No. 24-869

In The

Supreme Court of the United States

RANDALL EWING AND YASMANY GOMEZ,
Petitioners,

v.

ERIK CARRIER AND D'APRILE PROPERTIES LLC,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

Randall Ewing
408 N.E. 8th Avenue
Fort Lauderdale, FL 33301
312-219-0177
rpewin01@gmail.com

LEGAL PRINTERS LLC • Washington, DC • 202-747-2400 • legalprinters.com

QUESTION PRESENTED

Petitioners sued 1645 W. Farragut LLC after they attempted to buy a home from it. A jury awarded Petitioners $905,000, which remains unsatisfied. In that litigation, Petitioners moved for leave to amend their complaint to assert claims against Respondents Erik Carrier and D'Aprile Properties. The district court denied the motion because it would require re-opening discovery, not because the claims were futile. Petitioners then brought this separate action against Respondents. The Seventh Circuit dismissed because Petitioners unsuccessfully attempted to amend their complaint in the first case. The question presented is:

Should a court dismiss a plaintiff's claim, using its inherent authority or otherwise, because they first filed a motion for leave to amend to join the defendant to a plaintiff's lawsuit against another party when claim preclusion law did not otherwise require the plaintiff to raise those claims in the first lawsuit, as the Seventh Circuit held, or is the motion for leave to amend irrelevant, as the Second and Tenth Circuits have held?

RELATED PROCEEDINGS

Ewing, et al. v. 1645 W. Farragut LLC, 16-cv-9930 (N.D. Ill.), judgment entered November 12, 2021, *aff'd*, 90 F.4th 876 (7th Cir. 2024).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

Other Authorities

OPINIONS BELOW

The Seventh Circuit's opinion on September 30, 2024, is unreported but is available online at 2024 WL 4346396 and is reproduced in the appendix at A.1a-2a. The district court's February 16, 2024, order is unreported but is available online at 2024 WL 779391 and is reproduced in the appendix at A.3a-6a. The district court's March 2, 2023, opinion is unreported but is reproduced in the appendix at A.7a-8a. The Seventh Circuit's May 25, 2022, opinion is reported at 35 F.4th 592 and is reproduced in the appendix at A.14a-17a. The district court's opinion on September 17, 2021, is unreported but is available online at 2021 WL 4244753.

JURISDICTION

The Seventh Circuit issued its opinion affirming the dismissal of this case on September 30, 2024. Petitioners filed a petition for rehearing and rehearing en banc on October 15, 2024, A.23a. The petition was timely under Fed. R. App. P. 40(d)(1) and 26(a)(1)(c) because October 14, 2024, was a federal holiday. The Seventh Circuit denied the petition on October 30, 2024. A.23a. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part that "No person shall ... be deprived of life, liberty, or property, without due process of law."

Federal Rule of Civil Procedure 69(a)(1) provides in relevant part that "The procedure on execution [of a judgment]—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located."

INTRODUCTION

The Seventh Circuit's opinions in this case conflict with the Second and Tenth Circuits on an important matter that arises regardless of a case's size, type, or subject matter—whether a party forfeits a claim against another if they first try to add that claim to litigation against a different party. The Second and Tenth Circuits held that the answer depends on whether the doctrine of claim preclusion required the party to bring the claims in the previous case when initially filed, not the motion for leave to amend itself. *Northern Assur. Co. of America v. Square D Co.*, 201 F.3d 84, 88-90 (2d Cir. 2000); *Hartsel Springs Ranch of Colorado, Inc. v. Bluegreen Corp.*, 296 F.3d 982, 989-991 (10th Cir. 2002). In contrast, the Seventh Circuit affirmed the dismissal of Petitioners' claims here because of a prior motion for leave to amend and a court's inherent authority to manage its docket, without considering whether Petitioners were required to bring their claims against Respondents in that lawsuit. This Court should grant this petition and resolve the circuit split because preclusion is an area of law where "crisp rules with sharp corners are preferable to a round-about doctrine of opaque standards." *Taylor v. Sturgell*, 553 U.S. 880, 901 (2008).

The Second and Tenth Circuits' framework is superior because it recognizes that this Court has already carefully tailored the doctrine of preclusion to provide clear guidelines and achieve equitable results while accounting for the various—and occasionally clashing—principles of law and policy that arise when determining a prior lawsuit's effect on pending litigation. The "crisp rules" this Court has developed include: (1) state law determines the preclusive effect of prior federal judgments based on diversity jurisdiction absent an overriding federal interest, *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 509 (2001); (2) plaintiffs can sue joint tortfeasors in separate lawsuits so long as the first judgment remains unsatisfied, *Bigelow v. Old Dominion Copper Mining & Smelting Co.*, 225 U.S. 111, 132 (1912) ("if he sue one such wrongdoer and recover judgment, he is not estopped from suing another upon the same facts unless his first judgment has been fully satisfied."); and (3) courts almost always require mutuality (both parties being equally bound by the judgment) before applying claim preclusion, even though they do not require it when applying issue preclusion against a party who has litigated an issue and lost, *Nevada v. United States*, 463 U.S. 110, 143 (1983) ("While mutuality has been for the most part abandoned in cases involving collateral estoppel, it has remained a part of the doctrine of res judicata.").[1]

---

[1] Illinois has adopted the same rules. *Saichek v. Lupa*, 204 Ill.2d 127, 137 (2003) ("As a general rule, obtaining judgment against one person liable for a loss does not bar the plaintiff from prosecuting claims against any other person who may also be liable for that loss."); *People v. Franklin*, 167 Ill.2d

The outcome here, which is neither just nor equitable, reveals the flaws in the Seventh Circuit's inherent authority approach. The Seventh Circuit blew past each principle above, without considering why they exist, to absolve Respondents—who claim to be the same party as a judgment debtor—of any responsibility for that judgment debtor's liability. According to the Seventh Circuit's framework, the first trial's outcome was a "heads-I-win, tails-you-lose" scenario for Respondents from the moment the district court found that amending in the first case would prejudice 1645 W. Farragut. The Seventh Circuit did not arrive at this counter-intuitive result because any preclusion doctrine required Petitioners to raise the claims in the first case, because they tried to re-litigate an issue on which they lost, because they pursued claims outside the statute of limitations, or because they sought a double recovery.

Instead, the Seventh Circuit absolved Respondents of liability *only because* Petitioners first asked for permission to hold Respondents liable in a different case but were denied for reasons having nothing to do with the merit of their claims. The Seventh Circuit punished Petitioners because their chosen procedure added one issue to an appeal in the first case even though (1) an appeal of the denial of their motion for leave to amend would have been unnecessary had the Seventh Circuit allowed this case to proceed; and (2) Petitioners always possessed the right to file a separate case against these

---

1, 12 (1996) (noting that Illinois has removed the mutuality requirement for issue preclusion, or collateral estoppel).

Respondents and, ironically, moved for leave to amend only to minimize the burdens of bringing a second case. The Seventh Circuit's justifications disappear entirely once Petitioners establish that they always had the right to file this separate case against Respondents under governing preclusion law—a fact the Seventh Circuit chose to sidestep entirely by relying on its inherent authority.

The Seventh Circuit's inherent authority approach, unmoored by claim preclusion precedent, creates a new round-about doctrine of opaque standards that stumbles into more questions than it answers. For diversity judgments such as the one at issue here, these questions include whether federal courts have sufficient interest in an unsuccessful motion to amend in an earlier case under the *Erie* doctrine to override a state's determination that a party may maintain separate lawsuits, which this Court left open in *Semtek*, 531 U.S. at 509 ("This federal reference to state law will not obtain, of course, in situations in which the state law is incompatible with federal interests.").

Also, in cases such as this one where claim preclusion would not otherwise result in dismissal, the Seventh Circuit's approach must be reconciled with the "constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." *Societe Internationale Pour Participations Industrielles Et Commerciales, S. A. v. Rogers*, 357 U.S. 197, 209 (1958). For example, this Court left open whether a federal court has inherent authority to

dismiss cases for reasons other than a failure to prosecute when a party did not act in bad faith. *Link v. Wabash Co.*, 370 U.S. 626, 634-635 & n.12 (1962) (declining to reach the "broader question" of what type of conduct, absent bad faith or a failure to prosecute, would justify a court's use of inherent authority to dismiss). There has been no contention here that Petitioners acted in bad faith or failed to prosecute this action.

If this circuit split festers, litigants will face conflicting guidance and an increasingly treacherous path forward when considering whether to amend to add parties to existing litigation instead of filing a separate case. Out of an abundance of caution, those litigants will have no practical choice but to always file a separate case rather than risk those claims to a trial court's discretion and an abuse-of-discretion appellate standard of review. Trial courts deciding motions for leave to amend to add parties will now have to begin considering whether denying the motion will prejudice *the movant* by creating preclusive bars where none existed before. Trial courts considering preclusion issues in the first instance will have to parse the form and substance of both filed *and* proposed complaints, making an already complicated analysis needlessly more complex. Applying the Second and Tenth Circuits' approach is the more straightforward rule, where a denied motion for leave to add parties does not alter the underlying claim preclusion analysis.

This case is an ideal vehicle for resolving this circuit split because it presents undisputed facts, both federal and state interests and a federal diversity

judgment, Petitioners who are unencumbered by the typical baggage of trying to re-litigate an issue they lost, and a circuit split that is outcome-determinative. Suppose this Court agrees with the Seventh Circuit's inherent authority approach. If so, this case presents a good vehicle to resolve whether a court has inherent authority to dismiss a claim absent bad faith conduct or a failure to prosecute.

This Court should grant the petition for writ of certiorari.

STATEMENT OF THE CASE

Petitioners Randall Ewing and Yasmany Gomez brought claims against 1645 W. Farragut LLC in the United States District Court for the Northern District of Illinois, alleging fraud, violations of the Illinois Consumer Fraud Act, and breaches of contract arising out of an attempt to buy a home from 1645 W. Farragut ("*Ewing I*"). A.9a. The district court had diversity jurisdiction under 28 U.S.C. § 1332(a)(1) because Petitioners are Florida citizens, 1645 W. Farragut LLC is an Illinois company whose owner, Erik Carrier, is an Illinois citizen, and the matter in controversy exceeded $75,000. A jury subsequently awarded Petitioners $905,500 in damages. A.4a. Petitioners' judgment remains unsatisfied because of 1645 W. Farragut's insolvency. A.7a.

During *Ewing I*, Petitioners moved for leave to file an amended complaint adding Respondents Erik Carrier and D'Aprile Properties LLC as defendants to their fraud claims and alleging that Carrier is liable for any judgment against 1645 W. Farragut LLC as

an alter ego. A.18a-21a. Petitioners sought to allege that Carrier personally defrauded Petitioners and that D'Aprile Properties was vicariously liable because it employed Carrier as a real estate agent for the property. The district court denied Petitioners leave to amend. *Id.* The district court did not find that Petitioners' claims were futile or otherwise make any conclusions about Petitioners' right to bring these claims through a separate lawsuit. *Id.* Instead, it determined that the amendment would cause undue prejudice to 1645 W. Farragut because it required re-opening discovery. A.20a.

Facing an expiring statute of limitations and an abuse-of-discretion appellate review standard, Petitioners sued Respondents in the United States District Court for the Northern District of Illinois ("*Ewing II*"). The district court had subject matter jurisdiction under 28 U.S.C. § 1332(a)(1) because Petitioners are Florida citizens, Erik Carrier is an Illinois citizen, D'Aprile Properties is an Illinois company whose sole member, Ryan D'Aprile, is an Illinois citizen, and the matter in controversy exceeded $75,000. The case was assigned to a different judge than Petitioners' lawsuit against 1645 W. Farragut. A.15a. Respondents moved to dismiss, arguing that claim preclusion or the doctrine against splitting claims barred Petitioners' claims, which the district court granted. A.15a.

On appeal, the Seventh Circuit vacated the dismissal and ordered the clerk to transfer the case to the judge overseeing Petitioners' claims against 1645 W. Farragut in *Ewing I*. A.14a-17a. In dicta, however, the Seventh Circuit castigated Petitioners,

concluding that Petitioners "should not have filed this second suit." A.17a. The Seventh Circuit believed that Petitioners' lawsuit against Respondents meant they "had sought the views of a second district judge" on the first judge's "decision to limit the first suit to the claims against the LLC." A.15a. The Seventh Circuit reasoned that Petitioners' "objective is to have two judges consider their claims, then take the more favorable result." A.16a. According to the Seventh Circuit, this lawsuit was "unnecessary" because Petitioners could enforce the judgment against 1645 W. Farragut on "any alter ego in collection proceedings under Rule 69" in *Ewing I*. A.17a. The Seventh Circuit did not, however, explain why Petitioners' ability to collect from one Respondent in Rule 69 proceedings as an alter ego of the judgment debtor should impact Respondents' liability for fraud. *Id.*

The Seventh Circuit did not reference any claim preclusion authority or any Illinois law at all to support its conclusions. *Id.* Instead, it cited 28 U.S.C. § 1927, which permits recovery of one party's "excess costs, expenses, and attorneys' fees" from another who "multiplies the proceedings in any case unreasonably or vexatiously." A.17a. The Seventh Circuit also cited its decisions in *Dugan v. R.J. Corman R. Co.*, 344 F.3d 662, 670 (7th Cir. 2003), which dealt with a trial court's inherent power to exclude unreliable evidence, and *Chicago Title & Tr. Co. v. Verona Sports Inc.*, 11 F.3d 678, 679 (7th Cir. 1993), which concerned a case that settled the morning of oral argument and in which the Seventh Circuit wrote to remind attorneys of their duty to conserve judicial resources and to consider settlement

at multiple stages of the appellate process. *Id.* Following remand, this case was transferred to the district court overseeing *Ewing I* and stayed until that case concluded. A.10a.

Petitioners followed the Seventh Circuit's directive and filed a motion in *Ewing I* under Fed. R. Civ. P. 69 to obtain discovery from Respondent Carrier and enforce the judgment against him as an alter ego of 1645 W. Farragut. A.9a-13a. The district court held, however, that Illinois law governs Petitioners' judgment collection efforts because the judgment arose from its diversity jurisdiction and that Illinois law does not permit alter-ego determinations in Rule 69 proceedings. A.11a-12a. The district court relied on the same authority Petitioners had provided to the Seventh Circuit to explain why Illinois law allowed Petitioners to file this second lawsuit. *Id.* The district court noted that the Seventh Circuit "has held that, in Illinois, the allegations that must be made to pierce the corporate veil do not fall within the scope of supplemental proceedings." *Id.* When Petitioners pointed out that the Seventh Circuit based its holding in *this very case* on Petitioners' ability to pierce the corporate veil in *Ewing I*, the district court labeled the Seventh Circuit's language as "dicta." A.10a. Thus, the district court held it would "not allow discovery on, or decide whether, Erik Carrier is the alter ego of 1645 through supplemental proceedings in *Ewing I*." A.12a.

Next, the district court set a status hearing to consider whether to lift the stay as to Petitioners' veil-piercing claim. A.13a. At that hearing, Petitioners argued that the district court's determination that

alter-ego proceedings *must* occur in this case and its (correct) identification of the Seventh Circuit's language as being dicta removed whatever justification there was for staying any of their claims. Petitioners requested that Respondents answer the complaint on all three claims rather than moving forward with piecemeal discovery as to only one. A.8. The district court construed this request as abandoning alter-ego discovery "at this time." A.8a. The district court did not allow Petitioners any opportunity to proceed with alter-ego discovery after denying their request to proceed with the case as a whole nor indicate that if Petitioners did not proceed with piecemeal alter-ego discovery immediately, they would forfeit their claim entirely. *Id.*

After *Ewing I* concluded, Petitioners moved to lift the stay, to which the district court responded by dismissing this lawsuit *sua sponte*. A.3a-6a. Despite previously calling the Seventh Circuit's language about Rule 69 proceedings in *Ewing I* "dicta," the district court now concluded that "*Ewing II* is unnecessary" based on "the Seventh Circuit's guidance." A.6a. It also concluded that Petitioners "could have enforced that judgment against any alter ego in collection proceedings under Rule 69" and that Petitioners "abandoned" doing so because they requested to proceed with an answer and discovery for all three claims at once. A.5a-6a. Like the Seventh Circuit, the district court never explained why Rule 69 veil-piercing proceedings, or their abandonment, should impact Petitioners' right to sue Respondents for fraud. *Id.*

Petitioners again appealed to the Seventh Circuit.[2] The same panel summarily affirmed "for the reasons stated" in its prior opinion and the district court's opinion. A.2a.[3] Even though Petitioners brought these claims within the statute of limitations, the Seventh Circuit concluded that they had received "all the relief to which they are entitled, given their delay in asserting claims against other related persons and their abandonment of alter-ego theories." A.2a. The Seventh Circuit ignored Petitioners' argument that claim-preclusion law did not require them to bring suit against joint tortfeasors in the earlier case before they moved for leave to amend or that any abandonment of veil-piercing claims had no impact on their fraud claims under Illinois law.

REASONS FOR GRANTING THE PETITION

The only plausible interpretation of the Seventh Circuit's two opinions is that a court has inherent authority to dismiss a claim not otherwise barred by claim preclusion if the claim was presented in a proposed amended complaint during litigation with another party, whether or not claim preclusion law required the party to assert its claim in that forum. Because Petitioners brought these claims within the statute of limitations, the Seventh

---

[2] The Seventh Circuit had jurisdiction under 28 U.S.C. § 1291 and 28 U.S.C. § 1294.

[3] The Seventh Circuit also referenced its opinion affirming the judgment in *Ewing I*, 90 F.4th 876 (7th Cir. 2024), which concluded that the district court did not abuse its discretion by denying Petitioners' motion for leave to amend after the close of discovery. That opinion did not discuss Petitioners' right to bring this lawsuit.

Circuit's "mention of untimeliness must refer to the tardy motion to amend." *Hartsel Springs Ranch v. Bluegreen Corp.*, 296 F.3d 982, 990 (10th Cir. 2002). Moreover, the only authority the Seventh Circuit provided to support its conclusions were federal cases and statutes concerning a court's inherent authority to manage its docket and sanction bad-faith conduct, not claim preclusion cases. The result was a nonmutual one-way procedural bar where Respondents received all the benefits of the first litigation but none of the downsides even though Petitioners won, which achieved something neither this Court nor Illinois courts have ever permitted under the doctrine of claim preclusion.

I. The Seventh Circuit Created a Circuit Split.

By disregarding standard principles of claim preclusion *solely because* Petitioners unsuccessfully tried to amend the complaint in *Ewing I*, the Seventh Circuit's decision directly conflicts with decisions from the Second and Tenth Circuits on the same issue. In *Northern Assur. Co. of America v. Square D Co.*, the Second Circuit considered the identical issue raised here, extensively analyzed federal law throughout the country, and reached the opposite conclusion than the Seventh Circuit. 201 F.3d 84, 88-90 (2d Cir. 2000). The Second Circuit held that when a second lawsuit is filed following an unsuccessful attempt to add a defendant to an existing lawsuit, any procedural bar to the second lawsuit "turns on normal principles of claim preclusion, *i.e.*, whether [plaintiff] was required to bring its claim in the initial suit." *Id.* at 88. The Second Circuit concluded that if the

plaintiff was "under no obligation to bring the claims in [the first suit], [the second suit] is not barred by the normal operation of claim preclusion." *Id.* at 89.[4] This is the same approach Petitioners urged the Seventh Circuit to take in this case.

The Seventh Circuit's failure to ground its analysis in claim preclusion led it astray in concluding that Petitioners had violated their duty "to avoid multiplying litigation" and that Petitioners "should not have filed this second suit" without first considering the logical antecedent to any such conclusion—whether Petitioners were under an obligation to bring their claims against Respondents in that forum before they moved for leave to amend. In contrast, the Second Circuit recognized that if a party had the right to file a second lawsuit, adding those claims to existing litigation was an attempt at efficiency that courts should invite, not vexing conduct that should be punished. In such cases, "[h]ad leave to amend been granted, the second suit would have been avoided." *Id.* The Second Circuit held that a party able to bring multiple lawsuits "should not be penalized for its failure to succeed in its attempt to have all claims resolved in one lawsuit." *Id.* While the Seventh Circuit reasoned that Petitioners should be

[4] The Second Circuit cited cases from other circuit courts where a motion for leave to amend was later used as a procedural bar to a second lawsuit. It noted, however, that those cases only did so when both cases were against the same defendant and when the plaintiff was required to bring its second claim in the first lawsuit as a matter of preclusion law. *Id.* at 87-88. To the extent the Second Circuit was wrong, and these cases hold that there is a categorical bar on *all* lawsuits for claims previously presented in a denied motion for leave to amend, the circuit split presented here cleaves much deeper.

barred from bringing this lawsuit because they could also appeal the denial of leave to amend in *Ewing I*, the Second Circuit correctly recognized that "[f]aced with the burden of proving that the denial of leave to amend was an abuse of discretion, [p]laintiff cannot be faulted for deciding to institute a separate suit, something it had the right to do initially." *Id.*, n.6.

The Seventh Circuit's failure to ground its analysis in claim preclusion also led it astray when it wrongly concluded that Petitioners were trying to "have two judges consider their claims, then take the more favorable of the two outcomes" and that they "had sought the view of a second district judge" on the first judge's decision to "limit the suit to the claims against the LLC." However, when the law permits multiple lawsuits for the same harm, doctrines of issue preclusion and judgment satisfaction already exist to prevent Petitioners from taking a more favorable outcome than they deserve. *Bigelow*, 225 U.S. at 132 ("if he sue one such wrongdoer and recover judgment, he is not estopped from suing another upon the same facts unless his first judgment has been fully satisfied."); *Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 349 (1971).

The Seventh Circuit does not explain *how* Petitioners' success in this lawsuit would invite "the views of a second district judge" on the order denying leave to amend in *Ewing I*. That is because it cannot, for at no point in this lawsuit were Petitioners required to prove as an element of their proofs that the order denying leave to amend in *Ewing I* was wrongly decided. The Second Circuit correctly recognized that when claim preclusion gives a party

the right to file a second lawsuit before moving for leave to amend in an earlier case, an order denying leave should "not foreclose other valid procedural routes" *if it* "only said that it was too late to join claims directly" in that case and "did not say that [plaintiff] forfeited or waived any claims." *Northern*, 201 F.3d at 90. The same is true here. The disputed issue in Petitioners' prior motion to amend—whether an amendment after the close of discovery would unduly prejudice 1645 W. Farragut—would never present itself in *this* lawsuit against other parties.

The Seventh Circuit's failure to ground its analysis in claim preclusion also led it astray when it incorrectly reasoned, presumably under an exercise of inherent authority, that Petitioners' potential right to pierce the corporate veil against Carrier in *Ewing I* permitted it to disregard parallel procedures Petitioners could have also utilized to achieve the same end (i.e., this lawsuit). In contrast, the Second Circuit correctly concluded that when a party has two or more available procedures to achieve the same result, using "one procedural vehicle to vindicate a substantive right does not preclude employing a parallel procedural vehicle to vindicate the same substantive right." *Id.* (citation omitted).[5] The Seventh Circuit could reach a contrary conclusion

[5] The Second Circuit also rejected any concerns of prejudice to the new defendant because "had [plaintiff] not attempted to add its claims" in the first case, the new defendant "would face the same claims as it will after this decision." *Id.* at 89.

only by substituting its inherent authority for Illinois claim preclusion law.[6]

In *Northern*, the defendant also argued for the Second Circuit to invoke its inherent authority to promote wise judicial administration, as the Seventh Circuit did here. *Id.* at 89-90. But the Second Circuit concluded that "the scarcity of judicial resources alone does not justify denying a party the opportunity to litigate a claim" and that it could find *any* case where a court's inherent power to promote wise judicial administration was used to dismiss a claim against a defendant considered to be a separate party for claim preclusion purposes. *Id.* at 90. Here, the Seventh Circuit did precisely that.

The Seventh Circuit also created a conflict with the Tenth Circuit. In *Hartsel Springs Ranch*, the Tenth Circuit considered the effect of a denied motion for leave to amend to add parties in earlier litigation on a pending lawsuit. 296 F.3d at 889-991. While in that case, a different plaintiff was introduced in the prior motion to amend rather than a different defendant, the Tenth Circuit employed the same analysis the Second Circuit did by focusing on

---

[6] *See Indus. Nat'l Bank v. Shalin*, 330 Ill. App. 498, 502 (1st Dist. 1947) (plaintiff "is at liberty to proceed by execution to collect the judgment or institute a new action on it. Notwithstanding the second suit may be unnecessary, he has the clear legal right to recover, and the courts have no power to prevent him, or impose terms on him for so doing."); *Fleming v. Dillon*, 370 Ill. 325, 331 (1938) ("If coexistent remedies are consistent with each other, a party may adopt all or select any one which he thinks best suited to the end sought, and only the satisfaction of the claim in one case constitutes a bar of the other.").

whether that claim had to "have been brought in the first suit at all." *Id.* at 990. The Tenth Circuit reasoned that if the plaintiff could have filed a second lawsuit before moving for leave to amend, the "decision to choose the arguably more efficient route—misguided or not—does not foreclose [the second lawsuit] entirely." *Id.* at 989.

The Tenth Circuit agreed with the Second Circuit that "an unsuccessful selection" of one procedural route—a motion to amend in the first case—does not "foreclose the availability" of a party's preexisting right to file a second lawsuit. *Id.* at 990. While the Tenth Circuit noted that the plaintiff could have brought the claims into the first lawsuit through a "timely motion to amend" rather than an untimely one, "more important is the fact that there was no requirement to do so." *Id.* at 989 ("from the standpoint of policy and logic, the fact that a plaintiff's motion to amend was denied on the ground of disruptiveness should have no bearing on the question whether plaintiff should be permitted to assert such claim in a separate lawsuit.") (quotation omitted).

Because the Seventh Circuit did not consider whether Petitioners had to bring their claims against Respondents in *Ewing I* before concluding that their denied motion for leave to amend forfeited the claims, its opinions necessarily conflict with those of the Second and Tenth Circuit. This Court should grant this petition for writ of certiorari to resolve the circuit split.

II. The Circuit Split is Outcome-Determinative Because Preclusion Law Did Not Require Petitioners to Bring These Claims in the Earlier Lawsuit.

If the Seventh Circuit had focused on whether Petitioners were required to bring their claims against Respondents in *Ewing I* in the first place, as the Second and Tenth Circuits did, Petitioners' claims would have proceeded. Because the judgment in *Ewing I* was based on diversity jurisdiction, was issued by a federal court in Illinois, and resolved claims brought under Illinois state law, Illinois preclusion law should have applied absent compelling federal interests. *Semtek*, 531 U.S. at 508-09. In any event, the result is the same under both Illinois and federal law.

A. Claim preclusion gave Petitioners the right to sue joint tortfeasors separately.

Under federal and Illinois law, Petitioners had the right to sue joint tortfeasors (such as 1645 W. Farragut, Carrier, and D'Aprile Properties) in separate lawsuits even though recovery was sought for the same harm. *Bigelow*, 225 U.S. at 132 ("if he sue one such wrongdoer and recover judgment, he is not estopped from suing another upon the same facts unless his first judgment has been fully satisfied."); *Saichek*, 204 Ill.2d at 137.[7]

[7] This Court has long rejected the argument that preclusion prevents parties from initiating separate lawsuits if they could have combined them into one proceeding at the

Illinois and federal courts address concerns of double recovery and the potential for re-litigation of issues by limiting plaintiffs to the damages established in the first action, permitting them only one satisfaction of judgment, and prohibiting plaintiffs from re-litigating issues decided against them in the first lawsuit through the doctrine of issue preclusion. *Bigelow*, 225 U.S. at 132; *Saichek*, 204 Ill.2d at 137 ("The initial judgment, however, will normally serve as a limit on the plaintiff's entitlement to redress."); Restatement (Second) Judgments § 49 and cmt. a ("The injured party's right to maintain separate actions against multiple obligors is subject to several important constraints. The most important of these is that ordinarily he may not relitigate issues determined against him in the first action.").[8] None of these bars apply to Petitioners because their judgment remains unsatisfied, they do not seek a higher determination of damages, and no issues necessary for the success of their claims have been decided against them.[9]

---

outset. *Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322, 330 (1955) (claim preclusion inapplicable because "there was no obligation to join them in the [earlier] case since, as joint tortfeasors, they were not indispensable parties.").

[8] Illinois courts and this Court turn to the Restatement (Second) of Judgments to resolve preclusion issues. *See B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015) (this Court "regularly turns to the Restatement (Second) of Judgments" to resolve preclusion issues); *State Farm Fire & Cas. Co. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d 548, 559 (1st Dist. 2009) ("Illinois courts have also utilized the Restatement (Second) of Judgments to further define privity.").

[9] *See also Handley v. Unarco Indus., Inc.*, 124 Ill.App.3d 56, 63 (4th Dist. 1984) ("tortfeasors may be sued in separate suits; separate judgments and verdicts may be recovered, and it

B. Respondents were not the same party as the earlier defendant for claim preclusion purposes.

Carrier nonetheless argued that Petitioners were required to bring their fraud claim against him in *Ewing I* because he participated in the first lawsuit and controlled 1645 W. Farragut's defense. However, Carrier's argument fails under federal and state law because the control-of-prior-litigation exception to the rule against non-party preclusion is relevant only to *issue* preclusion. Restatement (Second) Judgements § 39 & cmt. b ("the rule stated in the Section applies to issue preclusion, and not to claim preclusion, because the person controlling the litigation, as a non-party, is by definition asserting or defending a claim other than one he himself may have."); *Montana v. United States*, 440 U.S. 147, 154 (1979) ("Preclusion of such nonparties falls under the rubric of collateral estoppel rather than res judicata.").

Carrier also argued that Petitioners had to bring their fraud claim against him in *Ewing I* because he owned 1645 W. Farragut. Owners of corporations, however, were not among the exceptions to the rule against non-party preclusion this Court identified in *Taylor*, 553 U.S. at 893-895.[10] The

---

is no defense that all of the tortfeasors have not been joined in the same action."); *Laver v. Kingston*, 11 Ill.App.2d 323, 328 (3rd Dist. 1956); *Camp St. Crossing, LLC v. Ad In, Inc.*, 2021 WL 5298062, at *6 (Ill. Ct. App. 3rd Dist. Nov. 15, 2021) (same).

[10] *See Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 591 U.S. 430, 435 (2020) ("as a matter of American corporate law, separately incorporated organizations are

Restatement provides the same. Restatement (Second) of Judgments § 59, cmt. a ("A corporation is for most purposes treated as a jural person distinct from its stockholders, members, directors, and officers.").[11] While it contains a provision for owners of closely held corporations who participate in earlier litigation and control the corporation's defense, *id.* at (3), that exception (as with the control-of-litigation-exception) applies only to *issue* preclusion, not claim preclusion. *Id.* (§ 59(3) preclusion applies "as to issues decided"), cmt. e ("In these circumstances, therefore, the rule of issue preclusion prima facie should apply.").

Issue preclusion, or collateral estoppel, does not bar Petitioners' claims because they prevailed in *Ewing I* on all necessary issues. Thus, Carrier's control of 1645 W. Farragut's defense in *Ewing I* and his ownership of it is irrelevant to any preclusion bar he could raise in this lawsuit. Its only relevance should be to *bar him* from contesting his liability for

---

separate legal units with distinct legal rights and obligations."); *Main Bank of Chicago v. Baker*, 86 Ill. 2d 188, 204 (1981) (same).

[11] While some decisions from Illinois courts and this Court used the term "privity" loosely to describe closely held corporations and their owners, they have done so only where the losing party was attempting a second bite at the apple and otherwise follow the Restatement (Second) of Judgments § 59. *State Farm Fire & Cas. Co. v. John J. Rickoff Sheet Metal Co.*, 394 Ill.App.3d 548, 560 (1st Dist. 2009) (citing Restatement (Second) of Judgments § 59 to define the preclusive effect of owners and shareholders); *Apollo Real Estate Inv. Fund, IV, L.P. v. Gelber*, 403 Ill.App.3d 179, 191 (1st Dist. 2010) (preclusive effect of owners of closely held corporations is "collateral estoppel").

fraud because of issue preclusion. No preclusion doctrine barred Petitioners, the victors in the prior lawsuit, from suing Carrier personally as a joint tortfeasor just because he participated in the previous lawsuit as an owner of the losing party.[12] At no point did Carrier, the district court, or the Seventh Circuit cite a single case where a previously successful plaintiff with an unsatisfied judgment was barred from suing a party who controlled the prior litigation.

D'Aprile Properties' argument for applying claim preclusion was that it employed Carrier as an agent, and its alleged liability was vicarious, but that argument only applies if Petitioners *lost* the first lawsuit. 18A Charles Alan Wright & Arthur Miller, Federal Practice and Procedure § 4463 (3d ed. 2002) (emphasis added) ("If the employee won the first action, the employer can assert claim preclusion; if the employee lost, the employer is free to relitigate all issues but the maximum recovery by the plaintiff is limited to the amount of the judgment in the first action."). The same rule applies in both Illinois and federal courts. *See Anderson v. West Chicago St. R. Co.*, 200 Ill. 329 (1902) ("Both being liable to the party

---

[12] *United States v. Gurley*, 43 F.3d 1188, 1197-98 (8th Cir. 1994) (allowing a lawsuit against a principal shareholder, president, and one of two directors of judgment debtor because "corporations are treated as entities separate from their officers, directors, and shareholders for purposes of preclusion just as for other purposes."); *In re Belmont Realty Corp.*, 11 F.3d 1092, 1096 (1st Cir. 1993) (same); *Twin City Pipe Trade Serv. Assoc., Inc. v. Wenner Quality Serv., Inc.*, 869 F.3d 672, 676-77 (8th Cir. 2017) (same); *Gillig v. Nike, Inc.*, 602 F.3d 1362 (9th Cir. 2010) (same); *Dish Network, LLC v. Ghosh*, 752 F. App'x 589, 594 (10th Cir. 2018) (same); *Ransburg Electro-Coating Corp. v. Lansdale Fisheries, Inc.*, 484 F.2d 1037, 1038 (3d Cir. 1973) (same).

injured, such party could sue them both in the same action, or sue each one separately, but if one was not guilty of the tort the other one could not be.").[13]

Restatement (Second) Judgments § 51 addresses multiple lawsuits based on vicarious liability, and it adopts the common-law rule wherein a second lawsuit is precluded only if the plaintiff lost the first lawsuit. *Id.* at (1)-(2), *cmt.* D & Illus. 7-9; *see also Simmons v. Himmelreich*, 578 U.S. 621, 631, n.5 (2016) (citing Restatement (Second) Judgments § 51). However, when the plaintiff wins the first lawsuit against one of the individuals in a vicarious liability relationship, the only preclusion that results in a second lawsuit against the other is the amount of damages. Because Petitioners did not lose on a necessary issue and did not seek to re-litigate damages, no claim preclusion bar required Petitioners to bring their claims against D'Aprile Properties as a jointly liable tortfeasor in *Ewing I*.

---

[13] *See also Gonzales v. Hernandez*, 175 F.3d 1202, 1207 (10th Cir. 1999) ("a judgment in favor of the injured party in a vicarious liability relationship does not preclude a second action against nonparties except as to the amount of damages."); *Beebe v. United States*, 721 F.3d 1079, 1083 n.4 (9th Cir. 2013) (same); *Headly v. Bacon*, 828 F.2d 1272, 1278 (8th Cir. 1987) (same); *Gill & Duffus Serv., Inc. v. A. M. Nural Islam*, 675 F.2d 404, 407 (D.C. Cir. 1982) (same).

C. Claim preclusion in favor of Respondents violated the rule of mutuality.

Under the rule of mutuality, "neither party could use a prior judgment as an estoppel against the other unless both parties were bound by the judgment." *Parklane Hosiery Co. Inc. v. Shore*, 439 U.S. 322, 326-27 (1979). *Kessinger v. Grefco, Inc.*, 173 Ill.2d 447, 461 (1996) (mutuality exists "only if both had been parties to the prior lawsuit and thereby bound by the outcome of that suit."). The justification is that a non-party that invokes preclusion based on an earlier judgment should be considered a party to that judgment in all respects. *Souffront v. La Compagnie Des Sucreries de Porto Rico*, 217 U.S. 475, 487 (1910) (a nonparty who can benefit from preclusion "is as much bound by the judgment ... as he would be if he had been a party to the record."). It would be unfair for a party to claim protection from future litigation based on a prior judgment while not agreeing to the terms of that judgment. For this reason, the original definition of "privity" that applied to preclusion was very narrow, encompassing only mutual or successive rights to the original claim or property through blood or estate. *See Bigelow*, 225 U.S. at 128-29; *Schafer v. Robillard*, 370 Ill. 92, 100 (1938).

This Court and many others eventually removed the mutuality requirement from the doctrine of issue preclusion for good reason "where the prior judgment was invoked defensively in a second action against a plaintiff bringing suit on an issue he litigated and lost as plaintiff in a prior action."

Blonder-Tongue, 402 U.S. at 324; *People v. Franklin*, 167 Ill.2d 1, 12 (1996) (Illinois "removed the mutuality requirement from the doctrine of collateral estoppel."). But this Court and others have not removed the mutuality requirement from claim preclusion. *Nevada v. United States*, 463 U.S. at 143.[14]

There does not appear to be any good reason for abandoning mutuality in the claim preclusion context when issue preclusion already prevents a losing party from obtaining a second bite at the apple. What good policy reason is there for permitting someone to claim victory in a second lawsuit just because it stands in the shoes of a judgment debtor concerning an unpaid debt? Petitioners must be able to enforce the judgment against Respondents, or Petitioners must be able to sue them separately. There has never been, and there is none in the case, any good reason for allowing Respondents to have it both ways.

This is why Petitioners, Respondents, the district court, and the Seventh Circuit have yet to find a case where a previously successful plaintiff with an unsatisfied money judgment was claim-precluded from bringing other suits within the statute of limitations against individuals not identified in that

---

[14] *See also Gill & Duffus Serv., Inc. v. A. M. Nural Islam*, 675 F.2d 404, 406-07 (D.C. Cir. 1982) ("In short, the 'privity' asserted by Islam and Transcontinental, if it in fact existed, should yield a result precisely opposite the one arrived at by the district court."); *Temple v. Lumber Mut. Cas. Ins. Co. of N.Y.*, 250 F.2d 748, 752 (3d Cir. 1958) (same); *Weinberger v. Tucker*, 510 F.3d 486, 495 (4th Cir. 2007) (same); *Bros, Inc. v. W.E. Grace Mfg. Co.*, 261 F.2d 428, 430 (5th Cir. 1958) (same).

judgment. The only policy justification for a contrary result would be to force plaintiffs to sue all potential defendants in one lawsuit, and "[i]f such a rule were ever adopted—and this itself would be a debatable choice—fairness would require advance warning to potential plaintiffs." *TMTV, Corp. v. Mass Productions, Inc.*, 645 F.3d 464, 473 (1st Cir. 2011).

Because Respondents have refused to abide by the judgment in *Ewing I* and are not identified in it, claim preclusion did not prevent Petitioners from bringing this second lawsuit against Respondents. The relationships on which Respondents' arguments are based—principal and agent, corporation and owner, control of earlier litigation—all only apply when the plaintiff previously litigated and lost. At no point did claim preclusion require Petitioners to bring their claims against Respondents in *Ewing I* so long as they recognized that if they failed in *Ewing I*, they would also lose in this case. As such, the Seventh Circuit necessarily relied on its inherent authority (as it said it was) to accomplish what claim preclusion would not otherwise permit: letting Respondents enjoy all the preclusive benefits of the judgment in *Ewing I* without them having to abide by any of its terms.

D. Illinois law did not require Petitioners to bring their veil-piercing claim in the earlier lawsuit.

Nothing is more emblematic of the flaws in the Seventh Circuit's approach than the treatment of Petitioners' veil-piercing claim. One of the positions

the parties shared on appeal was that Illinois law permitted a second lawsuit to pierce the corporate veil of a judgment debtor in the normal course of events. Indeed, the Seventh Circuit has said precisely that. *LM Ins. Corp. v. Spaulding Enter. Inc.*, 533 F.3d 542, 548 (7th Cir. 2008) ("Illinois law is clear that a judgment creditor can bring a claim to pierce the corporate veil of the debtor corporation in a new cause of action.").[15] A successive action to pierce the veil of a judgment debtor is not barred by claim preclusion because "where a party obtains a judgment against another party, the underlying claim merges with the judgment and the judgment becomes a new and distinct obligation of the corporation which differs in nature and essence from the original claim." *Pyshos v. Heart–Land Development Co.*, 258 Ill. App.3d 618, 624 (1st Dist. 1994).

With this direct authority, the only way the Seventh Circuit could conclude that Petitioners' lawsuit was "unnecessary," that Petitioners "should not have filed this second suit," and that they were "judge-shopping" is the Seventh Circuit's belief that it should invoke a court's inherent authority instead. Regardless, when Petitioners did as the Seventh Circuit directed in *Ewing I*, the district court was forced to send Petitioners *back* to this case while having to acknowledge that the Seventh Circuit's language about this case being unnecessary was

---

[15] *Westmeyer v. Flynn*, 382 Ill. App.3d 952, 956 (1st Dist. 2008) (same); *Buckley v. Abuzir*, 8 N.E.3d 1166, 1169 (Ill. Ct. App. 1st Dist. 2014) (same); *Peetom v. Swanson*, 334 Ill.App.3d 523, 528 (2nd Dist. 2002) (same); *Miner v. Fashion Enterprises, Inc.*, 342 Ill. App. 3d 405, 414 (1st Dist. 2003).

"dicta." All along, neither the Seventh Circuit nor the district court articulated why Petitioners' fraud claims depended on resolving their veil-piercing claims.

When Petitioners understandably threw their hands up and said they wanted to proceed with all three claims immediately or wait until the stay was lifted as to all three claims before moving into discovery, the district court framed that as abandonment and circled back to the Seventh Circuit's original language that this case should be dismissed as "unnecessary." Throughout this lollygag, Petitioners were told that they should not have filed a second suit, that they had to file a second suit, that the Seventh Circuit's language was dicta, and that the Seventh Circuit's language compelled dismissal of this case. All along, the party who defrauded another out of nearly a million dollars, as found by a jury, had to defend neither the veil-piercing claim nor the fraud claim.

This confusion only occurred because the Seventh Circuit grasped at its inherent authority and began substituting its docket management preferences for a clear-eyed assessment of the rights provided to Petitioners under Illinois law. Had it done so, it would have discovered that Illinois law does not mandate that Petitioners pursue parallel rights in any particular order. Indeed, Illinois law gives the choice to Petitioners, not the Seventh Circuit. *Fleming*, 370 Ill. at 331 ("If coexistent remedies are consistent with each other, a party may adopt all or select any one which he thinks best suited to the end

sought, and only the satisfaction of the claim in one case constitutes a bar of the other.").[16]

To the extent Petitioners abandoned their veil-piercing claim, that result was a consequence of the Seventh Circuit's original error in relying on its inherent authority instead of claim preclusion and Illinois law. Regardless, even if Petitioners abandoned their veil-piercing claims somewhere in the rabbit hole down which the Seventh Circuit sent them, that has nothing to do with their right to relief for their fraud claims.

III. The Seventh Circuit's Framework Raises More Questions Than It Answers.

The Seventh Circuit's approach to assessing the impact of motions to amend in previous litigation, by disregarding both federal and Illinois law on claim and issue preclusion, presupposes several issues in Respondents' favor that this Court previously left open and unresolved. This is to be expected when a court uses its inherent authority with little-to-no guardrails, rather than precedent developed over a century, to address concerns that preclusion doctrines were intended to address. *Taylor*, 553 U.S. at 891-893 (claim and issue preclusion balance "the expense and vexation attending multiple lawsuits, conserv[e]

---

[16] *See also Indus. Nat'l Bank v. Shalin*, 330 Ill. App. at 502 (plaintiff "is at liberty to proceed by execution to collect the judgment, or institute a new action on it. Notwithstanding the second suit may be unnecessary, he has the clear legal right to recover, and the courts have no power to prevent him or impose terms on him for so doing.").

judicial resources, and foste[r] reliance on judicial action by minimizing the possibility of inconsistent decisions" with the "deep-rooted historic tradition that everyone should have his own day in court" and "due process limitations."). A robust set of rules to address the same conduct calls into question the appropriateness of resorting to powers outside those rules. *See generally, Chambers v. NASCO, Inc.*, 501 U.S. 32, 63-66 (1991) (Kennedy, J. dissenting) ("Inherent powers are the exception, not the rule, and their assertion requires special justification in each case.").

Further, because their prior judgment was based on diversity, the outcome of Petitioners' litigation should have been "substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a State court," *Guar. Tr. Co. of N.Y. v. York*, 326 U.S. 99, 109 (1945), while still considering "the twin aims of the *Erie* rule: discouragement of forum-shopping and avoidance of inequitable administration of the laws." *Hanna v. Plumer*, 380 U.S. 460, 468 (1965). In *Semtek*, this Court left open the "situations in which the state law is incompatible with federal interests" concerning claim and issue preclusion. 531 U.S. at 509. Because the Seventh Circuit found a source to bar a lawsuit that Illinois law otherwise permits procedurally, the Seventh Circuit necessarily elevated its inherent authority over that of state law. The result was not only a different outcome than what state law dictated in this diversity case but also one that will encourage forum shopping as different forums necessarily develop their own unique rules and exceptions for when a motion for leave to amend to add parties

creates a new procedural bar and when it does not. If Illinois law was not sufficiently clear, the Seventh Circuit could have issued a certified question to the Illinois Supreme Court rather than substitute its judgment using its inherent authority.

Lastly, this Court recognizes that Petitioners have property rights in their claims that the Due Process Clauses protect. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982) ("the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances."). Similarly, this Court has carefully crafted the preclusion doctrines to account for "due process limitations." *Taylor*, 553 U.S. at 891. Any court that uses its inherent sanctioning or judicial management powers to dismiss a claim as "duplicative" or "unnecessary" when preclusion law permits it risks running afoul of the "constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." *Societe Internationale*, 357 U.S. at 209. In this case, where there has been no showing of bad faith, the dismissal of Petitioners' claims raises serious questions this Court left unresolved in *Link* concerning when a court can dismiss claims under its inherent authority for reasons beyond a failure to prosecute or to sanction bad faith conduct that is still consistent with due process. *Link*, 370 U.S. at 634-635 & n.12 (declining to reach the "broader question" of what type of conduct, in the absence of bad faith or a failure to prosecute, would justify a court's use of inherent

authority to dismiss); *see generally, Chambers v. NASCO, Inc.*, 501 U.S. at 58-59 (Scalia, J. dissenting) ("Since necessity does not depend upon a litigant's state of mind, the inherent sanctioning power must extend to situations involving less than bad faith.").

IV. This Case Presents an Ideal Vehicle for Resolving this Circuit Split.

This case presents undisputed facts on a circuit split that was outcome-determinative. This circuit split can also affect any case regardless of size, subject matter, or importance. The circuit split concerns a practice, moving for leave to amend, that occurs every day in federal court. Understanding the consequences of moving for leave to amend is an issue on which litigants need clear guidance beforehand to avoid overburdening the courts or (as in this case) unknowingly forfeiting claims.

If this Court grants certiorari to resolve that issue, the Seventh Circuit's framework—by disregarding preclusion law—ventures into multiple legal problems this Court has yet to decide. These include the relevance of mutuality to claim preclusion, a plaintiff's due process rights in not having their claim dismissed without regard to the state law on which their claim is brought and without sufficient notice, whether a federal court's exercise of inherent authority in place of state preclusion law is proper under the *Erie* doctrine, and a federal court's power to dismiss claims it perceives as duplicative or unnecessary in the absence of bad faith. Given that Petitioners previously won, did not act in bad faith, relied on state law, and that Respondents neither

must pay the earlier judgment nor defend against Petitioners' claims on the merits, this case is an unusual opportunity to determine the maximum contours of a court's power to dismiss claims as duplicative or vexatious under either claim preclusion or its inherent authority.

CONCLUSION

This Court should grant the petition for writ of certiorari.

Respectfully submitted,

Randall Ewing and Yasmany Gomez
408 N.E. 8th Avenue
Fort Lauderdale, FL 33301
312-219-0177