

6/9/26

No. 25-1374

In the
Supreme Court of the United States

AISHA TRIMBLE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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(i)

QUESTIONS PRESENTED

Petitioner filed an FTCA suit against the USA, sent reasonable notice per the 2007 amendment to FRCP 4(i) and proved service *prima facie*, via FRCP 4(l)(1) and USPS. The USA entered 56 days late, filed an informal "didn't-get-it" Notice and waited 63 more days to seek dismissal outside FRCP 6(b). After 203 days without an FRCP 12(a)(2) answer, the district court ordered stand down, and the Clerk entered default. Fifth Circuit violated the party-presentation principle, used obsolete 1993 law and split from 12 sister circuits and many state supreme courts to revive unpreserved FRCP 12(b),(2),(5),(6) defenses.

Entry of default was never set aside.

The questions presented are:

1) Whether Rule 12 dismissal lawfully bypasses entry of default or violates the Petition, Due Process and Equal Protection Clauses?

2) Whether the 2007 '*sent to*' amendment of Rule 4(i)(1)(A)(ii) requires "civil process clerk" on envelopes like the 1993 '*addressed to*' amendment?

3) Whether Rule 8(b)(6) admissions satisfy the evidence scope of Rule 55(d)?

(ii)

PARTIES TO THE PROCEEDING

Aisha Trimble is the Petitioner under this matter, and the Respondent is the United States of America.

RELATED PROCEEDINGS

U.S. Supreme Court:

Trimble v. USA, 25A1212, Application for Stay denied May 5, 2026.

Fifth Circuit Court of Appeals:

Trimble v. DHS, 26-10028, Pending, unconsolidated case with the same process service evidence.

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OPINIONS AND ORDERS BELOW

U.S. Court of Appeals for the Fifth Circuit ("5th Cir.")
Mandate, Denials, Judgment and Opinion recorded at
25-10921 and reproduced at Appendices A-E.
Northern District of Texas – Dallas Division ("ND TX"
or "District Court") Judgment, Dismissal and R&R
recorded at 3:24-cv-01615-L-BK and reproduced at
Appendices F-H. Clerk's Entry of Default recorded at
3:24-cv-01615-L-BK and reproduced at Appendix I.

JURISDICTION

ND TX is granted jurisdiction under 28 U.S.C. 1331,
1346(b)(1) and 2674. Fifth Circuit has jurisdiction
under 28 U.S.C. 1291 after ND TX Dismissal dated
Aug. 5, 2025. Fifth Circuit Opinion and Judgment
issued Feb. 16, 2026. Petitioner submitted *En Banc*
and Panel Rehearing Petitions Mar. 26, 2026. Fifth
Circuit denied Apr. 27, 2026. Supreme Court has
jurisdiction per 28 U.S.C. 1254(1).

CONSTITUTIONAL LAWS INVOLVED

Relevant Constitutional Laws appear at Appx. 46a.

FEDERAL RULES INVOLVED

Relevant Federal Rules appear at Appx. 46a – 53a.

FEDERAL STATUTES INVOLVED

Relevant federal laws appear at Appx. 53a – 56a.

STATEMENT OF THE CASE

This is a *prima facie* case where I proved reasonable notice was delivered to the U.S. Atty. Gen. D.C. and U.S. Atty. Dallas on Aug. 26-27, 2024. USA never filed evidence, or affidavits per 28 U.S.C. § 1746, to effectively rebut my USPS and FRCP 4(l)(1) facts. My service proof outweighed USA's "didn't-get-it" claim. Default was entered and never set aside. Fifth Circuit's non-receipt of service finding is wrong.

In 1996, I entered the Army at Jackson Barracks, New Orleans. Since 2000, I've sought initial appointment as a qualified preference eligible. I have never been appointed to a federal job. In 2023, I exhausted six USERRA and Veterans Preference Act of 1944 ("VPA") grievances.¹ Personal injury stems from non-discretionary, statutory neglect under those claims. Basically, DOL, MSPB and Fed. Cir. subject me to nothing less than "ritual humiliation" by pretending I seek *promotion* when I present *initial appointment* grievances. It's like shouting "tacos" and constantly being handed burritos. It inflicts ongoing distress and aggravation of existing disabilities. I'm still fighting for initial appointment, and the humiliation hasn't stopped.² My Complaint states "initial appointment" 27 times, and the R&R copies the ritual. See – Appx. H, Pg. 17a, 35a, 38a.

¹ Trimble v. VA, 23-1307 & 23-1306; Trimble v. DHS, 23-1279 & 23-1278; Trimble v. ATF, 23-1276 & 23-1277 (Fed. Cir. 2023)

² Trimble v. IRS, DA-3330-23-0146 & DA-3330-23-1053-I-1 (MSPB active)

On Jun. 21, 2024, I filed a well-pled FTCA suit against USA that has never been tried in another venue. Jurisdiction is under 28 U.S.C. §§ 1331, 1346(b)(1), and 28 U.S.C. § 2674 holds USA liable. No relief is sought under non-FTCA statutes.³

On Aug. 24, 2024, I paid Rojelio Perez to serve USA. I filed affidavit proof per FRCP 4(l)(1), with USPS evidence.⁴ USA didn't appear by Oct. 25, 2024. On Oct. 29 & Nov. 3, 2024, I asked the Clerk to enter default. On Nov. 12, 2024, I asked Judge Lindsay to reconsider my evidence and clarify any "defiance" for FRCP 4(i). He ordered me to stop asking him and wait for the Clerk and/or Magistrate to decide.⁵

On Dec. 20, 2024, AUSA Padis appeared 56 days late, sent the Clerk an informal FRCP 12(b)(5) Notice and emailed me suggesting I violate FRCP 4(c)(2).⁶ AUSA Delaney replaced Padis. 63 days after Padis's entry, Delaney filed a motion to dismiss ("MTD") without an FRCP 6(b)(1)(B) motion to enlarge time.⁷ USA never raised FRCP 12(b)(2), and ND TX never ordered FRCP 4(l)(3),(m) amending or cure. Around 203 days passed after USA appeared late and failed to answer per FRCP 7(a)(2), 8(b),(c) and 12(a)(2). On Jul. 11, 2025, the Clerk issued entry of default against the USA. Entry of default was never set aside.⁸

³ See - (ROA.8-166)

⁴ See - (ROA.186-192, 224-231)

⁵ See - (ROA.193-205, 235-236, 237-238)

⁶ See - (ROA.239-244, 310-311)

⁷ See - (ROA.245-284, 291-293)

⁸ See - (ROA.1-7, 354) and Appx. I.

REASONS TO GRANT PETITION

This Petition should be granted because my First and Fifth Amendment rights were violated. “This Court has a significant interest in supervising the administration of the judicial system.” Hollingsworth v. Perry, 570 U.S. 693 (2013)

When a question “fairly involve[s] the... scope of the statute [it is] appropriate for review...” Ferguson v. Moore, 352 U.S. 521 (1957). Rule 55(d) doesn’t define ‘*evidence that satisfies the court.*’ The questions on FRCP 4(i)(1)(A)(ii), 8(b)(6) and 55 must be resolved to prohibit disparate Rule application and ensure litigants don’t suffer manifest injustice when serving notice or securing entry of default.

Fifth Circuit violated the party-presentation principle, Margolin v. NAIJ, 25-767 (U.S. 2026) and far departed from its neutral arbiter role and duty to accept personal jurisdiction. I present “important constitutional question[s]...” Ashe v. Swenson, 397 U.S. 436 (1970) and “split[s] of authority...” Coney Island v. Burton, 24-808 U.S. (2026).

Fifth Circuit conflicts with this Court and many state supreme courts and sister circuits on the *prima facie* standard, reviving unpreserved defenses and allowing the Government to disobey rules and law. The stand-down order barred court access to proceed under FRCP 55(b),(d), and disparate application of obsolete 1993 law forced dismissal.

ARGUMENT

Notice is everything to our society. We are dependent on notice evidence to confirm final receipt of mail, goods, payments and messages. Without honest use of notice evidence proving receipt, citizens will endure unfair, deceptive abuse, unproven claims will overwhelm courts and merchants will face bankruptcy through "didn't-get-it" chargeback fraud.

This Petition comes forth because the lower courts rewarded USA's untimely conduct and used the uncorroborated "didn't-get-it" claim to justify dismissal. "Government officials shall be subjected to the same rules of conduct that are commands to the citizen." Olmstead v. USA, 277 U.S. 438 (1928). "Courts enforce... procedural regularity on others, and must follow those requirements themselves." Hollingsworth.

I. Judicial Departure from Standards.

A. Party-Presentation Principle Violated.

The Government raised zero rebuttal evidence or timely defenses to prove non-receipt of service. I raised the 12(b)(2) waiver, entry of default, the late MTD, objections to sanctions, *res judicata* and 12(b)(1),(5),(6) dismissal, proof of service and the USPS clarification that the scanned, authorized mailroom signature "*may reflect different destination due to Intended Recipient's delivery instructions on file.*"⁹

⁹ See - ROA.192

"[Fifth Circuit]... should not simply have made factual findings on its own." Icicle Seafoods. v. Worthington, 475 U.S. 709 (1986). Fifth Circuit was presented an FRCP 12(b)(1),(5),(6) dismissal where ND TX concluded "*failure to properly serve*."¹⁰ Fifth Circuit reframed the dismissal stating, "*We need only address insufficient service... the mailing... [was] signed by... 'O. Tonche' who was not employed at the United States Attorney's Office. As a result, the Office did not receive that mailing.*"¹¹ I was denied due process to rebut the new finding. Fifth Circuit changed "the finding of the trier of fact," Anderson v. City of Bessemer City, 470 U.S. 564 (1985)

I presented 10,267 words under my appeal filings, and Fifth Circuit advocated for USA by never mentioning one alphabet of my 12(b)(1),(2),(5),(6) arguments.¹² Fifth Circuit framed their Opinion 100% on USA's unpreserved, unproven defenses. 203 days passed after USA appeared late and failed to rebut my FRCP 4(l)(1) proof, and the lower courts treated my objection to Padis's email as failure to make "*further attempts*" to serve.¹³ No law requires me to treat USA's unproven "didn't-get-it" claims as judicial notice to cure or amend under FRCP 4(l)(3),(m). Was the party-presentation principle violated when the lower courts revived the untimely MTD defenses, though USA never moved under FRCP 6(b)(1)(B)?

¹⁰ See – Appendix G, Page 15a

¹¹ See – Appendix E, Page 9a

¹² Trimble v. USA, 25-10921 (5th Cir. 2026) - Doc. 17, 18-1, 20, 28

¹³ See – Appendix E, Page 9a

“A post-deadline extension must be upon motion made, and is permissible only where the failure to meet the deadline was the result of excusable neglect.” Lujan v. National Wildlife Federation, 497 U.S. 871 (1990). “When reviewing a ruling on motion to dismiss, this Court “accept[s] factual allegations in the light most favorable to [Petitioner].” Christopher v. Harbury, 536 U.S. 403 (2002).

Did ND TX litigate for USA and violate the party-presentation principle by raising FRCP 8(c),(d) and 12(b)(6) defenses after 8(b)(6) and 12(h)(2) were not followed? I was deprived of due process under 8(e) when the lower courts viewed my FTCA claim as, “frivolous, baseless [and] duplicative...”¹⁴ ND TX erred in finding I brought “claims” under non-FTCA statutes. I cited all laws I believe the tortfeasors violated in order to fully inform the court on what, when, why, where and how. Relief is only under FTCA. The R&R infers that I have no VPA standing, but 38 U.S.C. § 4214 and 5 U.S.C. 2108 § (2),(3)(A)(C) create and define my property interest in a federal job appointment. USERRA, VPA and the VEOA are distinct, active Acts of Congress.

“The [VPA], the precursor to VEOA, [gives] preference in a veteran’s initial appointment.” Kerner v. Dept. of Interior, 778 F.3d 1336 (Fed. Cir. 2015). “VEOA provides... veterans with a right to challenge... hiring decisions that violate a statute... relating to veterans’ preference. 5 U.S.C. § 3330(a).” Riller v. FDIC, 818 F.3d 1361, (Fed. Cir 2016)

¹⁴ See – Appx. E, Pg. 9a; Appx. G, Pg. 14a - 15a; Appx. H, Pg. 42a

Paragraphs 3-5, 7, 9 and 12-13 of my Complaint state:

"When I seek initial appointment... preference is granted through the [VPA]... It is currently impossible to promote me... What can I be promoted from? If a... judge uses the term "merit promotion" under a decision... related to ME, those terms are used to illegally deprive and conspire against my right to initial APPOINTMENT under the VPA... I am not bringing this non-frivolous Complaint forth to falsely accuse... harass or burden... I am not asking this Court to... overturn or challenge any of the illegal rulings related to this matter. I am asking this Court to acknowledge that my civil rights were violated when multiple U.S. Government employees and judges illegally pretended that I am a federal employee seeking "merit" promotion under the VPA."

MJ Toliver continued answering the allegations for USA stating, *"No corrective action can be made where no violation has occurred... Pro se litigants have no license to harass others..."* This proves ND TX answered the Complaint for USA and construed the above Paragraphs of my Complaint to do injustice. *"Common law of torts... implement[s] a person should be compensated fairly for injuries caused by violation of legal rights... the cardinal principle of damages in Anglo American law is compensation for injury caused to plaintiff by defendant's breach of duty."* Carey v. Phipus, 435 U.S. 247, 253 (1978)

Under Doc. 17, Pg. 28 & 36-37, I explain to Fifth Circuit why my FTCA Complaint lists so many laws. I construe "cause of action" as listing every law that was violated and *caused* me to file suit. I also asked to amend relating back under FRCP 15(a)(2), (c)(1)(B), but I don't believe that's necessary. My Complaint invokes FTCA, and no relief is sought under non-FTCA laws. This case is well-pled and non-duplicative of the unconsolidated EEO suit against DHS.¹⁵

The Free Speech Clause allows objections to 4(c)(2) violations. ND TX "*extended the deadline... to respond to the [untimely MTD]*" as a means to coerce me to argue with the untimely MTD.¹⁶ I moved to strike it and invoked FRCP 55(a), 83(b).¹⁷ I told ND TX, "*my motion to strike... under FRCP 12(f)(2) satisfies all need... to prove I oppose the illegal, fraudulent MTD.*"¹⁸ ND TX acted as USA's lawyer, and I legally refused to assist in righting USA's FRCP 6(b)(1)(B), 12(a)(2) wrongs. I am a free, natural-born American citizen and a "person" entitled to due process and equal protection under the Fifth Amendment. Dismissal punished me for invoking FRCP 55 and refusing to treat USA as above the law. "To punish a person [for doing] what the law allows violates due process." *Bordenkircher v. Hayes*, 434 US 357 (1978).

¹⁵ "The amendment would have done no more than state an alternative theory for recovery. Rule 15(a) declares that leave to amend "shall be freely given when justice so requires"; this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178 (1962)

¹⁶ See – Appendix H, Page 27a

¹⁷ See – (ROA.285-290, 294-302, 303-311, 313-320, 343-353)

¹⁸ See – Paragraphs c-j (ROA.318-319)

This Court doesn't allow the judiciary to raise issues or advocate for parties. The standard continues under *Margolin*. Fifth Circuit answered the Complaint allegations for USA, reframed the ND TX dismissal and affirmed revival of USA's unpreserved defenses. Fifth Circuit "violated the party-presentation principle when it decided a case different from the one... advanced." *Id.*

B. *Prima Facie* Standard Violated.

"Prima facie evidence of a fact is such evidence... sufficient to establish the fact and if not rebutted remains sufficient for the purpose." *Kelly v. Jackson*, 31 U.S. 622 (1832). "The preponderance-of-the-evidence standard [is] the default standard of proof in American civil litigation." *E.M.D. Sales, Inc. v. Carrera*, 604 U.S. 45 (2025).

I told ND TX that USA never filed proof of "*rejected delivery... or evidence showing the lawsuit wasn't ...logged and timestamped.*"¹⁹ Preponderant evidence weighs in my favor. I proved service and delivery to the authorized mailrooms. USA's due process rights were honored under Rule 4(i)(1)(A)(ii)(B).

"Return of service generally serves as prima facie evidence that service was validly performed." *Blair v. City of Worcester*, 522 F.3d 105 (1st Cir. 2008). USA never proved its didn't-get-it claim per *Kelly*, and USA didn't "effectively rebut" my evidence per *Blair*.

¹⁹ See (ROA.305-306)

C. Jurisdiction Refused.

"Personal jurisdiction is established when the defendant is served." Burnham v. Superior Court, 495 U.S. 604 (1990). The lower courts refused subject matter and personal jurisdiction after reviewing my FTCA facts, FRCP 4(l)(1) proof, USPS evidence and the Clerk's entry of default. ND TX and Fifth Circuit never cited Rule 12(b)(2), but dismissal indicates they are erroneously and silently reviving it for USA.

Rule 12(b)(2) is linked to 4(i)(1)(A)(ii), and I believe the lower courts refused personal jurisdiction and bypassed entry of default to avoid holding USA accountable to *Olmstead's* "same rules." USA wasn't required to appear and defend if their non-receipt claim was provable. USA litigated late, never proved non-receipt and never raised the 12(b)(2) defense. USA was "free to ignore... proceedings, risk a default judgment, and... challenge that judgment... in a collateral proceeding." Ins. Corp. of Ireland v. Compagnie, 456 U.S. 694 (1982)

Congress grants ND TX and 5th Cir. subject-matter jurisdiction per 28 U.S.C. §§ 1331, 1346(b)(1). I invoked § 1346(b)(1) under Para. 16 of my Complaint, and Para. 71-72 spell relief. "The discretionary function exception will not apply when a statute... specifically prescribes course of action... to follow." Berkovitz v. U.S.A., 486 U.S. 531 (1988). Per *Berkovitz*, USA's sovereign immunity is waived under this matter. The lower courts have a "... virtually unflagging obligation... to exercise the jurisdiction given..." Colorado River Water Conserv. v. U.S.A., 424 U.S. 800 (1976).

D. Stand-Down Violated 28 U.S.C. § 452.

28 U.S.C. § 452 allows FRCP 55(b)(d) motions. The stand-down only permitted replies to the forthcoming R&R and encroached my court access and due process rights under 55(b),(d). ND TX never lifted stand down after the Clerk entered default.²⁰ “It is the duty of courts to be watchful for constitutional rights... and against any stealthy encroachments thereon.” Spevack v. Klein, 385 U.S. 511 (1967). I emailed Judge Lindsay’s office and cc’d AUSA Parker about my FRCP 55(a) property interest. I moved Fifth Circuit to take notice, and the court never ruled on my FRE 201 motion.²¹ “Under Federal Rule of Evidence 201, a court may take... notice of an adjudicative fact.” PNC Bank v. 2013 Travis Oak, 24-50101 (5th Cir. 2025)

E. Disparate Application of Rules.

ND TX applied the obsolete 1993 ‘addressed to’ text against me and didn’t apply it against two similarly situated plaintiffs, *Pillar* and *Farmers*.²² “Civil process clerk” was omitted from the *Pillar* and *Farmers* envelopes, but it didn’t invalidate their FRCP 4(l)(1) affidavits or cause dismissal. Unlike *Pillar* and *Farmers*, I was deprived of court access through dismissal. My equal protection and due process rights under the current text of FRCP 4(i)(1)(A)(ii) and 4(l)(1) were violated. “The concepts of equal protection and due process are not mutually exclusive...” Bolling v. Sharpe, 347 US 497 (1954).

²⁰ See – (ROA.5), ELECTRONIC ORDER as Doc. 39

²¹ See – Trimble. v. USA, 25-10921 (5th Cir. 2026) – Docs. 18-1, 20

²² Pillar v U.S. SBA, 3:24-cv-00348-K, Doc-12 (ND TX 2024); Farmers Ins. v. USA, 3:24-cv-00394-X, Doc-13 (ND TX 2024)

"It is not the habit of this Court to decide important constitutional questions... the parties have not presented..." *Flournoy v. Wiener*, 321 U.S. 253 (1944).

Judge Lindsay ignored the Constitution when I said, "*adopting the MJ's position... would prejudice me and violate my right to equal protection and due process under FRCP 55.*"²³ Fifth Circuit ignored my objection to the R&R where I raised "hostile" treatment as compared to the *Pillar* and *Farmers* omissions. I also argued the *Pillar* and *Farmers* disparity on appeal. The lower courts remained silent on their arbitrary, disparate application of 4(i)(1)(A)(ii). "Not to hold the balance nice, clear and true denies due process." *Tumey v. Ohio*, 273 US 510 (1927)

The Rules Committee removed the 1993 'addressed to' text under 4(i)(1)(A)(ii) and replaced it with 'sent to.' The Notes explain "stylistic" amendments for Rules 4(d)(1)(C), 4(g), 4(i)(4) and 4(j)(2), but there is silence on 4(i)(1)(A)(ii). The Committee states, "*The restyled rules reduce inconsistencies by using the same words to express the same meaning.*" The 2007 'sent to' text isn't a 'same words' amendment, and I construe it as a substantive change to the 'addressed to' text under the 1993 amendment of 4(i)(1)(A)(ii).²⁴

²³ See - (ROA.378-386)

²⁴ See - The Committee Notes on Rules - 2007 Amendment
<https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title28a-node89&saved=L3ByZWxpbUB0aXRzZTI4L3RpdGxIMjhL25vZGU4OS9ub2RIOTE%3D%7CZ3JhbnVsZWlkO lVTQy1wcmVsaW0tdG10bGUyOGEtbn9kZTg5LW5vZGU5MQ%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim&edition=prelim>

“Effective December 1, 2007, the rule was amended. It does not require... summons and complaint be addressed to the civil-process clerk...”²⁵. *Auger* is unpublished under a sister-circuit district. I cited it as important case law on the scope of the 2007 amendment.²⁶ “Unpublished opinions [are] persuasive,” *U.S. v. Guadalupe*, 821 F.3d 577 (5th Cir. 2015). “Sister circuits provide persuasive authority.” *Juino v. Livingston*, 717 F.3d 431 (5th Cir. 2013).

Does my “civil process clerk” omission invalidate my FRCP 4(l)(1) affidavit? My affidavit does not ask to state the name on the envelope. It requires the server to attest to who he “*served the summons on.*”

F. Use of Obsolete Law Is Illegal.

“A court must apply the law in effect at the time it renders its decision.” *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). The *Landgraf* standard binds ‘sent to’ as controlling text under FRCP 4(i)(1)(A)(ii). Fifth Circuit violated my equal protection and due process rights under the 2007 Amendment to FRCP 4(i)(1)(A)(ii) when the Panel held, “*mailed service of process to the United States Attorney must be addressed to the civil-process clerk...*”²⁷ ND TX did the same when citing the obsolete ‘addressed to’ text.²⁸

²⁵ *Auger v. USA*, 6:08-cv-00479-MSS-KRS (MD FL 2008); Doc. 13, PageID 135

²⁶ See – (ROA.199, 234-235, 350)

²⁷ See – Appx. E, Pg. 9a, 19a

²⁸ See – Appx. H, Pg. 24a

II. Significant Constitutional Harm.

A. Supreme Court Supervision Needed.

This Court's supervision is necessary to prohibit ND TX from obstructing court access after citizens follow the 2007 '*sent to*' amendment under FRCP 4(i). AUSA Padis and MJ Toliver cited several other ND TX cases, proving the obsolete 1993 text was used against plaintiffs who sent reasonable notice to USAO Dallas and filed proof of service. My dismissal is not an isolated error. I speak truth and defend my constitutional rights, and I'm not formally litigating for anyone else.²⁹

B. Impacts Public's Right To Serve USA.

If courts can obstruct the docket and encroach litigants' rights under current law and Form AO 440, the Petition, Due Process and Equal Protection Clauses are useless, and citizens will never be able to fully seek justice. My right to proceed was negatively impacted after I proved service, and the Clerk entered default. Please prohibit the manifest injustice.

The Rules Enabling Act gives this Court "power to prescribe... the forms of process... practice and procedure of the district courts..." *Hanna v. Plumer*, 380 U.S. 460 (1965). Denial of due process and equal protection under FRCP 4 impairs the right to serve the USA without obstruction from the very courts that are bound, by Article VI, to protect the Constitution.

²⁹ See – (ROA.242, 361)

"By insisting that courts comply with the law, parties vindicate... the rights they assert [and]... the law's own insistence on neutrality and fidelity to principle." *Hollingsworth*

III. FTCA & FRCP 55 Property Interests.

A. Dismissal Obstructed Due Process.

"[My] right to use [FTCA and FRCP 55]... procedures is a species of property protected by the Due Process Clause... a [federal] tort claim is a species of property protected by the Due Process Clause." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982)

"Property interests protected by... due process extend... beyond ownership of... chattels... Property interests... are not created by the Constitution... they are created... by existing rules or an independent [law]..." *Board of Regents v. Roth*, 408 U.S. 564 (1972). Rule 55(a),(b),(d) accord "a property interest protected by procedural due process." *Id.* *Roth* looks at "the nature of the subsequent proceedings."

FRCP 55(b),(d) are subsequent to 55(a), and the 5th Amend. grants due process and equal protection under 28 U.S.C. §§ 2401(b), 2674 and FRCP 55(b),(d). I have a legal property interest in my FTCA lawsuit and its SF-95 forms via 28 U.S.C. § 2401(b). I have a legal property interest in the Clerk's FRCP 55(a) entry of default via 55(b),(d). Liberty to file 55(b),(d) motions and denial of my 55(a) property interest were the overwhelming "effect [of] dismissal... [with enormous] consequences." *Id.*

B. First Amendment Grants Court Access.

"The right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition..." *Borough of Duryea v. Guarnieri*, 564 U.S. 379 (2011).

My FTCA suit is non-frivolous. My VPA standing is real.³⁰ The dismissal shut the court door and violated my access rights after the Clerk entered default. "[The question] turns on an [FRCP 55(a) procedural] opportunity [already] gained [and a 55(b)(d)] opportunity [potentially] lost. The [1st Amendment grants] access to... seek judicial relief for [the] wrong of being shut out of court. [The question presented is] nonfrivolous and arguable." *Christopher*

C. Fifth Amendment Guards Property.

The Due Process Clause protects my FTCA and FRCP 55(a) property interests. The stand-down order blocked the filing of FRCP 55(b),(d) motions under those interests.³¹

IV. FRCP 55 Permissions and Evidence.

A. Do 55(b),(d) Grant Individual Rights?

This Court has never defined 'may' under 55(d). Does 'may' allow courts to obstruct 55(b),(d) motions, or does it permit default judgment against USA?

³⁰ "Honorably discharged veterans... are concededly entitled to whatever benefits the [VPA] affords." *Elder v. Brannan*, 341 U.S. 277 (1951). "The [VPA]... give[s] preference in a veteran's initial appointment to the federal civil service." *Kerner*

³¹ See – (ROA.5) – Doc. 39

“[...Federal Rules are] as binding as any statute duly enacted by Congress, and federal courts have no more discretion to disregard... than they do to disregard constitutional or statutory provisions.” Bank of Nova Scotia v. USA, 487 U.S. 250 (1988).

“The word ‘may’... connotes discretion.” Biden v. TX, 597 U.S. 785 (2022). “Mandatory terms [are]... (‘must’).” Medina v. PPSA, 606 U.S. 357 (2025).

55(b) has a non-discretionary ‘must’ for the Clerk. “Discretion... [is] limit[ed]... to legal standards.” Martin v. Franklin Capital Corp., 546 U.S. 132 (2005)

Can 55(d) violate 28 U.S.C. § 2072(b)? Do the Equal Protection and Due Process Clauses apply to ‘*plaintiff’s request*’ under 55(b)? The stand-down order blocked my 55(b) “*plaintiff’s request*” right. Does the ‘*may*’ under 55(d) give Judges discretion to block 55(b) motions?

B. Does 55(d) Require Greater Evidence?

This Court has never defined ‘*evidence that satisfies*’ under 55(d). Does 55(d) require higher evidentiary burdens after 8(b)(6) allegations are admitted? Two sister circuits have answered this question, and I am unaware of any case law from this Court that provides similar answers.

"After entry of default against the government, the quantum and quality of evidence that might satisfy a court can be less than that normally required." Alameda v. HEW, 622 F.2d 1044 (1st Cir. 1980) "We do not interpret Rule 55[d] to... require the court to demand more or different evidence than [ordinary]... Accordingly, we conclude Rule 55[d] did not preclude entry of the default judgment.." Marziliano v. Heckler, 728 F.2d 151, 158 (2nd Cir. 1984)

III. Conflicts With U.S. Courts of Appeals.

A. 12-to-1 Split On Reviving Defenses.

"Personal jurisdiction is a personal defense that may be waived or forfeited." Mallory v. Norfolk Southern, 600 U.S. 122 (2023). "Forfeiture is failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment." U.S. v. Olano, 507 U.S. 725 (1993). Across all sister circuits, defendants waive and forfeit 12(b)(2),(5) defenses if improperly preserved. Fifth Circuit conflicts with its own precedent and twelve sister circuits.

First Circuit: "Court may not *sua sponte* consider defects in personal jurisdiction on behalf of parties who may choose to waive the defects." Pilgrim Badge v. Barrios, 857 F.2d 1 (1st Cir. 1988). Second Circuit: "Defendant [waives] defense of improper service by participating in litigation without raising personal jurisdiction..." Hamilton v. Atlas, 197 F.3d 58 (2nd Cir. 1999).

Third Circuit: "Objections to service of process are waived if not timely raised... defective service waived if not challenged in first defensive pleading." McCurdy v. Am. Bd. of Plastic Surgery, 157 F.3d 191 (3rd Cir. 1998). Fourth Circuit: "Unexcused failure to raise the untimeliness of service defense... must be held to deprive the court of that power." Pusey v. Dallas Corp., 938 F.2d 498 (4th Cir. 1991).

Sixth Circuit: "Defendants waived lack of personal jurisdiction defense, and voluntarily submitted to the district court's jurisdiction." Gerber v. Riordan, 649 F.3d 514 (6th Cir. 2011). Seventh Circuit: "District court did not err finding defendants waived their defense of improper service based on their repeated involvement." Trustees v. Lowery, 924 F.2d 731 (7th Cir. 1991).

Eighth Circuit: "They participated... without raising personal jurisdiction... conduct manifests an intent to submit." Yeldell v. Tutt, 913 F.2d 533 (8th Cir. 1990). Ninth Circuit: "Personal jurisdiction may be waived as a result of... conduct... by a party during litigation." Peterson v. Highland, 140 F.3d 1313 (9th Cir. 1998).

Tenth Circuit: "The court may not *sua sponte* consider defects in personal jurisdiction on behalf of parties who may choose to waive..." Williams v. Life Savings and Loans, 802 F.2d 12004 (10th Cir. 1986). Eleventh Circuit: "The court may not, upon the defendant's motion or its own initiative, dismiss for lack of personal jurisdiction or insufficient service." Pardazi v. Cullman, 896 F.2d 1313 (11th Cir. 1990).

Federal Circuit: "An order entering default under Rule 55(a) is generally not appealable." Iowa State v. Greater Conts., 81 F. App'x 344 (Fed. Cir. 2003). D.C. Circuit: "We find DRC waived its objection to the service of process by proceeding..." DRC v. FGHA, 508 F.3d 1062 (D.C. Cir. 2007). Finally, Fifth Circuit: "Defendants voluntarily appeared... and waived the defense of insufficiency of service." BMI v. M.T.S., 811 F.2d 278, (5th Cir. 1987)

B. 4-to-1 Split On Absent Answer.

FRCP 7(a)(2) defines the 12(a)(2) answer. 8(b)(6) states, '*an allegation... is admitted if a responsive pleading is required and the allegation is not denied.*'

"[In] our system of representative litigation... each party is... considered to have notice of all facts..." Pioneer Investment v. Brunswick, 507 U.S. 380 (1993) Around 202 days went by after USA appeared late and never filed a 12(a)(2) answer. The Clerk entered default, but ND TX and Fifth Circuit subsequently rewarded USA's willful default. Fifth Circuit conflicts with its own precedent and four sister circuits.

"Default was subsequently entered... for failure to answer... entry of a default establishes liability." GAFAH v. Medfit, 982 F.2d 686 (1st Cir. 1992). "Goldsteins' [attorney failed] to answer... the district court did not abuse its discretion by imputing willful default." USA v. Goldstein, 05-1836-cv (2nd Cir. 2007)

"If a party willfully defaults... the court need make no other findings in denying relief," McHugh v. Glass, 95 F.4th 1337 (11th Cir. 2024).

"If no answer filed... default [will] be entered." FSLIC v. Kroenke, 87-3860 (Fed. Cir. 1988) "The... defenses were... waived by failing to answer... Wooten's complaint... was sufficient... on its own and... with the evidence presented... to support the default judgment..." Wooten v. McDonald Transit, 788 F.3d 490, 495 (5th Cir. 2015)

IV. Conflicts With State Supreme Courts.

A. Reviving Defenses and Defaults.

Fifth Circuit conflicts with five state supreme court rulings in Louisiana, Mississippi and Texas.

"We reverse because defendants did not plead declinatory exception of lack of personal jurisdiction... that exception is waived and cannot be revived by the appellate court." Vardaman v. Airosol Co., 722 So. 2d 985 (LA 1998). "Roper having filed no answer, a default judgment was confirmed against him." Roper v. Dailey, 393 So. 2d 85 (LA 1998)

"Pekin voluntarily submitted... to the jurisdiction of a Mississippi federal court...[and] impliedly consented to... jurisdiction over the dispute." Pekin Ins. v. Hinton, 192 So. 3d 966. "Defendants simply must take seriously their duty to answer. When, as here, they fail without good reason, they may expect no relief." H&W v. Griffin, 511 So. 2d 895 (MS 1987)

"Compugraphic filed no answer... by its default, Compugraphic admitted that its negligence was a proximate cause." Morgan v. Compugraphic Corp., 675 S.W. 2d 729, 731 (TX 1984)

B. Uncorroborated Defenses.

Fifth Circuit conflicts with LA & TX by allowing USA's unproven "didn't-get-it" defense to rebut my FRCP 4(l)(1) proof.

Per Roper, "Return of citation cannot be impeached by... uncorroborated testimony of a single witness... it cannot be impeached by the uncorroborated testimony of the party upon whom service is stated to have been made."

"A defendant who contends that the person served was not... a proper officer... has the burden to present evidence to the trial court... here, the defendant made no such showing." Pleasant Homes v. Allied Bank of Dallas, 776 S.W. 2d 153 (TX 1989)

V. Conflicts With U.S. Supreme Court.

"The basic principle of justice [is] that like cases should be decided alike," Martin. Fifth Circuit conflicts with relevant, controlling law under: Dusenbery v. USA, 534 U.S. 161 (2002); Jones v. Flowers, 547 U.S. 220 (2006); Olmstead v. USA, 277 U.S. 438 (1928); Mullane v. Central Hanover, 339 U.S. 306 (1950); Spevack v. Klein, 385 U.S. 511 (1967) and United Student Aid v. Espinosa, 559 U.S. 260 (2010).

A. Dusenbery & Mullane Notice Law.

Fifth Circuit's new fact-finding on the authorized federal building mailroom signature conflicts with Dusenbery & Mullane. USPS evidence, plus the process server's affidavit, prove reasonable notice delivered to the USA, per FRCP 4(i)(1)(A)(ii)(B).

The Due Process Clause doesn't require mail carriers to hunt for a USAO employee in the federal building if USAO's own filed instructions require USPS to deliver straight to the Dallas authorized mailroom at 1100 Commerce Street. Due process to apprise of the lawsuit doesn't require "heroic efforts," *Dusenbery*. The *Dusenbery* and *Mullane* cases are indistinguishable because this case involves reasonable notice sent to the known Dallas addresses under all circumstances.

USPS shows no refusal or unclaimed status, actual signee is *D. Mailroom* and final status = delivered.³² Forcing USPS to ignore USAO's filed delivery instructions, and escorting the mail carrier past the authorized mailroom to hunt for a USAO signee, is an unnecessary heroic effort that "places impossible obstacles in the way," *Mullane*.

The Panel relies on *Systems Signs v. US DOJ*, 903 F.2d 1011, 1013 (5th Cir. 1990) where cure was ordered after plaintiff "personally" served a federal agency, and his relatives served the Government without returning "*affidavits indicating the person served...*" Those facts are distinguishable here. Unlike *Systems*, I never violated FRCP 4(c)(2). I filed the 4(l)(1) affidavit and met the burden to prove service validity.³³

³² See - (ROA.192, 230)

³³ See - (ROA.186-92)

I filed more evidence when seeking entry of default.³⁴ USA provided zero evidence of Tonche's employer or Tonche's mailroom duties. USPS evidence proves delivery success to USAO's authorized mailroom. ND TX didn't issue a finding of non-receipt, and "conclusory contention[s] abdicate... responsibility to actually evaluate the sufficiency of [USA's] allegations. *Bost v. Illinois Bd. of Elections*, 24-568 (U.S. 2026)

C. Jones Dispute Law.

The *Jones* standard to cure and take "additional steps to provide notice" is invoked when "notice is returned unclaimed." *Jones* does not rely on uncorroborated arguments, and the *Jones* standard performs *ex ante* review of mail carrier evidence to determine service success or failure. Under *Jones*, "notice [is] constitutionally sufficient if reasonably calculated to reach the intended recipient." USPS never indicated anything had "gone awry." *Id.*

D. Espinosa Defense Preservation Law.

USA never filed an answer, objected to personal jurisdiction or sought a Rule 6 extension to preserve defenses. Waiver and forfeiture happens when you "...sleep on rights," *Espinosa*. USA's first defensive move was an informal notice to the Clerk that didn't preserve anything per FRCP 6(b)(1)(B) and 12(h)(1)(B).³⁵ USA provided no evidence or "availing argument... to demonstrate a due process violation..." *Id.*

³⁴ See – (ROA.225-31)

³⁵ See – (ROA.241-44)

E. *Olmstead* Conduct Law.

The Constitution, Bill of Rights, Federal Rules and U.S. Code govern these issues. USA is not immune to default, and the Courts below are prohibited from encroaching my rights and allowing Government employees to violate the law. "Government officials shall be subjected to the same rules that are commands to the citizen... If the Government becomes a lawbreaker, it breeds contempt for law." *Olmstead*

F. *Spevack* Protections Law.

Dismissal violated my right to access the court and proceed under the FTCA, FRCP 4(l)(1) and 55(b),(d). I invoked my constitutional rights and stated ND TX and USA's conduct is illegal.³⁶ "Illegitimate and unconstitutional practices get their first footing by silent approaches and slight deviations from legal modes of procedure." *Spevack*

VI. Constitutional Due Process for Service.

The FRAP 10(a) record on appeal ("ROA") doesn't contain one judicial finding of non-receipt of service. The ROA doesn't have an FRCP 4(l)(3) order to amend nor an FRCP 4(m) dismissal or cure order.³⁷ The ROA finding on the FRCP 4(l)(1) affidavit resulted in entry of default. The ROA finding on the envelope omitting "civil process clerk" resulted in dismissal. The ROA has zero findings of unconstitutional service defects.

³⁶ *Trimble v. USA*, 25-10921 (Doc. 17, pg. 9, 14-15)

³⁷ *See* - (ROA.1-7)

I complied with *BMI's* "constitutionally minimal due process requirements" to apprise USA of this lawsuit. Preponderant evidence proves notice was delivered to authorized mailrooms in D.C. and Dallas.

"Our cases have never required actual notice," *Dusenbery*. "[USA] could have timely objected... and appealed from an adverse ruling... [The alleged] deprivation did not amount to a violation of [USA's] constitutional right to due process." *Espinosa*

CONCLUSION

I declare under penalty of perjury that the foregoing is true and correct to my best belief. This Court is the remaining remedy to reverse this manifest injustice. Please don't deny this Petition if Respondent waives the right to respond. Please resolve the constitutional and legal questions set out and fairly included herein. Please grant this Petition for Writ of Certiorari.

Respectfully submitted,

/s

Aisha Trimble, Pro Se

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