2/5/25

No. 24-1070

In the Supreme Court of the United States

Conghua Yan,
Petitioner,

v.

Mark A. Taylor, in his official capacity as Criminal District Office Investigator, Tarrant County, and in his private capacity; Richard B. Harwell, in his official capacity as Sergeant, Tarrant County, and in his private capacity; David F. Bennett, in his official capacity as Sheriff, Deputy, Tarrant County, and in his private capacity,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition addresses an *unpublished* dismissal of a constitutional challenge to a government policy barring Petitioner and everyone from filing individual criminal complaint of perjury to the law enforcement.

1. Whether a criminal District Attorney office policy that allows the sheriff's office to only accept criminal perjury complaints only at the request of presiding judges in their official capacity deprives individual's right in their private capacity to petition the government for redress of grievances under the First Amendment.

2. Other than deprivation of individual right character, whether the judicial branch can possess exclusive privilege to open or request criminal perjury complaint, this is a matter of first impression.

3. Whether claims seeking adjudication for *one's own treatment* (individual right to file a First Amendment petition) versus *the treatment of others* (private cause of action to prosecute others) represent distinguishable legal theories.

PARTIES TO THE PROCEEDING

Petitioner is Conghua Yan.

Respondent is Mark A. Taylor, individually and officially as Criminal District Office Investigator; Richard B. Harwell, individually and officially as Sergeant; David F. Bennett, individually and officially as Sheriff, Deputy. All in Tarrant County, Texas.

LIST OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

- United States District Court (N.D. Tex.):

  Yan v. Mark A. Taylor et al., No. 4:23-cv-00288 (Mar. 19, 2024)

- United States Court of Appeals (5th Cir.):

  Yan v. Mark A. Taylor et al., No. 24-10288 (Nov. 15, 2024)

These proceedings are parallel and indirectly related to the above-captioned case under Rule 14.1(b)(iii):

- United States District Court (N.D. Tex.):

  Yan v. The State Bar of Texas et al., No. 4:23-cv-00758 (May. 21, 2024)

- United States Court of Appeals (5th Cir.):

  Yan v. The State Bar of Texas et al., No. 24-10543 (pending)

- The Supreme Court of the United States:

  Yan v. Terry, No. 24-554 (cert. pending)

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The Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

The opinion of the court of appeals (App., infra, 1a-3a) is decided on Oct 25, 2024. The order of the court of appeals denying rehearing en banc (App., infra, 4a) is decided on Nov 15, 2024.

JURISDICTION

The judgment of the Fifth Circuit of Appeals was entered on October 25, 2024. Petitions for rehearing were denied on November, 15, 2024. This Court has jurisdiction pursuant to *28 U.S.C. § 1254(1)* and *2350.*

CONSTITUTIONAL PROVISIONS

US Constitution, First Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

A. Texas attorney Leslie Barrows, using sworn affidavits, colluded to commit aggravated perjury against the Petitioner in state court civil divorce proceedings and awarded criminal proceeding legal fees from a nonparty's ERISA fund.

1. In 2022, Texas attorney Leslie Barrows filed sworn affidavits in state court divorce proceedings, claiming that her client, Fuyan Wang, the Petitioner's ex, could not afford Barrows' legal service for the divorce suit and seeking the court to compel payment from the Petitioner.

2. The sworn affidavit includes detailed billing, such as other attorneys' legal fees incurred from a criminal proceeding in which Barrows' client, Wang, was charged with domestic violence. The Petitioner wasn't a party to that criminal proceeding, as it is the government pressed the charge.

3. Barrows testified on the stand that all fees listed in her sworn affidavits were incurred in the divorce suit. The associate judge Lori Deangelis awarded Barrows $25,000 from Petitioner's ERISA fund, an amount exceeding what Barrows had pleaded.

4. Later, the Petitioner discovered that Barrows had made a political contribution to associate judge DeAngelis's district judge campaign and hosted a fundraising event at her office just months earlier. DeAngelis's campaign was still ongoing at the time she presided over the hearing, yet neither disclosed their affiliation.

5. In Texas, an associate judge is a statutory Article I appointed position and does not hold constitutional jurisdiction, similar to a federal magistrate.

B. The Petitioner filed a criminal complaint of aggravated perjury with local law enforcement, but his complaint was barred by a policy. This policy mandates that the DA's office can only open perjury criminal complaint cases only if requested by the particular presiding judge, prohibiting individual victims from filing case to the executive branch.

1. In Texas, aggravated perjury is a third-degree felony if someone makes materially false statements in affidavits during court proceedings.

2. Barrows committed aggravated perjury on the facial court record because the affidavits show that the bills were incurred from criminal

proceedings, not divorce proceedings. Three years later, Barrows still walks jail-free. Texas family courts are attorney-white-collar-crime paradise.

3. The Petitioner attempted to file a criminal complaint of perjury with the local sheriff's office but received a letter stating that the local enforcement "was not able to meet the requirements set forth by [Tarrant County Criminal District Attorney's office] ... they would **only accept** or **open** an investigation into your claim of perjury **only at the request** of the **presiding judge**, since that did not occur, your case has been closed."

4. There are merely a dozen judges in Tarrant County, which has a population of 3 million.

5. Petitioner reengaged the sheriff office, a sheriff officer yelled at Petitioner, saying, "we do not have any business to do with you."

6. Later, the Petitioner discovered that the sheriff's office was tipping off Barrows about his communications with law enforcement.

7. The Petitioner tried to call 911 to open a criminal case, but law enforcement hung up on him.

At that point, the door to filing a criminal complaint was slammed shut in his face.

C. The Petitioner filed a federal case to challenge the constitutionality of the policy. The case was dismissed under an unpublished opinion for lack of Article III standing.

1. The Petitioner filed a federal suit challenging the constitutionality of the alleged policy, alleging that the policy violated the First, Fifth, Sixth, and Fourteenth Amendments, as well as the separation of powers, along with *§ 1983* claims.

2. The Petitioner's case was dismissed in the district court for lack of concrete injury. The Petitioner appealed to the Fifth Circuit, but his appeal was denied for lack of Article III standing.

3. The appellate court and district court concluded that the Petitioner pleaded to compel the government to prosecute Barrows, for which he has no standing. The Petitioner argued that none of his facially pleaded prospective relief sought prosecution; he facially sought to restore his right to file a criminal complaint and to invalidate the policy through a constitutional challenge. The courts ignored Petitioner's pleadings and arguments.

4. Both the appellate review and district court judgment were written in an appearance suggesting that the courts handled a complaint from the Petitioner seeking to prosecute others, thereby dismissing his case based on well-established precedent. However, the courts mischaracterized the Petitioner's claims for the purpose of dismissal. In the fact, the Petitioner had facially pleaded a different legal theory, specifically challenging the policy that infringed on his private right to petition.

5. The lower courts never allowed the Petitioner to present his side of claims truthfully. Instead, they recharacterized his claims and dismissed the entire case accordingly using an unpublished opinion. This type of judicial practice is scary.

REASONS FOR GRANTING THE PETITION

This petition is straightforward. The Petitioner challenged an unconstitutional policy that prohibits his private constitutional right to file criminal complaint against a lawyer. The Petitioner sought prospective relief explicitly for himself.

However, the courts ruled that the Petitioner was seeking relief related to the treatment of others and dismissed his claim for lack of Article III standing.

In Texas all judges are active practicing lawyers and local lawyers are the main political contributors of the judge campaign. Research shows that Texas family court judges receive more contributions from lawyers than all other court judges combined. Texas family court judges can issue unappealable orders to liquidate family assets and award them to attorneys.

Local Fort Worth family lawyers cabal calling litigants, "whiny ass client"[1] of "Divorce Corp."[2]

Judges should uphold the law, not make decisions based on political affiliation. Most of the time, political affiliation refers to being left or right, Democrat or Republican, but it can also mean the distinction between a layperson and a practicing lawyer.

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[1] https://www.youtube.com/watch?v=HK2aDDwCckk
[2] https://www.youtube.com/watch?v=th0R2nxva2w

A. This constitutionality challenge and *§ 1983* claim is of national importance, as the Circuits have noted that there is no direct Supreme Court precedent on point and existing Circuit rulings are inadequate, vacillative and conflicted.

The Ninth Circuit held that, "**as a matter of first impression**", "**the filing of a criminal complaint is protected by the First Amendment.**" (emphasis added) *Entler v. Gregoire*, 872 F.3d 1031, 1043 (9th Cir. 2017).

The Ninth Circuit stated that "to opine on the **foundational constitutional principle**, we **join** our **two** sister circuits that have held that the filing of criminal complaints falls within the embrace of the First Amendment." *Id.* (citing *Meyer v. Bd. of Cty. Comm'rs* , 482 F.3d 1232, 1243 (**10th Cir. 2007**) and *United States v. Hylton*, 710 F.2d 1106, 1111 (**5th Cir. 1983**)) (emphasis added).

The Ninth Circuit concluded that "[a]lthough **there is no Supreme Court case directly on point**, there is clear Ninth Circuit precedent," (emphasis added) *Id* at 1041, the violations of filing grievances as ""constitutional right" to do that" are "constitutionally impermissible," and "are not entitled to qualified immunity."

The Seventh Circuit concluded that "[i]t should be **clear** that the First Amendment protects your ability to report to the police that you are the victim of a crime. And although the Supreme Court "**does not require a case directly on point** for a **right to be clearly established**," *Kisela v. Hughes*, —— U.S. —— —, 138 S.Ct. 1148, 1152 (2018)" (citation omitted) *Comsys, Inc. v. Pacetti*, 893 F.3d 468, 475 (7th Cir. 2018).

"The first amendment right to petition for redress of grievances is "among the most precious of the liberties safeguarded by the Bill of Rights." ... There can be no doubt that the filing of a legitimate criminal complaint with local law enforcement officials constitutes an exercise of the first amendment right." *United States v. Hylton*, 558 F. Supp. 872, 874 (S.D. Tex. 1982).

The Fifth Circuit "affirms the district court's holding that Hylton"s conduct constitutes a legitimate exercise of her constitutional right to petition for redress of grievances." *United States v. Hylton*, 710 F.2d 1106, 1112 (5th Cir. 1983).

"Under the rule of orderliness, "one panel of this circuit may not overturn another panel absent an intervening decision to the contrary by the Supreme Court or this court en banc."" *Henry v. Educ. Fin. Serv. (In re Henry)*, 944 F.3d 587, 591 (5th Cir. 2019).

However, the Fifth Circuit panel that determined the Petitioner's case blatantly disregarded *Hylton* and the rule of orderliness, despite Yan citing the exact same argument and authority in the appellant brief. Therefor, "the constitutional rule applied by the Fifth Circuit was not " 'beyond debate,'" *Mullenix v. Luna*, 577 U.S. 7, 19 (2015).

After all, only a handful of Circuits (5th, 7th, 9th, and 10th) have tried to address this first impression of constitutionality challenge and *§ 1983* concerning filing criminal complaint. In Yan's case, the Fifth Circuit rendered a vacillative unpublished opinion that **directly contradicts** its own precedent (*Hylton*), Seventh Circuit (*Comsys, Inc.*), Ninth Circuit (*Entler*) and Tenth Circuit (*Meyer*).

Being able to report to police is a **clearly established First Amendment right**. Because the Supreme Court **does not have** a case directly on

point, as stated in *Comsys, Inc.* and *Entler*, this absence provides the Fifth Circuit with room to *vacillate*. Consequently, they rendered a decision like *Hylton*, but took different stances in unpublished opinions like Yan's.

When the Circuits stated that the Supreme Court *does not have a direct ruling on a clearly established right*, and Yan's case demonstrates that the circuit renders *vacillative* opinions through *unpublished* opinions, this Court has an **obligation**.

"[E]xisting precedent must have placed the statutory or constitutional question beyond debate" *Ashcroft v. Al-Kidd*, 563 U.S. 731, 741 (2011).

"This obligation — to reach an independent judgment in applying constitutional standards and criteria to constitutional issues ... The Supreme Court is subject to that obligation..." *Jacobellis v. Ohio*, 378 U.S. 184, 189 n.3 (1964).

B. This case is of national importance concerning the First Amendment Petition right, which is infringed by a policy affecting millions of people. Moreover, this policy itself breaches the separation of powers principle affecting every citizen.

The alleged policy stating that the Tarrant County Criminal District Attorney's office "*would only accept or open an investigation into your claim of perjury only at the request of the presiding judge*" deprives the Petitioner of their First Amendment right to petition and places it solely in the hands of one judge.

Tarrant County has a population of more than 3 million. This alleged executive branch policy deprives 3 million people of their individual right to file grievances, placing it under the control of the judicial branch, presents a significant national interest warranting judicial review.

This case presents a first impression distinct from *Entler*, *Meyer*, and *Hylton*. In others three cases, individuals lost the rights but they did not lose the right to others. *Comsys, Inc.* at 476 recognized that exercising right as a citizen in a private capacity is *far different* from exercising right in an official [employee] capacity.

In this case, the alleged policy delegates the right of filing criminal complaints of perjury in private capacity exclusively to judicial actors in official

capacity, revealing a collective effort among Tarrant County government entities to conceal perjury activities within the confines of the family court system.

Moreover, perjury is an exclusive criminal cause of action without any civil cause of action, Tarrant County Criminal District Attorney's office should have known that the Texas constitution does not allow a judge to be the trier of fact for a criminal charge of perjury:

> "a person charged with criminal contempt is not entitled to a trial by jury. ... On the other hand, under the criminal procedures of this state, **a person charged with a crime** is entitled to have the person's case **tried by a jury**. TEX. CODE CRIM. PROC. arts. 1.05, 1.12. When **a trial court possesses the ability** to **hold a person** in contempt and **confine him for perjury**, the alleged **perjurer lacks any possibility of having his case tried before a jury, as would be his right in a criminal prosecution**. ...allowing contempt for perjury **"permit[s] too great inroads on the procedural safeguards of the Bill of Rights,** since contempts are summary in their nature, and leave determination of guilt to a **judge** rather than a **jury**"" (emphasis added) *In re Reece*, 341 S.W.3d 360, 369 n.12 (Tex. 2011).

As the Supreme Court of Texas explicitly ruled, the Petitioner cannot bring the alleged perjurer, attorney Leslie Barrows, before any judge. This policy said is against the constitutions. The Petitioner cited and argued *In re Reece*, the lower courts ignored.

The Tarrant County DA's office created a Catch-22 rule by stating they will only open a criminal case if requested by a judge, but a Judge is neither grand jury, jury, criminal investigator nor prosecutor. A judge can only determine a controversy or case over a claim after the parties have been properly served. The problem is that perjury is a criminal cause of action, which does not have a corresponding civil cause of action for the Plaintiff to pursue at the front of judge.

Additionally, civil proceedings are not free. Why would any victim need to bear an extra financial burden to bring up a criminal complaint? How many victims can afford an attorney to file a criminal complaint in the court? This policy burdens the victims, affecting 3 million people.

This policy effectively served the purpose of systematically abandoning the prosecution of perjury

in family court by establishing an unattainable requirement.

This policy alone violates Articles I and III, disrupting the separation of powers as it causes interference between the executive and judicial branches. The executive branch's arbitrary refusal to prosecute certain crimes affects individual victims. However, ceasing to prosecute perjury in state courts allows judicial actors to usurp the executive branch's determinative power, blurs the lines between grand jury, jury, and two branches.

This policy throws a monkey wrench into the legal framework and significantly undermines the integrity of judicial proceedings. After all, the attorney dressed up in DA office does not want to prosecute attorney dressed in suit.

"[A]rriving at the truth is a fundamental goal of our legal system" *United States v. Havens*, 446 U.S. 620, 626 (1980). "The courts obviously have a special obligation to promote the integrity and truthfulness of the judicial process." *Guy v. Travenol Labs., Inc.*, 812 F.2d 911, 914 (4th Cir. 1987). Similarly, "there is nothing more sacred than the integrity of the judicial

process." *United States v. Bethea*, No. 17-2788-cr, 4 (2d Cir. Sep. 6, 2018). Without consequences for counsel's perjurious conduct, proceedings represented by such counsel cannot be truthful or meaningful.

The Tarrant County Criminal District Attorney's office takes away people's private rights to file criminal complaints of perjury by falsely telling people that **only** that presiding judge can do so, despite this being contrary to the Texas Constitution, legal principles, precedent and common sense. Establishing an unactionable policy like this is equivalent to systematically abandoning the criminal prosecution of attorneys' perjurious conduct incurred in the state court.

A systemic breach of judicial integrity affecting 3 million people undoubtedly constitutes a matter of national interest. This Court needs to intervene.

C. This case is of national importance because it offers this Court an opportunity to address a split amongst Circuits regarding the distinction between the right to prosecute others and the right to set in motion governmental machinery for one's own treatment.

"While Plaintiff did not have a right to force the local prosecutor to pursue her charges, she possessed

the right to access ... procedures for redress of her claimed wrongs and to set in motion the governmental machinery." *Entler* at 1043-44. See also *Meyer*.

The Ninth and Tenth Circuits recognizes that the right to compel prosecution and the right to access governmental to set in motion governmental machinery, are distinguishable legal theory.

However, when the Petitioner argued in the district court and Fifth Circuit that he challenged a county policy delegating his private First Amendment petition rights, and that his complaint seeks prospective relief of his own unconstitutional treatment, the Fifth Circuit reframed his complaint and treated it as an equivalent claim the right of prosecution of others, dismissed his case.

The alleged policy merely prohibits the Petitioner from opening a criminal complaint case—an act that **does not** itself initiate a criminal prosecution. "[M]erely "reporting a crime to law enforcement and giving testimony does not constitute the 'initiation' of a criminal prosecution." *Hanly v. Powell Goldstein*, 290 F. App'x 435, 439 (2d Cir. 2008).

Investigate first, prosecute later. Criminal investigation and criminal prosecution are two distinct stages. Similarly, seeking relief for one's own treatment and seeking relief for the treatment of others are two distinguishable legal theories. The individual right to open a grievance and the private cause of action right to prosecute others are also distinguishable legal theories.

Given the inconsistency, inadequacy, and conflict among Circuits regarding three distinguishable legal theories, this case presents an opportunity for this Court to provide clarity.

D. This case is of national importance because it clearly showcases how a pro se litigant against attorney-white-collar crime was treated unfairly, where well-established principles and precedents not being binding in unpublished opinion.

"In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *Greenlaw v. United States*, 554 U.S. 237, 243 (2008).

"All pleadings shall be so construed as to do substantial justice." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). "[T]the pleadings of pro se litigants should be construed liberally...."It is the substance of the relief sought by a *pro se* pleading, not the label that the [movant] has attached to it, that determines [its] true nature and operative effect ..."" *United States v. Bernal*, No. 13-40201, 3-4 (5th Cir. 2014).

These party presentation and liberal construction principle became smoke and mirror when a pro se party's civil claim involving a local lawyer well-connected with judges and an unpublished opinion is used to manifest injustice.

The Petitioner was not afforded meaningful opportunity of advocacy in the proceeding because the district court and appellate court repeatedly reframed his complaint to suit purposes of dismissal, disregarded his own presentation.

The Fifth Circuit's opinion erred by putting words into Yan's mouth and ruled accordingly. The Fifth opinion said that, "Yan argues that private citizens have the right to bring failure-to-investigate and failure-to-prosecute claims." without citing any

reference or source from Yan's complaint. The root word "fail," and "prosecute" appeared more than **10 times** in the opinion.

The contradictory plain fact is, the root word "fail," and "prosecute" **never appeared** in Yan's factual allegations. Yan challenged the policy, not the decision. The lower courts manufactured Yan's claims and ruled upon it. This is manifest injustice.

The Panel wrote at pp. 1-2 that:

> "Conghua Yan filled a pro se civil complaint alleging that he filed a criminal complaint with the Tarrant County Sheriff's Department the Tarrant County District Attorney did not prosecute the complaint....
>
> Yan argues that private citizens have the right to bring failure-to-investigate and failure-to-prosecute claims based on various legal theories....
>
> Yan also argues ...that he has standing to bring a claim in the public interest" (emphasis added)

Contrarily, in the opening brief at pp. 4-5, the Petitioner had clearly objected:

> V. What the judgement findings and conclusions is not what was pleaded.....
>
> A. Plaintiff did not sue for "Defendants for failing to investigate and prosecute injuries he"
>
> B. Summarized de facto claims .....
>
> C. Plaintiff did not plead that he has a standing for "public interest".....
>
> D. Plaintiff objects the recharacterization of "claims arising out of the decisions to stop investigating and/or not prosecute his allegations of criminality", but the Order ignored his arguments .....
>
> E. The Order has departed from the principle of party presentation

In the petition for panel rehearing en banc at p 12, Petitioner expressly objected that

> "he did not sue the Defendants for failing to investigate or prosecute criminal complaint. He did not plead that he has standing to bring claims for public interest, and his claim should not be recharacterized or framed as departing from his true allegations."

Petitioner's objections were disregarded once again. His judicial experiment indicates that "[m]ost judges regard pro se litigants as 'kind of trash not

worth the time'." Richard Posner, Most Judges Regard Pro Se Litigants as 'Kind of Trash Not Worth the Time,' ABA Journal (Sept. 11, 2017)[3].

The Supreme Court has long recognized that injury in fact exists when a plaintiff alleges that the government has directly impacted the exercise of his First Amendment rights or where he has shown a threat of specific future harm. See *Laird v. Tatum*, 408 U.S. 1, 13–14 (1972), citing *Ex parte Levitt*, 302 U.S. 633, 634 (1937). Petitioner argued but these precedents were disregarded.

"[I]ntangible injuries can nevertheless be concrete. [...] *Pleasant Grove City v. Summum*, [...] (free speech); *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, [...] (free exercise)." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016). The deprivation of a constitutional right, standing alone, can establish an Article III injury-in-fact. The Petitioner argued by citing *Spokeo*, but was disregarded.

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3 https://www.abajournal.com/news/article/posner_most_judges_regard_pro_se_litigants_as_kind_of_trash_nor_worth_the_t

"It is clear therefore that First Amendment interests were either threatened or in fact being impaired at the time relief was sought. The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The Petitioner argued by citing *Elrod*, but was disregarded.

In *The Book People, Inc. v. Wong*, No. 23-50668 (5th Cir. Jan. 17, 2024), the Fifth Circuit allowed challenges to a policy banning freedom of speech but dismissed the Petitioner's challenge to a policy banning freedom of petition. The Petitioner argued by citing *The Book People*, but was disregarded.

In *Barilla v. City of Houston*, Tex., No. 20-20535, (5th Cir. Sep. 10, 2021), the Fifth Circuit reversed a motion to dismiss by ruling that "the Supreme Court has recognized that chilled speech or self-censorship is an injury sufficient to confer standing," but affirmed motion to dismiss in Petitioner's case. The Petitioner argued by citing *Barilla*, but was disregarded.

In *Free Speech Coal. v. Paxton*, No. 23-50627, 38 (5th Cir. Mar. 7, 2024). the Fifth Circuit ruled that:

> "[p]laintiffs respond by pointing out that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitute irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) [...] Plaintiffs' position is compelling."

The Petitioner argued by citing exact same *Elrod* in briefings to the district court and the Fifth Circuit. But his position was trashed.

"The Founders believed that self-representation was a basic right of a free people. Underlying this belief was not only the antilawyer sentiment of the populace, but also the "natural law" thinking that characterized the Revolution's spokesmen." *Faretta v. California*, 422 U.S. 806, 831 n.39 (1975).

"When the Colonies were first settled, "the lawyer was synonymous with ...the arbitrary Justices of the ... Court... and twisting the law to secure convictions." ... "distrust of lawyers became an institution."..."the lower classes came to identify lawyers with the upper class."" *Faretta* at 826-27.

The Petitioner is probably among the 0.01% of pro se litigants who was able to single-handedly submit a

certiorari booklet complies with Supreme Court rules on the first submission. No Supreme Court clerk ever contacted him for any supplemental corrections.

How many lawyers can do it single-handedly? This speaks to the level of the Petitioner's legal skills. However, despite the Petitioner not appearing foolishly clueless, he still stands no chance of surviving a Rule 12 dismissal under the lower court's practice of reframing the claim.

Allowing lower courts to reframe complaints to suit the needs of dismissal-with-prejudice leaves nobody a chance to prevail. The Petitioner was barred from further amending complaint even before seeing Defendant's *Rule 12* motion, that tells all.

Two centuries later, Chief Justice John Marshall's 1803 warning becomes reality when *Rule 12* becomes the speedy vehicle for trashing ""remedy for the violation of a vested legal right," the United States "cease[s] to deserve th[e] high appellation" of being called "a government of laws, and not of men."" *Byrd v. Lamb*, 990 F.3d 879, 884 (5th Cir. 2021).

The reality is, behind the Petitioner, there were many other pro se litigants whose cases were trashed

by lower courts' arbitrary and capricious reframing. They either could not endure and afford the time and money or were tripped up by the heightened procedural maze and obstacles before reaching this highest Court.

"Admittedly, if you are unhappy with [a court's] treatment of your case, and if you persist through all [] processes, and if you have enough time and money, you can usually bring your complaint to [higher] court for review before an independent judge. But what are the chances of being able to endure and afford all that?" Neil Gorsuch & Janie Nitze, *Over Ruled: The Human Toll of Too Much Law* [78] (2024).

The Supreme Court's statistics show that pro se litigants have almost no chance of being granted a petition of certiorari. Why then do the Circuits bother to apply binding precedent to millions pro se litigants within unpublished opinions, vehicles where injustice is often unnoticed? The Circuits rarely concern themselves with abandoning Supreme Court binding precedents in unpublished opinions because there is virtually no chance for pro se litigants to reverse injustice.

If a Supreme Court precedent is applied **once** in a Circuit's published ruling but abandoned **99** times in unpublished opinions, the precedent does not truly bind; it serves merely as window dressing.

It is wrong for the judiciary to use precedent to create the appearance of fairness while relying on unpublished opinions to do the opposite. "As Mr. Justice Brandeis correctly observed, "sunlight is the most powerful of all disinfectants."" *New York Times Co. v. Sullivan*, 376 U.S. 254, 305 (1964). This petition offers this Court a rare opportunity to ensure that all Supreme Court precedents are equally binding even in unpublished opinions.

E. Judicial independence is sustained by justice consistency. This case is an excellent vehicle for this Court to emphasize the importance of the stare decisis principle in producing consistent results where the lower courts have been using unpublished opinions to conceal inconsistent outcomes.

The Supreme Court has held that:

> The legal doctrine of stare decisis derives from the Latin maxim "stare decisis et non quieta movere ," which means to stand by the thing decided and not disturb the calm. The doctrine reflects respect for the accumulated wisdom of judges who have previously tried to solve the same problem. ... The **Framers** of

> our Constitution understood that the doctrine of stare decisis is part of the "judicial Power" and rooted in Article III of the Constitution. ... emphasized the importance of stare decisis : To "**avoid an arbitrary discretion in the courts**, it is indispensable" that federal judges "should be **bound down** by strict rules and precedents, which serve to define and point out their **duty** in every particular case that comes before them."... In the words of THE CHIEF JUSTICE, stare decisis' "greatest purpose is to serve a **constitutional ideal—the rule of law**."" (emphasis added and citation omitted for brevity) *Ramos v. Louisiana*, 140 S. Ct. 1390, 1411 (2020).

This Court has repeatedly explained that:

> "stare decisis "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived **integrity of the judicial process**." ... The doctrine "**permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals**, and thereby contributes to **the integrity of our constitutional system of government, both in appearance and in fact.**"" (emphasis added and citation omitted for brevity) *Id.*

This Court added that:

> "Stare decisis has been a **fundamental part of our**

> **jurisprudence** since the founding, and it is an important doctrine. ... There are circumstances when past decisions must be overturned, but we begin with the presumption that we will follow precedent, and therefore when the Court decides to overrule, it has an **obligation** to provide an **explanation** for its decision.") (emphasis added and citation omitted for brevity) *Id* at 1432.

In the Petitioner's case, both the district court and the Fifth Circuit disregarded controlling precedents raised by the pro se litigant, which originated from either the Supreme Court or the Fifth Circuit itself. The Fifth Circuit issued an unpublished opinion that swept judicial **integrity**, **obligation**, and the **rule of law** under the rug.

"Article III, § 1, establishes a broad policy that federal judicial power shall be vested in courts whose judges enjoy life tenure and fixed compensation. These requirements **protect the role of the independent judiciary** within the constitutional scheme of tripartite government and assure impartial adjudication in federal courts." (emphasis added) *Thomas v. Union Carbide Agric. Products Co.*, 473 U.S. 568, 582-83 (1985).

This Court must recognize that Article III, § 1 incentivizes federal judges with life tenure and fixed compensation to safeguard judicial independence. If the public perceives that the federal courts are departing from the stare decisis principle, employing fast and loose tactics under unpublished opinions, and producing inconsistent results without fearing any consequences, this perception may foster a sentiment among the public to "flip the seats of judges to vacillate unfavorable precedents." Such a perspective ultimately leads to unexpected collateral damage.

Abandoning stare decisis not only leads to judicial injustice, harming litigants, but it will jeopardize the foundation of judicial independence at some point. *Vacillative rulings incentivize public expectation for vacillative judicial seats.* This Court should be aware that the *Article III* is amendable upon public request.

"Precedent is fundamental to day-to-day constitutional decisionmaking in this Court and every American court. The "judicial Power" established in Article III incorporates the principle of *stare decisis*, both vertical and horizontal." *United States v. Rahimi*, 144 S. Ct. 1889, 1920 (2024). When the courts treat

precedents fast and loose, the public will treat the judicial power fast and loose.

Chief Justice Robert correctly noted that "[c]riticism of judges has dramatically increased in recent years...That statement is just as true, if not more so, today."[4] Maybe it is as great as "the Colonies where "distrust of lawyers became an institution."" *Faretta* at 827.

Twisting the law brewed anti-lawyer sentiment among the colonies. See *Faretta.* Similarly, **twisting** the claims to secure dismissal and treating litigants like trash brew anti-judge sentiment among the populace.

This Court has a choice: either rubber-stamp the lower court's decision, covering up the twisting and adding more straw to the pile of distrust, or make some effort before new distrust becomes institutionalized.

This Court has a duty to equally emphasize judicial independence and judicial integrity, because

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[4] Chief Justice [John G. Robert, Jr], 2024 Year-End Report on the Federal Judiciary, Supreme Court of the United States, https://www.supremecourt.gov/publicinfo/year-end/2024year-endreport.pdf

judicial independence does not last long without judicial integrity.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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