ORIGINAL

No. 24-830

In The
Supreme Court of the United States

JENN-CHING LUO,
Petitioner,

v.

OWEN J. ROBERTS SCHOOL DISTRICT; GEOFFREY BALL; SHARON W. MONTANYE; SWEET STEVENS KATZ WILLIAMS LLP; THE PENNSYLVANIA DEPARTMENT OF EDUCATION
Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether bombing courts or shooting judges is a holy mission to counter a corrupt judicial system? That is a satire to ridicule the Courts below if a corrupt judicial system is on the other side of God for God to clean up. It is uncertain how other Circuits did their job. However, in the Third Circuit, the proceeding is nothing but a game for a big guy. It is not a baseless accusation. The Courts below only issued orders against Petitioner regardless of the laws and records. They even issued per curiam orders, contravening precedents, to rule against Petitioner; how could a Court issue a per curiam order in contravenance with precedent?

Also, to rule against Petitioner, the Courts below did not comply with procedural rules. For example, the main controversy in this proceeding is the determination of the answer deadline for defendants to respond to the summons. Determining the answer deadline is a fundamental determination common in every case. However, in this action, the Courts below did not determine the answer deadline but let defense counsels do no matter what defense counsels wanted. Does this system deserve trust? There was a controversy; the defendants disagreed that the answer deadline existed. If so, the courts below should decide on it, especially the answer deadline, based on which defendants should respond to the summons in a timely manner. Then, the litigation could move on. However, the Courts below never decided on the answer deadline but kept the controversy remained in controversy. Because the defendants did not respond to the summons, the

proceeding could not advance except for a request for entry of default judgment. The District Court also never decided on the request for entry of default judgment but let the time pass in vain. When the summons had been severed on defendants for four-plus years, and a request for entry of default was pending, the District Court *sua sponte* ordered Petitioner to amend the Complaint. Have any legal professionals even heard that a District Court *sua sponte* ordered the plaintiff to amend his Complaint when the defendant failed to respond to the summons that was served on the defendant four-plus years ago and a request for entry of default was pending? Defendants' failure to respond to the summons was the defendants' problem. The District Court never issued an order against the defendants but issued an order to torture Petitioner.

In the entire proceeding, the District Court never issued an order against the defendants; on the contrary, the District Court did not enforce procedural rules but let the defense counsel do no matter what the defense counsel wanted. For example, after the summons had been severed on defendants for four-plus years, the District Court allowed defense counsels to file a pre-answer motion without a post-deadline extension. How could the District Court give defendants the privilege not to comply with the procedural rules?

There was other reckless conduct by the District Court. For example, the school district did not move to dismiss all claims and did not answer the claim that the school district did not move to dismiss. After the summons had been served on the defendants about seven years ago and a request for entry of

default was pending, the District Court *sua sponte* dismissed the claim that the school district did not move to dismiss and answer. Have any legal professionals even heard that a District Court *sua sponte* dismissed a claim that the defendant failed to defend and answer when a request for entry of default was pending? Is it ridiculous that the District Court *sua sponte* dismissed the claim, not because of lack of jurisdiction when a request for entry of default was pending? In the entire proceeding, the Courts below just issued orders against Petitioner regardless of the laws and records. Rational people would wonder if this judicial system works. However, the controversy raised a Constitutional issue: the judgment the Courts below entered is void. This petition respectfully presents the following two questions.

(1) Summons set forth that the defendant should respond to the summons "*within 21 days after service of this summons.*" Under Article 1 Section 10 Clause 1 or due process of law, can the Court issue a stay order to change the deadline for defendants to respond to the summons?

(2) When the judgment the Court below entered was void, is it necessary to grant the petition for a writ of certiorari for a valid judgment?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner JENN-CHING LUO was the appellant in the court of appeals. The Petitioner is not a nongovernmental corporation, nor does it have a parent corporation or shares held by a publicly traded company.

The Respondents were five appellees in the court of appeals: Owen J. Roberts School District, Geoffrey Ball, Sharon W. Montanye, Sweet Stevens Katz Williams LLP, and the Pennsylvania department of Education.

RELATED PROCEEDINGS

United States District Court for the Eastern District of Pennsylvania:

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 14-6354

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 16-6568 (Dec. 7, 2023)

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 17-1508 (Oct. 10, 2024)

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 21-1098 (Oct. 10, 2024)

United States Court of Appeals for the Third Circuit:

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 23-2143 (Mar. 21, 2024)

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 24-1090 (Nov. 19, 2024)

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 24-3048

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PETITION FOR WRIT OF CERTIORARI

Petitioner JENN-CHING LUO respectfully petitions this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINION BELOW

The panel order denying the petition for panel rehearing and rehearing *en banc* (App. *infra*, 1a-2a) is not published. The panel opinion of the Third

Circuit that vacated the District Court's judgment in part, affirmed in part, and remanded for further proceedings, not published, is in the Appendix (App. *infra*, 3a-12a); The opinion of the District Court that dismissed claims, but not totally, is in the Appendix (App. *infra*, 13a-25a); The opinion of District Court that dismissed the remaining claims is in the Appendix (App. *infra*, 26a-32a)

JURISDICTION

On October 17, 2024, the Third Circuit denied the petition for panel rehearing and rehearing *en banc*. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 1, Section 10, Clause 1:
No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Fourteenth Amendment, Section 1:
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the

State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

(A) Background

Petitioner commenced this action against Owen J. Roberts School District and Geoffrey Ball ("District defendants"), Sharon W. Montanye and Sweet Stevens Katz Williams LLP ("attorney defendants"), and the Pennsylvania Department of Education ("PADOE").

This case arose from two separate instances, originally from the student's special education. The following briefly describes the background. The first instance was Geoffrey Ball, a special education supervisor of Owen J. Roberts School District, who removed the bus aide on his own to cause the disabled student to be beaten on the school bus. Geoffrey Ball did not notify the family about the bullying. §1983 claims and state law claims were asserted against the school district and other defendants.

The second instance in the Complaint arose from an IEP meeting to review an IEE report for developing an educational program. Geoffrey Ball was aware the evaluator would be out of State on

June 6, 2016, and permitted the evaluator not to attend the meeting and never informed the Petitioner that the evaluator would be absent from the meeting. Further, Geoffrey Ball revised the IEP on his own and demanded Petitioner's consent to the IEP revision. Petitioner disagreed with it. Then, Geoffrey Ball issued a notice, claiming the school district could implement the IEP revision he made unless Petitioner requested a due process hearing. Any person knowing the IDEA would disagree with what Geoffrey Ball did.

That was the original controversy from the student's education. There were precedents resolving such kind of controversy. For example, in Board of Educ. v. Rowley, 458 U.S. 176, 206-207 (1982), this Court held that failing to satisfy procedural requirements for developing an IEP denied a FAPE. However, legal proceedings are not a matter of right or wrong or legal or illegal. The instance showed that a legal proceeding is nothing but a game for the big guy; the point is if the litigant is big enough to play the game.

When this action was before the district court, the Court below must rule against Petitioner no matter what. Those instances are enough for a book. Defense counsels only needed to write or file, no matter whether it was relevant to the cause of the claim or not, and the Court below must grant it. The proceeding was meaningless but a tort against Petitioner. The Court below even issued per curiam orders, contravening precedents, to rule against Petitioner. We can see some examples. For example, this action needed to decide if Congress abrogated the Pennsylvania Department of Education's

("PADOE") sovereign immunity for violation of the IDEA, the relevant provision is as follows.

> 20 U.S.C. §1403
> (a) IN GENERAL
> A State shall not be immune under the 11th Amendment to the Constitution of the United States from suit in Federal court for a violation of this chapter
> (b) REMEDIES
> In a suit against a State for a violation of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

Clause (a) shows that the State does not have sovereign immunity in a suit for violation of the IDEA, and clause (b) shows remedies at law or in equity are available. People may think Petitioner is a pro se, having never studied at law school and not knowing the laws. The point is not how Petitioner interpreted the laws but how the Third Circuit interpreted them.

There were other cases deciding the same question; we can see that the Third Circuit interpreted the same law in Petitioner's case differently from other cases. For example, in M.A. ex rel. E.S. v. State-Operated Sch. Dist. of City of Newark, 344 F.3d 335 (3d Cir. 2003) which is a precedent of the Third Circuit, New Jersey Department of Education ("NJDOE") was a co-

defendant; NJDOE asserted sovereign immunity to dismiss the claims against it, including §1983 claims. The Third Circuit ruled that Congress completely abrogated NJDOE's sovereign immunity in the suit, including from §1983 claims. Therefore, NJDOE could not assert sovereign immunity to dismiss §1983 claims. However, when deciding on Petitioner's claims, the Third Circuit ruled that Congress only partially abrogated PADOE's sovereign immunity in this action. For example, the Third Circuit wrote, "*But his claim was grounded in §1983, not the IDEA, and as an 'arm of the state,' the PDE is immune from such a claim.*" (App. 7a, *infra*) The Third Circuit ruled that Congress did not abrogate PADOE's sovereign immunity from §1983 claims and PADOE could assert sovereign immunity to dismiss §1983 claims. The Third Circuit interpreted the same law differently in Petitioner's claim. The point is that M.A. is a precedent; how could the Third Circuit issue a per curiam order, in contravention of precedent, to rule against Petitioner? This system is not "right or wrong," "legal or illegal," but is a game for big guys. Only idiots trust this system.

There are many examples in which the Third Circuit issued a per curiam order, contravening precedent, to rule against the Petitioner. We can see a state law example. The Complaint had a malicious prosecution claim against the School district counsel. The Third Circuit affirmed the District Court's dismissal for the following reasons.

> *Luo cannot prevail on this claim because, according to the Complaint, the attorney*

> *defendants neither initiated the administrative proceeding nor prevailed in it. See U.S. Express Lines Ltd. v. Higgins, 281 F.3d 383, 394 (3d Cir. 2002); also, 42 Pa. Con. Stat. §8351.* (App., 9a, n.4)

The Third Circuit ruling is based on the fact that "attorney defendants were the counter-claimants," e.g., not the party initiating the proceeding, and Petitioner did not prevail it. First, the Third Circuit's ruling contravened a Pennsylvania state court's precedent. A counter-plaintiff or counter-claimant in Pennsylvania can be sued for malicious prosecution when "malicious use of civil process" was found. See Dumont T. R. Corp. v. Franklin E. Co., 397 Pa. 274, 279 (Pa. 1959) ("*malicious prosecution, which, when founded on civil prosecutions, are usually described as malicious use of civil process.*") However, the Third Circuit issued a per curiam order, ruling that counter-claimant could not be sued for malicious prosecution, to dismiss Petitioner's claim. How could the Third Circuit issue a per curiam order, contravening the precedent, to rule against Petitioner? Any rational person would wonder if this judicial system deserves trust. The Court just arbitrarily issued an order against Petitioner. Further, the Third Circuit also ruled that Petitioner did not prevail over the collateral issue, which conflicted with the Third Circuit's own finding. The Third Circuit found "*HO Jelley "denied Montanye's collateral issue*" (App. 8a), e.g., Petitioner prevailed on it. No matter what, the Third Circuit issued an order against Petitioner.

It is in vain and useless for Petitioner to argue the

claims; the Court always arbitrarily dismissed them regardless of the laws and facts. The Third Circuit never considered the Petitioner's issues, did not comply with the procedural rules, and allowed defense counsel to do whatever they wanted. Only idiots trust this judicial system. The District Court and the Third Circuit should know what shame is.

(B) Stay pending appeal

The procedural history is a mess because the courts below and the defense counsels failed to comply with procedural rules. The District Court and defense counsels should know what shame is.

Service of summons was effectuated. Before the defendants appeared to answer the summons, the District Court *sua sponte* entered a stay order pending the appeal of another case, e.g., Luo III. (District Court docket ECF #2). That was surprising; how could District Court *sua sponte* stay an action before defendants appeared to defend? The Court below always arbitrarily handled Petitioner's case. The issuance of the stay order was in question. Indeed, the Supreme Court held it was an abuse of discretion to issue the stay order pending appeal of another case. See Landis v. North American Co., 299 U.S. 248 (1936) ("*That to grant the stay until decision of the other case by this Court on appeal was abuse of discretion* ") The District court inappropriately *sua sponte* issued the order in the very early beginning to create a sequence of procedural issues.

After the district court *sua sponte* issued the stay order, the district court also entered the deadline for

the defendants to answer the summons on the docket and notified the defendants electronically. For example, District Court docket has the following entry: District defendants' "*answer due was February 3, 2017*"; attorney defendants' "*answer due was February 3, 2017,*" and PADOE's "*answer due was February 9, 2017.*" (District Court docket ECF #4).

Defendants knew the answer deadline that the District Court entered on the docket. However, the defendants never complied with the deadline to answer and were in default. However, the District Court never enforced the deadline but let defense counsels do it no matter what. Eventually, the Courts below never issued an order against the defendants. The "answer due" became uncertain, and this was the main controversy surrounding this action.

The Court just did everything for the defendants, regardless of the procedural rules and records. Any rational legal professional would wonder how defendants could ignore the "answer due" that the District Court entered on the docket. Even District Court issued a stay order earlier, the Court could enter another order for a modification. Rational legal professionals would wonder why defendants were allowed to ignore (or defy) the answer deadline that the District Court entered on the docket.

Because the defendants had not responded to the summons, the Petitioner made a request for entry of default. However, the District Court never decided the request for default entry. Rational legal professionals would wonder why the District Court never ruled on the request for entry of default. It was

either way: granting it or denying it and ordering defendants to answer the summons. Why did the District Court never rule on it but let the time pass in vain?

When Petitioner's request for entry of default had been pending for two-plus years, attorney defendants and District defendants filed their pre-answer motion to dismiss on June 2, 2021 and June 17, 2021, respectively. When defendants filed the pre-answer motion to dismiss, the deadline to answer had expired four-plus years ago. However, the defendants did not have a post-deadline extension for their untimely motion. Any rational professional would say "no;" Defendants could not file an untimely motion without a post-deadline extension. However, the District Court permitted defendants to do so. The District Court should know what shame is for never respecting or complying with the laws.

Because attorney defendants and District defendants did not follow Rule 6 to have a post-deadline extension, their late motions were void for failing to follow the form of laws. Petitioner moved to strike their untimely pre-answer motions. However, the courts below disagreed. The Third Circuit had the following reasons:

> [Petitioner] claims that the deadline for the defendants to answer the Complaint expired on January 26, 2017, 21 days after summonses were issued, and more than four years before motions to dismiss were filed. Not so. The matter was stayed on January 4, 2017, pending an appeal to this Court in another of Luo's cases, see E.D. Pa. Civ. No. 15-cv-04248

(Luo III). (App. 5a-6a)

The Third Circuit always did everything for the defendants and described Petitioner as the source of the problems. Petitioner never made the unintelligent statement as the Third Circuit wrote. On the contrary, Petitioner argued defendants should answer within "21 days after a summons was served" because, according to the Supreme Court's published opinion, under Article 1 Section 10 Clause 1 or due process of law, the stay order could not change the deadline for defendants to answer. (POINT I, *Infra*) Especially since it is defendant's motion to dismiss, and defendant had the burden to prove the answer deadline. The Third Circuit should not "only" criticize Petitioner about calculating the deadline; on the contrary, defendants had the obligation to prove the answer deadline but failed to do it. Why did the Third Circuit not criticize the defendants for failing to prove the answer due? In particular, Petitioner raised the crucial issue that the stay order could not change the answer deadline by citing the Supreme Court's published opinions. The defendants wrote no word to contest the Petitioner's issue. The Third Circuit did not decide on the crucial issue of the Petitioner. Oddly, how could the Third Circuit rule against Petitioner without considering the Petitioner's issue? Rational legal professionals would wonder if this system is fair and deserves trust.

The determination of "answer due" became the central controversy. The answer due is fundamental, determined by procedural rules. However, it is surprising that the Third Circuit declined to

determine it. It is understandable if the Third Circuit decided the answer due, the outcome would be against the defendants. That's why the Third Circuit was unwilling to. This action should be the only case in which the Court refused to determine the answer due. However, the Court had the duty to enforce the answer deadline. See United States v. Kwai Fun Wong, 575 U.S. 402, 428 (2015) ("*Even if the [defendants'] filing deadlines are not jurisdictional, ..., it is our duty to enforce the law, whether it is jurisdictional or not.*") Without determining the answer due, how could the Third Circuit enforce it? How the Third Circuit did its job is a question mark. The Third Circuit only arbitrarily issued orders against Petitioner. Rational people would wonder if this system deserves trust.

(C) The Court's Assistance in helping defendants escape from default

The Third Circuit ruled that it was timely for defendants to file their pre-answer motion in June 2021 and they were not in default because of the "complicated procedural history." (App. 6a, *infra*) The Third Circuit's decision is based on the assumption that the stay order postponed the answer due until the stay pending appeal ended. Then, the complicated procedural history further "extended" the answer deadline to June 2021. We need to focus on the "complicated procedural history" and if it could further extend the answer deadline.

The Third Circuit described the "complicated procedural history" in Footnote 1 (App. 6a, n.1). Whether the "complicated procedural history" could

further extend the answer deadline is a question of law. The complicated procedural history breaks down into five events. We will examine each event.

First, the first event of complicated procedural history the Third Circuit wrote is, "*After this Court's mandate issued in the appeal in Luo III, in July 2018, Luo immediately filed motions for default judgment.*" (App. 6a, n.1) However, the issuance of the mandate in the appeal of Luo III ended the possibility of extending the answer deadline to June 2021. The stay order in advance set forth the duration of the stay, pending the appeal of Luo III. When the Third Circuit issued the mandate in the appeal of Luo III in July 2018, the stay pending appeal ended. Even if we assume the stay order postponed the answer due, the stay order ended in July 2018, and the defendants should answer in July 2018. There is no way to extend the answer deadline to June 2021. The Third Circuit's ruling was apparently wrong.

In short, the complicated procedural history could not extend the answer deadline to June 2021. Supposedly, it is unnecessary to continuously examine the remaining events of complicated procedural history because the stay pending appeal ended in July 2018, and the defendants must answer in July 2018. It was untimely for the defendants to file their motion in June 2021. The following continuously examines the remaining events of the complicated procedural history.

The second event of the complicated procedural history that the Third Circuit wrote is as, "*In November 2020, [Petitioner] filed a motion to lift the stay.*" (App. 6a, n.1) Yes, Petitioner filed a motion to

lift the stay. However, the motion to lift the stay was unnecessary and was moot. The stay order in advance set forth the duration of the stay, pending the appeal of Luo III. In July 2018, the Third Circuit issued the mandate in the appeal of Luo III; the stay pending appeal ended, and it was unnecessary to file a motion to lift the stay; eventually, such a motion was moot. See Sierra Club v. Trump, 977 F.3d 853, 889 (9th Cir. 2020) ("*Given that we have resolved the merits of this appeal, the district court's stay pending appeal is terminated, and we dismiss Sierra Club's emergency motion to lift the stay pending appeal as moot.* ") The moot motion could not extend the answer deadline.

The third event of complicated procedural history the Third Circuit wrote is as follows.

> In an order entered February 9, 2021 ("February 9, 2021 order"), the District Court lifted the stay, and directed Luo "to consolidate his claims as per [the November 29, 2016 order] by filing a second amended consolidated complaint in [Luo I] so that litigation can proceed." (App. 6a, n.1)

The February 9, 2021 order ruled that this action could not proceed, and Petitioner must replead this action into Luo I as a second amended consolidated complaint. The Third Circuit did not accurately describe the February 9, 2021 order. The reference order [the November 29, 2016 order] granting Plaintiff leave to replead claims dismissed without prejudice is from another case, not an order of this action. It is easy to verify it. This action was

commenced on December 21, 2016 (See District Court docket ECF #1); the reference order [the November 29, 2016 order] was issued before this action was commenced. The point is that the February 9, 2021 order defied Supreme Court's published opinion, and was even void.

First, in Hall v. Hall, 138 S. Ct. 1118, 1125 (2018), this Court noted, "*consolidation not as completely merging the constituent cases into one, but instead as enabling more efficient case management while preserving the distinct identities of the cases and the rights of the separate parties in them.*" Consolidation does not merge constituent cases into one. District court defied the Supreme Court's published opinion to direct Petitioner to merge this action into Luo I as a consolidated complaint. The February 9, 2021 order was erroneous. However, the District Court and the Third Circuit arbitrarily issued an erroneous order against Petitioner and denied Petitioner's motion to vacate the clearly erroneous order. Do the District Court and the Third Circuit know what shame is? The District Court and the Third Circuit arbitrarily issued orders against Petitioner regardless of the laws and evidence. Only idiots trust this system.

Second, the February 9, 2021 order is void on multiple grounds. (1) This action has new defendants and new transactions. Merging this cation into Luo I as a second amended consolidated complaint would make the second amended Complaint not relate back to the original Complaint such that the second amended Complaint would be time-barred and dismissed. The District Court could not issue an order to direct Plaintiff to commit suicide, which is

unconstitutional, deprivation of this action's life without due process of law. Indeed, any unconstitutional order is void. See *Ex parte Siebold*, 100 U.S. 371, 376 (1879) ("*An unconstitutional law is void, and is as no law.*") (2) Under the due process of law, the District Court could not *sua sponte* decide that this action could not proceed and must be repled into Luo I as a second amended consolidated complaint, because of failing to give Petitioner an opportunity to respond. For example, see Iowa Cent. Ry. v. Iowa, 160 U.S. 389, 393 (1896) (emphasizing that due process requires that the method of procedure adopted "*gives reasonable notice, and affords fair opportunity to be heard before the issues are decided.*") The February 9, 2021 order violated due process of law. Any order violating due process of law was void. See Old Wayne Mut. Life Ass'n v. McDonough, 204 U.S. 8, 15 (1907) ("*the judgment it rendered was void for the want of the due process of law required by the Fourteenth Amendment.*")

The February 9, 2021 order is void on multiple grounds. Void order is nonexistent and has no legal effect. See Black's Law Dictionary, 2nd edition, ("*void*" as: "*Null; ineffectual; nugatory; having no legal force or binding effect; unable, in law, to support the purpose for which it was intended.*"); Lubben v. Selective Service System Local Bd.No. 27, 453 F.2d 645 (1st Cir. 1972) ("*A void judgment is one which, from its inception, was a complete nullity and without legal effect.*") Because February 9, 2021 is void, no legal effect, it could not extend the answer deadline to June 2021. The District Court and the Third Circuit even denied Petitioner's motion to vacate the void order after Petitioner showed the

order was void. Do the District Court and the Third Circuit know what shame is? They are a corrupt public office that only issues orders against the Petitioner regardless of the laws and evidence. Only idiots trust this system.

The fourth event of the complicated procedural history the Third Circuit described as, "*Luo filed a timely motion for reconsideration, which sought clarification as to whether he was required to replead his claims in Luo I, Luo IV, and Luo V in one amended consolidated complaint case, and, if so, arguing that it was improper, and asserting that he would stand on his initial complaint.*" (App. 6a, n.1). Motion for reconsideration could not extend the answer deadline to June 2021. The point is that the February 9, 2021 order defied the Supreme Court's published opinion and was also void for violating due process of law. It is ridiculous that the District Court and the Third Circuit denied Petitioner's motion to vacate such a clearly erroneous and void order. Do the District Court and the Third Circuit know what shame is, a corrupted public office denying to vacate a clearly erroneous and void order?

The fifth event of the complicated procedural history the Third Circuit described was, "*In May 2021, the District Court denied that motion and consolidated the matters for administrative purposes only, obviating the need for an amended complaint.*" (App. 6a, n.1) On May 20, 2021, the District Court *sua sponte* issued an order, consolidating this case with Luo I under Rule 42.

However, the Rule 42 consolidation order also raised procedural issues. Rational legal professionals would wonder: Can a Court consolidate a case where

defendant has not responded to the summons? Rule 42 applies when actions "*involve a common question of law or fact.*" Before the defendant answers the Complaint or files a pre-answer motion to dismiss, it is uncertain how many laws or facts the Court needs to decide. Indeed, other courts held that it was premature to consolidate a case with another before the defendant answered the Complaint. For example, see 5 J. MOORE, FEDERAL PRACTICE 42.02, at 42-7 n.5 (2d ed. 1969) (It is premature to consolidate cases before defendants answer.); Also see Duval v. Bathrick, 31 F. Supp. 510 (D. Minn. 1940) ("*Since the defendant has not as yet answered herein, and the cause is not at issue, the motion of the Plaintiff to consolidate for trial purposes this action with another action now pending in the fourth division of this Court is prematurely made and cannot be considered by the Court at this time.*"); Also, see Ball Machinery Co. v. United States, 69 Cust. Ct. 301, 302, C.R.D. 72-16 (1972) ("*In point of fact, it has been held that a motion for consolidation prior to the filing of an answer and joinder of issue is prematurely made and cannot be considered by the Court at that stage of a case.*") It is odd how the District Court could consolidate a case where the defendant had not responded to the summons. The District Court and the Third Circuit should know what shame is: a corrupt public office. In order to help defendants escape from a default, the District Court and the Third Circuit interpreted the laws differently from other courts.

However, a funny thing happened.

Defense counsels got excited after the District Court *sua sponte* issued the Rule 42 consolidation

order. The deadline for defendants to answer this action had expired four-plus years ago. Defense counsels contended that the Rule 42 consolidation gave them a new clock to answer this case. The defense counsel's contention is unintelligent and is a joke for people to laugh. Rule 42 never has a provision that provides defendants with a new clock to answer. Notably, in Hall v. Hall, 138 S. Ct. 1118, 1127 (2018), the Supreme Court held that "*consolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.*" Consolidation does not change the parties' rights, and defendants never had a right for a new clock to answer. Rule 42 never gave defendants a new clock to answer and could not extend the answer due to June 2021. The defense counsel's contention that rule 42 consolidation provided a new clock for defendants to answer is a joke for legal professionals to laugh at. However, the District Court and the Third Circuit agreed with defense counsels. Do the District Court and the Third Circuit know what shame is?

In short, the five events that were examined above could not extend the answer deadline to June 2021. It is wrong for the Third Circuit to hold that the defendants' June 2021 filings were timely because of the complicated procedural history.

(D) The Court *sua sponte* dismissed while the request for default was pending

Besides failing to have a post-deadline extension,

the school district's motion also did not move to dismiss the 20 U.S.C. §1415(i)(2) claim, e.g., the appeal of due process hearing.

On October 30, 2023 when the deadline to answer had expired about seven years and a request for entry of default was pending, the District Court *sua sponte* dismissed the 20 U.S.C. §1415(i)(2) claim. Have any rational legal professionals even heard that a Court *sua sponte* dismissed the claims when a request for default was pending? The District Court's conduct is ridiculous. Summons had been served seven-plus years ago; how could the Court *sua sponte* dismiss the claim that the defendant failed to answer when a request for default was pending? Only idiots trust this system. A court does not respect and comply with the laws. What kind of justice system is it?

REASONS FOR GRANTING THE PETITION

I. Petitioner raised the issue that, under Article 1 Section 10 Clause 1 or due process of law, can the Court issue a stay order to change the deadline for defendants to answer the summons? The Courts below never decided on the crucial issue of the Petitioner; how could the Court rule against the Petitioner? Is it justice?

Petitioner raised the issue that, under Article 1 Section 10 Clause 1 or due process of law, can the Court issue a stay order to change the deadline for defendants to answer the summons? This issue is

crucial to whether defendants' motions were void and default judgment should be entered. Defense counsel wrote no word to contest. The Court below also did not decide the crucial issue; how could the Third Circuit rule against the Petitioner without considering the Petitioner's issue? Is it justice? The point is defense counsels were incapable of arguing the question and wrote no word to contest. This Court should grant this petition for a writ of certiorari to decide on the crucial question. The background is as follows.

Summons has the following provisions,

> *Within 21 days after service of this summons on you (not counting the day you received it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) – you must serve on the Plaintiff an answer to the attached Complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure.*

According to the summons, an answer to the Complaint or a Rule 12 motion must be filed "*within 21 days after service of this summons.*" However, before defendants fulfilled their summons obligation to answer, the District Court *sua sponte* issued a stay order. That raised the controversy whether the stay order could change the time for defendants to answer, e.g., "*within 21 days after service of this summons.*" Petitioner raised the issue that, under Article 1 Section 10 Clause 1 or due process of law,

the Court could not issue the stay order to change the deadline for defendants to answer. Petitioner made the following arguments.

First, this Court held that under US Constitution Article 1 Section 10 Clause 1, the Court cannot issue any order to impair parties' obligations arising in the agreement/contract (e.g., the summons). By doing so, such an order was void. See Trustees of Dartmouth Coll. v. Woodward, 17 U.S. 518 (1819) (An order to change the deadline to answer the summons " *is an act impairing the obligation of the Contract* [e.g., summons], *and is unconstitutional and void* ."). Indeed, a summons is a contract binding the defendant and the Plaintiff. Defendant has a summon obligation to answer within 21 days, and Plaintiff has a summons right to have a default judgment when defendant fails to fulfill its summons obligation. The Court could not issue an order to impair the obligation of the contract; any order doing so is void. Also see Home Bldg & L. Assn. v. Blaisdell 290 U.S. 398, 458, n.3 (1934) ("*we shall the better understand that clause in our federal constitution which forbids the making of laws impairing the obligation of contracts* ." (citing The Critical Period of American History, 8th ed., p.168 n.2, by John Fiske)). Because the Court cannot issue an order "*impairing the obligation of contracts,*" the stay order could not change the answer deadline, e.g. within 21 days after service of the summons. Accordingly, the deadline for the defendants to answer was February 3, 2017, and the defendants were in default early in this action.

Second, this Court also held that, under due process of law, the Court must proceed on the notice

to parties. For example, see Grannis v. Ordean, 234 US 385, 394 (1914) ("*The logical result is that a state, through its courts, may proceed to judgment respecting the ownership of lands within its limits,* ***upon constructive notice to the parties concerned*** *who reside beyond the reach of process. That this constitutes "due process" within the meaning of the Fourteenth Amendment was recognized in Pennoyer v. Neff, supra, and is no longer open to question.*"). This Court held that, under due process of law, the Court must proceed on notice (e.g., summons) to the parties. Accordingly, the answer deadline that was set forth in the summons, e.g., "within 21 days after service of the summons," could not be changed by the stay order; if the Court attempted to do so, such an order is void because of violating the due process clause. See Old Wayne Mut. Life Ass'n v. McDonough, 204 US 8, 15 (1907) ("*the judgment it rendered was void for the want of the due process of law required by the fourteenth Amendment.*")

Petitioner raised the crucial issue that, under Article 1 Section 10 Clause 1 or due process of law, the stay order could not change the deadline for defendants to answer. The Courts below never decided on the crucial issue. How could the Court rule against Petitioner? Is it justice?

Further, defense counsels were incapable of arguing the question, writing no word to contest. The point is that the defense counsels studying at law schools could not see the problem if the summons notice could be changed after service. There should be many other attorneys who have no idea about it. This question deserves a determination. Further, the

Court below could not enter judgment without deciding on the Petitioner's issue. This petition for a writ of certiorari should be granted to decide on the issue.

II. The judgment the Courts below entered was void. Void judgment is no judgment. It is necessary to grant the petition for a writ of certiorari to enter a valid judgment.

The controversy is the determination of the answer due.

Petitioner raised the crucial issue that, under Article 1 Section 10 Clause 1 or due process of law, the Court could not issue a stay order to change the deadline for defendants to answer the summons. Petitioner argued the answer due was February 3, 2017.

Even if the Court ruled the stay order changed the deadline, the stay order in advance set forth the stay duration, pending the appeal of Luo III. The Third Circuit issued the mandate in the appeal of Luo III in July 2018. The stay pending appeal ended in July 2018. Even if the Court ruled that the stay order had changed the answer deadline, the defendants should have answered the summons in July 2018 when the stay pending appeal had ended. How could attorney defendants and District defendants contend they "timely" filed their motion to dismiss on June 2, 2021 and June 17, 2021, respectively?

Defense counsels only made the unintelligent contention that the May 20, 2021 order, consolidating under Rule 42, gave them a new clock to answer. Such an unintelligent contention is not

deserved for an argument. First, Rule 42 never had a provision that gave defendants a new clock to answer. Second, in Hall v. Hall, 138 S. Ct. 1118, 1127 (2018), the Supreme Court held that "*consolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.*" Consolidation does not change the parties' rights, and defendants never had a right for a new clock to answer. The defense counsel's contention that rule 42 consolidation provided a new clock for defendants to answer is a joke for rational legal professionals to laugh at.

It is defendants' motion to dismiss, and defendants had the burden of proof. Since defendants failed to prove the answer deadline that allowed them to argue their motion was timely, their motion was untimely. This matter had raised a Constitutional issue; the judgment the Court below entered was void.

(A) The judgment the Court below entered was void.

Since the defendants' motions were untimely, defendants must follow Rule 6(b) to have a post-deadline extension. For example, see Lujan v. National Wildlife Federation, 497 US 895, 873 (1990) ("*Although Rule 6(b) allows a court, 'in its discretion,' to extend any filing deadline 'for cause shown,' a post-deadline extension must be 'upon motion made,' and is permissible only where the failure to meet the deadline 'was the result of*

excusable neglect.'"")

This matter raised a constitutional issue; the defendants' motions to dismiss were void. Because their motions were untimely, District defendants and attorney defendants must follow Rule 6(b) to have a post-deadline extension. For example, see Lujan v. National Wildlife Federation, *Supra*. However, the defendants failed to follow "*the form of law*" to have a post-deadline extension. As a result, the defendant's motions to dismiss were not due process of law. See Hagar v. Reclamation District, 111 U. S. 701, 708 (1884) ("*[B]y 'due process is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought.*"); Also see Kennard v. Louisiana, 92 U. S. 480,481 (1875) ("*due process of law*" is as "*if it has been done in the due course of legal proceedings, according to those rules and forms which have been established for the protection of private rights.*")

It is precedent that any document on the record, including court order or judgment, is void if not in compliance with due process of law. For example, see Milliken v. Meyer, 311 U.S. 457, 461 (1940) (judgment (or any document on the record) is void when it is "*violative of the due process clause of the Fourteenth Amendment*"); Also, see Old Wayne Mut. Life Ass'n v. McDonough, 204 U.S. 8, 15 (1907) ("*the judgment it rendered* [or any document on the record] *was void for the want of the due process of*

law required by the Fourteenth Amendment.") Accordingly, the District' defendants' and attorney defendants' motions to dismiss are void because they violated due process of law.

It is useless for District defendants and attorney defendants to file their "void motion." Void motion is not a motion, is nonexistent, and has no legal effect. For example, See Black's Law Dictionary, 2nd edition, defines "*void*" as: "*Null; ineffectual; nugatory; having no legal force or binding effect; unable, in law, to support the purpose for which it was intended.*" Also see Wikipedia, The Free Encyclopedia ("*In law, void means of no legal effect. An action, document, or transaction which is void is of no legal effect whatsoever: an absolute nullity—the law treats it as if it had never existed or happened.*"); Lubben v. Selective Service System Local Bd. No. 27, 453 F.2d 645 (1st Cir. 1972) ("*A void judgment* [or void document on the record] *is one which, from its inception, was a complete nullity and without legal effect.*") It is useless for the District defendants and attorney defendants to file their "void motion."

The judgment granting the District defendants' and attorney defendants' void motions is also void. Void judgment is no judgment. Pennoyer v. Neff, 95 U.S. 714, 728 (1878) ("*The judgment, if void when rendered, will always remain void.*") A litigation cannot be ended without a judgment. Accordingly, this Court should grant this petition for a writ of certiorari to enter a valid judgment.

(B) Default judgment should be entered against all defendants

The above shows that the District defendants' and attorney defendants' motion to dismiss was void. A void motion has no legal effect; the law treats it as if it had never existed. Default judgment should be entered against District defendants and attorney defendants because they failed to answer the Complaint.

PADOE did not answer the Complaint or file a Rule 12 motion. The District Court *sua sponte* dismissed the claim against PADOE by holding that PADOE had sovereign immunity. However, as shown previously, *Supra* @5, Congress enacted 20 U.S.C. §1403 to abrogate PADOE's sovereign immunity in this action. The Court below erred in *sua sponte* dismissing the claim against PADOE. The point is that PADOE never answered the Complaint nor filed a Rule 12 motion. Default judgment should be entered against PADOE.

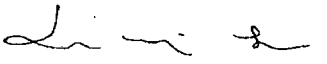
The Third Circuit noted in its opinion, "*After this Court's mandate issued in the appeal in Luo III, in July 2018, Luo immediately filed motions for default judgment.*" (App. 6a, n.1) Yes, Petition made a request for entry of default. However, the Third Circuit did not provide a detailed history. Before Petitioner made the request for default, Petitioner contacted school district counsel Sharon W. Montanye and asked her to answer because the stay order had caused severe delay. However, the school district counsel, Sharon W. Montanye, did not want to proceed with this action and refused to answer the summons. Under such circumstances, Petitioner made the request for entry of default on August 5, 2018. (District Court docket ECF #14) However, the school district never expressed an intention to

proceed but asked the District Court "***to close civil action number 16-cv-06568 and all consolidated and/or related matters.***" (District Court docket ECF #15-1). That was surprising and unbelievable. The instance case, e.g., 16-cv-06568, had not been dismissed yet; the defendants even had not responded to the summons. How could the school district ask the district court to close it? The school district willfully refused to proceed to create the problem and cause the delay; the school district's conduct was culpable. Attorney defendants and PADOE never responded to the Petitioner's request for entry of default. However, failure to respond to a request for default is culpable. See TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 698 (9th Cir. 2001) ("*[W]e have typically held that a defendant's conduct was culpable for purposes of the [Rule 55(c) or 60(b)] factors where there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond.*") District defendants, attorney defendants, and PADOE never showed a good cause to oppose a default judgment.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court grant the petition for a writ of certiorari, summarily vacate the judgment of the Third Circuit, and enter a default judgment against District defendants, attorney defendants, and PADOE.

Respectfully submitted,



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