 44a; Pet. App. F, 46a; Pet. App. H, 70a.

JURISDICTION

The Kansas Supreme Court issued its order on January 29, 2025. This court has jurisdiction under 28 U.S.C. 1254(1), and 28 U.S.C. § 1257(a). The district court had jurisdiction pursuant to 28 U.S.C. § 1331.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Section one of the Fourteenth Amendment provides in pertinent part, "No State shall ... deprive any person of life, liberty, or property, without due process of law...."

Section One of the Fourteenth Amendment of the United States Constitution provides:

All Persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United

States; nor shall any state deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

42 U.S.C. 1983 provides, in relevant part:

42 U.S.C. 1983 provides, in relevant part every person who, under color of any statute, ordinance, regulations, custom, or usage, of any State or Territory or the District of Columbia, subject, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to deprivation of any rights, privileges, or immunities secured by the Constitutional and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

The Fourteenth Amendment to the U.S. Constitution provides that:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. CONST. amend. XIV § 1; see also *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (“Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.”).

The Due Process Clause is derived from the Magna Carta, which read in relevant part: “No freemen shall be taken and imprisoned or disseized or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.” *MAGNA CARTA*, § XXXIX (1215), see also *Bank of Columbia v. Okely*, 17 U.S. (4 Wheat.) 235, 244 (1819) (“As to the words from *Magna Charta* [sic], incorporated

into the constitution . . . after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government . . . ”).

STATEMENT OF THE CASE

Legal Background:

The Due Process Clause of the Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law....” Due process requires notice, an opportunity to be heard, and an impartial tribunal. This Court’s “precedents establish the general rule that individuals must receive notice and an opportunity to be heard before the Government deprives them of property.” *United States v. James Daniel Good Real Property*, 510 U.S. 43, 48 (1993). Due process mandates that the state provide some adequate post-deprivation process “for a determination of rights and liabilities.” The Petitioner has been deprived of her Constitutional Right Due Process.

Factual Background:

The instant action arises from the Cases in the District Court of Johnson County Kansas Case No. 22CV00108 Consolidated with Case No. 22CV00228 Jackson vs. Santander Consumer USA Inc. et al. the Honorable Judge Rhonda K. Mason presiding. (Herein respectfully “Judge Mason”). On 09/20/2023, Judge Mason heard oral arguments on multiple motions filed by the Petitioner and the Collective Defendants who are all represented by the same counsel in the state case. (Herein “Defendants”) During the hearing, Judge Mason unexpectedly imposed an oral restrictive filing order against both Petitioner and the Defendants, “*Specifically you Ms. Jackson*” without warning and without any form

of due process. (**See Pet. App. I, 71a**) Judge Mason never gave Petitioner a legal opportunity to oppose the restrictive filing order or to be heard. Before the oral order became permanent without due process it was immediately enforced by the court.

The hearing held on 09/20/2023 was not a scheduled hearing for the court to impose permanent restrictive filing orders; regardless, such was imposed orally at a hearing on other matters that were scheduled for 09/20/23, evidenced by the transcript of the court hearing of 09/20/2023. (**See Pet. App. I, 71a, 09/20/2023 Reporters Transcript Relevant pages**) On 10/17/2023, Judge Mason created a Journal Entry for the oral restrictive filing order (**See. Pet. App. A, 1a**)

The 10/17/2023 Journal Entry includes a permanent restrictive filing order which states that nothing can be filed without first meeting and conferring with the Parties of the case and that the parties are to seek leave before filling “anything”. (**See Pet. App. A, at 2a**). The order did not include any instructions for the Petitioner to seek leave to file “anything”, and vaguely states the parties are to meet and confer but has no instructions for any protocol; the order doesn’t state that the restrictive filing order is a temporary order; nor does the order give instructions for the Petitioner to oppose the order, or a chance to defend or be heard before full enforcement of the deprivation.

On 10/20/2023, Judge Mason entered another restrictive filing order, vexatious litigant order, restricting Petitioners access to the court against the Petitioner, imposing harsher restrictions against the Petitioner only without giving the Petitioner a chance to be heard before imposing these restrictions. (**See Pet. App. B, 6a**) The 10/20/2023 Restrictive Filing order states in short:

“Kris Chapter Jackson has demonstrated a persistent practice of filing frivolous motions and issuing subpoenas and requests for documents to numerous individuals and

agencies located within and out of the state that are tangential or not relevant to her pending case in this jurisdiction.” (See Pet. App. B, at 6a, ¶1)

The 10/20/2023 Restrictive Filing order (**Pet. App. B, 6a**) goes on to state:

“To this date Ms. Jackson has filed 298 of the 401 total documents in this case. Many of her filings consist of motions for frivolous matters, such as the presence of food in the deposition room (DOC 246), requests that the Defendants pay her travel fees to mediation, (DOC 221) or demanding that Defendants provide her with a vehicle for transportation for the duration of the case”. (DOC # 13)” (See Pet. App. B, at 6a, ¶5)

On 10/23/2023, Judge Mason entered, filed, and served a second, lengthy, and harsher restrictive filing Order order against the Petitioner (**See Pet. App. C, 24a**) in the same manner as the prior Orders, without due process, further restricting the Petitioner' access to the court in addition to the prior imposed filing restrictions. The “Johnson County District Court”, Judge Mason never invited the Petitioner to oppose or raise any objection to any of Judge Mason’ allegations within any of the restrictive filling orders. The state court Judge never allowed the Petitioner to defend or oppose the orders or invited the Petitioner to be heard as to the restrictions and confinement order(s) which caused a deprivation of the Petitioner's rights.

The State never allowed the Petitioner to show cause as to why the restrictive filling orders should not be imposed. The Johnson County District State Court, Judge Mason failed to allow the Petitioner to be heard in open court or allow the Petitioner to file a responsive pleading to oppose the orders and prove if there was or wasn’t a valid reason for the orders prior to entering and enforcing the Orders in violation of the Petitioner’ constitutional rights to due process. The record of the State Court details that the restrictive filings orders and confinement orders from

court offices were imposed without the Petitioner ever having a chance to oppose the orders in open court or object to the restrictive filing orders, restricting Petitioner' access to the court, confinement and vexatious litigant order before they were permanently imposed upon the Petitioner.

The Petitioner attempted to appeal the restrictive the filing orders, vexatious litigant orders, confinement orders, and deprivation orders with the Kansas Court of Appeals. However, the Kansas Court of Appeals issued an OSC (See Pet. App. D, 43a) for the Petitioner to show cause for why the Appeal should not be dismissed for lack of the Appellate Court jurisdiction for the non-final order. (See Pet. App. E, 44a)

Case law details and supports Petitioner' contention that before restrictive filing orders and restrictive access to the court can be imposed permanently, the Court must give the party an opportunity to object, oppose, and be heard. (See: *Holt v. State*; "Before court-imposed filing restrictions become effective, the party subject to them is entitled to notice and opportunity to be heard in opposition".) Kansas Appellate Court case law supports the idea that a party must be given the opportunity to be heard and object before their access to the court can be restricted: Due process required that the Petitioner had to have been given an opportunity to be heard and object before her access to the court can be restricted and her denial of court filing services were denied.

According to the 14th Amendment, the Petitioner cannot be denied access to the court without first being given a notice and an opportunity to be heard; the Petitioner was not given notice nor an opportunity to be heard before the restrictions were imposed nor does any of the orders invite the Petitioner to oppose or set a date for the Petitioner to be heard. (See Pet. App. Infra, 6a – 26a) The State Court failed to allow the Petitioner a chance to object to consider her objections and make findings of fact

Moreover, the restrictions must be reasonable. Blanket prohibitions or outright bans are an impermissible restriction on a party's access to the courts. 290 Kan. at 501. Moreover, "before the court-imposed filing restrictions become effective, the party subject to them is entitled to notice and an opportunity to be heard in opposition," but "the objecting party need not be physically present and may voice any objections in writing." 290 Kan. at 501. The Petitioner sought an appeal (**See Pet. App. D, 43a, E, 44a**) to seek redress of the deprivation of her rights and complains that the district court did not allow the Petitioner to be heard before imposing the injunction/restrictive filing orders. (See: *STATE of Kansas, Appellee, v. Edward NEWSON, III*, Appellant, No. 112 896. 11-20-2015; In the State of Kansas, *Appellees v. Edward Newson, III*, First, the state district court failed to give *Newson* notice and an opportunity to be heard, at least in writing, before it imposed the filing restrictions. See *Holt*, 290 Kan. at 501.) The Kansas Appeals Court reviewed the *Newson* case on docket management for abuse of discretion. 290 Kan. at 502.

The Petitioner was denied her right to appeal the deprivation(s) order(s) entered against her without due process; the Petitioner sought review from the Kansas Court of Appeals (**See Pet. App. G, 48a**) to raise the following questions of review:

- (1)** Did the district court exceed its power to limit the filing of the Petitioner's future motions?
- (2)** Were the Restrictions imposed on the pro sec litigant without allowing the Petitioner a chance to oppose the restive filing orders (without due process)?
- (3)** Were the restrictions imposed blanket prohibitions?
- (4)** Did the district court enter a restraining order imposing temporary filing restrictions first before imposing permanent injunctions/deprivation on the Petitioner?

- (5) Did the state district court conduct a hearing and allow the Petitioner to be heard before the permanent injunction/deprivations were enforced?
- (6) Are the restrictive filing/confinement orders a violation of the Petitioner's constitutional right to due process, and or do the orders comply with the 14th Amendment Due Process Clause?

The Petitioner contended in the lower court and higher court (Kansas Appeals Court, Kansas Supreme Court) that the restrictive filing, confinement orders, and vexatious litigant should be appealable orders just as they are held appealable in 10th Circuit and other lower state courts across the country; (**See Pet. App. G, 48a thru 68a**); The Petitioner argued in the Kansas Court of Appeals and Kansas Supreme Court that the Restrictive filing orders failed to give the Petitioner a chance to be heard before the deprivation and have been reviewed on appeal and are appealable orders; As it was held in *Lynn v. Anstaett* (*Patrick LYNN, Appellant, v. Nancy ANSTAETT, et al., Appellees*) restrictive filing order was heard on appeal and *Lynn* was able to proceed on appeal in the Kansas Supreme Court whom reversed the restitutive filing order imposed: (*Lynn v. Anstaett*, No. 108,568, 2013 WL 5422344, at *3 (Kan. Ct. App. Sept. 27, 2013) (*Lynn* 3) In the case *STATE of Kansas, Appellee, v. Edward NEWSON, III*, Appellant, No. 112 896. 11-20-2015; restrictive filing orders were heard on appeal. As the Kansas Appeals Court ruled in the Edward Appeal; **“First, the district court failed to give Newson notice and an opportunity to be heard, at least in writing, before it imposed the filing restrictions”**, See *Holt*, 290 Kan. at 501. Moreover, even though we find that it may be reasonable for the court to impose filing restrictions under the circumstances presented, the district court's order does not specify or enumerate any conditions *Newson* must meet to “obtain the Court's permission” to allow future filings. See, e.g., *State ex rel. Stovall v. Lynn*, 26 Kan.App.2d 79, 81-82, 975 P.2d 813 (reasonable restrictions include enumerated prefiling

conditions), rev. denied 267 Kan. 890 (1999). Thus, we vacate the district court's order restricting future filings by *Newson*." The Kansas Court of Appeals has accepted and ruled upon appeals for restrictive filing orders as detailed in; *Lynn v. Anstaett* 309 P.3d 974 (Kan. Ct. App. 2013).

As held in the *Lynn* case; Kansas Court of Appeals heard an appeal and has held a court should consider whether a litigant's "pattern of litigation activity" justifies imposing filing restrictions, noting numerous factors may be considered depending upon the circumstances. *State ex rel. Stoval v. Lynn*, 26 Kan. App. 2d 79, 82, 975 P.2d 813, 815, rev. denied 267 Kan. 890 (1999).

In the Case of *Lynn*, *Lynn* was attempting to comply with the gatekeeping restrictions imposed on him in *State ex rel Stoval v. Lynn*, 26 Kan.App.2d 79, 81–82, 975 P.2d 813, rev. denied 267 Kan. 890 (1999). On Appeal *Lynn* points to *Holt*, 290 Kan. 491, to support his contention that a ban upon his right to file pro se violates well-established Kansas law. In *Holt*, (*Holt v. State*, 232 P.3d 848 (Kan. 2010) Supreme Court of Kansas) a district court ruled that a prisoner was barred from filing future motions in a criminal case after the prisoner filed his fourth K.S.A. 60–1507 motion. *Holt*, 290 Kan. at 497.

Despite the Petitioner citing the above cause to obtain redress/appellant review from the restrictive filing orders, deprivation orders, and restrictive access to court offices orders, the Kansas Court of Appeals and Supreme Court failed to allow the Petitioner to appeal lower state court orders (See Pet. App. *infra*, 43a, 44a, 46a, 70a) An appeal should be allowed to be taken from a "vexatious litigant" order, for a person designated as a vexatious litigant by a court should be allowed to immediately appeal that decision to a higher court to challenge its validity; for such an order(s) can significantly restrict a parties ability to file future lawsuits, access the court filing system, access

the court offices, court help center and is considered a substantial legal consequence.

REASONS FOR GRANTING PETITION

Petitioner now seeks further review in this Court and offers the following reasons why a writ of certiorari is warranted.

A. Introduction

The Due Process Clause is of unique importance because of the exceptionally wide range of property and liberty interests which it protects. Members of the public regularly assert procedural due process claims to prevent termination of a right or a loss of a right before deprivation. The Kansas Appeals Court and Kansas Supreme Court has adhered to a uniquely narrow interpretation of the Due Process Clause, establishing a barrier that few claimants can overcome, and routinely denying due process claims that would have been sustained in other circuits and or a right to appeal restrictive filing orders, deprivation orders, vexatious litigant orders, and or orders which restrict a litigant access to the courts; which are immediately appealable in other state courts and federal appellate courts.

The decisions of this Court establish a fundamental distinction between pre-deprivation and post-deprivation determinations and procedures. Due process requires notice, an opportunity to be heard, and a determination by an unbiased individual or body. Ordinarily, a state must provide a procedure that satisfies those constitutional requirements before depriving someone of liberty or property. This Court has recognized, however, that where it would be impracticable to provide such constitutional protections prior to the deprivation, the Due Process Clause requires only that there be a post-deprivation

process that satisfies those due process requirements. *Parratt v. Taylor*, 451 U.S. 527 (1981).

Correctly applying those well-established principles, multiple federal courts of appeals (multiple circuits) and the highest courts and states (courts) have held that the existence of a post-deprivation process is only relevant where it would have been impracticable to provide a pre-deprivation procedure that satisfies the constitutional due process requirements. Those courts of appeals and state courts thus look to the existence and sufficiency of post-deprivation procedures solely in cases in which the deprivation of liberty or property was the result of a random or unauthorized action or in which it would have been otherwise impracticable to provide a pre-deprivation process that met due process standards.

B. The Origin and Protection of the 14th Amendment Clause of Due Process to the United States Constitution

The Petitioner had a Constitutional Right of Access to the Court's. The lower state court order(s) deprives the Petitioner of said right, there should have been a chance for the Petitioner to be heard and to oppose the orders. The Fourteenth Amendment provides a right of access to the courts, *Bounds v. Smith*, 430 U.S. 817 (1977). It should be a violation of a person's due process right to be denied an appeal from a restrictive filing order for like in this case the orders were entered without due process, without the petitioner having a chance to be heard or oppose as the records details. (See Pet. App. B, 9a thru 23a) The Petitioner is a pro se litigant who cannot afford an attorney and without an attorney the Petitioner is unable to file court documents and has been subject to the whim of the court who has enforced deprivation orders upon the Petitioner that carries sanctions or contempt charges if violated. (See Pet. App. C, 26a)

The proceedings in the lower court should be automatically stayed for the Court of Appeal to review vexatious litigant/restrictive filing orders; such orders should be immediately appealable, meaning a party can appeal that decision right away without waiting for a final judgment in the case. The appealable and procedural implications of such a ruling should be clarified by the Supreme Court of the United States. The Supreme Court of the United States should resolve this procedural dispute arising in state and federal courts across the country and decide that vexatious litigant, deprivation orders, restrictive filing orders, are immediately appealable orders, and the pending suit is automatically stayed pending resolution in the appellant court.

C. The Opinion/ Ruling of the Kansas Court of Appeals and Kansas Supreme Court Decided an Important Federal Question in a way that conflicts with the Decision of other Federal and State Courts in the United States Court

If a party is declared vexatious, such order should be allowed to be appealed by the Kansas Appellant Court immediately, and such appeal should be automatic. The Kansas Court of Appeals and Supreme Court failed to hold a restrictive filing order is immediately appealable and or automatic. A person who has been declared a “vexatious litigant” requires permission to appeal for such an order is an injunction order denying a party a right that is permanent restrictions as against the Petitioner, including prohibiting the petitioner from accessing court office(s), court help centers that are located in court office(s), filing court documents, and obtaining filed stamp copies of court filings, such orders may have been entered in violation of due process and are not carefully tailored, some orders may be vague as here which doesn't detail how the Petitioners court documents will be rejected or accepted by the court.

The restrictive deprivation orders prevent the pro se Petitioner from acting as a litigation representative, in any

form, prevents the Petitioner from preparing any document to be filed or otherwise submitted to the court, prevents the Petitioner from engaging in any activity with the court, clerks, and imposes contempt charges and sanctions all without the Petitioner having a chance to oppose. (See Pet. App. *infra* 1a thru 24a) All of the restrictive filling orders for all the reasons set forth herein should have been appealable without question.

Permission to appeal a deprivation order should not be required for a person who has been declared a vexatious litigant to seek permission to appeal while already denied access to the court filing system and court offices when an order completely locks a pro se litigant out from the court. A party should be able to obtain immediate review of such order(s) by way of appellant review. The Petitioner sought review under the collateral order doctrine and was still denied permission to appeal from the Kansas Appellant Court – for the deprivation order(s) were made in the course of an underlying action but is collateral to the subject of that action, should be appealable pursuant to the collateral order doctrine. (See Pet. App. H, 70a)

A vexatious litigant order or deprivation order is a separable and collateral order which should automatically be reviewable on appeal and be held to be a final decision just as it is held to be a final decision upon a final judgment. The restrictive filling orders should have been reviewable under an exception to the rule of finality) as it is in other federal and state courts and is immediately appealable. Because Restrictive filing order(s) are conclusive, as detailed in the following case law below held by multiple federal and state courts authorities across the country:

1. A separable and collateral order" is reviewable See *Doleac ex rel. Doleac v. Michalson*, 264 F.3d 470,478 (5th Cir. 2001).
2. Determining if the Vexatious-Litigants Order is reviewable requires" a two-step inquiry involving both

separability from the remand itself and the collateral order doctrine." *Fontenot v. Watson Pharm., Inc.*, 718 F.3d 518, 521 (5th Cir. 2013) (citing *Doleac*, 264 F.3d at 479,485). "The first [question] is whether [the Vexatious Litigants Order] is 'distinct and separable' from the remand order, and therefore not encompassed within Section 1447(d)'s bar to review of a remand." *Regan v. Starcraft Marine, LLC*, 524 F.3d 627, 631 (5th Cir. 2008) (citing *First Nat'l Bank v. Genina Marine Servs., Inc.*, 136 F.3d 391, 394 (5th Cir. 1998)). A n order is "separable" if it (1) "precede[s] the order of remand 'in logic and in fact,' so as to be made while the district court had control of the case," and (2) has the "preclusive effect of being functionally unreviewable in the state court." *Doleac*, 264 F.3d at 482 (quoting *Angelides v. Baylor Coll. of Med*, 117 F.3d 833, 837 (5th Cir. 1997)); see also *Regan*, 524 F.3d at 631 ("An order is 'separable' if it precedes the remand order 'in logic and in fact' and is 'conclusive.'" (quoting *Genina Marine*, 136 F.3d at 394)).

3. The Vexatious Litigants Order did not end the litigation on the merits and cannot, therefore be said to be a final, appealable order under § 1291. There are, however, procedural mechanisms to appeal district courts' non-final orders. See, e.g., *id.* (explaining that the "collateral order doctrine" is one such mechanism); *Dahiya v. Talmidge Int'l, Ltd.*, 371 F.3d 207, 213-14 (5th Cir. 2004) (*DeMoss, J.*, dissenting) (discussing direct appeals of non-final orders under 9 U.S.C. § 16). Here, Defendants seek reconsideration of an injunction imposed by the Court to prevent further vexatious filings. See Mot. 12-17; Order 5-8. Such an order is appealable under 28 U.S.C. § 1292(a)(1).⁴ See *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 183-86 (5th Cir. 2008); see also *Int'l Ass'n of Machinists & Aerospace Workers Local Lodge 2121 AFL-CIO v. Goodrich Corp.*, 410 F.3d 204, 207-08 & n.3 (5th Cir. 2005) (recognizing at least three mechanisms to achieve appellate jurisdiction: final orders under 28 U.S.C. § 1291; interlocutory injunctions under 28 U.S.C. § 1292(a)(1); and the collateral order doctrine);

Cerveceria Cuauhtemoc Moctezuma S.A. de C. V. v. Montana Beverage Co., 330 F.3d 284, 286 (5th Cir. 2003) (per curiam) (same). Thus, the vexatious litigants Order is appealable for purposes of reviewability.

4. Imposing an injunction—though interlocutory—is appealable under 28 U.S.C. § 1292(a)(1). See also *Fin. Servs. Corp. of Midwest v. Weindruch*, 164 F.2d 197, 198 (7th Cir. 1985) (per curiam) (holding that "an order granting a preliminary injunction is a judgment within the meaning of Rule 59(e)).

5. See: *Luckett v. Panos* (2008) 161 Cal.App.4th 77, concluded that a section 391.7 pre-filing order is an injunction. Since section 904.1, subdivision (a)(6) makes appealable "an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction," the order at issue in Luckett, by which the lower court had refused to lift the vexatious litigant designation, was appealable as an order refusing to dissolve an injunction. By parity of reasoning, the California State Appellant Court has construed the pre-filing order/vexatious litigant order as an order granting an injunction, in which case it too would be appealable under §904.1, subdivision (a)(6).

6. See: *Lester v. Lennane* (2000) 84 Cal.App.4th 536, 561. as here, the vexatious litigant order is made in the course of an underlying action but is collateral to the subject of that action, it is appealable pursuant to the collateral order doctrine.

7. Under the majority rule, "an interim order is appealable if: 1. The order is collateral to the subject matter of the litigation, 2. The order is final as to the collateral matter, and 3. The order directs the payment of money by the appellant or the performance of an act by or against appellant." (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal. App. 4th 289, 297-298, citing *Sjoberg v. Hastorf* (1948) 33 Cal. 2d 116, 119.) Section 391.7, subdivision (a) order in this case is wholly collateral to the subject of the underlying lawsuit. Indeed,

it has no effect upon the instant action. It affects only litigation the party might want to file in the future. The trial court's granting of the motion is a final decision on that issue. The order directs a party to perform an act, namely, to obtain an order from the presiding judge before filing any future litigation. Thus, the order is appealable as a final decision on a collateral matter.

8. Some courts have deemed a vexatious litigant order to be appealable under the collateral order doctrine. See *Lester v. Lennane* (2000) 84 Cal. App. 4th 536, 561; *Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal. App. 4th 289, 297-298 [an interim order is appealable if: 1. The order is collateral to the subject matter of the litigation. 2. The order is final as to the collateral matter, and 3. The order directs . . . the performance of an act by or against appellant."].)

9. The 10th Circuit has heard immediate appeals from an order restricting a litigant's filings (filing restrictions) See: *Sieverding v. Colorado Bar Ass'n*; 9 case Number No. 06-1038 – (<https://casetext.com/case/sieverding-v-colorado-bar-assn-3#p1343>) Appeal from the *United States District Court for the District of Colorado*, *Edward W. Nottingham, J.* (*Sieverding v. Colo. Bar Ass'n*, 126 Fed.Appx. 457, 459 (10th Cir.2005)).

10. The 2nd Circuit has also heard immediate appeals from an order restricting a litigant's filing or court access: Ref: See: *Martin-Trigona v. Lavien*, 737 F.2d 1254 (2d Cir.1984).

D. This Dispute Presents an Important Question of Federal Law That Has Not Been, But Should Be, Settled by this Court:

There is a split of authority between courts throughout the United States, state and federal; if a restrictive filing order is appealable, a vexatious litigant should be an appealable order, an automatic appealable order. Some courts have deemed a restrictive filing order

to be appealable as detailed above, some other courts have deemed it to be non-appealable as detailed below. For example, courts have found orders issued pursuant to the vexatious litigant statutory scheme to not be directly appealable until after entry of judgment. (See, i.e., *Gollin v. Allenby* (2010) 190 Cal.App.4th 616, 635; *Roston v. Edwards* (1982) 127 Cal.App.3d 842, 846.)

In re *Bittaker* (1997) 55 Cal.App.4th 1004, 1008, an order declaring someone a vexatious litigant is “non-appealable, but petitioner could have sought its review in conjunction with an appeal from some subsequent otherwise appealable judgment or order.” Also, appeal may be taken from an order refusing to dissolve an injunction that prevents a vexatious litigant from filing suit. (*Luckett v. Panos* (2008) 161 Cal.App.4th 77, 89-90; Code Civ. Proc., § 904.1, subd. (a)(6).)

There are countless legal arguments that are applicable to the split of authorities regarding deprivation and/or confinement orders between states and federal courts; however Petitioner refers to *Nevada*; *Nevada* also doesn’t allow an appeal from a vexatious litigant order even when a party is denied access to the court; See: *Gumm v. Mainor*, 118 Nev. 912, 920, 59 P.3d 1220, 1225 (2002); see also *NRAP* 3A(b)(8). Vexatious litigant orders inhibiting a party’s ability to submit court filings without particular restrictions do not affect the party’s rights arising out of a judgment because the party’s right of access to the courts does not arise out of a judgment in an action, but instead, arises out of the United States and Nevada Constitutions, case authority, statutes, and court rules. See, e.g., *NRCP* 2 (providing for a civil action); *Jordan*, 121 Nev. at 55–56, 110 P.3d at 39 (discussing the constitutional right of access to the courts).

Thus, a post-judgment vexatious litigant order is not appealable under *NRAP* 3A(b)(8) as a special order entered after final judgment. See *Gumm*, 118 Nev. at 920, 59 P.3d

at 1225. Also see: *Peck v. Crouser*, 129 Nev. 120, 124, 295 P.3d 586, 588 (2013) holding a vexatious litigant determination, which is not independently appealable. Because of the mix/split of authorities under these nationally significant circumstances, this Court review is warranted to harmonize conflicting decisions or have precedential value.

Law should be uniformed across the United States between states and federal courts. The decision made in one court system (state or federal) should influence and be considered by the other court system, ensuring constituency in legal interpretation across the county, particularly when dealing with similar legal issues, while still respecting the district jurisdictions of each system; this principle is largely upheld by the Supremacy Clause of the Constitution, which establishes federal law as the supreme law of the land, binding state courts to follow federal interpretations on matters of federal law. As detailed above the United States 10th circuit court of appeals allows immediate appeal from an order restricting a litigant filing or access to court deprivation however the Kansas Court of Appeals has declined to allow the Petitioners appeal to be reviewed. The Supremacy Clause in the Constitution dictate that when state and federal laws conflict, federal law take precedence. The United States Supreme Court has the authority to review state court decisions to ensure they align with federal law.

E. Indigent Person/Due Process Clause and Equal Protection:

An order denying access to court which essentially restricts your right to file court documents and other lawsuits, is considered automatically appealable, meaning you should be able to appeal such a decision to a higher court immediately; this is based on the principle of the right to access the courts as protected under due process. The current deprivation orders against the Petitioner not

only restricts the Petitioner' access to the court but doesn't allow the Petitioner to enter into the court offices to file other actions of any kind. The Supreme Court has established that individuals have a fundamental right to access the courts, which is protected under the fourteenth amendment due process clause.

The current orders (**See Pet. App. *infra*, 1a thru 26a**) specifically take away the Petitioner' right to access the court which restrict the Petitioner from entering court offices to file lawsuits, oppositions, replies, or seek redress from offices held in the courthouse such as the consumer fraud division which is also located in the same courthouse. The current order restricts the Petitioner from seeking an order of protection if she comes into a domestic violence situation or requires an order of protection for other issues. The current orders also restrict the Petitioner from filing a civil lawsuit in the court offices against other parties or her ability to respond to other matters in the court office if sued or facing evictions etc. If a court denies a litigant access to the court such order should be immediately appealable for the sake of a litigant's interest in judicial access to effect a specific settlement of some dispute is an interest entitled to some measure of constitutional protection as a value of independent worth or whether a litigant must be seeking to resolve a matter involving a fundamental interest in the only forum in which any resolution is possible.

An order that blocks the access of a person's right to access the court denies (a pro se litigant) due process and equal protection, such an order should be automatically appealable especially when there was no hearing held on the merits or a chance to be heard as in this case; before the orders were permanently enforced. (Due process requires, at a minimum: (1) notice; (2) an opportunity to be heard; and (3) an impartial tribunal. *Mullane v. Central Hanover Bank* (1950)).

The United States Supreme Court has recognized that the right of access to courts may implicate equal protection guarantees. (See: *Amdt14.S1.8.12.3 Access to Courts, Wealth, and Equal Protection*) Litigants should have substantive Due process right of access to state courts under the Fourteenth Amendment. See: *Boddie v. Connecticut*, 401 U.S. 371, 374 (1971). Our original Constitution, in the Fifth Amendment, and later those who drafted the Fourteenth Amendment, recognized the centrality of the concept of due process in the operation of this system. Without this guarantee that one may not be deprived of his rights, neither liberty nor property, without due process of law,

Thus, this Court should view access to the courts as an element of due process and require any denial to access the court as an automatically appealable order. The legitimacy of the State's monopoly over techniques of final dispute settlement, even where some are denied access to its use, stands impaired when recognized, effective alternatives for the adjustment of differences remain. The invocation of governmental power has often created serious problems for pro se litigants' rights, especially those who are unable to afford counsel in suits. As detailed herein, the Petitioner was not given a chance to be heard before her right to access court offices was restricted.

The judicial proceeding becomes the only effective means of resolving the dispute at hand and denial of a party's full access to that process raises grave problems for its legitimacy and should be deemed to be an appealable order with immediate review. Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurisprudence, this Court voiced the doctrine that "(w)herever one is assailed in his person or his property, there he may defend,"

Mullane v. Central Hanover Bank & Trust Co., *supra*; *Covey v. Town of Somers*, 351 U.S. 141, 76 S.Ct. 724, 100 L.Ed. 1021 (1956). A State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause, and a denial of a right to access of the court injunction that imposes sanctions and contempt charges if disobeyed should be an appealable order.

The Due Process Clause on which the Court relies has proven very elastic in the hands of judges. "The doctrine that prevailed in *Lochner v. New York*, 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937), *Coppage v. Kansas*, 236 U.S. 1, 35 S.Ct. 240, 59 L.Ed. 441), *Adkins v. Children's Hospital*, 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed. 785), (*Jay Burns Baking Co. v. Bryan*, 264 U.S. 504, 44 S.Ct. 412, 68 L.Ed. 813), and like cases - that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely - has long since been discarded." *Ferguson v. Skrupa*, 372 U.S. 726, 730, 83 S.Ct. 1028, 1031, 10 L.Ed.2d 93. I

The Petitioner cannot afford an attorney to represent her interest while being denied access to court. The majority who represent themselves are indigent and unable to afford an attorney; such a person who is denied the right to access the court offices and other deprivations and restrictions should be allowed to immediately appeal for such right, which is repugnant to the Constitution under the Equal Protection Clause. This court's decisions for more than a decade now have made clear that differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of a party, are repugnant to the Constitution." *Roberts v. LaVallee*, 389 U.S. 40, 42, 88 S.Ct. 194, 196, 19 L.Ed.2d 41; See also *Williams v. Oklahoma City*, 395 U.S. 458, 89 S.Ct. 1818, 23 L.Ed.2d 440; *Long v. District Court of Iowa*, 385 U.S. 192, 87 S.Ct. 362, 17 L.Ed.2d 290; *Draper v. Washington*, 372 U.S. 487, 83 S.Ct. 774, 9 L.Ed.2d 899.

The Petitioner cannot afford an attorney to represent her therefore the Petitioner should not be locked out of the court simply at the whim of the court at any given stage of the proceedings. The reach of the Equal Protection Clause is not definable with mathematical precision. But in spite of doubts by some, as it has been construed, rather definite guidelines have been developed: race is one (*Strauder v. West Virginia*, 100 U.S. 303, 25 L.Ed. 664; *McLaughlin v. Florida*, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed.2d 222); alienage is another (*Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 68 S.Ct. 1138, 92 L.Ed. 1478); Religion is another (*Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965); poverty is still another (*Griffin v. Illinois*); and class or caste yet another (*Skinner v. Oklahoma*, ex rel. *Williamson*, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655).

May an indigent be excused if he does not obtain an attorney to represent his interest, which requires payment of money that he does not have to obtain access to the court and file court pleadings based upon the deprivation orders that halt his rights to access the court? How about a requirement of an onerous bond to prevent a final order entered against him or her while he or she is locked out of the court upon orders entered against him without due process, which is only reviewable after final judgment? The affluent can put up the bond, though the indigent may not be able to do so. See *Williams v. Shaffer*, 385 U.S. 1037, 87 S.Ct. 772, 17 L.Ed.2d 683. The question historically has been whether the right claimed is 'of the very essence of a scheme of ordered liberty.' (Should an order denying you access to court offices be immediately appealable without a final judgment entered before the appellate court can take review of a restrictive filing order) *Palko v. Connecticut*, 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288.

Yeager, 384 U.S. 305, 86 S.Ct. 1497, 16 L.Ed.2d 577 (1966); *Long v. District Court of Iowa*, 385 U.S. 192, 87 S.Ct. 362, 17 L.Ed.2d 290 (1966); *Roberts v. LaVallee*, 389 U.S. 40, 88 S.Ct. 194, 19 L.Ed.2d 41 (1967); such principles should be extended to restrictive filing orders, vexatious litigant orders, and denial to access the court orders.

For example those who can pay a fee and retain an attorney will have its day in court and access but those who cannot afford an attorney and an order is entered against him that denies access of court offices and filing of court papers (an indigent person) cannot take up an immediate appeal upon the order (that was entered without a litigant having a right to be heard or oppose) and is locked out of the court without an attorney representing them creates where money determines not merely "the kind of trial a man gets," *Griffin v. Illinois*, *supra*, 351 U.S. at 19, 76 S.Ct. at 591, but whether he gets into court at all, the great principle of equal protection becomes a mockery. A State may not make its judicial processes available to some but deny them to others simply because they cannot pay a fee or afford an attorney to represent their interest when an order denying them a right to access the court offices and filing or papers are invoked, and no appeal can be taken until after a final order is entered. Cf. *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966).

The denial of access of the court and a deprivation order entered against a self-represented party (for the order would not apply if the Petitioner was represented by counsel), as applied to a self-represented indigent, is a denial of equal protection and such order of deprivation of a right to access the court and file court pleadings should be an appealable order to have immediate review from an order that deprives a person of their right to access the court.

F. This case is an excellent vehicle for review for an Answer to the Questions Presented Will Have Enormous National Impact for this Dispute Presents a Live Case of Controversy.

As detailed herein, there are state appellate courts that have ruled that a vexatious litigant order is an appealable order, and there are other courts that have ruled that a vexatious litigant order is not an appealable order. There are federal United States Appellant circuits that have ruled that a vexatious litigant order is an appealable order and is treated as an injunction, creating a dispute of authorities across the United States State and Federal Court.

This case is an excellent vehicle for review to obtain an answer to the questions presented herein, which will have national impact, especially for pro se litigants who aren't able to afford attorneys who may be affected by an order declaring them a vexatious litigant and or restricting court access and filing. The Petitioner is currently deprived of a fair hearing and a chance to be heard before the restrictive filing orders were enforced, which is an ongoing deprivation. There is a live controversy for, as detailed above, the conflicting authorities on the presented questions conflict with another federal and or state appellant courts. The split in authorities' details that a decision upon the issues herein may have come out differently in courts where the conflicts have been alleged. Conflict is such an important issue when there is a split of authority that undermines uniformity. A basic principle of our legal system is that an outcome should not depend on the court a party finds itself in. The Supreme Court is in a unique position to enforce uniformity by resolving this conflict through a decision applicable to the courts below it.

The split across state and federal appellant authorities' details that there is national importance. The questions presented herein affect a large number of non-

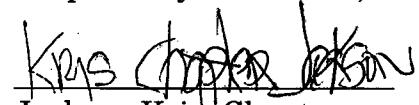
parties a substantial of the economy, especially pro se litigants who are unable to retain legal counsel because of their inability to afford counsel, and or a particular class of people (lower income, veterans, minorities).

As detailed within the split of authorities, the issues presented here continue to occur with a substantial number of people who attempt to represent themselves in legal proceedings, which is a primary indicator of an issue. Another question presented within this petition, which turns on federal issues, is due process, which is based on a denial of a right to appeal a restrictive filing order, a violation of due process just as a right to an impartial judge if not obtained in a violation of due process, and a right to a fair trial. Do you obtain a right to a fair trial when you cannot appeal a restrictive filing order until a final judgment is entered in such a case is it a violation of the 14th Amendment Clause to the Constitution; should a restrictive filing order be an immediate appealable order automatically staying the pending of the litigation in the lower court until the restive filing order is reviewed upon appeal and affirmed.

CONCLUSION

For the foregoing reasons, a writ of certiorari should be issued to review the decision of the Kansas Supreme Court and Kansas Court of Appeals.

Respectfully Submitted,



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