NO. _____

In the Supreme Court of the United States

EDWARD JACOB LANG, ET AL.,

Petitioners,

v.

DANIEL THAU, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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May 28, 2025

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QUESTIONS PRESENTED

The U.S. Court of Appeals for the District of Columbia—reciting its awareness that the Petitioners /Plaintiffs were incarcerated and even some in solitary confinement evidently in retaliation for the filing of this lawsuit and unable to respond—cut off the appeal below on summary affirmance. Knowing that the Plaintiffs were unable to meet deadlines dismissed the appeal before the Plaintiffs had a chance to file an Appellant brief, just as the U.S. District Court had also done in prematurely dismissing the case at the trial level. The Questions Presented are:

1. Does "good cause" as a basis for reinstatement of a lawsuit and/or extension of time under Federal Rules of Civil Procedure ("FRCP") Rule 4(m) for failure to serve a Defendant turn on the test "through no fault of the litigant," such as being incarcerated and/or in solitary confinement? Is it sufficient to show that the deviation was "through no fault of the Plaintiff" or does "good cause" require something more (as suggested by Defendants/Respondents)?

2. Does "good cause" as a basis for reinstatement of a lawsuit or extension of time under FRCP Rule 4(m) to serve a Defendant include considering the absence of any inconvenience or prejudice to the Defendants?

3. Where all parties and the lower courts agree that the Complaint and amended complaints actually included a telephone number, could the District Court dismiss the case under Local Rule 5.1(c)(1) for failure to include a telephone number—that was in fact included —on speculation that someone might not answer the phone number—although the attorney in fact under a power of attorney did answer when the Defendants

called the phone number (and Defendants immediately hung up when he answered the phone number)? That is must the phone number on a complaint be "his" phone number owned as the exclusive property of a Plaintiff rather than "his" phone number where a Plaintiff can be reached?

4. Where Local Rule 5.1(c)(1) requires a "residential address" but all parties and the lower courts agree that most of the Plaintiffs resided for years in Federal prison as inmates—especially those like Edward Jacob Lang who was arrested early in 2021 and continuously incarcerated until January 21, 2025—can the District Court dismiss the case for disclosing that the Plaintiffs reside in Federal prison? That is, if a Plaintiff has no residential address (because they are in prison) can his or her case be dismissed under Local Rule 5.1(c)(1)?

5. Where the initial complaint was filed on January 5, 2024, the District Court dismissed the initial complaint as to all Plaintiffs on April 30, 2024, (day 118), but on May 20, 2024, ECF Dkt. # 15, the Defendant U.S. Capitol Police recited and conceded having been previously served with the Complaint in its Memorandum in opposition to re ECF Dkt. # 11 Motion for Relief from Judgment, did the District Court err in denying an extension of time to serve the Defendants?

6. Can the District Court under Local Rule 5.1(c)(1) dismiss the case for providing a post office box address with the U.S. Postal Service [established under the U.S. Constitution as the official mail service of the U.S. Government] while also noting that the Plaintiff is in the custody of a Federal prison and has no residence.

7. Did the Court of Appeals err by ignoring the clear errors of the trial court and trying to force the

error through a narrow slot of relief from a judgment rather than that the trial court was simply wrong?

8. Did the District Court abuse its discretion where it dismissed the case without prejudice, an attorney was then found to represent the Plaintiffs, the attorney got all of the Defendants properly served, the attorney's law practice telephone number satisfied Local Rule 5.1(c)(1), and the attorney's law practice official address satisfied Local Rule 5.1(c)(1), but the District Court did not allow reinstatement of the Plaintiffs' claims?

9. Where FRCP Rule 4(m) requires service of the lawsuit on Defendants within 90 days, but the second amended complaint was filed with leave of court on February 6, 2024, the District Court dismissed the lawsuit as to all Plaintiffs on April 30, 2024, (that is on day 83), did the District Court err in dismissing the Second Amended Complaint on the 83rd day? Did the District Court err in denying an extension of time to serve the Defendants?

10. Where the District Court dismissed the second amended complaint on the 83rd day under Local Rule 5.1(c)(1), is FRCP Rule 4(m) not relevant to dismissal of this case?

11. Could the U.S. District Court for the District of Columbia cut off the Plaintiffs' legal rights by disregarding the limitations of their incarceration and even solitary confinement delaying their responses, where the U.S. Constitution deprives the District Court of the authority to establish rules?

12. Has the U.S. Constitution "textually committed the power to another Federal branch" by explicitly investing the U.S. Congress with the power and function to establish the lower Federal courts and their structure,

the jurisdiction of the lower courts, and the rules by which they are governed? That is, does the commitment of those functions to Congress eliminate any argument of inherent authority or judicial traditions?

13. Under the Rules Enabling Act of 1934, 28 U.S.C. §§ 2071 to 2077, which delegates the establishment of rules governing the Federal courts to the U.S. Supreme Court and the Judicial Conference thereof, must that delegation be interpreted conservatively and with caution, not overly broad?

14. Where 28 U.S.C. § 2072, limits this Court's creation of "general rules of practice and procedure and rules of evidence" by "(b) Such rules shall not abridge, enlarge or modify any substantive right," are these rules limited to only internal procedures and "housekeeping" issues and not empowered to cut off legal rights of litigants? Indeed, 28 U.S.C. § 2074 states "(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress."

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants below

All Plaintiffs are individuals who have no corporate existence, corporate parent existence, or subsidiary relationships.

- EDWARD JACOB LANG
  P.O. Box 485
  Narrowsburg, NY 12764
- RACHEL MYERS
- TREVOR BROWN
- DEREK KINNISON
- MICHELLE HELMINEN
- NANCY SINGLETARY

Respondents and Defendants-Appellees below

All Defendants are either individual employees of government agency or government agencies or organizations and have no parent corporate or corporate subsidiary relationships.

- SARGEANT DANIEL THAU
  Metropolitan Police Department
  441 4th Street NW, 7th Floor
  Washington. DC 20001
- SARGEANT ROBERT GLOVER,
  Metropolitan Police Department
- PAMELA A. SMITH, Current Chief
  of the Metropolitan Police Department
  441 4th Street NW, 7th Floor
  Washington. DC 20001
- ROBERT J. CONTEE III, former Chief
  of the Metropolitan Police Department
  441 4th Street NW, 7th Floor
  Washington DC 20001
- SARGEANT FRANK EDWARDS, Metropolitan Police Department in his individual capacity and official capacity
- OFFICER JIMMY CRISMAN, Metropolitan Police Department in his individual capacity and official capacity
- SARGEANT PAUL RILEY, Metropolitan Police Department in his individual capacity and official capacity
- SARGEANT TARA TINDALL, Metropolitan Police Department In her individual capacity and official capacity

- OFFICER LILA MORRIS, Metropolitan Police Department In her individual capacity and official capacity
- LT. JASON BAGSHAW, Metropolitan Police Department In his individual capacity and official capacity
- OFFICER JOHN DOES 1-50
  Metropolitan Police Department
  441 4th Street NW, 7th Floor
  Washington. DC 20001
- THE DISTRICT OF COLUMBIA, a Municipal Corporation, as Employer of Metropolitan Police Department Officers
  441 Fourth Street N.W.
  Washington, D.C. 20001
- UNITED STATES CAPITOL POLICE
  119 D Street N.E.
  Washington, DC 20510
- J. THOMAS MANGER, in his official capacity as Chief of the U.S. Capitol Police
  119 D Street N.E.
  Washington, DC 20510
- YOGANANDA PITTMAN in her official capacity as former Chief of the U.S. Capitol Police
  119 D Street N.E.
  Washington DC 20510
- ERIC WALDO, Deputy Chief of the U.S. Capitol Police in his individual capacity and official capacity
- THOMAS LOYD, Inspector, U.S. Capitol Police in his individual capacity and official capacity

- SARGEANT BRYANT WILLIAMS, U.S. Capitol Police, in his individual capacity and official capacity
- LT. MICHAEL LEROY BYRD, U.S. Capitol Police, in His Individual Capacity and Official Capacity
- THOMAS A. DIBIASE, in his official capacity as General Counsel for the U.S. Capitol Police
  119 D Street N.E.
  Washington, DC 20510
- JAMES W. JOYCE, in his official capacity as Senior Counsel for the U.S. Capitol Police
  119 D Street N.E.
  Washington, DC 20510
- OFFICER JOHN DOES 51-100
  U.S. Capitol Police
  119 D Street N.E.
  Washington, DC 20510

LIST OF PROCEEDINGS

U.S. Court of Appeals, District of Columbia Circuit

No. 24-5192

Edward Jacob Lang et al. *Appellants* v. Daniel Thau Sargeant Metropolitan Police Department et al., *Appellees*

Final Order: February 25, 2025

U.S. District Court, District of Columbia

No. 24-cv-295 (DLF)

Edward Jacob Lang et al. *Appellants* v. Daniel Thau, Sargeant Metropolitan Police Department et al. *Appellees*

Final Order: June 19, 2024

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OPINIONS BELOW

A. Judgment for Which Certiorari is Sought

Petitioners seek review of the Judgment of the U.S. Court of Appeals for the District of Columbia Circuit dated February 25, 2025 (App.1a). That opinion upheld the order to dismiss of the District Court for the District of Columbia (App.11a) and the denial of the motion to reinstate the complaint. (App.4a).

B. Summary of the Opinions Below

Plaintiffs filed a Complaint on January 5, 2024, at ECF Dkt. # 1. Plaintiffs with some additional Plaintiffs filed an Amended Complaint on January 9, 2024, ECF # 2. Additional Plaintiffs filed a Motion for Joinder (as the District Court construed it) to join the Amended Complaint on February 5, 2024, at ECF Dkt. # 4. The Plaintiffs filed a Second Amended Complaint adding additional Plaintiffs on February 6, 2024, at ECF Dkt. # 5, for which leave of court was granted.

The District Court (Honorable Dabney Langhorne Friedrich presiding), issued the following Minute Order on April 15, 2024 in *Lang, et al. v. Thau, et al.*, 1:24-cv-00295

> MINUTE ORDER granting the 1 defendants' [9] Motion for an Extension of Time to Respond to Plaintiffs' Motion for Joinder. On or before June 3, 2024, the defendants shall file any response to the plaintiffs' [4] Motion to Join. Further, the Court is concerned about the plaintiffs' potential noncompliance with Local Civil Rule 5.1(c)(1). This rule

> provides that "[t]he first filing by or on behalf of a party shall have in the caption the name and full residence address of the party." L Civ. R 5.1(c)(1). "If [a] party is appearing pro se, the caption" of the first filing "shall also include the party's telephone number." *Id.* The "[f]ailure to provide the address information within 30 days of filing may result in the dismissal of the case against the defendant." *Id.* Based on the Court's review of the plaintiffs' [5] Second Amended Complaint, the only listed telephone number is for plaintiff EDWARD JACOB LANG. But the defendants represent that the listed telephone number is not actually Lang's. As such, it does not appear that the plaintiffs have complied with LCvR 5.1(c)(1) within the allotted 30 days, preventing the parties from consulting and from this Court contacting the plaintiffs telephonically. Although the plaintiffs are proceeding pro se, they still must comply with the Local Rules. See *Hedrick v. FBI*, 216 F. Supp. 3d 84, 93 (D.D.C. 2016). It is hereby ORDERED that on or before April 29, 2024 the plaintiffs shall show cause why the case should not be dismissed for failure to comply with Local Rule 5.1(c)(1). The Clerk of Court is directed to mail a copy of this order to the plaintiffs' addresses of record. So Ordered by Judge Dabney L. Friedrich on April 15, 2024. (lcdlf2)

The District Court dismissed the case <u>without prejudice</u> on April 30, 2024 (App.11a), by

> MINUTE ORDER. The plaintiffs were ordered

> to show cause, on or before April 29, 2024, why this case should not be dismissed without prejudice for failure to comply with Local Rule 5.1(c)(1). *See* Min. Order of April 15, 2024. The deadline has passed, and the plaintiffs have failed to show cause or make any other filing with this Court. Accordingly, it is ORDERED that this case is DISMISSED WITHOUT PREJUDICE. The Clerk of Court is directed to close this case and mail a copy of this order to the lead plaintiff's address of record. So Ordered by Judge Dabney L. Friedrich on April 30, 2024. (lcdlf2)

On May 6, 2024, a newly-involved attorney for the Plaintiffs, Stefanie Lynn Juntilla [neé Stephanie Lambert] filed a Motion for Relief from Judgment at ECF Dkt. #11. The Motion attached proof of service on all Defendants at ECF Dkt. #11-1 (Exhibit 1).

Given that –

a) The District Court dismissed the case <u>without prejudice</u>,

b) The Plaintiff's new attorney secured service of process upon all Defendants by May 6, 2024,

c) The Plaintiffs now represented by counsel provided a common, official address of Lambert's legal practice satisfying the requirement of Local Rule 5.1(c)(1) as to an official contact address,

d) The Plaintiffs now represented by counsel provided a common, official telephone number of Lambert's legal practice satisfying the

requirement of Local Rule 5.1(c)(1) as to an official contact telephone number,

e) An attorney now representing all the Plaintiffs, any questions suggested about the legal representation of any Plaintiff were now moot and not at issue,

all of the possible reasons for dismissing the action or not allowing an extension of time no longer exist.

On June 19, 2024, the District Court denied attorney Stephanie Lambert's Motion for Relief from Judgment (renamed a Motion to Reinstate Complaint by the District Court) at ECF Dkt. # 16. (App.4a).

On August 19, 2024, the Plaintiffs appealed at ECF Dkt. # 17. The record was transmitted to the US Court of Appeals on August 20, 2024, ECF Dkt. # 18.

Before the Plaintiffs had the opportunity to file a brief, the Defendants/Appellees filed a Motion for Summary Affirmance on October 7, 2024, which raised nothing new or different from the errors of the District Court, including misstatements of fact.

Plaintiffs filed a Response in Opposition to the Motion for Summary Affirmance on December 23, 2024, although Stephanie Lambert was not licensed in the Court of Appeals and the Plaintiffs were left scrambling to find a willing attorney.

The Appellees filed a Reply on January 2, 2025.

On February 25, 2025, the Court of Appeals issued a Per Curiam Order, dismissing the appeal. (App.1a).

The Mandate of the U.S. Court of Appeals for the District of Columbia Case No. 24-5192 back to the District Court was entered on April 22, 2025.

JURISDICTION

This Petition for Writ of Certiorari asserts violations of the Constitution, Due Process clauses, and the correct interpretation of the Rules Enabling Act, FRCP Rule 4(m) and Local Rule 5.1(c)(1). This Court has jurisdiction under 28 U.S.C. §§ 1254(1) and 28 U.S.C. § § 2101(c).

The District Court had jurisdiction pursuant to 28 U.S.C. § 1331 as there is a controversy arising under federal law and the Constitution. The D.C. Circuit had jurisdiction pursuant to 28 U.S.C. § 1291. The notice of appeal was timely filed pursuant to 28 U.S.C. § 2107 and Federal Rules of Appellate Procedure Rule 4(a)(1)(A) on September 26, 2023. This appeal is from a final order that disposed of all claims and terminated the case.

STATEMENT OF THE CASE

A. Summary of the Case

On January 6, 2021, around 10,000 demonstrators, as estimated by the U.S. Capitol Police—though obviously not robotic automatons of uniform opinions—who were generally in different ways and with different messages supportive of President Donald Trump came to

visit the U.S. Capitol building and the immediately nearby U.S. Capitol Grounds totaling 58.8 acres.[1]

This sounds like a lot, but it is not remotely so. An estimated 3.5 million tourists and visitors enter the U.S. Capitol every year[2] (that's almost 14,000 people every business day). The U.S. Capitol building is 750 feet long, about the size of a modest size oceangoing cruise ship. Therefore, more visitors and tourists cycle through the U.S. Capitol over the course of the average business day (just under 14,000) than the total number of demonstrators who gathered on the Capitol Grounds on January 6, 2021 (roughly 10,000).

A crowd of mostly peaceful demonstrators are accused of disrupting the Joint Session of Congress on January 6, 2021, mostly by poking their head inside the Capitol building for time periods of around 30 seconds to 30 minutes. We are ordered to believe that unarmed demonstrators planned to overthrow the U.S. Government in only a few minutes, during which most of them walked politely between the velvet ropes, chatted calmly with police officers, admired the architecture, kneeled and prayed, and took photographs of each other.[3]

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[1] https://www.aoc.gov/explore-capitol-campus/buildings-grounds/capitol-grounds

[2] Hantman testimony, U.S. Congress, House Committee on Appropriations, Subcommittee on Legislative, Legislative Branch Appropriations for 2004, hearings, part 1, 108th Cong., 1st sess., July 15, 2003 (Washington: GPO, 2003), p. 1464. *See also*, Website of Capitol Visitors' Center.

[3] Recall that neither this Court, nor Members of Congress, nor the media, nor the public are allowed to see 90% of the videos and evidence concerning January 6, 2021, due to District Court protective orders.

For a hundred or so of those 10,000 demonstrators, the peaceful demonstrators turned violent when they were attacked by amped-up police officers. However, the Biden Department of Justice counts violent acts by 18 U.S.C. § 111(a)(1) which lumps together "assaults," "resists," "opposes," "impedes," "intimidates," and "interferes with" interchangeably. Therefore the numbers are contaminated and deceptive. Every act is counted as "assaulting" when it clearly is not. And even the misleading collapse of every act into "assaulting" is deceptive. If a police woman has her hand—this is literally from an actual case—on one end of a bike rack and a defendant touches the other end 8 feet away and moves it, the defendant actually (this really occurred) charged with "assaulting."

Radio traffic obtained in criminal discovery reveals hysteria and panic conveying the sense that this was Armageddon. For example, panicked screams of "shots fired!" over police radio bands failed to clarify that it was the police shooting at unarmed civilians. To the police ear, a very different scenario was invoked by those words screamed over the radio. These are, of course, recordings preserved in court records but hidden from public view. We assume, of course, that this evidence will not disappear. Whereas building security cameras show peaceful interactions in most places, they also show unprovoked police brutality and attacks on demonstrators that turned into brawls. Again, these are videos recorded and maintained in the lower court's case files. Petitioners are seeking to have those released to the public from protective orders.

While most of the U.S. Capitol Police behaved almost too well, the Washington, D.C. Metropolitan

Police Department declared war on the political protestors.

The side of Joshua Black's face was blown off by so-called "non-lethal" (but still very dangerous) bullets that are supposed to be aimed only at the torso. Hector Varga was thrown by police—again recorded in body-cam videos forever (or until they disappear)—off the side of a large exterior marble staircase 25 feet down to the very hard ground below. Body-cam video shows police kicking an elderly woman down the exterior stairs—not once, but three times in a row.

We are told about—and shown on video—police officers slipping on blood on the exterior marble. We are not told that the blood is the blood of the peaceful demonstrators that the police officers are standing on. This is so shocking it must be repeated: This is all clearly captured on video, but the public is not allowed to see those videos. See, however, *J6 A True Timeline*, https://open.ink/collections/j6

Somehow misled by orders from superiors, police officers believed that they had to urgently clear the Capitol Grounds of all demonstrators, and that if they violently beat the protestors closest to the building everyone would leave. However, more people were arriving around the outside ringing the crowd, pressing people in closer and closer. Therefore, no amount of police violence against the crowd could avail because the protestors could not get out from the center to depart. The police could have patiently waited for reinforcements to arrive at the outside of the crowd and clear the grounds—if that was even necessary at all—rather than trying to beat the crowd into compliance from the center.

B. Course of Proceedings

The underlying lawsuit concerns claims against the Appellees under, inter alia, 42 U.S.C. § 1983, brought by Appellants, who are or were incarcerated at the time of the relevant filings in the above-captioned case.

On January 5, 2024, Edward ("Jake") Lang, proceeding pro se, filed a complaint on behalf of himself along with twenty-six others. The complaint presented, among others, *Bivens*, tort, and 42 U.S.C. § 1983 claims for more than $5 million in damages against the District of Columbia, officials and officers of the District of Columbia Metropolitan Police Department, and officials and officers of the U.S. Capitol Police. Compl. (R.l) 37-1, 98-143, Prayer for Relief.

On January 9, 2024, Lang filed an amended complaint adding eighteen plaintiffs, several factual allegations, and one cause of action (negligence perse). Am. Compl. (R.2).

On February 2, 2024, the District Court filed a standard procedural order informing plaintiffs of the need to follow the Rules and Local Rules. Standing Order (R.3).

On February 5, 2024, twenty-six individuals filed a motion for joinder (Mot. Join. (R.4)) and Lang filed a second amended complaint, adding forty-five new plaintiffs and removing thirteen prior plaintiffs without providing address or telephone contact information for most. 2d Am. Compl. (R.5).

The District Court granted the motion for joinder of additional Plaintiffs and leave for filing the second amended complaint on April 7, 2024, by Minute Order.

The District Court granted the motion for filing the second amended complaint on April 7, 2024, by Minute Order.

On April 2 and 3, 2024, nearly ninety days after the lawsuit was initiated, Lang requested the issuance of summonses. Reqs. for Summons (R.6, R.7).

On April 15, 2024, an Assistant United States Attorney entered an appearance on behalf of the U.S. Capitol Police for the limited purpose of requesting to extend the time to oppose the motion for joinder. Notice Appear (R.8); Mot. to Extend (R.9).

REASONS FOR GRANTING THE PETITION

A. Standards of Review

1. As to Questions Presented 1, 2, 3, 4, 5, 6, 7, 9, 13, 14 (Errors of law)

In general, this Court reviews questions of law de novo. *United States v. Verrusio*, 762 F.3d 1, 13 (D.C. Cir. 2014).

2. As to Questions Presented 8, 11, 12 (Abuse of Discretion)

"We review for an abuse of discretion a district court's Rule 4(m) dismissal for failure to serve process." *Zapata v. City of New York*, 502 F.3d 192, 195 (2d Cir. 2007). 5 . . . "

* * *

The Federal Rules contain a "cure provision" requiring the district court to allow a party who

> has failed to serve process on the United States but is required to do so a "reasonable time" to cure such a failure. *See* Fed. R. Civ. P. 4(i)(3)(B) (pre-2007 amendment) ("The court shall allow a reasonable time to serve process under Rule 4(i) for the purpose of curing the failure to serve . . . the United States in an action governed by Rule 4(i)(2)(B) , if the plaintiff has served an officer or employee of the United States sued in his individual capacity.").8

Kurzberg v. Ashcroft, 619 F.3d 176 (2nd Cir. 2010).

3. As to ALL Questions Presented (Abuse of Discretion by making Error of Law)

But a trial court "by definition abuses its discretion when it makes an error of law." *Koch v. Cox*, 489 F.3d 384, 388 (D.C. Cir. 2007) (quoting In re: Sealed Case (Med. Records), 381 F.3d 1205, 1211 (D.C. Cir. 2004)). Thus, "the 'abuse-of-discretion standard includes review to determine that the discretion was not guided by erroneous legal conclusions.'" *Id.* (quoting In re: Sealed Case (Med. Records), 381 F.3d at 1211). *Akhmetshin v. Browder*, No. 19-7129 (D.C. Cir. Apr 13, 2021)

4. As to Questions Presented 3, 6, 9 (Clear Error of Findings of Fact

This Court reviews the District Court's findings of fact for clear error *United States v. Dixon*, 901 F.3d 1322, 1338 (11th Cir. 2018).

5. As to Questions Presented 3, 6, 9 (Challenges to Sufficiency of the Evidence)

This Court reviews challenges to the sufficiency of the evidence *de novo*, asking whether, viewing the evidence in the light most favorable to the verdict,

"any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Boyd*, 803 F.3d 690, 692 (D.C. Cir. 2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *see United States v. Bryant*, 117 F.3d 1464, 1467 (D.C. Cir. 1997).

B. General Review of Relevant Law

The notice pleading philosophy of the Federal Rules of Civil Procedure requires that a complaint be read liberally. *Conley v. Gibson*, 355 U.S. 41, 47-48 (1957). A court shall accept all of the plaintiffs well-pled allegations as true. *Schuer v. Rhodes*, 415 U.S. 232 (1974). A complaint should not be dismissed unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley*, 355 U.S. at 45-46. The summary dismissal of a complaint without the benefits of adversarial litigation bring this philosophy into further relief, especially where the plaintiffs are incarcerated. The fact of a pro se plaintiffs incarceration impacts the summary dismissal of a complaint for failure to follow procedural rules, particularly regarding notice and service of process. Courts have recognized that an incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on service of the summons and complaint where the plaintiff has provided the necessary information to help effectuate service.

Furthermore, a complainant should not be penalized for having their action dismissed for failure to effect service. Fed. R. Civ. P. 4. *See also, Fowler v. Jones*, 899 F2d 1088 (CA 11, 1990); *Rance v. Rocksolid Granit USA, Inc*, 583 F3d 1284 (CA 11, 2009); and, *Puett v. Blandford*, 912 F2d 270 (CA 9, 1990). Notably, several circuits have held that a plaintiff has shown "good cause"

for purposes of dismissal under Rule 4(m) service has not been properly made through no fault of the plaintiff. Incarceration is obviously an imposed disability for the effectuating of proper procedural rules that require physical presence, and freedom of action, like the preparation and filing of pleadings, notice and service of process, and even receiving notice of pleadings filed by opposing counsel. Indeed, solitary confinement and incarceration are predicate reasons that filing a civil rights lawsuit is generally extended beyond the dates of incarceration.

Summary dismissal of an action under circumstances where the complaint contains well-pleaded factual allegations in a civil rights lawsuit filed by incarcerated individuals for nothing more than a failure to follow ministerial procedural rules that are ordinarily performed by attorneys and plaintiffs who are not incarcerated is an exceptional sanction.

For instance, the Second Circuit in *Romandette v. Weetabix Co*, 807 F2d 309 (CA 2, 1986), found "good cause" and held that the district court erred in dismissing a pro se inmate's case for failure to effect service where there was a failure to effect personal process through no fault of the litigant. *See also. Ranee, supra.* Similarly, the Ninth Circuit in Puett, supra, has held that an incarcerated pro se plaintiff should not be penalized for a failure to effect service, provided the plaintiff has furnished the necessary information where that is possible. Moreover, the Fifth Circuit *Lindsey v United States RRB*, 101 F.3d 444 (CA 5, 1996), noted that good cause is shown when in forma pauperis plaintiffs' failure to properly serve a defendant is attributable to other personnel who have improperly performed their duties, or where it was impossible due

to the reliance on government personnel; and this would include local prison conditions of confinement and restrictions.

This principle is echoed in other circuits, emphasizing that an impossibility or failure on the part of others to allow the proper performance of notice and service of process by or on behalf of incarcerated individuals will constitute good cause sufficient to avoid dismissal on procedural technicalities alone. *Walker v. Sumner*, 14 F3d 1415 (CA 9,1994).

Therefore, the incarceration status of a pro se plaintiff should influence the district court's decision regarding summary dismissal, especially because the complainant has filed most of the pleadings pro se and on behalf of a variable set of other complainants with the same or similar causes of action against the Appellees. This is particularly true where the complainant is incarcerated and held in solitary confinement where compliance with the procedural rules, such as notice and service of process, and the filing of pleadings themselves are complicated by the fact of the incarceration and the inability to fully identify the proper information and demonstrable circumstances of a failure of others to notify the complainant or to provide him or her with reasonable access to the information necessary to keep abreast of the court proceedings.

An incarcerated individual will necessarily be bound to proceed in piecemeal fashion due to the fact of not receiving the same access to notice and filings as a non-incarcerated individual.

C. All Objections Were Satisfied and Moot When the District Court Denied Motion for Reinstatement

On April 7, 2024, the District Court ordered Plaintiffs to demonstrate proof of service or good cause for their failure to serve in accordance with applicable rules by May 6, 2024. *See* Min. Order of Apr. 7, 2024.

However, the District Court dismissed the case before that date on April 30, 2024, indicating that proof of service was not the reason for the dismissal of the Plaintiff's case.

On April 7, 2024, the District Court granted leave for the Plaintiffs to amend their complaint with the Second Amended Complaint dated April 6, 2024. See Min. Order of Apr. 7, 2024.

On April 15, 2024, an Assistant United States Attorney entered an appearance on behalf of the U.S. Capitol Police for the limited purpose of requesting to extend the time to oppose the motion for joinder. Notice Appear (R.8); Mot. to Extend (R.9).

Notice that by asking for more time to respond on behalf of the Defendants/Appellees, the Appellees essentially admitted to having received the lawsuit, thus conceding service of process as of April 15, 2024.

Therefore, by the admission of the Appellees, the Defendants/Appellees were effectively served within 90 days of the April 6, 2024, second amended complaint and April 5, 2024, motion for joinder for additional Plaintiffs to join, all approved by grant of the District Court.

Therefore, the Defendants had received actual notice of the complaint on April 15, 2024, or 100 days

after the initial complaint, or only 8 days after the grant of leave of court for the entry of the Second Amended Complaint on April 7, 2024, and only 96 days after the filing of the Plaintiffs' January 9, 2024, Amended Complaint not requiring leave of Court as being within the period of automatic right of amendment.

The District Court granted the requested extension and ordered Plaintiffs to "show cause why the case should not be dismissed for failure to comply with Local Rule 5.1(c)(1)" on or before April 29, 2024.

On April 30, 2024, the District Court dismissed the case without prejudice for failure to comply with the procedural rules requiring identification of parties. Min. Order of Apr. 30, 2024.

The dismissal on April 30, 2024, was only 23 days after the grant of leave of court for the entry of the Second Amended Complaint on April 7, 2024, only 108 days after the filing of the initial complaint on January 5, 2024, and only 104 days after the filing of the Plaintiffs' January 9, 2024, Amended Complaint not requiring leave of Court as being within the period of automatic right of amendment.

On May 6, 2024, an appearance was entered on behalf of all plaintiffs by attorney Stephanie Lambert (Not. Appear (R. 10) and a motion to reinstate the case was filed. Mot. Relief J. (R.II).

On May 6, 2024, attorney Lambert filed proof of service on all the Defendants.

Thus, proof of service on the Defendants was filed on May 6, 2024, only 29 days after the grant of leave of court for the entry of the Second Amended Com-

plaint on April 7, 2024, only 121 days after the filing of the initial complaint on January 5, 2024, and only 117 days after the filing of the Plaintiffs' January 9, 2024, Amended Complaint not requiring leave of Court as being within the period of automatic right of amendment.

The District Court should have granted the Plaintiffs' motion for reinstatement of the case effectively an extension of time in which to serve the Defendants. It was an abuse of discretion not to grant incarcerated Plaintiffs an extension to May 6, 2024, particularly when all Defendants had actually been served by May 6, 2024. The extension was not made in hope but to the date of actual filing of proof of service.

D. Rule 4(m) Should Count Days as a Matter of Law From Filing of Second Amended Complaint on April 7, 2024

There is nothing in the language of FRCP Rule 4(m) which specifies whether the 90 days limit on serving the Defendants runs from the filing of the initial complaint on January 5, 2024, from the filing of the amended complaint on January 9, 2024, without the need for leave, or from the filing of the April 7, 2024, grant of leave of court to file the Second Amended Complaint.

Therefore, there is no plain language legal interpretation of Rule 4(m) to support a limitation of the time period only to the filing of the first initial complaint.

Because FRCP Rule 4 was enacted pursuant to the delegation of authority from the Congress under the Rules Enabling Act from a Constitutional grant of

power to Congress exclusively,[4] the Rule must be interpreted narrowly and cautiously as delegated authority.

In fact, because the District Court explicitly granted leave of court on request, the Court's grant of leave to file the Second Amended Complaint enshrines the SAC as "the" complaint and implicitly restarts the 90 day time for serving the Second Amended Complaint now-different after amendment.

Plaintiffs assert that any precedent which fails to acknowledge that the U.S. Constitution textually invests the establishment of judicial rules in the Congress, but the Congress delegated that authority, would be erroneous. Rule 4 must be interpreted within the limits of delegated authority from Congress.

Rule 4 provides:

> (m) TIME LIMIT FOR SERVICE. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

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[4] *Rules: Pre-1934 Rulemaking*, Federal Judicial Center, https://www.fjc.gov/history/work-courts/rules-pre-1934-rulemaking

This does not specify whether "the complaint" means the original complaint or the operative as amended complaint. *But see, generally, Moore v. Walton*, 96 F.4th 616 (3rd Cir. 2024). Although inexplicably categorized as "Do Not Publish," the U.S. Court of Appeals for the Eleventh Circuit explained that

> Despite this, Jones failed to comply with the clear instructions and failed to properly serve Safebuilt within 90 days of filing his amended complaint or within the multiple extended time periods permitted by the court.

Jones v. SAFEbuilt LLC, 24-10848 (11th Cir. May 09, 2025) (*emphasis added*). Thus, the Eleventh Circuit only earlier this month endorsed the proposition that 90 days runs from the filing of the amended complaint.

> It would be an "absurd result" to count the 90 days from the pre-amended complaint, because by definition the amendment would change the contents of the complaint. Thus, it would only make sense for the operative version of the complaint to be served on the Defendants, restarting the time in which to serve them. Serving an outdated version of the complaint would be pointless and nonsensical.
>
> . . . we have long held that, in construing a statute, we are not bound to follow the literal language of the statute—"however clear the words may appear on superficial examination"—when doing so leads to "absurd," or even "unreasonable," results. *United States v. American Trucking Assns., Inc.*, 310 U.S. 534, 310 U.S. 543-544 (1940) (citation omitted); *see also Offshore Logistics, Inc. v. Tallentire*,

477 U.S. 207 (1986); *O'Connor v. United States*, 479 U.S. 27 (1986); *California Federal Savings & Loan Assn. v. Guerra*, 479 U.S. 272, 479 U.S. 284 (1987); *United States v. Wells Fargo Bank*, 485 U.S. 351 (1988).

United States v. Providence Journal Co., 485 U.S. 693, 708, 710 (1988) (Stevens, J., dissenting).

E. The District Court erred in Misunderstanding and Mis-Applying "Good Cause" as an Error of Law

The Defendants below and the Courts below made an overly-complicated and erroneous analysis of when reinstatement of a lawsuit and/or extension of time under Federal Rules of Civil Procedure ("FRCP") Rule 4(m) is appropriate or even required "for good cause shown." This erroneous analysis contends that far more is needed than whether the failure to serve a Defendant timely was "through no fault of the litigant." They argued that "good cause" to excuse late service of process requires something more compelling than whether there was no fault by the Plaintiff to overcome a failure to serve a Defendant in 90 days.

For example, the Defendants and lower courts argued that being incarcerated and/or in solitary confinement which hinders the progress of the civil lawsuit is not sufficient to show that the deviation was "through no fault of the Plaintiff" or that more is required to establish "good cause."

Here, as well, "good cause" as a basis for reinstatement of a lawsuit or extension of time under FRCP Rule 4(m) to serve a Defendant should consider the absence of any inconvenience or prejudice to the Defendants.

F. The District Court Erred as a Matter of Facts in Dismissing Case under Local Rule 5.1

All parties and the lower courts agree that the Complaint and amended complaints actually included a contact telephone number. However, the District Court dismissed the case under Local Rule 5.1(c)(1) for failure to include a telephone number—that was in fact included.

The Defendants actually called the number, which was answered, but the Defendants hung up without attempting to get a message to the Plaintiffs. Edward Jacob Lang's attorney-in-fact under a power of attorney reports Lang being called at that number, he answered, and then when the Defendants asked for Lang or other Plaintiffs, the callers would not leave a message but immediately hung up.

All parties and the lower courts agree that the Complaint and amended complaints actually included a contact address. The Complaint on its face alerts the reader that the Plaintiffs are in prison.

G. The District Court Erred as a Matter of Law in Applying Local Rule 5.1 to Dismiss Case under Local Rule 5.1

Defendants speculate that someone might not answer the phone number. Thus, Defendants contend that Local Rule 5.1(c)(1) was not satisfied because of the mere possibility in the Defendants' thoughts that maybe someone won't answer the phone or pass a message to the Plaintiffs.

The Plaintiffs' attorney-in-fact under a power of attorney actually did answer when the Defendants

called the phone number (and Defendants immediately hung up when he answered the phone).

It is an error of law—applying basic interpretation—to conclude that Local Rule 5.1(c)(1) requires that the contact phone number on a complaint must be owned in a legal sense by the Plaintiff(s). "His" phone number in plain language clearly means a phone number where a person may be reached. It does not mean a phone number legally owned by the person. There is nothing in Local Rule 5.1(c)(1) suggesting that.

Thus, where a lawyer who is a member—but not an owner of—a law firm provides "his" phone number for official business even though the phone number is not "his" in a legal sense, Local Rule 5.1(c)(1) is satisfied. It belongs to the law firm overall. Yet it is also "his" contact phone number. "His" phone number means where the Plaintiff can be reached. There is nothing in the wording of Local Rule 5.1(c)(1) that the phone number be accessible only by the Plaintiff, or that it have no other use.

There is no requirement in the wording of the Local Rule that a Plaintiff be sitting by the phone at all times in case someone calls. The Local Rule does not exclude the possibility that the Court or opposing parties might need to leave a message because the Defendant is not available at the exact instant that someone calls.

There is no requirement in the wording of the Local Rule that a Plaintiff cannot provide a post office box. The Local Rule requires the Plaintiff's residential address but the complaint also makes clear that the Plaintiffs' "residence" was then at a Federal prison. Put another way, Local Rule 5.1(c)(1) does not require

that a Plaintiff have a residence. There is nothing requiring that and plenty of precedent of homeless persons or someone living with someone else filing a lawsuit.

The Local Rule could not—and does not—mandate that a Plaintiff must be a land owner or have a residential address.

All parties and the lower courts agree that most of the Plaintiffs resided for years in Federal prison as inmates—especially those like Edward Jacob Lang who was arrested early in 2021 and continuously incarcerated until January 21, 2025.

H. District Court Abused Its Discretion

The District Court dismissed the case without prejudice. An attorney was then found to represent all of the Plaintiffs. That attorney Stephanie Lambert got all of the Defendants properly served. The attorney's law practice telephone number satisfied Local Rule 5.1(c)(1). The attorney's law practice official address satisfied Local Rule 5.1(c)(1).

Therefore, the District Court abused its discretion by not allowing reinstatement of the Plaintiffs' claims.

The motion for reinstatement filed May 6, 2024, but denied on June 19, 2024, at ECF Dkt. # 16, seeking relief under Rule 60(b), was mistakenly predicated on setting aside a dismissal with prejudice *id.* at 4), but the District Court had dismissed without prejudice, and there was no argument that the effect of the dismissal prevented counsel from refiling on behalf of properly identified plaintiffs.

As grounds for reinstatement, the motion contended that the lead plaintiff, Lang, was imprisoned and

placed in solitary confinement after filing the second amended complaint.

Lang's unavailability prevented his timely response to the District Court's orders and procedural compliance. The reinstatement motion further represented that "most" of the named plaintiffs besides Lang were also imprisoned. *See id.* at 15. The motion argued that violating the requirements for party contact and identification information was an insufficient basis on which to dismiss the claims and that service of process had been accomplished by May 6, 2024. *Id.* 12, 14, 15, 18.

However, the crux of Appellants' lawsuit for civil rights violations was properly pled in the complaint. The legal theories posited included references to factual allegations and were entirely sufficient to survive summary dismissal under the federal rules of civil procedure.

I. Constitution Textually Commits Power to Enact Rules to the Congress—not the Judiciary

Could the U.S. District Court for the District of Columbia cut off the Plaintiffs' legal rights by disregarding the limitations of their incarceration and even solitary confinement delaying their responses, where the U.S. Constitution explicitly deprives the District Court of the authority to establish rules?

The U.S. Constitution "textually committed the power to another Federal branch" by explicitly investing the U.S. Congress with the power and function to establish the lower Federal courts and their structure, the jurisdiction of the lower courts, and the rules by which they are governed. That is, the explicit commit-

ment of those functions to Congress eliminates any argument of inherent authority or judicial traditions.

Article I, Section 8, of the U.S. Constitution grants the power of Congress "To constitute tribunals inferior to the Supreme Court;"

1. Rules Enabling Act Replaces Any Inherent Authority of the Federal Judiciary

The Rules Enabling Act of 1934, 28 U.S.C. §§ 2071 to 2077, delegates the establishment of rules governing the Federal courts to the U.S. Supreme Court and the Judicial Conference thereof.

That delegation must be interpreted conservatively and with caution, not overly broad.

28 U.S.C. § 2072, limits this Court's creation of "general rules of practice and procedure and rules of evidence" by "(b) Such rules shall not abridge, enlarge or modify any substantive right".

Are these rules limited to only internal procedures and "housekeeping" issues and not empowered to cut off legal rights of litigants?

Indeed, 28 U.S.C. § 2074 states "(b) Any such rule creating, abolishing, or modifying an evidentiary privilege shall have no force or effect unless approved by Act of Congress."

CONCLUSION

While Appellants recognize that ultimately the relief sought in their appeal is reinstatement of their lawsuit, the aforementioned reasons support such relief. Appellants respectfully submit that the Appellees' motion for summary affirmance be overturned below here, and the dismissal reversed, and that the Appellants' appeal be remanded to the Court of Appeals, or simply issue an order to the District Court to reinstate the case so that Appellants can properly file and litigate their complaint.

Respectfully submitted,

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