

No: _____

**In The
Supreme Court of the United States**

IN RE ERIC DRAKE
Petitioner/Relator

**On Petition for Writ of Mandamus to the United States
Court of Appeals for the Fifth Circuit**

PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED

This dispute concerns the dismissal of a defendant with prejudice, Nordstrom Inc, which was a proper defendant in the district court proceeding. Relator filed a motion for partial nonsuit, nonsuiting all defendants except Nordstrom Inc because the Relator wanted to confirm whether Nordstrom Inc was not a proper defendant in the proceeding.

Nordstrom's attorneys were untruthful to the Relator and the district court by advising the Relator and the district court that Nordstrom Inc was not a proper defendant in the district court proceeding, but evidence proved otherwise. The district court dismissed Nordstrom Inc with prejudice, but all other defendants without prejudice. Relator filed proof that Nordstrom Inc was a viable defendant into the district court's record and filed a timely Rule 60, but the district court refused to reverse its dismissal with prejudice, believing Nordstrom's attorneys that Nordstrom Inc was not a proper defendant.

Relator filed an appeal in the Fifth Circuit Appeals requesting for the court to review and reverse the with prejudice order of the district court. *See App. Ex. D.* Relator filed his brief. Nordstrom could not answer the Relator's brief without admitting that the Relator was correct, the evidence that supports the fact that Nordstrom Inc was, and still is a proper defendant was filed into the district court's record and made part of the appellate record. The clerks notified the Relator by standard U.S. mail during the holidays (New Years) of the court's order, which gave the Relator only 3-days to draft this Writ of Mandamus, and compose the Appendix. The order is annexed to Relator's Appendix, *See App. Ex. A.* The Respondents admonished Nordstrom's lawyers for their deficient and untimely pleadings, but the December 28, 2017 order also noticed the Relator that the Respondents deemed the Relator appeal as frivolous. The Relator sharply disagrees with the legal assessment that his appeal is frivolous.

Not having any other options or applicable remedies, and since the appeal is still pending, the Relator respectfully submits his Writ of Mandamus to this Honorable Court for its review and decisions. It is the Relator's opinion that no impartial judge would consider the Relator's appeal to be frivolous, as argued herein.

The Relator's questions and or issues presented are:

1). Whether Respondents erred and abused their discretion by determining that the Relator's appeal is frivolous that is supported a competent brief and with compelling and objective evidence that the Real Party in Interest cannot refute. Nordstrom's own Securities and Exchange Report proves that Nordstrom Inc was and still is a proper defendant in the Relator's personal injury case, therefore, an appeal asking the Fifth Circuit to review the district courts order is not frivolous.

2). Whether federal appellate court justices in this nation should be allowed to declare a case that has merit to be meritless or frivolous without a written opinion.

3). Whether the U.S. Supreme Court should review the federal appeals practice to encourage faith in the judicial process, proper due process, and by requiring all federal appeals court justices to write an opinion, to ensure equal protection for all litigators, especially in cases when an appellate court has deemed a case as frivolous that contains evidence that proves that the court is in error, as in the case before the Court.

4). Whether the Respondents conduct and demeanor towards a protect class of person, and or any litigator where objective evidence is ignored to sanction a nonlawyer or *pro se* litigant would demand recusals of those judges or justices.

IDENTITY OF PARTIES AND COUNSEL

Relator:	Eric Drake <i>Movant</i> in the underlying suit
Movant is pro-se:	Eric Drake Pro-Se 10455 N. Central Expressway Suite 109 Dallas, Texas 75231 (214) 477-9288
Respondents:	Judges Leslie Southwick, Stephen Higginson, and James Dennis Fifth Circuit Court of Appeals 600 South Maestri Place New Orleans, LA 70130-3408
Real Party in Interest:	NORDSTROM DEPARTMENT STORES, INCORPORATED; BLAKE NORDSTROM; PETER NORDSTROM; ERICK NORDSTROM; JAMES NORDSTROM; ENRIQUE HERNANDEZ, JR., Nordstrom's Chief Executive Officer; NORDSTROM, INCORPORATED
Represented by:	Tate L. Hemingson Counsel for Nordstrom Inc et al Strasburger & Price, LLP 901 Main Street Suite 6000 Dallas, Texas 75202

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OPINIONS BELOW

The rulings under review are the December 28, 2017 Order with intent to sanction the Relator for the filing of an alleged frivolous appeal in the Fifth Circuit Court of Appeals in Orleans Parish, Louisiana, in case number 17-20317. And the District Courts Order Dismissing Nordstrom Inc with prejudice on May 1, 2017, in the Southern District of Texas. The Orders are reproduced at Pet. App. A and B. The Fifth Circuit Court of Appeals' have not published a final order to the December 28, 2017 order in controversy, and to the best of Relator's understanding, the district court's order is unpublished.

JURISDICTION

This Court's jurisdiction rests on 28 U.S.C. § 1651. This case also presents an actual case and controversy involving an important constitutional and public interest question. See *Powell v. McCormack*, 395 U.S. 486 (1969) ("It has long been held that a suit "arises under" the Constitution if a petitioner's claim "will be sustained if the Constitution . . . [is] given one construction and will be defeated if [it is] given another.").

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES

Federal Rule of Appellate Procedure 41 governs issuance of an appellate court mandate and provides, in pertinent part:

(b) When Issued. The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.

(d) Staying the Mandate.

(1) On Petition for Rehearing or Motion. The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

(2) Pending Petition for Certiorari.

(A) A party may move to stay the mandate pending the filing of a petition for a writ of certiorari (or in this case writ of mandamus) in the Supreme Court. The motion must be served on all parties and must show that the writ would present a substantial question and that there is good cause for a stay.

(B) The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition.

(C) The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(D) The court of appeals must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed.

Fourteenth Amendment, the Due Process Clause of the Fourteenth Amendment which infer procedural due process and substantive due process. Procedural due process is the guarantee of a *fair legal process* when the government tries to interfere with a person's protected interests in life, liberty, or property, and substantive due process is the guarantee that the fundamental rights of citizens will not be encroached on by government.

In *Poe v. Ullman* (1961), dissenting judge John Marshall Harlan II adopted a broad view of the "liberty" protected by the Fourteenth Amendment Due Process clause:

‘[T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This 'liberty' is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints, . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment.’

Equal Protection Clause, Persons "within its jurisdiction" are entitled to equal protection from a state. Largely because the Privileges and Immunities Clause of Article IV has from the beginning guaranteed the privileges and immunities of citizens in the several states, the Supreme Court has rarely construed the phrase "within its jurisdiction" in relation to natural persons. In *Yick Wo v. Hopkins* (1886), the Supreme Court has clarified that the meaning of "person" and "within its jurisdiction" in the Equal Protection Clause would not be limited to discrimination against African Americans, but would extend to other races, colors, and nationalities such as (in this case) legal aliens in the United States who are Chinese citizens.

RELIEF SOUGHT

Pursuant to 28 USC § 1651 Eric Drake, respectfully files a Writ of Mandamus directing the Honorable Judges Leslie Southwick, Stephen Higginson, and James Dennis to vacate its December 28, 2017 order, and issue a detailed opinion how and in what manner the Relator’s appeal is frivolous. That Judges Leslie Southwick, Stephen Higginson, and James Dennis be made to show how the evidence (Nordstrom’s Securities and Exchange Report) that proves that Nordstrom Inc was and still is a proper and viable defendant in a lawsuit where the Relator was injured in a Nordstrom Dept. Store does not prove that Nordstrom Inc

is a proper defendant in Drake's lawsuit against Nordstrom. Further, that Judges Leslie Southwick, Stephen Higginson, and James Dennis explain in detail why the court is sanctioning the Relator when he filed a timely and competent brief, but Nordstrom failed by the Respondent's own admissions by filing deficient and untimely pleadings. Lastly, the Relator ask the Court to order an investigation into Nordstrom's attorneys making misleading and false statements of fact to the Relator who is *pro se*, (Nordstrom attorneys told the Relator and the district court that Nordstrom Inc was not a proper defendant), *which is not true*. But Nordstrom's attorney's convinced the district court that Nordstrom Inc was not a proper defendant, and the reason for the with prejudice order by the district court.

RULE 20.1 STATEMENT

This case presents the exceptional circumstance in which the district court ignored objective evidence to dismiss Nordstrom Inc as a defendant to assist Nordstrom's legal counsel. The Respondents has also ignored the same objective and compelling evidence to sanction the Relator. Unfortunately, Relator's pleas for justice have been dismissed by the district court and also by the Fifth Circuit Court, even though Relator evidence proves his case beyond a reasonable doubt. Relator has been left with no other option but to file this petition for a Writ of Mandamus. The Respondents will undoubtedly, and wrongfully sanction the Relator without just cause and to compensate the Real Party in Interest (Nordstrom) even though the Respondents admits that their pleadings are deficient and untimely. Because the Respondents has chosen not to provide a written opinion, this action alone will bar the Relator from bringing this matter to this Court after their final order, because this Court will not accept in all probability a writ of certiorari without a written opinion, thus Relator's only option is to file a Writ of Mandamus while the appeal is pending, in order to seek justice.

INTRODUCTION

Eric Drake shall be referred to hereon as Petitioner, Relator, or Drake. This case presents the kind of extraordinary circumstances in which this Court exercises its discretionary authority to issue a writ of mandamus. The writ of mandamus should issue because the Fifth Circuit's refusal to acknowledge beyond a reasonable doubt evidence, which proves that the Relator's case has merit, Respondents abruptly and wrongfully determined that the Relator's case is supposedly frivolous. Since the Fifth Circuit order is contrary to common legal sense, the non-issuance of an opinion contravenes a clearly applicable rule of procedure and effectively thwarts this Court's decision to decline review of a petition for writ of certiorari. Thus, before the Respondents file their final order, the Relator's only option is to: 1). File a motion to stay in the district court, and Fifth Circuit, which the Relator has done so; 2). File a motion for a Writ of Mandamus. However, without the district court and circuit court's denials, the Relator could not file in this Court a Stay of the proceeding in the Fifth Circuit.

FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED

I. RELATOR'S INJURY AT NORDSTROM DEPT. STORE

On March 16, 2016, the Relator was injured by an employee of Nordstrom during a nose waxing procedure. Relator never having the procedure asked Nordstrom's employees whether the waxing was painful. Several of the Nordstrom's employees assured the Relator that the procedure was easy and painless. (This can be proven beyond a reasonable doubt). The waxing of the nose requires that wax is placed in the nostril with what appears to be a pop-stick. The wax on the stick is pulled out of the nostril quickly in a downward motion, Relator wasn't advised of this procedure in advance. The Relator's medical experts' medical states the Relator suffered an injury to his neck by Nordstrom's waxing.

Additionally, Relator's medical experts report states that the waxing procedure was the cause of Relator's injuries, which confirmed causation. After reporting the accident to Blake Nordstrom, the company hired investigators to harass the Relator, and shut down the Spa where the accident occurred to cover up and hide potential employees who were witnesses. Relator tried to work with Nordstrom to settle the issue, and to obtain the names of the persons involved, but Nordstrom refused to provide any names to the Relator. After not being able to settle the matter, the Relator filed suit in the Southern District of Texas.

Unfortunately, the Relator suffered a rupture of his L3/L4 disc that required surgery and other medical treatment. Relator filed a motion for partial nonsuit on January 11, 2017. The district court's record and the appeals record shows compelling evidence that Nordstrom's attorneys were untruthful to the Relator and to the district court concerning Nordstrom Inc. The compelling evidence is a tape recording made by the Relator with a Nordstrom lawyer who advised the Relator that Nordstrom Inc was not a proper defendant in the district court's case. After further investigation into the matter, the Relator discovered Nordstrom Securities and Exchange Report. This report refutes the allegation that Nordstrom Inc was not a proper defendant. However, by then the district court was convinced that Nordstrom Inc was not a valid or proper defendant in the district court proceeding because this is what the lawyers who represent Nordstrom advocated.

Of course, the district court is going to believe an officer of the court over a *pro se* litigant, however, when the Relator filed the complete Securities and Exchange Report into the district court's record for review as proof that Nordstrom Inc is a proper defendant the district court should have reversed its previous ruling on May 1, 2017, but the court refused to do so. *See App. Ex. F.*

Having no other recourse, the Relator filed an appeal in the Fifth Circuit Court of Appeals in New Orleans, Louisiana. The Relator filed his brief on September 14, 2017. *See App. Ex. D.* Mysteriously, the district court went beyond

its legal ability to do so, filed a denial of the Relator's IFP on October 5, 2017. But by then the district court had lost its jurisdiction to deny the IFP. In addition, suddenly the Relator's IFP had missing pages which is impossible because the Relator check such a document closely. The Fifth Circuit suspended briefing [which gave the Real Party in Interest] plenty of time to file their reply. It is the Relator's legal opinion that the district judge was attempting to force the Relator's into filing another IFP. Case law reveals that judges normally will grant the IFP, but then declare the appeal as being frivolous. It is the Relator's opinion that the district judge and Nordstrom's attorneys, possibly with the help of those in the Fifth Circuit had already hand picked a judge waiting to act once the Relator filed his new IFP. Rather than falling into this ambush, the Relator asks members of his church and friends for the filing fees because he is disabled and on a fixed income.

The filing fees were paid in October of 2017. But the Fifth Circuit was evasive in putting the case back on the docket, giving the Real Party in Interest even more time. After the Relator filed several complaints, the appeal was put back on the record but the Real Party in Interest did not file a timely brief showing any case law or arguments that the Nordstrom Inc was not a proper defendant to Drake's person injury case. Nordstrom's attorneys cannot disprove that the Nordstrom Inc is not a proper defendant in a case against Nordstrom Department Stores. Judges Southwick, Higginson, and Dennis on December 28, 2017 issued an order citing that the Real Party in Interest filed deficient and untimely pleadings. But the Respondents also cited that the appeal was frivolous in light of overwhelming evidence that proves the appeal has merit. The Respondent in a short half page order requests the Relator to explain why he should not be ordered to pay the Real Party in Interest double cost and damages. Of course, this is absurd in a case where the Realtor's appeal is supported with compelling, beyond a reasonable doubt evidence. Thus, the Relator files this Mandamus because the

appeal is still pending in the Fifth Circuit. Moreover, there would be no means for the Realtor to file in this Court without an opinion from the Fifth Circuit Court.

II. REALTOR'S CONDUCT IN THE DISTRICT COURT.

The Realtor filed suit in the Southern District of Texas against the Real Party in Interest for personal injuries and other damages. However, the Relator had several medical emergencies that prevented him from continuing the litigation. Three of the most experienced neurosurgeons in the United States determined that Relator had to undergo surgery to recover from the pain and numbness that he was experiencing.

Relator filed a motion for partial nonsuit because Nordstrom's legal counsel alleged that Nordstrom Inc was not a proper defendant. Relator actually tape recorded the conversation because the Relator is not an officer of the court, thus courts generally will not take the word over a *pro se* litigant if a lawyer argues something different. However, after speaking with a few attorneys regarding whether or not Nordstrom Inc was a viable defendant, they referred Relator to Nordstrom's Securities and Exchange Report, which confirmed that Nordstrom's attorneys was untruthful to the Relator and the district court. But the district court wasn't interested in the fact that Nordstrom's lawyers were deceitful to the court. In fact, the Relator filed a complaint with the Texas Bar Association, and the State Bar quickly dismissed the complaint in light of the evidence and the conduct of Real Party in Interest attorneys. This is typical of the State Bar Association in Texas unless another attorney or judge files the complaint it isn't given much attention. Relator attached a copy of the tape recording where the attorney is clearly giving the Relator false and misleading information about Nordstrom Inc.

The district court dismissed Nordstrom Inc with prejudice, this would make it impossible to file suit against Nordstrom again if the proper defendant has been

dismissed with prejudice. The Relator filed a Rule 60 motion to reconsider however the district court denied the motion to reconsider on May 1, 2017. **App. Ex C**, and the Relator filed a notice of appeal to the Fifth Circuit on May 3, 2017.

III. RELATOR'S CONDUCT IN THE FIFTH CIRCUIT COURT OF APPEALS WAS NOT SANCTIONABLE.

The Relator's brief was timely filed with citations and references to the clerk's record. The Realtor referred to the objective evidence, (Nordstrom's Securities and Exchange Report), which clearly shows that the district court was in error by dismissing Nordstrom Inc with prejudice. *See App. Ex. D.*

In order for the Respondent to order sanctions against a party, the party could have failed to follow through with an order by the court, or failed to file responses timely, which none of these circumstances would be applicable to the Relator's conduct in the Fifth Court of Appeals.

Sanctionable conduct might also include failing to explain how the trial court erred or to present cogent or clear arguments for reversal. The Relator was precise in his argument of how the district court failed to recognize compelling evidence, which the Respondents apparently likewise failed to see. Relator cited relevant and applicable authority, and his arguments were relevant and legally illogical. However, regarding sanctionable activity, it is the Real Party in Interest who failed to argue their case in the Fifth Circuit properly, filed untimely pleadings, and misrepresented facts to the district court, and created delays by filing deficient pleadings before filing a sub-standard poorly written pleadings.

The Respondents failed to show even the slightest indication how the Relator's appeal is frivolous. The district court also called the Relator's appeal frivolous, but neither did the district court provide any proof or points as to how the Realtor's case is allegedly frivolous. There must be more than empty allegations to prove that pleading are frivolous, there must be facts and evidence.

IV. RELATOR'S APPEAL PENDING IN THE FIFTH CIRCUIT COURT COULD NOT POSSIBLY BE CONSIDERED FRIVOLOUS.

The Relator's appeal is not frivolous by any legal standards, and could not be considered as frivolous by an impartial tribunal.

Since the Respondent failed to provide a written opinion of at least a page or two of how the Relator's appeal is allegedly frivolous, or cite any deficiency in the Relator's pleadings or the brief, a reasonable ordinary prudent person would have to conclude that the Respondent's ruling is not objective, impartial, or legally sound—and that the December 28, 2017 order is frivolous because there is no basis for the order regarding the Relator. *See App. Ex. A.*

It appears that the Respondents are attempting to savage the accusations of the district court judge who said in his February 8, 2017 order of dismissal, "Nordstrom Inc "would be in any way, shape, or form responsible for the Plaintiff (') s injuries" or "should be considered as a party" to the suit.'" *See App. Ex. B.* Of course, the evidence that the Relator filed into the district court's record proves that the district court judge was completely incorrect. *See App. Ex. F.* Relator annexed to Appendix a CD of the entire Nordstrom report. It's voluminous.

Apparently, the Respondents surmised that it would be much easier to continue a pattern of abuse by claiming that the Relator's appeal is frivolous without lifting a hand in writing one paragraph as to how the appeal is frivolous. Respondent's treatment of the Relator is on account of his race and he is *pro se*.

It is interesting that Judge Leslie H. Southwick was assigned to the Relator's appeal, being that there was opposition to his nomination at the Fifth Circuit because of his racially intolerant and homophobic ways. As reported, the district court judge and his family has ties to the Klan, and Mississippi Judge Leslie Southwick appears to be hand picked for the Relator's appeal in the Fifth Circuit. In the *Richmond* case, Judge Southwick opinion was to uphold of the

decision of the Mississippi Employee Appeals Board to reinstate a white state employee (Richmond) who was fired for an incident of referring to a black co-worker as a “good ole nigger” outside of the co-worker's presence.

Pursuant to the Fed. R. App. P. 38. An appeal is frivolous if the arguments in support of it are wholly insubstantial and the outcome is obvious from the start. See *Cronin v. Town of Amesbury*, 81 F.3d 257, 261 (1st Cir. 1996) (per curiam). Put another way, an appeal is frivolous when the appellant's legal position is doomed to failure—and an objectively reasonable litigant should have realized as much from the outset. *Toscano v. Chandris, S.A.*, 934 F.2d 383, 387 (1st Cir. 1991). Being that the Relator’s appeal was not doomed to failure, but supported by objective evidence that Nordstrom’s attorneys could not refute and it supports the Relator’s argument in his appeal pending in the Fifth Circuit. The evidence is so compelling that not even the Real Party in Interest can controvert it.

This is the reason why Nordstrom’s attorneys could not file a brief that controvert the Relator’s brief, because their brief would have to admit that the Relator is correct. However, by the Respondents alleging that the Relator’s appeal is frivolous, the Real Party in Interest does not need to concede to a *pro se* litigant. This mandamus also provides a snap-shot of how U.S. appellate court treats *pro se* nonwhite litigants and in the American judicial system.

"[A]n appeal can be weak, indeed almost hopeless, without being frivolous" *Lallemand v. Univ. of R.I.*, 9 F.3d 214, 217-18 (1st Cir. 1993).

Indeed, an appeal is frivolous only if the results are obvious, or the arguments of error are wholly without merit. *Id.* In this case, there is neither regarding Relator’s appeal, and though Judge Higginson graduated from Harvard University *summa cum laude* he is was unable to write a single paragraph as to how the Relator’s appeal is frivolous. The fact that Higginson is incapable of citing even one reason how the Relator’s appeal is frivolous—is just cause to re-

quest recusals and the filing of this writ for Mandamus for relief. Of course, when allegations are made that an appeal or pleading is frivolous, and when the advocator of the criticism is unable to cite even one element of how the pleading or appeal is frivolous, is a sign that the appeal or pleading could not be frivolous.

An appeal may be frivolous when an appellant grounds his appeal on arguments or issues that are beyond the reasonable contemplation of fair-minded people, and no basis for reversal in law or fact can be or is even arguably shown, and may be frivolous as argued when an appellant has not dealt fairly with the court, [or] has significantly misrepresented the law or facts. *Abbs v. Principi*, 237 F.3d 1342, 1345 (Fed. Cir. 2001) (internal citations omitted). None of these issues are applicable to Relator's appeal pending presenting in the Fifth Circuit, and if so, the Respondents silent confirms this argument. *See App. Ex. A.*

Federal appellate courts can dispose of an appeal without citing or providing an opinion, this is one of the issues cited in the Relator's writ that should be closely examined by this Court, because if federal justices were required to provide a written opinion, they would not be able to hide behind a dismissal without the showing of how the appeal is frivolous. This type of conduct sometimes brings out the worse in men who wishes to assist other judges or their friends by merely dismissing an appeal as frivolous, which is the case at hand. But the Texas Supreme Court made a comment that coincides with this issue that is worth reprinting:

"We previously held that a trial court may, in its discretion, grant a new trial in the interest of justice." However, for the reasons that this court has come to, we believe that such a vague explanation in setting aside a jury verdict does not enhance respect for the judiciary or the rule of law, detracts from transparency we strive to achieve in our legal system, and does not sufficiently respect the reasonable expectations of parties and the public when a lawsuit is tried to a jury. Parties and the public generally expect that a trial followed by a jury verdict will close that trial process... the parties and public are entitled to an understandable, reasonably specific explanation ..."

V. REASONS WHY THE WRIT SHOULD ISSUE

Because a writ of mandamus is “a drastic and extraordinary remedy,” Relator must demonstrate three things: (1) “his right to issuance of the writ is clear and indisputable”; (2) he has “no other adequate means to attain the relief”; and (3) “the writ is appropriate under the circumstances.” *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380-81 (2004). “These hurdles, however demanding, are not insuperable.” *Id.* at 381. “[T]he mandamus power is not some vestigial remnant of a bygone era, to be wrapped in cellophane and left untouched by human hands.” *In re Recticel Foam Corp.*, 859 F.2d 1000, 1005 (1st Cir. 1988).

Mandamus is particularly appropriate in three instances, each of which is present here. First, “jurisprudence ... urge[s] greater appellate oversight through use of mandamus,” because “federal judges are placed in an unusual lawmaking role as creators of federal common law,” and presents “risks of adverse foreign policy consequences.” *Balintulo v. Daimler AG*, 727 F.3d 174, 187 (2d Cir. 2013) (emphasis added). Second, mandamus has been traditionally employed “to confine the court ... to a lawful exercise of its prescribed jurisdiction.” *Cheney*, 542 U.S. at 381; see also, *In re U.S.*, 426 F.3d 1, 5 (1st Cir. 2005) (“judicial authority ... is a classic exceptional instance justifying interlocutory intervention”). Third, “in free-speech cases interlocutory appeals sometimes are more freely allowed, and writs of mandamus sometimes more freely issued,” *Union Carbide Corp. v. U.S. Cutting Serv., Inc.*, 782 F.2d 710, 712 (7th Cir. 1986), where the challenged order restricts speech, *In re Perry*, 859 F.2d 1043, 1047 (1st Cir. 1988).

By Respondents is wrongfully attempting to dismiss Relator’s appeal that has merit by alleging it is frivolous could be considered as *free-speech* and constitutional rights violation. This Petition involves all three of these elements. Whether Relator is prevented from filing petitions or as in this case, Respondents are attempting to dismiss a case with merit it can be viewed as a violation of free

speech, because the results are the same. The Writ should therefore be granted.

VI. RELATOR HAS A CLEAR AND INDISPUTABLE RIGHT TO ISSUANCE OF THE WRIT.

To demonstrate a “clear and indisputable” right to mandamus relief, Drake must show “that the challenged order is palpably erroneous.” *In re Pearson*, 990 F.2d 653, 656 (1st Cir. 1993). Relator can meet his burden by demonstrating that Nordstrom’s Securities and Exchange Report is unwavering in proving that Nordstrom Inc was and still is a proper defendant in the Relator’s district court litigation. Moreover, when the district court denied the Relator’s IFP it was without jurisdiction to do so, “the lower court was clearly without jurisdiction, or exceeded its discretion to such a degree that its actions amount to a usurpation of power.” *In re Recticel Foam Corp.*, 859 F.2d at 1006 (internal quotes omitted).

Relator refers the Court to **Appendix F**, and the CD disc annexed, which is a complete copy of Nordstrom’s Securities and Exchange Report. On page 1 through 12, 17, 19 and Page 45 verifies that Nordstrom is a proper defendant. On page 12 of the report, it clearly lists the retail stores that Nordstrom Inc control, and Texas is listed in as one of those states in alphabetical order, and on page 13, under “Legal Proceedings.” When the Relator spoke with Blake Nordstrom, (President of Nordstrom) he said that the company is self-insured. On page 45 of the Securities Report, is a heading of: Self-Insurance: it states that “we” (Nordstrom Inc) retain a portion of the risk for certain losses related to . . . and other liability claims. Of course, the Plaintiffs claim would be considered under the heading of “other liability” claims. On page 19, the report supports the fact that Nordstrom Inc controls Nordstrom’s full-line stores like the department store the Plaintiff was injured in, Nordstrom Racks stores, and other owned retail stores by Nordstrom. This report verifies that Nordstrom Inc is liable for at least a portion of the Plaintiffs injuries, which the Respondent’s 12/28/17 order should be vacated.

VII. REASONS WHY MANDAMUS IS APPROPRIATE REGARDING THE APPEAL PENDING PRESENTLY IN THE FIFTH CIRCUIT

This writ of mandamus is filed regarding *Drake v. Nordstrom Department Stores et al*, a case that is presently pending in the Fifth Circuit Court of Appeals, in Orleans Parish, Louisiana on appeal.

The evidence that the Relator filed into the district court's record and is in the Fifth Circuit record would make it impossible for the Relator's appeal to be frivolous. See **App. Ex. A** and **App. Ex. F**. It will be equally impossible for the Real Party in Interest to be successful in any district court regarding the Relator's personal injury claims because of the evidence and expert witness testimony.

The only reason why the Relator has to file this mandamus in this Court is because the Respondents are abusing their judicial powers to harm the Relator, only because of his race, African-American. Nordstrom's Securities and Exchange Report proves that the Respondents are incorrect and supports this Court taking action to intervene in the Fifth Circuit proceedings. The conduct of the Respondents is a violation of the Relator's due process rights under the 14th Amendment, and 42 USC §1981, for citizens to have access to file suits and be a party to suits, because the Respondents have wrongfully determined that Relator's appeal is frivolous, it is just as if the Respondents would not allow the Relator access to the courts. Relator is not a lawyer, but he has reversed several state court dismissals—but the Respondents are not going to allow this to happen—and because the federal appellate system allows appeals courts to dismiss cases they claim are frivolous without an opinion, it is a convenient way to dispose of the Relator's appeal, and for the Respondents to hand out awards of double cost and damages to the Real Party in Interest who failed to even file a timely responsive brief, and its other pleadings were according to the Respondents were deficient. Therefore, Mandamus in this case is certainly appropriate.

A. There Is A “Reasonable Probability” That The Court Will Grant Relator’s Writ of Mandamus And A “Fair Prospect” That The Court Will Agree That Nordstrom’s Securities and Exchange Report Verifies That Relator’s Appeal Has Merit.

Real Party in Interest failed to be successful in their responses to the Relator’s brief [See App. Ex. E], but the Respondents came to the district judge’s and Nordstrom’s lawyers rescue by alleging that the Relator’s appeal is frivolous in light of overwhelming evidence. See App. Ex. F. Respondent’s are unable to make Nordstrom’s own securities report disappear, but they can ignore it to harm the Relator. However, the report and App. Ex. D, speaks volumes as to whether the Relator’s appeal is frivolous. The Respondents behavior is undoubtedly biased against Relator, this type of conduct also impeaches the sincerity of the judicial system. But the Court need not resolve these disputes to grant the application to Stay, because Nordstrom’s Securities and Exchange Report [App. Ex. F, and the disc of the full report] cannot be controverted. Moreover, there would be no legal basis for the Respondents to ignore this evidence because it was properly filed into the district court’s record and is part of the record for the Fifth Circuit.

1. *Unless the Court takes immediate action, irreparable harm will occur to the Applicant absent a Stay.*

Those who taken a sworn oath to protect the public is placed on a higher standard. However, racial hatred distort the idea of blind justice and in turn can be the source for ignoring evidence that would free a person from prison that is of a different race, or consider a case frivolous that has merit as in the case before the Court. The district court’s aim was to assist the Real Party in Interest, because the judge has ties to the law firm that is representing Nordstrom.

However, unless the Court take immediate action, the Respondents will harm the Relator by burdening him with unfair and unnecessary cost, and damages even though the Respondents admits that (Nordstrom) the Real Party in

Interest attorney's pleadings were deficient and untimely. Relator only hope is for this Court to act immediately and grant the Relator's Writ of Mandamus. Otherwise, it would be impossible for the Relator to obtain relief from any other source. The actions of the Respondents are not about impartiality or preserving honor in the judiciary, but the misuse of their judicial powers to inflict financial burden on the Relator for filing a brief that Nordstrom's attorneys are unable to competently reply.

VIII. RELATOR HAS EXHAUSTED ALL ALTERNATIVES AND HAS NO OTHER ADEQUATE MEANS TO AVOID IRREPARABLE HARM.

Prior to filing this Petition, Relator exhausted all other avenues for relief. When the district court dismissed incorrectly Nordstrom Inc with prejudice, the Relator sought reconsideration and filed compelling/objective evidence (**App. Ex. F** and the entire report) into the district court's docket that could not be argued with, but the district court denied the Relator's Motion to Reconsider (Rule 60). *See App. Ex. C.* Drake thereafter filed an appeal with the Fifth Circuit.

Relator filed his brief, [**App. Ex. D**] but within only 9-days before the Real Party in Interest was to file their responsive brief, they filed rather motions and other pleadings that the Respondents has described as deficient and untimely. In order to try and dispose of the Relator's appeal, the district court judge filed a denial of the Relator's IFP after the court had lost its jurisdiction over the case.

It is evident to the Relator now that the district court judge sought to harm the Relator by filing a motion denying his IFP when the district court did not have jurisdiction, a violation of due process, 14th amend. rights, and violation of the Canons for a judge to file a false order. But the Fifth Circuit did not hold a hearing on the matter; rather the court stayed the appeal and informed the Relator that the district court had denied his IFP. Even though the Relator explained to the Fifth

Circuit that the distinct court did not have authority or jurisdiction to sign the order, the Fifth Circuit clerk's office ignored the Relator and left only one of two options: file another IFP or pay the fees.

At that point, the Relator understood that this was a possible *trap* for the Relator to file another IFP, because pursuant to § 1915(d), a litigant that files an IFP as indigent is subject to have his or her cases dismissed and labeled frivolous even if the case isn't frivolous. This was a means to quickly dispose of Drake's appeal without the Real Party in Interest filing a brief, and surly without Nordstrom admitting that the Relator's arguments in his brief were correct.

The Relator asks church members and other friends for the filing fees and paid the fee. Yet, after the fees were paid the Fifth Circuit was evasive and reluctant in putting the appeal back on the docket to allow the Real Party in Interest as much time as possible to file whatever they had planned to file. Relator had to file several complaints with the clerk of court, but two weeks after the fees were paid the case was finally put back on the courts docket.

The Real Party in Interest never filed a responsive brief in reply to the Relator's brief, but filed a motion [App. Ex. E] that was deficient, untimely, and this should have resulted in a ruling by the Respondents against Nordstrom. However, the Respondents saved the Real Party in Interest of loosing to a *pro se* litigant by simply calling Drake's appeal frivolous to cover-up the poorly drafted pleadings of the Real Party in Interest (Nordstrom) attorneys, but more importantly to come to the same conclusions of dismissing the appeal as allegedly being frivolous as the district court desired. In addition, the Respondents were not concerned about the behavior of Nordstrom's attorney's of providing false and misleading information to the district court and the Relator that was provable by actual tape-recorded conversations between Drake and Nordstrom's attorneys.

Short of mandamus, an end-of-case appeal is now Relator's only recourse. However, where, as here, there is "something about the order, or its circumstances,

[that] would make an end-of-case appeal ineffectual or leave legitimate interests unduly at risk,” mandamus is warranted. *In re Pearson*, 990 F.2d at 656. An end-of-case appeal is not a viable remedy and the Respondents will also burden the Relator with costs and damages when the appeal is not frivolous to try and harm the Relator.

Furthermore, allowing the Respondents to punish the Relator because his pleadings proves his case, more so than Nordstrom’s attorneys would turn back our modern judicial system back to the days of slavery. The very act is affront to the Constitution and thus warrants immediate intervention by this Court.

Additionally, Respondent is attempting to use the fact that federal appellate courts do not have to provide written opinions, unlike state appellate courts, which only give fuel injustices just like the legal circumstance before this Court for appeals court to dismiss cases and grant cost and damages to assist the other party or for any reasons. This case is even more grievous when the Respondents are trying to take advantage of a nonlawyer who is disabled and *pro se*. This type of conduct should not be allowed in any court, especially a federal appellate court.

In addition, while “the general burdensomeness of litigation, standing alone,” does not warrant mandamus intervention, *In re Pearson*, 990 F.2d at 661 (emphasis added), “[t]he harm here goes far beyond the mere burden and expense of protracted, but the harm here is to the integrity of our judicial system by public view of the American judicial system when justices in a federal appellate court conspires with a district judge and the Real Party in Interest to defeat the Relator who is *pro se* by making false claims that his appeal is frivolous when it isn’t.

If this Court does not act, the Relator will receive no justice from the Respondents, and if there is no justice then there can be no law—without laws how can we proclaim that our nation is any better than dictators who line of suspects and put them to death. In a way, Respondents are attempting to execute

the Relator, because ordering the Relator to wrongfully pay unwanted cost and damages when the Respondents fully knows that Drake is disabled and living below the U.S. poverty level is a sort of assassination—and its wrong! Because the Respondents will not provide a written opinion, it is highly unlikely that this Court will accept or review any appeals from the Respondents final judgment. Requiring Relator to undertake such great cost, only to vindicate a district courts judge's wrongful judgment, would chill the Judicial Canons, the Constitution, the Bill of Rights, and integrity of the judicial system and warrants mandamus intervention. *In re Perry*, 859 F.2d at 1047-48.

In looking at this matter in another way, the challenged December 28, 2017 order itself does not directly prohibit speech, one could argue it is not a First Amendment violation, but it does punishes the Relator, a black man, for being right in his arguments and pleadings, which writings are “speech” and it certainly does not negate the need for mandamus. *In re Asbestos Sch. Litig.*, 46 F.3d at 1295. “The mere “threat of such liability” has an “inhibiting effect” on speech, and justifies mandamus intervention even where “the district court’s ruling did not directly prohibit” speech. (Judge Alito) *Id.*; see also, *Nat'l Nutritional Foods Ass'n v. Whelan*, 492 F. Supp. 374, 378-79 (S.D.N.Y. 1980) (“The threat of being put to the defense of a lawsuit ... may be as chilling to the exercise of First Amendment freedoms as fear of the outcome of the lawsuit itself”).

IX. MANDAMUS IS APPROPRIATE UNDER THE CIRCUMSTANCES.

For all the reason asserted herein mandamus is appropriate to prevent injury to the Relator and to possibly bring forth case law in the federal appellate courts to prevent judges from dismissing cases without providing a written opinion.

The clerk mailed the Respondents December 28, 2017 order to the Relator right before the New Years holidays. Nordstrom's attorneys knew what the order

said because they were notified, but the Fifth Circuit sent the order to the Relator by regular U.S. mail. The Relator did not receive a copy of the order until it was practically too late to file this writ. The idea was to give the Relator as little time to respond as possible, quite the opposite as pled herein when the Fifth Circuit gave Nordstrom's attorneys over 45-days to file its brief, and they failed to file a brief of any kind but an out of time motion. **App. Ex. E.**

Therefore the need for this Court to intervene is necessary to prevent the Respondents from abusing their discretion, and authority against the Relator. But more importantly the likely hood of this same circumstances reoccurring is very probable.¹ Federal appeals courts should be a means to correct the lower courts wrongful acts, and not an outlet to assist the lower courts in wrongfully pursue of injustices and punishing non-lawyers for exercising their rights to bring their complaints to the courts.

¹"Advisory mandamus ... is appropriate when the issue presented is novel, of great public importance, and likely to recur." *United States v. Horn*, 29 F.3d 754, 769-70 (1st Cir. 1994). "When advisory mandamus is in play, a demonstration of irreparable harm is unnecessary." *In re Sony BMG Music Entm't*, 564 F.3d 1, 4 (1st Cir. 2009).

X. RELATOR'S APPEAL DO NOT QUALIFY AS FRIVOLOUS

In addition to granting the Relator's Writ for Mandamus, he asks this Honorable Court to order the Respondents to file a detail response to the Relator's petition. The disposition of the Respondents ignoring compelling evidence and to assist the Real Party in Interest by alleging that the Relator's appeal is frivolous when evidence proves beyond a doubt that the appeal *is not* frivolous is not only erroneous, but also a grievous and forcible detainer—or an aggressive rape of the Relator's constitutional, due process, and equal protection rights. It is also an abuse of the Respondents judicial authority.

However, in this case it is used as a tool to cause extreme financial burden on the Relator—in effect, to punish the Relator for being right. This should not be allowed to occur just because the Relator is of African decent and the law firm that is composed of predominantly white lawyers were unable to competently answer the Relator's brief. Or shall the Relator say, refused to file a reply brief because to do so would only reinforce the Relator's argument in his brief.

Historically, the Fifth Circuit has reversed and remand cases where the district court dismissed *pro se* litigant's cases alleging that the case was frivolous. *Alfred v. Corr. Corp. of Am.*, No. 09-30614, Fifth Circuit, 437 Fed. Appx. 281; 2011 U.S. App. LEXIS 11658.² The Fifth Circuit in *Alfred* stated noted whether the district court inappropriately resolved genuine issues of disputed fact. Yet in

²An appellate court reviews a dismissal of a complaint as frivolous for abuse of discretion. If the plaintiff could have more fully pleaded his complaint, the appellate court also reviews the district court's refusal to conduct a hearing or submit a questionnaire for abuse of discretion. In reviewing for abuse of discretion, the appellate court may consider whether (1) the plaintiff was proceeding *pro se*, (2) the court inappropriately resolved genuine issues of disputed fact, (3) the court applied erroneous legal conclusions, (4) the court has provided a statement explaining the dismissal that facilitates intelligent appellate review, and (5) the dismissal was with or without prejudice.

the case before the Court, the district court was convinced it was correct, because of the Real Party in Interest untrue statements that Nordstrom Inc wasn't a proper defendant, even after the Relator filed the report into the record. Thus, on the face of what the Fifth Circuit has opinioned, the district court in the Relator's case abused its discretion, and the Respondents also abused their discretion. Since the Relator is complaining about the conduct of the Fifth Circuit, it has not provided a statement explaining the dismissal that facilitates intelligent appellate review. The Fifth Circuit has ignored its own previous rulings. And of course, the Relator filed the appeal because the district court dismissed Nordstrom Inc with prejudice. According to Alfred's case before the Fifth Circuit, this was one of five elements that the court generally considering whether there is a statement of explanation.

The Relator's appeal has arguable basis fact, though Nordstrom's Securities and Exchange Report is a solid piece of evidence, since the district court and the Fifth Circuit are not considering this evidence—one could say, it's evidence that certainly infer an arguable basis in fact. *Tweedy v. Boggs*, No. 92-1281 Fifth Circuit, 1993 U.S. App. LEXIS 40937. In *Tweedy*, the district court dismissed all of *Tweedy's* claims as frivolous, pursuant to 28 U.S.C. § 1915(d). But the Fifth Circuit opinioned that the district court abused its discretion in dismissing some of *Tweedy's* claims, and affirmed in part, and reversed and remand in part.

In the case of Elijah Alfred Alexander, Jr., he challenged the dismissal of with prejudice, pursuant to 28 U.S.C. § 1915(d), of his *pro se*, in forma pauperis civil rights action. The order was with prejudice. And the Fifth Circuit vacated the district court's order and remand. Relator likewise challenged the dismissal of with prejudice that the district court signed on February 8, 2017. It is the Relator's position that it would be difficult for any person remotely understand case law and appeals not to agree that the conduct of the Respondents are unprecedented from the opinions of that Court in its past, and to consider the Relator's appeal frivolous is a detriment to an intelligent judicial appeals court.

Factually, the Relator's appeal would not qualify as being frivolous, even if the Fifth Circuit used §1915(d) as a standard to determine if the appeal was frivolous. Indeed, most of the reversals historically from the Fifth Circuit are a direct result of the district court dismissing a *pro se* or inmate's §1983 or civil rights case. *United States v. Ajaegbu*, No. 97-10092, Fifth Circuit, 1998 U.S. App. Lexis 39249; *Patton v. Jefferson Parish Sheriff's Office*, No. 95-31146, Fifth Circuit, 1996 U.S. App. Lexis 44084; *Denton*, 504 U.S. at 34, 112 S. Ct. at 1730.

The district court would not allow the Relator to amend his pleadings, but the issue is whether Nordstrom Inc is a proper defendant, and Nordstrom Inc is a valid defendant in Relator's personal injury case against Nordstrom.

This Court, the U.S. Supreme Court, in *Denton v Hernandez* reversed and remand, overturning the dismissal of *Denton's* complaint.³ The standards set by the Fifth Circuit are the same standards that this Court are guided by. But the conduct of the Respondents appears to be more "*personally influenced*" than following judicial guides. *Denton v. Hernandez*, No. 90-1846, Supreme Court of The United States, 504 U.S. 25; 112 S. Ct. 1728; 118 L. Ed. 2d 340; 1992 U.S. LEXIS 2689; 60 U.S.L.W. 4346; 92 Cal. How could frivolousness be obvious when the Relator's appeal is supported by evidence that the Real Party in Interest is incapable of controverting—it cannot. "An appeal is not frivolous if the results are not obvious." *Hyde v. Baker*, No. 92-15863, No. 92-15867, No. 92-15870, Ninth Circuit, 24 F.3d 1162; 1994 U.S. App. LEXIS 18631:

"While there is evidence supporting the imposition of joint and several liability for sanctions on appellants, the evidence is not overwhelming. Therefore, we decline appellees' request to impose Rule 38 sanctions."

³With respect to [t]he case being dismissed with or without prejudice, the reviewing court should determine whether the district court abused its discretion by dismissing the complaint with prejudice or without leave to amend if it appears that the allegations could be remedied through more specific pleading, since dismissal under § 1915(d) could have a *res judicata* effect on frivolousness determinations for future in forma pauperis petitions.

See, e. g., *Bryant v. Civiletti*, 214 U.S. App. D.C. 109, 110-111, 663 F.2d 286, 287-288, n. 1 (1981) (§ 1915(d) dismissal for frivolousness is *res judicata*); *Warren v. McCall*, 709 F.2d 1183, 1186, and n. 7 (CA7 1983) (same); cf. *Rogers v. Bruntrager*, 841 F.2d 853, 855 (CA8 1988) (noting that application of *res judicata* principles after § 1915(d) dismissal can be "somewhat problematical").

The Ninth Circuit in the *Hyde* case, like the majority of federal appeals circuit courts are not focus on giving out Rule 38 sanctions against *pro se* litigants for unfounded reasons.⁴ But in the Relator's case the Respondent's goal was not to undertake justice, but to allow the Real Party in Interest to obtain cost and fees when it was not justified and when the attorneys for Nordstrom refused to file a responsive brief—but only motions for delay purposes. Relator's conduct in the Fifth Circuit did not elicit Rule 38 sanctions.⁵

This Court, the United States Supreme Court, also reversed and remanded *Yazoo*, even though the district court dismissed *Yazoo's* case for alleged lack of subject matter jurisdiction. *Yazoo County Industrial Dev. Corp. v. Suthoff*, No. 80-1975., Supreme Court of the United States, 454 U.S. 1157; 102 S. Ct. 1032; 71 L. Ed. 2d 316; 1982 U.S. Lexis 505.

⁴Sanctions under FRAP 38 would not be imposed on attorney appealing from imposition of sanctions upon him under FRCP 11 and 28 USCS § 1927 since appeal could not be regarded as frivolous where, in fact, imposition of FRCP 11 and § 1927 sanctions had been reversed on appeal. *McMahon v. Shearson/American Express, Inc.* (2d Cir. N.Y. Feb. 14, 1990), 896 F2d 17, disapproved as stated in *Mareno v. Rowe* (2d Cir. N.Y. Aug. 6, 1990), 910 F2d 1043, disapproved as stated in *Simon DeBartolo Group, L.P. v. Richard E. Jacobs Group, Inc.* (2d Cir. N.Y. July 28, 1999), 186 F3d 157.

⁵Sanctions pursuant to Rule 38 would not be awarded against plaintiffs in fraudulent misrepresentation action, brought in United States District Court based on diversity of citizenship jurisdiction, who had appealed from District Court's award of summary judgment against them on grounds that their claims were time-barred under applicable state statute of limitations, notwithstanding that facts admitted by plaintiffs in their briefs left no uncertainty that period of limitations had passed, and counsel for plaintiffs had even conceded at oral argument that period of limitations had passed, since more egregious circumstances than these are required before Rule 38 sanctions will be imposed. *Rutherford v. Exxon Co., U.S.A.* (5th Cir. Tex. Sept. 28, 1988), 855 F2d 1141.

Sanctions under Fed. R. App. P. 38 and 28 USCS § 1927 for appeal of judgment against defendant in breach of contract action were not warranted because, although defendant's appeal failed, appeal was neither frivolous nor unreasonable or vexatious multiplication of proceedings. *Analysis Group, Inc. v. Cent. Fla. Invs., Inc.* (1st Cir. Mass. Dec. 9, 2010), 629 F3d 18.

⁵ An appeal on a matter of law is frivolous where none of the legal points are arguable on their merits. Allegation of frivolous appeal should not be made cavalierly; unfounded requests for sanctions are themselves frivolous and sanctionable. *Nordberg, Inc. v. Telsmith, Inc.* (Fed. Cir. Apr. 24, 1996), 82 F3d 394.

Attorneys' fees and double costs would not be imposed under Rule 38 against defendant in contract action based on diversity of citizenship who appealed from District Court's entry, pursuant to its authority under USCS Rules of Civil Procedure, Rule 54(b), of summary judgment on contract claim though defendant's counterclaim was still pending, since though defendant-appellant did not prevail on appeal, its pleadings could not be regarded as frivolous for purpose of Rule 38, and if appellant's brief was not as helpful as court would have liked, same could be said for that of appellee. *Schieffelin & Co. v. Valley Liquors, Inc.* (7th Cir. Ill. June 26, 1987), 823 F2d 1064.

Sanctions for filing frivolous appeal were not appropriate in action based on dispute over lease of satellite because, although appellant's arguments were rejected, they were not frivolous. *Columbia Communs. Corp. v. EchoStar Satellite Corp.* (4th Cir. Md. Jan. 25, 2001), 2 Fed Appx 360.

The Respondent's behavior could be looked upon as a political ploy to maintain the district court judge order, even if it means dismissing Relator's appeal. However, a § 1915(d) dismissal is not a dismissal on the merits, but rather an exercise of the court's discretion under the *in forma pauperis* statute. But the Respondents in their December 28, 2017 order did not specify under what statute or laws have they determined that the Relator's case is allegedly frivolous. Yet the standard of review, which denotes that the appeal might be frivolous because the party is representing themselves is prejudicial, and a failure of allowing equal protection to *pro se* litigants. It also give judges a license to dismiss *pro se* litigant cases wrongfully. Dismissal of the claims as frivolous was proper only if the facts alleged were clearly baseless, a category which encompassed fanciful, fantastic, and delusional allegations, whether or not there were judicially noticeable facts available to contradict them. *Denton v. Hernandez*, No. 90-1846, Supreme Court of the United States, 504 U.S. 25; 112 S. Ct. 1728; 118 L. Ed. 2d 340; 1992 U.S. Lexis 2689; 60 U.S.L.W. 4346.

However, the Relator's appeal is not a 28 USC § 1915(d) case. But even if it was, this Court, The U.S. Supreme Court, granted *Boag's* application for a writ of certiorari, reversing the order upholding the dismissal of his complaint, and remanded the case for further proceedings. *Boag v. MacDougall*, 454 U.S. 364; 102 S. Ct. 700; 70 L. Ed. 2d 551; 1982 U.S. LEXIS 56; 50 U.S.L.W. 3539

Relator filed an appeal to the district court's dismissal with prejudice against Nordstrom Inc, which was an error and an abuse of discretion once the Relator filed Nordstrom's Securities and Exchange Report into the courts record. After the Relator filed an appeal, and the Relator's brief was not deficient, the district court judge wrongfully signed and filed an order, when he knew he did not have jurisdiction to even file it. It is the Relator believe that Nordstrom's attorney's contacted the district court judge and informed him apparently that they needed to stop the Relator and most likely asked him to sign the frivolous order. In fact, in the order the judge states that he didn't have jurisdiction, but the district court judge also knew that by filing the order, being that the Relator is *pro se* that the Fifth Circuit would ignore this important fact, that the judge did not have jurisdiction, and demand Relator to file another IFP. It's call conspiracy.

And since the district court judge had clearly and erroneously sign an order that he knew and the clerk's at the Fifth Circuit knew was deficient, but in order to inflict misery on the Relator, the clerk and the court in general allowed it to happen, being that the Relator is an African American. When the Relator questioned the clerk of court secretary about the mater because the clerk of court refused to speak with the Relator, she hung up the telephone in the Relator's face after commenting, "File another IFP." (This conversation was tape-recorded). Likewise, after the Fifth Circuit was reluctant in putting the Relator's appeal back on the docket, this action was to give Nordstrom's attorney's as much time as possible to contrive how they might answer or not answer the Relator's brief, again clerk's had no answer why the appeal wasn't put back on the docket.

For the reason that the district judge understood that when he signed the order denying the Relator's IFP, he did not have authority or jurisdiction to do so, the district court's judge committed a crime and an unethical act. He should be impeached permanently and stripped of his judge ship. The district court judge in the Relator's opinion violated the Code of Conduct for United States Judges, Canon's 1, 2, 3, and 5. Relator listed also Canon 5 because essentially the district court judge lend his judicial authority to Nordstrom's attorneys to buy them time in the Fifth Circuit by filing an order to disrupt the Relator's appeal in favor of Nordstrom's attorneys. The filing of a fraudulent document in a courts record is a crime. The district court judge should be prosecuted.

The district court judge possibly violated the false claims act because he knew that the order of denying the Relator's IFP was a reckless disregard of the truth. False Claims Act (FCA), 31 U.S.C. §§ 3729 – 3733. And most certainly, Nordstrom's advising the Relator and the district court that Nordstrom Inc wasn't a proper defendant, yet the entity is a proper defendant is: (1) actual knowledge, (2) deliberate ignorance of the truth or falsity of the information, or (3) reckless disregard of the truth or falsity of the information.

It would appear to the Relator that the Respondents are willing to undertake whatever it would take in order to assure Nordstrom and their attorneys are successful. In such a case, Mandamus is the proper tool to stop the lower court's conduct until this Court can evaluate the facts of the case.

The Relator therefore asks this Court to order the Respondents to file with this Court a response of how the Relator's appeal is frivolous. Further, the Relator asks the Court to order the Respondents to furnish an explanation why they ignore the compelling evidence of Nordstrom's Securities and Exchange Report that establishes that Nordstrom Inc is a valid defendant in a lawsuit, where Relator was injured on the property of a Nordstrom's Department Store.

Additionally, the Relator respectfully asks the Court to order the Respondents to answer the following questions:

- a). Why didn't the Respondents question the Real Party in Interest attorneys regarding their conduct of providing false and misleading information to the Relator who is *pro se* and the district court.
- b). Explain the Respondents position of believing that the Relator should be assessed damages, in that that the Real Party in Interest attorneys deserved cost or double cost, and damages.
- c). That the Respondents should cite how the Relator failed in his appeal, his brief, and clear and consist explanations how Relator failed to do something or how the Relator's appeal is frivolous.
- d). Explain why the Respondents did not sanction the Real Party in Interest and their attorneys for filing deficient and untimely pleadings and making false statement and claims to the Relator and the district court.

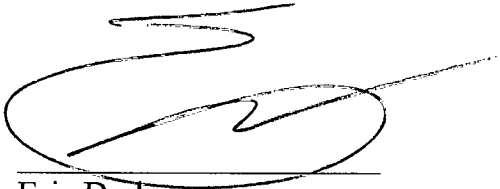
The Respondent's December 28, 2017 order is so contrary to an impartial tribunal that it bedrocks the ethical principles that should infer an objective and unbiased tribunal, thus this action warrants immediate correction. The order itself contradicts any logical legal principles, especially when the Respondent and the district court have objective evidence that clearly disproves the Relator's appeal is frivolous.

The Real Party in Interest never filed a responsive brief to the Relator's brief because they could not without conceding to the Relator. Rather, the Real Party in Interest filed motions with the Fifth Circuit, which were deficient, poorly written, and even untimely.

XI. CONCLUSION

For the foregoing reasons, this Court should grant the Relator's Writ of Mandamus, ordering the Respondents to file a reply that set by this Honorable Court, answering the questions above as set forth herein. Further, that the December 28, 2017 order should be vacated in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Eric Drake', written over a horizontal line.

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