No. 21 - _____

IN THE SUPREME COURT OF THE UNITED STATES

In re: Larry Klayman

Petitioner

On Petition for a Writ of Mandamus to the
United States Court of Appeals for the
Eleventh Circuit

PETITION FOR WRIT OF MANDAMUS

/s/ Larry Klayman
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QUESTIONS PRESENTED

1. Did the U.S. Court of Appeals for the Eleventh Circuit ("Eleventh Circuit") err by denying Larry Klayman, Esq. ("Mr. Klayman") admission pending the outcome of a bar disciplinary proceeding in the District of Columbia, thereby presuming him guilty until proven innocent and severely harming the interest of his clients?

PARTIES TO THE PROCEEDING

1. **Petitioner Larry Klayman**

The Petitioner Larry Klayman ("Mr. Klayman") is an attorney and a former federal prosecutor of the U.S. Department of Justice. Mr. Klayman is also the founder, and former chairman and general counsel of non-profit Judicial Watch and founder, chairman, and current general counsel of non-profit Freedom Watch. He has continuously been a member in good standing of The Florida Bar since 1977.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Mr. Klayman states that no parties are corporations.

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OPINIONS AND ORDERS ENTERED

On March 18, 2021, the Eleventh Circuit denied Mr. Klayman's application for admission to practice despite him continuously being a member in good standing of The Florida Bar for nearly forty five (45) years, based on a pending bar disciplinary proceeding in the District of Columbia. App. 0025. *See* Florida Supreme Court Certificate of Good Standing. App. 0095.

JURISDICTION

The Eleventh Circuit denied Mr. Klayman's application for admission on March 18, 2021. App. 0025. Pursuant to the Court's March 19, 2020 order regarding filing deadlines due to the ongoing COVID-19 pandemic, a Petitioner's Petition for Writ of Mandamus must be filed within 150 days from the date of the order, which is on or before August 16, 2021.[1]

RELEVANT LEGAL PROVISIONS

I. **Due Process Clause of the Fourteenth Amendment**: "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

[1] The exact date is August 15, 2021, which is a Sunday.

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.

II. **Due Process Clause of the Fifth Amendment:** "…nor be deprived of life, liberty, or property, without due process of law…."

III. **Sixth Amendment to the Constitution**: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

RULE 20.1 STATEMENT

There exists truly exceptional circumstances that mandate the issuance of the writ sought by Mr. Klayman in this matter. As set forth in detail below, Mr. Klayman was denied admission to the Eleventh Circuit based on an ongoing bar disciplinary proceeding in the highly

leftist and extremely politicized District of Columbia Bar. This is fundamentally wrong on two levels—first, it violates Mr. Klayman's sacrosanct due process rights as guaranteed to him under the Fourteenth and Fifth Amendments to the Constitution since it presumes him guilty until proven innocent, and second, even more importantly it violates his clients' right to counsel of choice as guaranteed under the Sixth Amendment to the Constitution.

On a more macro level, the Eleventh Circuit's decision is further evidence of the highly politicized nature of many courts today—the District of Columbia courts for sure, but also the Eleventh Circuit. This is, of course, highly improper, as it runs counter to the sole function of the court system, which is to provide a non-biased and fair resolution to everyone, regardless of political affiliation and ideological belief, based solely on the facts at issue and the relevant law. The result of this politicization is the those who happen to be conservatives are frequently discriminated against, that is "left out in the cold" by today's frequently dysfunctional legal system.

This has become so apparent that the Honorable Laurence Silberman of the U.S. Court of Appeals for the District of Columbia

Circuit recently penned a scathing dissent in *Tah v. Global Witness Publishing, Inc. et al,* 19-7132 (D.C. Cir.) addressing this new status quo, which is also manifest in the media and Big Tech:

> Although the bias against the Republican Party—not just controversial individuals—is rather shocking today, this is not new; it is a long-term, secular trend going back at least to the '70s. (I do not mean to defend or criticize the behavior of any particular politician). Two of the three most influential papers (at least historically), The New York Times and The Washington Post, are virtually Democratic Party broadsheets. And the news section of The Wall Street Journal leans in the same direction. The orientation of these three papers is followed by The Associated Press and most large papers across the country (such as the Los Angeles Times, Miami Herald, and Boston Globe). Nearly all television—network and cable—is a Democratic Party trumpet. Even the government-supported National Public Radio follows along.
>
> As has become apparent, Silicon Valley also has an enormous influence over the distribution of news. And it similarly filters news delivery in ways favorable to the Democratic Party. See Kaitlyn Tiffany, Twitter Goofed It, The Atlantic (2020) ("Within a few hours, Facebook announced that it would limit [a New York Post] story's spread on its platform while its third-party fact-checkers somehow investigated the information. Soon after, Twitter took an even more dramatic stance: Without immediate public explanation, it completely banned users from posting the link to the story.")
>
> ....
>
> It should be borne in mind that the first step taken by any potential authoritarian or dictatorial regime is to gain

> control of communications, particularly the delivery of news. It is fair to conclude, therefore, that one-party control of the press and media is a threat to a viable democracy. It may even give rise to countervailing extremism. The First Amendment guarantees a free press to foster a vibrant trade in ideas. But a biased press can distort the marketplace. And when the media has proven its willingness—if not eagerness—to so distort, it is a profound mistake to stand by unjustified legal rules that serve only to enhance the press' power.

The Court's decision to grant Mr. Klayman's Petition would go a long way towards remedying this phenomenon, as it shows that the courts (along with the media that cover the courts) are not to be used as a political weapon against those who simply happened to have differing political and ideological beliefs.

Lastly, Mr. Klayman is left without any adequate relief from any other court, as the Eleventh Circuit has informed Mr. Klayman that its decision to deny his application for admission was not subject to any appeal or review. App. 0025. Thus, this Petition is Mr. Klayman's only avenue for relief.

STATEMENT OF THE CASE

I. Background Facts

Mr. Klayman is an attorney who has been a member continuously in good standing of The Florida Bar since 1977. App. 0095. He is the

founder of both Judicial Watch and Freedom Watch, the former of which he left to run for U.S. Senate in Florida and the latter of which he serves as the chairman and general counsel today. App. 0007. Mr. Klayman is a former Justice Department prosecutor and was on the trial team that succeeded in breaking up the telephone monopoly of AT&T, thereby creating competition in the telecommunications industry. App. 0007. He is also a former Republican candidate for the U.S. Senate from Florida. App. 0007.

During his tenure at Judicial Watch, Mr. Klayman obtained a court ruling that Bill Clinton committed a crime, the first lawyer ever to have done so against an American president. App. 0007. While at Freedom Watch, Mr. Klayman successfully obtained a preliminary injunction against intelligence agencies regarding illegal mass surveillance of millions of Americans. *Klayman v. Obama et al*, 1:13-cv-851 (D.D.C). These are a few of his numerous accomplishments in his decades of practice as both a public interest advocate and litigator as well as private practitioner. *See* Mr. Klayman's bio. App. 0007.

II. Facts Pertaining to Mr. Klayman's Eleventh Circuit Application

Mr. Klayman was retained by Dr. Jerome Corsi ("Dr. Corsi") to represent him in a defamation case against Newsmax Media and its employees Christopher Ruddy, John Cardillo, and John Bachman. This case was originally filed in the Circuit Court of the State of Florida, 15th Judicial Circuit in and for Palm Beach County and was removed to the U.S. District Court for the Southern District of Florida ("Southern District of Florida") by the Newsmax Defendants. *Corsi v. Newsmax Media, Inc., et al*, 9:20-cv-81396-RAR (S.D. Fl.). The Southern District of Florida ultimately erroneously granted the Newsmax Defendants' motion to dismiss, and at the direction of Dr. Corsi, Mr. Klayman filed a Notice of Appeal to the Eleventh Circuit.

Because Mr. Klayman was not a member of the Eleventh Circuit, but was a citizen and resident of Florida and a member of The Florida Bar, his only recourse was to apply for admission to the Eleventh Circuit, as he could not move for admission *pro hac vice*. 11th Cir. R. 46-4. Mr. Klayman therefore submitted an application for admission to the Eleventh Circuit on or about March 12, 2021. App. 0001 - 0023. On March 15, 2021, the clerk of the Eleventh Circuit sent Mr. Klayman a letter requesting additional information on "a copy of the 2011

reprimand issued by The Florida Bar; a copy of the 2020 suspension issued by the District of Columbia Bar; information and/or documentation pertaining to the two matters against you pending with the District of Columbia Bar." App. 0024. Mr. Klayman therefore submitted all of the requested information to the clerk. On March 18, 2021, the Eleventh Circuit denied Mr. Klayman admission on the basis that he had a pending disciplinary proceeding in the District of Columbia, writing in relevant part, "[y]ou may reapply for admission after all the pending disciplinary matters have concluded and you are in good standing with all courts and bars of which you are a member." App. 0025. Importantly, this order stated that "the Court has no procedures for appeal or reconsideration of the denial of an application for admission, and the Court will not accept for filing or review any additional materials seeking reconsideration," App. 0025, leaving Mr. Klayman with no adequate remedy at law but to file this instant Petition not just to protect his own interests but more importantly his client, Dr. Jerome Corsi, who has been left without counsel in this important appeal.

III. Facts Pertaining to the District of Columbia Disciplinary Proceeding

The disciplinary proceeding that the Eleventh Circuit was referring to is currently pending before the District of Columbia Court of Appeals. *In re Klayman*, 20-BG-583 (D.C.C.A.) (the "Sataki Matter"). The Sataki Matter stems from Mr. Klayman's representation of Elham Sataki ("Ms. Sataki") back in or around 2010, almost twelve (12) years ago. The full details of this representation, which are incredibly voluminous, are set forth in Mr. Klayman's initial brief submitted to the District of Columbia Court of Appeals, and included in the appendix herein. App. 0026 - 0092. In the interest of brevity, Mr. Klayman will not recite all of these facts here, but respectfully requests that the Court review his initial brief for any necessary clarification. App. 0026 - 0092.

The important part that is relevant to this Petition is that Mr. Klayman did not engage in any ethical misconduct during the course of his representation of Ms. Sataki. Ms. Sataki was simply unhappy with the result of the litigation—although Mr. Klayman did everything in his power to zealously represent her and to try to further her interests—so she, on the legal advice of non-lawyers, filed identical meritless bar complaints against Mr. Klayman in Florida, Pennsylvania, and the

District of Columbia. App. 0042. Tellingly, The Florida Bar and Pennsylvania Bar immediately saw that Ms. Sataki's complaint was retaliatory and meritless, and summarily dismissed the complaint. App. 0042. On the other hand, however, the District of Columbia Office of Disciplinary Counsel ("ODC"), which has shown itself to be driven mainly, if not entirely, by leftist politics, seized on this "golden opportunity" to target Mr. Klayman to try to remove him from the practice of law by piling on frivolous bar complaint after frivolous bar complaint in the hopes of simply bankrupting him, thereby *de facto* removing him from the practice of law. In fact, Deputy Bar Counsel Julia Porter of ODC brazenly admitted this goal during a hearing on another meritless bar complaint against Mr. Klayman, stating to the Hearing Committee that "Mr. Klayman should not continue to have the privilege of being a lawyer." App. 0094. This is not for ODC to decide. Until recently, ODC's mission statement on its website stated:

> In this capacity, the Office of Disciplinary Counsel has and claims and admits to have a dual function: to protect the public and the courts from unethical conduct by members of the D.C. Bar and **to protect members of the D.C. Bar from unfounded complaints**. (emphasis added).

Under its current regime under the "new" Bar Disciplinary Counsel Hamilton Fox III, ODC has completely ignored the second part of its mission statement, and instead fashioned ODC into a highly politicized weapon to target members of the District of Columbia Bar who dare to have conservative and Republican political beliefs.

For instance, especially during the Trump years in particular, ethics complaints were filed, accepted and initiated against Trump White House Counsellor Kellyanne Conway[2] over remarks she made on cable news, against former Trump Attorney General William Barr[3] (the complaint was outrageously and incredibly filed by all four (4) prior presidents of the bar as well as a former senior bar counsel) for withdrawing the indictment of General Mike Flynn and for remarks he made on Fox News, Senators Ted Cruz[4] and Josh Hawley[5] over their

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[2] https://www.washingtonpost.com/politics/law-professors-file-misconduct-complaint-against-kellyanne-conway/2017/02/23/442b02c8-f9e3-11e6-bf01-d47f8cf9b643_story.html

[3] https://thehill.com/regulation/court-battles/508489-more-than-two-dozen-dc-bar-members-urge-disciplinary-probe-of-ag

[4] https://www.texasstandard.org/stories/lawyers-law-students-officially-file-grievances-seeking-to-disbar-senator-ted-cruz/

role in advocating for President Trump in the last election, and of course former U.S. Attorney Rudy Giuliani[6] over his representation of President Trump, to name just a few. To the contrary, when a complaint was filed against fellow leftist Democrat lawyer David Kendall of Williams & Connolly over his admitted involvement in the destruction of Hillary Clinton's 33,000 emails illegally retained on a private server, which complicity is not even in dispute, ODC summarily and quickly rejected a complaint filed by conservative lawyer and public interest advocate Ty Clevenger, who ODC has also attempted to disbar, until they drove him into submission due to the cost of defending himself, and he simply resigned.[7]

Mr. Klayman has not been spared from this discriminatory and illegal conduct. As set forth above, he has been subject to meritless bar

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[5] https://thehill.com/homenews/state-watch/534783-attorneys-urge-missouri-supreme-court-to-probe-hawleys-actions

[6] https://www.law.com/newyorklawjournal/2021/03/03/nyc-bar-details-complaints-calling-for-full-attorney-discipline-investigation-of-giuliani/#:~:text=Under%20the%20New%20York%20state,censured%20or%20receive%20no%20punishment.

[7] Ty Clevenger, State bar prosecutors are flouting the law, protecting Hillary Clinton and her lawyers, LawFlog, available at: https://lawflog.com/?p=1389

complaint after meritless bar complaint that have been prosecuted with nothing short of zealous vigor by ODC, all in hopes of simply bankrupting Mr. Klayman by forcing him to expend countless time and resources to defend. Regrettably, it is not just ODC which has become a leftist political tool, but the entire bar discipline apparatus. This is evidenced by the fact that at the Hearing Committee stage in the Sataki Matter, one of the members of the Hearing Committee was Michael Tigar, an avowed and proud communist, and someone who is the ideological foe of Mr. Klayman, a staunch conservative and supporter of former President Trump. App. 0011. To make matters worse, the Chair Anthony Fitch, while leftist but perhaps not a communist, appeared to be highly collegial with if not in awe of Mr. Tiger and acted in a manner that was overly deferential to him throughout the disciplinary process, looking to him repeatedly for "guidance."

Despite the fact that (1) Mr. Klayman presented a litany of material witnesses in his favor, and ODC presented only the complainant, Ms. Sataki, and (2) Ms. Sataki's "credibility" or lack thereof was severely impeached during the hearing, App. 0075, the Hearing Committee still issued a fatally flawed opinion which also led

to a fatally flawed Report and Recommendation from the Board on Professional Responsibility, which made it clear that it did not even review Mr. Klayman's submissions and simply took ODC and the Hearing Committee's word as gospel. App. 0085. This resulted in the pending proceeding before the District of Columbia Court of Appeals ("DCCA")

To make matters even worse, however, once this matter reached the DCCA, on October 19, 2020 the DCCA *sua sponte* issued an order to show cause as to why Mr. Klayman should not serve an interim suspension while the matter was being decided, which could take a considerable amount of additional time if a complete and thorough review of the record should ever take place. On January 7, 2021, the DCCA imposed temporary suspension on Mr. Klayman without any legal or factual analysis, after having egregiously denied him his Sixth Amendment right to counsel. This matter is still pending, nearly seven months after the DCCA's initial order to show cause.

Thus, temporary interim discipline, particularly under these egregious and extraordinary circumstances—being the result of an entirely meritless bar complaint that was seized upon by ODC as a

political weapon—runs counter to perhaps the most fundamental and basic tenet of our judicial system – that an individual is to be provided due process and equal protection under the law, and thus presumed innocent until proven guilty. However, to the contrary, the DCCA has flipped fundamental constitutional rights on their head, finding Mr. Klayman guilty until he can prove himself innocent.

This has grossly and severely prejudiced Mr. Klayman, depriving him of his ability to practice law in before District of Columbia courts, and now even in the Eleventh Circuit, which has adopted the "guilty until proven innocent" approach of the DCCA to deny Mr. Klayman admission. More importantly, this has also severely prejudiced Mr. Klayman's clients, including Dr. Corsi, who has been left without any counsel to represent him in his appeal, and financially unable to retain other counsel as a result of being financially destroyed during the course of Robert Mueller's failed Russian "Collusion" Investigation.

REASONS FOR GRANTING THE WRIT

I. This Case Involves Mr. Klayman's Constitutional Due Process Rights

The Eleventh Circuit has adopted the DCCA's approach of presuming Mr. Klayman guilty until proven innocent by denying his

application for admission to practice until the resolution of the Sataki Matter in the DCCA. This flies in the face of one of the basic tenets of the American legal system – that persons are entitled to a presumption of innocence and are therefore innocent until proven guilty. This is well-settled by the Supreme Court as early as 1895. *Coffin v. United States*, 156 U.S. 432 (1895).

This fundamental right is engrained in the Due Process Clause of the Fifth and Fourteenth Amendments, which state that no person shall be deprived of life, liberty, or property without due process of the law."

The Eleventh Circuit, in denying Mr. Klayman his right to practice before it pending the outcome of the Sataki Matter has clearly deprived Mr. Klayman of a fundamental liberty without due process. This is only amplified by the Eleventh Circuit denying Mr. Klayman any right of appeal or review of their denial, thereby depriving him of any adequate remedy at law. To make matter worse, it has abridged Dr. Corsi's right to chose the counsel of his choice.

II. The Eleventh Circuit's Decision Invokes the Constitutional Right to Counsel of Choice

It is easy to see why the Eleventh Circuit's decision is problematic. In the event that Mr. Klayman is found to have not committed any ethical violation by the DCCA, Dr. Corsi's right to counsel of choice will have been violated, as it will be too late for Mr. Klayman to represent him in his appeal. Thus, either way, Dr. Corsi's right to have Mr. Klayman represent him will be denied.

It is fundamentally ingrained in the Sixth Amendment to the Constitution that a criminal defendant is guaranteed the right to counsel of choice, including pro hac vice counsel. *See Powell v. Ala.*, 287 U.S. 45, 53 (U.S. 1932) ("It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice.").

This fundamental principle is so strong that the California Supreme Court has recognized this right in civil cases. "Ultimately, disqualification motions involve a conflict between the client's right to counsel of their choice...." *City and County of San Francisco v. Cobra Solutions Inc.*, 38 Cal. 4th 839, 846 (Cal. 2006); *See also Khani v. Ford Motor Co.*, 215 Cal.App.4th 916, 920 (Cal. App. 2d Dist. 2013). Federal courts have also adopted this fundamental principle. "The substantial

relationship test balances the new client's right to counsel of choice and the former client's right to confidentiality." *N.L.A. v. Cty. of L.A*, 2016 U.S. Dist. LEXIS 134953, at *6 (C.D. Cal. Sep. 29, 2016).

There is absolutely no prejudice that would result from the Eleventh Circuit simply granting Mr. Klayman's admission to practice, as he is clearly eligible to do so, having been a member continuously in good standing of The Florida Bar since 1977. Then, in the unlikely event that the DCCA imposes final discipline on Mr. Klayman, the Eleventh Circuit can act accordingly at that time. This simple solution ensures that Mr. Klayman and Dr. Corsi's constitutional rights are protected, while at the same time, not harming or prejudicing the Eleventh Circuit in any way.

Now, however, in the absence of the implementation of this constitutional (and common sense) solution, Dr. Corsi is left without counsel to represent him and he is severely prejudiced and stands to lose all of his appellate rights.

CONCLUSION

Based on the foregoing, the Court should grant Mr. Klayman's Petition to be admitted before the Eleventh Circuit, as it implicates

fundamental due process and equal protection constitutional rights, as well as Sixth Amendment constitutional right to counsel of choice for his clients.

As with the media and the body politic of this nation in today's world, the politicization of the Courts, including the Eleventh Circuit, regrettably, is highly improper and dangerous. This flies in the face of the sole purpose of the legal system—to provide a non-biased and fair resolution to everyone, regardless of political affiliation or ideological belief, based solely on the facts at issue and the relevant law.

The Court's decision to grant Mr. Klayman's Petition can be one of the first of many steps necessary to restore the Courts to its intended function. Time is of the essence in considering and ruling upon this Petition, as the Eleventh Circuit has threatened to dismiss Dr. Corsi's appeal.

Dated: August 11, 2021

Respectfully Submitted,

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