No. 24-945

In The
Supreme Court of the United States

JENN-CHING LUO,
Petitioner,

v.

OWEN J. ROBERTS SCHOOL DISTRICT; GEOFFREY BALL; CATHY A. SKIDMORE; KERI KOLBAY; SHARON W. MONTANYE
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, legal proceedings are not a matter of right or wrong, lawful or unlawful, or fair or unfair but a lawless game for the Court to play. It is not a baseless accusation. There are facts sufficient to be a book. We can see that from 2017, the Courts below "always" issued per curiam orders, contravening precedents or statutory laws, to rule against the Petitioner. How could a Court issue a per curiam order in contravenance with precedent? Why did the District Court and the Third Circuit not issue an order, contravening the precedent, against the big guy? Does the judicial system deserve trust?

The District Court and the Third Circuit did not proceed according to procedural rules. The procedural controversy started in 2017 after District Judge O'Neill in November 2016 denied the defendants' motions to dismiss; since then, this case was reassigned to two other judges because of the judge's retirement. After the defendants' motions were denied, under Fed. R. Civ. P. 12(a)(4), defendants should answer within 14 days after their motions were denied. It is the rule requirement that every Court follows.

However, the defendants never answered; the Petitioner followed Rule 55(a) to request a default. The District Court could grant or deny the request.

If the District Court did not grant the default request, the proceeding needs the defendants' answers to continue. The District Court should either grant Petitioner's request for default or order the defendants to answer. However, the District Court did not grant Petitioner's request for default judgment and also did not order the defendants to answer. Instead, the District Court *sua sponte* ordered Petitioner to amend the Complaint for defendants to dismiss. That is ridiculous. Petitioner had no duty to amend the Complaint; how could the District Court *sua sponte* order Petitioner to perform an act that Petitioner had no duty? Have any legal professionals ever heard that a District Court *sua sponte* ordered a plaintiff to amend the Complaint after the defendants failed to answer and a request for default was pending? Which legal basis allowed the Courts below to do so? The District Court and the Third Circuit acted no differently from a murderer. Are they proud of themselves? Is that the so-called justice?

After the first murder attempt failed, the Courts below instructed others to injure the Petitioner. The Court below allowed defense counsels to file another pre-answer motion to dismiss the Complaint again. Have any legal professionals ever heard that after a defendant's pre-answer motion to dismiss a Complaint is denied, the defendant can file another pre-answer motion to dismiss the Complaint again? It should never have happened before; however, the Courts below allowed defendants to do so in this action. The point is which rule allowed the defendants to file another pre-answer motion to dismiss a Complaint repeatedly. Especially, Fed. R.

Civ. P. 12(a)(4) set the effect of filing a motion to dismiss. Under Rule 12(a)(4), it is the rule requirement that defendants must answer within 14 days after the Court denied their motion to dismiss. Defendants should answer, not file another motion to dismiss the Complaint repeatedly. How could the Courts below refuse to enforce the rule requirement? The District Court and the Third Circuit should know what shame is, a murderer, never respecting and complying with the laws but constantly attempting a murder. Are they proud of themselves? That made Petitioner make the satire to ridicule the Courts below: Whether bombing courts or shooting judges is a holy mission to counter a corrupt judicial system.

It is uncertain how other Circuits did their job. If other Circuits also did not respect and comply with the laws, then the entire judicial system sucks. The procedural controversy has raised a Constitutional issue: the judgment the Courts below entered is void. This petition respectfully presents the following two questions.

(1) Under Fed. R. Civ. P. 1 ("*These rules govern the procedure in all civil actions and proceedings in the United States district courts,*"), can the Courts below refuse to enforce the rules, particularly Rule 12(a)(4)?

(2) When the judgment the Courts below entered was void, is it necessary to grant the petition for a writ of certiorari to vacate the void judgment 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, Cathy A. Skidmore, Keri Kolbay, and Sharon W. Montanye.

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

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 24-3106

Jenn-Ching Luo v. Owen J. Roberts School District et al., Civ. No. 25-1073

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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. Only Honorable Richard Lowell Nygaard voted for panel rehearing; 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-15a); The opinion of the District Court that dismissed claims and closed this case, is in the Appendix (App. *infra*, 16a-28a); The District Court's amended order that partially dismissed the complaint is in the Appendix (App. *infra*, 29a-34a); The District Court's order that decided defendants' second pre-answer motion to dismiss is in the Appendix (App. *infra*, 35a-38a).

JURISDICTION

On November 19, 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

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

It is uncertain how other Circuits did their jobs. According to what the Third Circuit did, legal proceedings are not a matter of right or wrong or fair or unfair, but only a rule-less game for the Court to play. It is not a baseless accusation. There are facts, sufficient to be a book. We can see that the Third Circuit "always" issued per curiam orders, contravening precedents or statutory laws, to rule against the Petitioner. How could a Court issue a curiam order, contravening with precedent or statutory laws to rule against Petitioner? Why did the Third Circuit not issue an order, contravening the precedent, against the big guy? The District Court and the Third Circuit even allowed the stronger side not to comply with the rule requirement. Do Courts have a value? We can see the facts.

(A) BACKGROUND

On February 28, 2014, the IEP team developed a residential program for the student effective 8/31/2014, on page 33 of Section B of the IEP. Before the beginning of the 2014 school year, the School District had a new special education supervisor, Geoffrey Ball. Geoffrey Ball refused to carry out the residential IEP. The school district's refusal to carry out the residential IEP denied the student a free appropriate public education ("FAPE"). See 20 U.S.C. §1401(9)(D) ("*The term 'free appropriate public education' means special education and related services that— are provided in conformity with the*

individualized education program required under section 1414(d) of this title.")

Then, Geoffrey Ball revised the IEP on his own, removing the residential placement from the IEP, making instructions to attack the Petitioner, and demanding the Petitioner to take "parent training" under the school district's supervision. Geoffrey Ball also wrote the revision was effective immediately. No law allowed Geoffrey Ball to revise the IEP on his own. Also, Geoffrey Ball has no authority to supervise Petitioner and to determine what Petitioner should learn or be trained for. The Petitioner requested a due process hearing to remove the IEP revision that Geoffrey Ball made and to demand the school district implement the residential IEP.

The hearing officer issued an order removing the IEP revision that Geoffrey Ball made. However, the Hearing officer did not decide if the school district could refuse to carry out the residential IEP but instead stated that the parties did not present data to show why the student needed a residential placement. The hearing officer *sua sponte* ordered an independent educational evaluation ("IEE"). The hearing officer's decision was irrelevant. Because the due process complaint notice did not include the question of whether the IEP team did not have sufficient data to develop the residential program, no parties presented any evidence. The hearing officer did not decide whether the school district could refuse to implement the residential IEP.

After the hearing, Geoffrey Ball intended to implement the hearing officer's decision to have an IEE immediately. Because the hearing officer did not

decide if the school district could refuse to implement the residential IEP, Petitioner was preparing to appeal the hearing officer's decision and did not consent to implement the hearing officer's decision. However, Geoffrey Ball intentionally implemented the hearing officer's decision; Geoffrey Ball, on his own, had Keri Kolbay as an independent evaluator, transmitted the school student's records to Keri Kolbay, and revised the IEP according to Keri Kolbay's evaluation without the parent's participation. The law is clear that the school district could not do so. However, Geoffrey Ball intentionally did it. Petitioner commenced this civil action to appeal the hearing officer's decision with §1983 constitution-based claims for violating Petitioner's constitutional rights to direct his child's education.

The controversy that the Complaint pled had no first impression question; precedents well settled them. The District Court or the Third Circuit could resolve them by simply following the precedents. The actual problem was from the Court. The Courts below did not decide the issues the Complaint presented but always wrote statements irrelevant to the cause to rule against Petitioner and ignored issues that were clearly in favor of Petitioner. Someone may doubt Petitioner a pro se; what did Petitioner talk about? If so, we only examine the record, not to argue the law. For example, the Complaint had the appeal of the hearing officer's decision for the 2014 residential IEP. That was the student's 2014 educational program.

The school district never moved to dismiss it and never answered it. The District Court never reviewed the student's 2014 educational program.

On October 30, 2023, about nine years after this case was commenced (the Complaint was filed on November 5, 2014), the District Court *sua sponte* dismissed the claim for the 2014 residential IEP when a request for entry of default was pending. Rational legal professionals would wonder how a Court could *sua sponte* dismiss a claim when a request for default was pending. How did the District Court do its job, especially? For nine years, it never reviewed the student's educational program. How do you feel if a court puts aside a review of your child's education program for nine years not to review it?

The Courts below 'always' dismissed Petitioner's claims by issuing per curiam orders, contravening precedents. Indeed, people may think the Petitioner is not qualified to interpret the law because of the status of pro se. We just let precedents speak for themselves. For example, the Third Circuit had the following ruling:

> *First, Luo claimed that the various defendants violated his "liberty right" with regard to parent training, "the 4010 application," and the student evaluation (Claims 1-3, 5 & 7). The bulk of his allegations are related to B.L.'s education and assessment for services under the IDEA; as such, any perceived violation of Luo's rights cannot be remedied under §1983. See A.W. v. Jersey City Pub. Sch., 486 F.3d 791, 802-03 (3d Cir. 2007) (en banc) (recognizing that litigants cannot use §1983 to remedy statutory violations of the IDEA).*

(App. 12a). The Third Circuit cited its precedent, A.W., to dismiss Petitioner's §1983 constitution-based claims. However, A.W. speaks for itself that §1983 constitution-based claims are actionable. For example, the Third Circuit's precedent A.W. held @794, "*If the plaintiff's allegations establish the violation of a constitutional right, the violation is necessarily actionable;*" Also, held @803, "*§1415(l) preserved actions based on violations of constitutional rights.*" The Third Circuit's precedent, A.W., speaks for itself that §1983 constitution-based claims are actionable. How could the Third Circuit cite its precedent A.W. to dismiss Petitioner's §1983 Constitution-based claims? We have seen the Third Circuit issued a per curiam order contravening its precedent to rule against Petitioner.

We even have the fact that, in order to rule against Petitioner, the Third Circuit issued an unintelligent order. For example, 20 U.S.C. §1415(i)(1)(B) provides

> *A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).*

How does a regular person read the above simple provision? People may think that Petitioner is a pro se, never studying at law school. We can see if the pro se Petitioner or the Third Circuit is dumb. The above provision is a reading and comprehension question for elementary school students. The provision is similar to the simple question that John goes to work every day except Sunday. Elementary school students could tell that on Sunday John did not go to work. Now, we turn to the provision,

> *A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).*

Similarly, when a party brings an action to appeal a hearing officer's decision, the hearing officer's decision is not final. However, it is surprising that, in order to rule against Petitioner, the Third Circuit read the provision as:

> *A hearing officer's decision "shall be final," although the statute provides for federal review of the decision.*

(App. 13a) Is the pro se Petitioner dumb? Or, the Third Circuit is dumb. The public should come to laugh at the Third Circuit. Eventually, from a legal viewpoint, the hearing officer's decision cannot be final when an appeal is made. The hearing officer's decision is appealed by filing a civil complaint. If the hearing officer's decision is final, as the Third Circuit ruled, any civil complaint appealing a hearing officer's decision must be dismissed because of res judicata. If a hearing officer's decision is final when an appeal is made, there is no way to appeal the hearing officer's decision. The Third Circuit repeatedly issued unintelligent orders. The public should come to laugh at the Third Circuit. The IDEA provision is incredibly well-known, fundamental knowledge that a hearing officer's decision is final only when no appeal is made. For example, See US Department of Education, Office of Special Education Program ("OSEP") letter to Hampden, 49 IDELR 197 (September 4, 2007), "*Under 34 CFR §300.514(a), an unappealed decision is final, and*

must be implemented." It's a well-known knowledge; however, the Third Circuit issued an unintelligent order, in contravention of the well-known knowledge, to rule against Petitioner. As Petitioner stated at the beginning, the legal proceeding is not a matter of right or wrong, lawful or unlawful, but only a game. Does the judicial system deserve respect or trust?

It is in vain and useless for Petitioner to argue the claims on merit; the Court always arbitrarily dismissed them regardless of the laws and facts. This petition only presents procedural issues. We can see that the Third Circuit even did not enforce the procedural rules, but let defense counsels do whatever they wanted.

(B) Rule requirement

The procedural matter is more horrible. Have any legal professionals ever heard that after a defendant's motion to dismiss a complaint is denied, the defendant can file another motion to dismiss the Complaint a second time? It should never have happened before; however, in this action, the Courts below allow defense counsels to do so. The point is which rule allowed the defendants to repeatedly file another motion to dismiss the Complaint. Those defense counsels supposedly should be sanctioned for failing to comply with the procedural rules. However, the Courts below allowed defense counsels to do so.

The active Complaint is the amended Complaint because Petitioner amended the Complaint as a matter of course. On October 31, 2016, the District Court (Judge O'Neill) decided the defendants' pre-answer motions in multiple cases and granted the

Petitioner leave to replead the claims that were dismissed without prejudice into this action as a second amended consolidated complaint. Such leave for a plaintiff to replead claims that were dismissed without prejudice is under a plaintiff's freedom of choice. Plaintiff can decline to replead them or abandon them.

Petitioner filed a motion to reconsider the dismissal order. Meanwhile, Petitioner also duly informed the District Court and defendants that Petitioner declined to replead the claims that were dismissed without prejudice. For example, the Third Circuit noted the following.

> *Luo asserts that he chose to stand on his Complaint rather than file "a second amended consolidated complaint" in response to the District Court's October 31, 2016 order.* (App. 8a, n.7).

Petitioner duly informed defendants that he declined to replead the claims that were dismissed without prejudice and no second amended complaint would be filed. Petitioner never prejudiced defendants.

On November 28, 2016, the District Court denied the Petitioner's motion for reconsideration of the dismissal order. After the District Court decided the defendants' motions to dismiss, the remaining claims included the claims against Ball and Kolbay and the claim for residential IEP against the school district arising from the appeal of the hearing officer's decision.

Because the defendants filed a motion to dismiss the Amended Complaint, they must comply with the effect of filing the motion. Fed.R.Civ.P. 12(a)(4) set

forth the consequence. For example,

> **Rule 12(a)(4)**. *Effect of a Motion.*
> Unless the Court sets a different time, serving a motion under this rule alters these periods as follows:
> (A) if the Court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the Court's action; or

Defendants enjoyed filing a motion to dismiss and must comply with the effect of filing such a motion. It is a rule requirement: the School District, Ball, and Kolbay must answer the Amended Complaint, and the filing deadline was December 12, 2016, e.g., 14 days after November 28, 2016.

The next event in this action is the School district's, Ball's, and Kolbay's answer to the Amended Complaint. It is the rule requirement that they must answer within 14 days. However, the rule requirement became the main controversy. Those defendants never answered the Amended Complaint. Instead, they filed another motion to dismiss (e.g., a second pre-answer motion or even a third motion) to dismiss the Amended Complaint repeatedly. Have any legal professionals ever heard that, after a defendant's motion to dismiss is denied, the defendant can repeatedly file another motion to dismiss the Complaint? The Courts below let defense counsels do whatever they wanted and granted them.

The Third Circuit ruled that the District Court could allow defendants to file a second or third pre-answer motion to dismiss the Amended Complaint

repeatedly because docket control is a sound discretion of the district court, citing its precedent as follows.

> *See generally In re Fine Paper Antitrust Litig., 685 F.2d 810, 817 (3d Cir. 1982) (noting that "matters of docket control . . . are committed to the sound discretion of the district court");* (App. 10a)

However, federal rule of civil procedure speaks for itself; rule requirements are not a matter of docket control. For example, see Fed. R. Civ. P. 1 ("*These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the Court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.*"). Especially federal rule of civil procedure is the uppermost, above any laws. See Notes of Advisory Committee on Rules—1937, ("*after the rules have taken effect all laws in conflict therewith are of no further force or effect.*") Nothing can overrule the rule requirement. The Third Circuit always issued an order, contravening law or precedent, to rule against Petitioner.

It is the rule requirement that defendants should answer no later than December 12, 2016. Because the defendants never answered, on July 16, 2018, Petitioner requested an entry of default. (E.D. Pa. ECF #64). The District Court never ruled on Petitioner's request for entry of default, neither granting nor denying, but sat idly. The Third Circuit denied the default request by stating the answer due

was undetermined because of the "complicated procedural history" starting at the District Court lifting the stay. (App. 9a, n.8). However, the federal rule of civil procedure speaks for itself; because the defendant filed a motion to dismiss, the answer deadline is determined by Rule 12(a)(4). The Third Circuit's decision conflicted with the civil rules.

Eventually, a judge cannot overrule a rule requirement. If a judge can overrule the rule requirement, he is a king, not a judge. In particular, the Supreme Court had published opinion that it is the duty of the Court to enforce procedural rules. 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.*"); Lujan v. National Wildlife Federation, 497 U.S. 871, 905 (1990) ("*If the Rules imposed an absolute deadline for the submission of evidentiary materials, the District Court could not be faulted for strictly enforcing that deadline, even though the result in a particular case might be unfortunate.*") The Third Circuit never complied with the Supreme Court's published opinion to enforce the rule requirement that defendants should answer no later than December 12, 2016. Still, it used the so-called "complicated procedural history" as an excuse for an attempt to overrule the rule requirement. Later, it will be shown that in the Third Circuit's decision, the "complicated procedural history" determined the answer deadline by Rule 42, a rule for consolidation; apparently, no legal professionals would agree.

(C) The District Court *sua sponte* order to amend.

As stated above, it is the rule requirement that defendants must answer no later than December 12, 2016, and the Court must enforce it. Wong, *Supra*; Lujan, *Supra.* The Third Circuit never enforced it but made an excuse, as part of the complicated procedural history, for an attempt to overrule the rule requirement. On February 9, 2021, when the answer deadline had expired four-plus years ago, the District Court *sua sponte* issued an order directing Petitioner to make a second amended complaint by repleading claims in two new cases, e.g., Luo IV and Luo V, into this action as a second amended consolidated complaint. For example, the Third Circuit noted,

> *In an order entered February 9, 2021, 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. 9a, n.8)

The order conflicted with the Supreme Court's published opinion. In Hall v. Hall, 138 S. Ct. 1118, 1125 (2018), this Court held, "*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. The district court defied the Supreme Court's published opinion by directing the Petitioner to make a consolidated complaint. The February 9, 2021 order should be vacated because it defied the Supreme Court's published opinion. However, the

District Court and the Third Circuit refused to vacate the order.

Further, the February 9, 2021 order is void. The original February 9, 2021 order, which the District Court *sua sponte* ordered in 14-6354 (Luo I, this case), 16-6568 (Luo IV), and 17-1508 (Luo V), is as follows:

> **IT IS FURTHER ORDERED** that Plaintiff is directed to consolidate his claims as per (Civ. A. No. 15-4248, ECF. No. 21) by filing a second amended consolidated complaint in Civil Action No. 14-6354 so that litigation can proceed. (E.D. Pa. 14-6354 ECF #74, page 3)

In the February 9, 2021 order, the District Court *sua sponte* decided that the claims in Luo VI and Luo V could not proceed and Petitioner should follow the cited reference order, e.g., (Civ. A. No. 15-4248, ECF. No. 21), to replead claims in Luo VI and Luo V into Luo I as a second amended consolidated complaint. However, the cited reference order (Civ. A. No. 15-4248, ECF. No. 21) never decided Luo IV and Luo V.[1]

The February 9, 2021 order is void. Under the due process of law, the District Court could not *sua sponte* decided that Luo VI and Luo V could not be proceeded and must be repled them into Luo I without offering Petitioner an opportunity to respond. In doing so, the District Court failed to

[1] It is very easy to verify it: Luo IV was commenced on December 21, 2016 (E.D. Pa. 16-6568 ECF #1) and Luo V was commenced on April 3, 2017 (E.D. Pa. 17-1508, ECF #1). Luo IV and Luo V were commenced after the cited reference order (Civ. A. No. 15-4248, ECF. No. 21) was issued on November 29, 2016.

comply with due process of law. 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 because the District Court did not offer Petitioner an opportunity to respond before the District Court decided it, and 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, no legal effect.

The February 9, 2021 order directing Petitioner to make a second consolidated complaint not only defied the Supreme Court's published opinion, "*consolidation not as completely merging the constituent cases into one,*" but is also void. The Courts below failed to enforce the rule requirement that defendants must answer no later than December 12, 2016, but issued an order, contravening the precedent and void, in an attempt to overrule the rule requirement.

(D) The District Court consolidated cases under Rule 42

The District Court made another excuse as part of the complicated procedural history to overrule the rule requirement that defendants answer no later than December 12, 2016. On May 20, 2021, the District Court *sua sponte* issued an order, consolidating Luo VI and Luo V with Luo I under

Rule 42. For example, the Third Circuit has the note,

> *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. 9a, n.8)

The problem is that, on May 20, 2021, the defendants had not responded to the summons in Luo IV and Luo V. (See E.D. Pa. 16-6568 and 17-1508). Have rational legal professionals ever heard that a Court consolidated a case before defendants responded to the summons? The May 20, 2021 order also raised a procedural issue. Rational legal professionals would wonder: Can a Court consolidate a case where the defendant has not responded to the summons?

Rule 42 applies when actions "*involve a common question of law or fact.*" Before the defendant responds to the summons, is it appropriate for the District Court to *determine sua sponte* how many questions of law and fact remain to be determined? Eventually, there were precedents that it was premature to consolidate a case 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 Luo IV and Luo V with another case when defendants had not responded to summons. The District Court and the Third Circuit always issued an order, contravening precedents, to rule against Petitioner.

A funny thing happened after the District Court *sua sponte* issued the Rule 42 consolidation. Defense counsels got excited. The deadline for defendants to answer 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 at. 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. Undoubtedly, Rule 42 never gave defendants 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 legal professionals to laugh at, especially since defense

counsels cited no authorities. However, the District Court and the Third Circuit agreed with defense counsels that Rule 42 provided a new clock for defendants to answer. In short, the Third Circuit decided that the answer due was determined by Rule 42 because of the so-called "complicated procedural history." It appeared frivolous, having no authorities in support.

Defense counsels strongly believed that Rule 42 consolidation gave them a new clock to answer (Please don't laugh). On June 9, 2021, e.g., the 20th day after the Rule 42 consolidation order issuance, Kobay filed a second pre-answer motion to dismiss the Amended Complaint a second time. (E.D. Pa. 14-6354 ECF #91). On June 17, 2021, e.g., the 28th day after the Rule 42 consolidation order issuance, the school district, and Ball filed a second pre-answer motion to dismiss the Amended Complaint a second time (E.D. Pa. 14-6354 ECF #95). When they filed a second pre-answer motion to dismiss the Amended Complaint, the answer deadline had expired four-plus years ago.

Further, on March 18, 2022, the District Court granted the school district's, Ball's, and Kolbay's second pre-answer motion to dismiss the Amended Complaint and dismissed the Amended Complaint with prejudice. (App. 36a) Has any rational legal professional ever heard that a defendant could repeatedly file another motion to dismiss the same Complaint after its motion to dismiss the Complaint was denied? The District Court and defense counsels should know what shame is; how could a defendant repeatedly file another motion to dismiss the same Complaint after its motion to dismiss was denied?

The proceeding before the District Court is court bullying.

Further, the October 31, 2016 order approved and adopted the Magistrate Judge's Report and Recommendation in denying Ball's and Kolbay's motion to dismiss. (App. 6a) The order that approved and adopted the Magistrate Judge's RR is "*the final decision on the matter*" that the amended complaint sufficiently pled claims against Ball and Kolbay. The point is that Ball and Kolbay never filed timely objections to the Magistrate Judge's Report and Recommendation. Failing to file timely objections had barred Ball and Kolbay from attacking the Magistrate Judge's factual findings and legal conclusions. How could Ball and Kolbay file a second pre-answer motion to attack the pleadings of the Amended Complaint again? Do defense counsels know what shame is? The District Court just let defense counsels do whatever they wanted.

A notice of appeal was filed. The Third Circuit found the claim for residential IEP against the school district and the claims against Ball were outstanding and dismissed it for a jurisdiction defect.

(E) The District Court re-decided the school district's and Ball's second pre-answer motion

After the Third Circuit remanded this action to the District Court, the District Court re-decided the school district's second pre-answer motion to dismiss. Under the circumstances that the school district's motion never moved to dismiss the claim for residential IEP, the District Court *sua sponte*

dismissed the claim for residential IEP by the following false statements.

> *Mr. Luo has chosen to stand on his first amended Complaint in Luo I rather than file an additional amended complaint. As a result, all claims in Luo I against the School District will be dismissed with prejudice in accordance with Judge O'Neill's November 28, 2016 order.* (App. 20a)

That is false. The school district never moved to dismiss the claim for residential IEP arising from the appeal of the hearing officer's decision (e.g., under §1415(i)(2)), and the District Court never dismissed it. For example, the Third Circuit has the note, "*We dismissed the appeal for lack of jurisdiction after determining that the District Court did not address the §1415(i)(2) action or the §1983 claims against Ball.*" (App. 7a)

The point is that there was a pending request for default judgment for the residential IEP. Has any legal professional ever heard that a Court *sua sponte* dismissed a claim when a request for default was pending? The proceeding before the District Court is court bullying. Further, the District Court also *sua sponte* granted Ball permission to file a third pre-answer motion to dismiss the amended Complaint a third time. For example, the District Court wrote:

> *"Mr. Ball will be given an opportunity to file a renewed motion to dismiss the Section 1983 claim against him as pleaded in Luo I within twenty days of this order."* (App. 20a-21a)

Has any legal professional ever heard that a court *sua sponte* granted a defendant to file a third pre-answer motion to dismiss the same Complaint after its two previous motions failed to dismiss? The proceeding before the District Court is nothing but "court bullying." Especially it is the rule requirement that Ball must answer no later than December 12, 2016, and the Court must enforce the rule requirement. Wong, *Supra*; Lujan, *Supra*. How could the District Court grant Ball 20 days to file a third pre-answer motion to dismiss the same Complaint a third time?

REASONS FOR GRANTING THE PETITION

I. The judgment the Court below entered was void. Void judgment is no judgment and must be vacated under Fed. R. Civ. P. 60(b)(4). Granting the petition for a writ of certiorari is necessary to vacate the judgment the Court below entered and to enter a valid judgment.

This petition is to vacate the judgment granting the School District's second pre-answer motion to dismiss, Kolbay's second pre-answer motion to dismiss, and Ball's third pre-answer motion to dismiss.

As shown previously, Supra @9-13, it is the rule requirement that the school district, Ball, and Kolbay must answer the Amended Complaint no later than December 12, 2016. However, they failed to do it. Instead, after the answer deadline had

expired four-plus years ago, on June 9, 2021 Kolbay filed a second pre-answer motion to dismiss the Amended Complaint a second time (E.D. Pa. 14-6354 ECF #91); on June 17, 2021, the school district and Ball filed a second pre-answer motion to dismiss the Amended Complaint a second time. (E.D. Pa. 14-6354 ECF #95). However, no rule allowed those defendants to file a second pre-answer motion to repeatedly dismiss the Amended Complaint. Because defendants' second motion to dismiss failed to follow "the form of law," their second pre-answer 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, those defendants' second pre-answer motions to dismiss were void because they violated due process of law.

Further, 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.*")

Because the school district's and Kolbay's second pre-answer motion to dismiss is void, the judgment granting the school district's and Kolbay's second pre-answer motion to dismiss is also void.

Further, it is the rule requirement that Ball must answer no later than December 12, 2016. The District Court had a duty to enforce the rule requirement and had no authority to overrule the rule requirement. Wong, *Supra*; Lujan, *Supra*. The District Court had no authority to *sua sponte* grant Ball 20 days to file a third pre-answer motion to dismiss the Amended Complaint repeatedly.

Accordingly, the District Court's order *sua sponte* granting Ball 20 days to file a third pre-answer motion to dismiss is void because the District Court had no such authority. See United States v. Walker, 109 U.S. 258, 266 (1883) ("*Although a court may have jurisdiction over the parties and the subject-matter, yet if it makes a decree which is not within the powers granted to it by the law of its organization, its decree is void.*")

Because the District Court's order that *sua sponte* granted Ball 20 days to file a third pre-answer motion to dismiss the Amended Complaint repeatedly is void, Ball's third motion to dismiss is void. Therefore, the judgment granting Ball's third motion to dismiss is also void.

In short, the judgment granting the school district's and Kolbay's second pre-answer motion to dismiss is void; the judgment granting Ball's third pre-answer motion to dismiss is void. Void judgment is forever no judgment. Pennoyer v. Neff, 95 U.S. 714, 728 (1878) ("*The judgment, if void when rendered, will always remain void.*") Void judgment should be vacated under Fed. R. Civ. P. 60(b)(4). Accordingly, this Court should grant this petition for a writ of certiorari to vacate the judgment the Courts below entered and to enter a valid judgment.

II. Under Fed. R. Civ. P. 55(a), Default judgment should be entered against the School District, Ball, and Kolbay because the answer deadline had expired and they did not answer and also had no post-deadline extension.

The Third Circuit failed to read Petitioner's arguments, making incorrect statements. For example,

> *Luo sets forth six main points for review; the crux of his arguments in Points 1-3, and part of Point 6, is that defendants Ball and Kolbay's motions to dismiss were "void," and that he was entitled to default judgment against Ball, Kolbay, and the School District. We disagree.* (App. 8a)

Under Fed. R. Civ. P. 55(a), a default judgment is warranted where a defendant "*failed to answer or otherwise defend*" the claims against the defendant. As shown previously, at the early beginning of this action, the defendants had already filed a motion to dismiss the Amended Complaint. It is the rule requirement that after their motions to dismiss were denied, they should answer no later than December 12, 2016. However, the school district, Ball, and Kolbay failed to answer. Under the circumstances, the only defense available for the defendants is to seek a post-deadline extension. Defendants also had no post-deadline extension. Under Rule 55(a), default judgment should be entered against the school district, Ball, and Kolbay because they "*failed to answer or otherwise defend.*"

Because the school district, Ball, and Kolbay never admitted they were in default, they never showed a good cause to oppose a default judgment. The Third Circuit denied the request for default judgment because of the complicated procedural history and the assumption that the remaining claims should be

dismissed. However, the Third Circuit presented nothing for proof.

(A) The complicated procedural history

The Third Circuit denied default judgment because of the "complicated procedural history." (App. 9a). It appears the Third Circuit's decision is frivolous, having no authority in support. The so-called complicated procedural history includes the following.

1. There was a stay order. However, when the District Court *sua sponte* issued the stay order on January 4, 2017, the answer deadline (e.g., December 12, 2016) had expired 23 days. (App. 9a) The stay order has nothing for denying a default.

2. There was a February 9, 2021 order directing Petitioner to replead Luo VI and Luo V into Luo I as a second amended consolidated complaint. (App. 9a, n.8) However, as shown previously, *Supra* @14-16, the February 9, 2021 order defied the Supreme Court's published opinion and was void. An invalid order is not a ground against Petitioner or to deny default judgment.

   The Third Circuit further stated, "*the defendants reasonably relied on the District Court's orders directing Luo to file a second amended consolidated complaint before responding to the outstanding claims.*" (App. 9a) Such contention has no legal basis. Before the District Court issued the February 9, 2021 order, there was the rule

requirement that defendants must answer no later than December 12, 2016. Defendants failed to answer and were in default. The Third Circuit failed to cite a rule to show why defendants could file another pre-answer motion to dismiss the Amended Complaint repeatedly but had a pattern of arbitrarily ruling against Petitioner.

3. The Third Circuit stated, "I*n May 2021, the District Court denied that motion and consolidated the matters for administrative purposes only, obviating the need for an amended complaint.*" (App. 9a, n.8) The Third Circuit further stated, "*The defendants renewed their motions to dismiss within weeks of the District Court's consolidation order*" (App. 9a). Such contention has no legal basis. As showed previously, *Supra* @17-20, Rule 42 consolidation never gave defendants a new clock to answer. Second, it is the rule requirement that defendants must answer no later than December 12, 2016. Defendants failed to answer and were in default. The Third Circuit failed to cite a rule to show why defendants could file another pre-answer motion to dismiss the Amended Complaint repeatedly but had a pattern of arbitrarily ruling against Petitioner.

Overall, the Third Circuit's reason to deny default judgment is based on two assumptions that the Third Circuit never proved.

1. The first assumption is: After the defendants' pre-answer motions to dismiss the Amended Complaint were denied, the defendants could file

another pre-answer motion to dismiss the Amended Complaint again. However, such an assumption conflicted with Fed. R. Civ. P. 12(a)(4), under which defendants must answer no later than December 12, 2016.

2. The second assumption is: After the defendants' pre-answer motions to dismiss the Amended Complaint were denied, Rule 42 consolidation gave the defendants a fresh new life to file another pre-answer motion to dismiss. However, such an assumption also conflicted with Fed. R. Civ. P. 12(a)(4), under which defendants must answer no later than December 12, 2016.

From the above, the Third Circuit's denial of default judgment is frivolous, having no authorities in support. The federal rule of civil procedure is the uppermost, above any laws. See Notes of Advisory Committee on Rules—1937 ("*after the rules have taken effect all laws in conflict therewith are of no further force or effect.*"). There is no way for the Third Circuit to find a law that could overrule the rule requirement that defendants must answer no later than December 12, 2016. We have seen that the Third Circuit has a pattern of arbitrarily ruling against Petitioner. As stated at the beginning of this petition, Petitioner did not make a baseless accusation. According to the Third Circuit, legal proceedings are not a matter of right or wrong or lawful or unlawful but a lawless game for the Court to play. Could this Honorable Court tell us how a nobody seeks justice?

(B) The Third Circuit's assumption

The Third Circuit also stated that default judgment should be denied because the remaining claims against the school district, Ball, and Kolbay would be dismissed if the Petitioner made the second amended consolidated Complaint to give the defendants another opportunity to dismiss. For example, the Third Circuit wrote, "*it appeared that his remaining claims were going to be dismissed based on his failure to amend the complaint.*" The point is that the Third Circuit found nothing for proof but only made an assumption as a reason to deny default judgment.

The background started on October 31, 2016. After the District Court decided the defendants' motions to dismiss in multiple cases, the District Court granted Petitioner leave to replead the claims that were dismissed without prejudice to make a second amended consolidated complaint and granted Ball and Kolbay leave to dismiss the second amended consolidated Complaint. (App. 30a) and (App. 31a). As stated previously, *Supra* @10, even though the District Court granted leave, repleading the claims that were dismissed without prejudice is under a plaintiff's freedom of choice. Plaintiff can abandon them or decline to replead them. Petitioner duly informed the District Court and defendants that Petitioner declined to replead the claims that were dismissed without prejudice and not to make a second amended consolidated complaint.

Now, the Third Circuit assumes that those remaining claims would be dismissed if Petitioner made the second amended consolidated complaint.

We can verify that the assumption of the Third Circuit is not true. Eventually, the Third Circuit never proved its assumption but had a pattern of writing false statements against Petitioner. For example, the Third Circuit wrote,

> *The District Court denied, in part, Ball's motion to dismiss, and denied Kolbay's motion to dismiss, both without prejudice to their right to raise the same defenses in a motion to dismiss a second amended complaint.*" (App. 6a)

The Third Circuit wrote false statements; The District Court never granted Kolbay and Ball to "*raise the same defense in a motion to dismiss a second amended complaint..*" The District Court only granted Kolbay and Ball to argue "*qualified immunity*" and "*failure to identify a protectable liberty interest*" in the second amended consolidated Complaint. (App. 30a); (App. 31a)

Speaking of qualified immunity, Kolbay is a private defendant acting under the color of state law; therefore, qualified immunity is not available for Kolbay. See Wyatt v. Cole, 504 U.S. 158, (1992) ("*Qualified immunity from suit, as enunciated by this Court with respect to government officials, is not available to private defendants charged with §1983 liability for invoking state replevin, garnishment, or attachment statutes.*") Ball was a public defendant who could argue qualified immunity. However, qualified immunity is available when no violation of a clearly established right exists. See Harlow v. Fitzgerald, 457 U.S. 800, 818

(1982) (Qualified immunity is designed to shield government officials from actions "*insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have know.*") A defense of no protectable liberty right includes a defense of qualified immunity; therefore, Ball doesn't have to argue qualified immunity separately.

In short, the only defense Kolbay and Ball could raise to dismiss the second amended consolidated Complaint, if Petitioner made it, is the "*failure to identify a protectable liberty interest.*" However, the Supreme Court already held that directing their child's education is a well-established liberty right of parents. For example, see Washington v. Glucksberg, 521 U.S. 702, 720 (1997) ("*In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the liberty' specially protected by the Due Process Clause includes the rights to .....direct the education and upbringing of one's children*") A protectable liberty right clearly exists. There was no way for Kolbay and Ball to assert a defense of no protectable liberty right to dismiss the second amended consolidated Complaint if Petitioner made it. The Third Circuit constantly wrote false statements to rule against Petitioner arbitrarily.

Further, the remaining claim against the school district is the claim for residential IEP. It was also impossible for the school district to dismiss. The Complaint pled that the IEP team developed a residential program for the student effective 8/31/2014, on page 33 of Section B of the IEP. However, the school district failed to provide the

residential IEP. The Complaint pled that failure to provide the residential IEP denied the student a free appropriate public education ("FAPE"). See 20 U.S.C. §1401(9)(D) ("*The term 'free appropriate public education' means special education and related services that— are provided in conformity with the individualized education program required under section 1414(d) of this title.*") The Complaint sufficiently pled that the school district denied the student a FAPE. The school district can't dismiss the claim for residential IEP; eventually, the school district never moved to dismiss the claim for residential IEP.

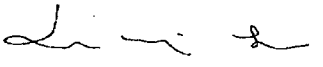
From the above, we see again that the Third Circuit has a pattern of arbitrarily ruling against Petitioner. Notably, the Third Circuit found nothing that could prove its assumption that the remaining claims against the school district, Ball, and Kolbay would be dismissed if Petitioner made the second amended consolidated Complaint. As stated at the beginning of this petition, Petitioner did not make a baseless accusation. According to the Third Circuit, legal proceedings are not a matter of right or wrong or lawful or unlawful but only a lawless game for the Court to play. Could this Honorable Court tell us how nobody seeks justice when the Courts below do not respect and comply with the laws?

CONCLUSION

For the reasons stated above, the Petitioner respectfully requests that this Court grant the petition for a writ of certiorari, summarily reverse the Third Circuit's judgment, and enter a default

judgment against the school district for the residential IEP, Ball, and Kolbay.

Respectfully submitted,



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