UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
No. 13-5365 (C.A. No. 12-1916)

BRET D. LANDRITH, *et al.*,
Appellants,
v.
CHIEF JUSTICE JOHN G. ROBERTS, JR.,
Appellee.

APPELLANTS' ANSWER AND REQUEST FOR AFFIRMATIVE RELIEF UNDER FRAP RULE 27(a)(3)(B) AND CIRCUIT RULE 27(c)

Appellants, Bret D. Landrith and Samuel K. Lipari appearing pro se make the following answer to Appellee John G. Roberts, Jr., Chief Justice of the United States' untimely motion for summary affirmance [Doc. 1484851] of the district court's November 4, 2013, Order and Memorandum Opinion.

STATEMENT OF FACTS

1. Justice John G. Roberts through his USDOJ counsel Ronald C. Machen Jr.; R. Craig Lawrence; and Claire Whitaker in the Motion #1484851 materially misrepresent the express allegations in the First Amended Complaint, R. 11 Exb. 1 ("Am. Complaint") and the express prospective injunctive and declaratory relief sought.

2. The plaintiffs amended their original complaint (R.1) as a matter of course under FED. R. CIV. P. 15(a)(l) and *Hujjar-Nejad v. George Washington Univ.* (D.D.C., 2012) to "cure" each of the bad faith allegations

by the defendant's first motion to dismiss (R. 9) that the original complaint (R.1) failed to state a claim.

3. The Am. Complaint, R. 11 alleges clearly established constitutional rights violations resulting directly from policies formally implemented by Justice John G. Roberts in his role as Chief Administrator of the Courts which injured the plaintiffs and which threaten the plaintiffs and create a high probability of future injury.

4. The Am. Complaint, R. 11 expressly alleges particular policies violating the plaintiff's clearly established constitutional rights were executed by Attorney General Eric Holder in Holder's statutory capacity and at the direction of Justice John G. Roberts. Exb. 1, R. 11 ¶ 123, pg. 36.

5. The Am. Complaint, R. 11 states with specificity the conduct of Holder at the direction of Justice John G. Roberts, providing the "who, what, where, and when" of the actions of the USDOJ under Holder's enforcement of Justice John G. Roberts' policies to violate the plaintiffs' clearly established constitutional rights prior to filing the District of Columbia action and specific subsequent conduct in retaliation (Exb. 1, R. 11 ¶ 124, pg. 36) for filing the District of Columbia action to further Justice John G. Roberts' and Holder's policies to obstruct justice through extrinsic fraud and prevent the plaintiffs' claims from being heard.

6. The plaintiffs sought leave to amend under Rule 15 (R. 17) to include Attorney General Eric Holder as a defendant, but leave was denied (Order R. 26) and is now being appealed.

Facts related to *Lujan* factor (1) a concrete and particularized injury

7. The Am. Complaint alleges that Justice John G. Roberts and AG Holder violated the plaintiffs' First, Second, and Fifth Amendment rights through the warrantless electronic surveillance, censorship of the plaintiffs' telephone communications, and disruption of their business to extra judicially deprive the plaintiffs of their property:

> "124. Chief Justice JOHN G. ROBERTS, JR through his agent Attorney General Eric H. Holder, Jr. and the USDOJ in direct response to the plaintiffs' present lawsuit redoubled their disruptive surveillance of the plaintiffs, even stopping their phone service and committed other acts to interfere with SAMUEL K, LIPARI's medical supply business to violate the plaintiffs' First, Fourth and Fifth Amendment rights for the purpose of defending Chief Justice JOHN G. ROBERTS, JR. through extrajudicial means."

Exb. 1, R. 11 ¶ 124, pg. 36.

8. In support of the Am. Complaint's allegations that Justice John G. Roberts and AG Holder violated the plaintiffs' First, Second, and Fifth Amendment rights

> "131. SAMUEL K. LIPARI's medical supply online database has been largely censored until this week, however the daily reports (which themselves were censored by the previous site host GoDaddy.com in erroneous compliance with USDOJ and FBI interest letters) show the documents being retrieved in the progress of a federal law enforcement

> investigation instead of through search engine and publicized link referrals (which are also routinely censored or disabled at the direction of USDOJ) that has obtained evidence of the veracity of the original complaint's factual allegations."

Exb. 1, R. 11 ¶ 131, pg. 39.

9. The plaintiffs had certain and actual injury to their First Amendment Rights including interference with Lipari's business email, political campaign and Medical Supply websites (R.11 pgs. 40-48, incorporating by reference R.11 ¶¶ 1-133 that includes blocking of Lipari's business account email R. 11 pg. 34 ¶¶ 114-6; Censorship of Landrith's and Lipari's online publishing of the public documents filed in the district court pgs. 34-35 ¶¶ 117-9; Censorship of Lipari's online document database pg. 39 ¶¶ 131.

Facts related to *Lujan* factor (2) 'fairly traceable' to the defendant

10. The constitutional rights violations suffered by the plaintiffs and for which the plaintiffs are in actual imminent danger of suffering in continuing unlawful conduct by Justice Roberts and AG Holder and in conduct by AG Holder subsequent to the plaintiffs' filing of the original complaint in retaliation for the plaintiffs seeking equitable redress are alleged to be dictated by an unpublished USA PATRIOT Act policy implemented by Justice Roberts that had the foreseeable effect of violating the plaintiffs' constitutional rights. See R. 11 ¶ 124, pg. 36).

11. Federal statute makes Justice Roberts responsible for the policies of the Judicial Conference of the United States which derives its authority from 28 U.S.C. § 331, stating it is headed by the Chief Justice of the United States and consists of the Chief Justice, the chief judge of each court of appeals, a district court judge from each regional judicial circuit, and the chief judge of the United States Court of International Trade.

12. Federal statute makes AG Holder responsible for execution of policies complained of by the plaintiffs regarding the business of the courts created by Justice Roberts where under 28 U.S.C. § 331, it state the Attorney General shall, upon request of the Chief Justice, report to such Conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

13. The Am. Complaint, R. 11 details the misconduct of US Attorneys not defending Justice Roberts in this action: (District of Kansas USA Barry R, Grissom pgs. 20-21, ¶¶ 67- 69; pg. 24 ¶ 84; pg. 30 ¶ 100; AG Holder pg. 34 ¶116, and the Am. Complaint clarifies that Justice Roberts is responsible for the complained of conduct by AG Holder under the unpublished secret USA PATRIOT Act policy of Justice Roberts:

> "123. When US Attorney **General Eric Holder is carrying out these violations** of **the plaintiffs' First Amendment Rights as part of a judge protection policy,** he is reporting to the defendant Chief Justice JOHN G. ROBERTS, JR by statute.

> 124. Chief Justice JOHN G. ROBERTS, JR. **through his agent Attorney General Eric H. Holder, Jr. and the USDOJ in direct response to the plaintiffs'** present **lawsuit** redoubled their disruptive surveillance of the plaintiffs, even stopping their phone service and committed other acts to interfere with SAMUEL K. LIPARI's medical supply business **to violate the plaintiffs' First, Fourth and Fifth** Amendment rights for **the purpose of defending Chief Justice JOHN G. ROBERTS, JR. through extrajudicial means."**I Emphasis added].

Am. Complaint R. 11; Exb. 1, pg. 36, ¶¶ 123, 124. See also Exb. 3, pg. 6.

14. The Am. Complaint R.11 in ¶120 avers the plaintiffs obtained knowledge of the secret part or unpublished part of USA PATRIOT Act policy of Justice Roberts to address citizens posting information about the courts on the Internet from Judge Brian Barnett Duff of the Northern District of Illinois and Commissioner Sidney J. Perceful of the Federal Mediation and Conciliation Service. See also 2nd Am. Complaint R. 17-3 at pgs 15, 36.

Facts related to *Lujan* factor (3) that a court is capable of redressing

15. In Count I, Cause Of Action For Injunctive Relief Under First Amendment Of United States Constitution (R.11, Exb.1 pg. 40-48), the plaintiffs seek to have Justice Roberts alter again his prior policy change in response to Justice Breyer's commission to post the names of judges with the ethics complaints:

> "Chief Justice Hon. JOHN G. ROBERTS, JR. change the official policy of the National Judicial Conference so that parties ethics complaints against judicial branch officials are posted online with the name of the judicial branch official against whom the complaint is

> made for the purpose of other litigants and their representatives to better evaluate patterns of where a judicial branch official deviates from "black letter law" in their decisions and determinations."

Am. Complaint, R.11, Exb.1 pg. 40, ¶ 1

16. In Count II, Cause Of Action For Declaratory Relief, Under First Amendment Of United States Constitution the plaintiffs seek to have the court award declaratory relief against Justice Roberts as the head of the National Judicial Conference affirming that federal judges injuring the reputations of advocates seeking to report violations of federal statutes and implement the enforcement of federal statutes where Congress has given parties the status of a private attorney general through express private rights of action to vindicate national policy violates the advocate's clearly established First Amendment rights to report criminal misconduct:

> "1. The plaintiffs seek to have the court declare that vilifying parties for bringing actions under the Civil Rights Acts including 42 USC § 1981; the Sherman Antitrust Act 15 U.S.C. §§ 1 et seq.,and RICO 18 U.S.C. § 1961 et seq. before any discovery has been permitted violates their rights."

Am. Complaint, R.11, Exb.1 pg. 50, ¶ 1.

17. In Count II, Cause Of Action For Declaratory Relief, Under First Amendment Of United States Constitution (R.11, Exb.1 pg. 48-50), the plaintiffs seek to have the court award declaratory relief against Justice Roberts as the head of the National Judicial Conference affirming the

Supremacy Clause by affirming that advocates disbarred by a state for reporting violations of federal statutes or for implementing the enforcement of federal statutes where Congress has given parties the status of a private attorney general through express private rights of action to vindicate national policy violates the advocate's clearly established First and Fifth Amendment rights, and the Supremacy Clause and federal district courts cannot participate in the violations including 42 USC § 1985(2) and (3) without conducting an evidentiary hearing and observing the Due Process rights of the advocate:

> "2. The plaintiffs seek to have the court declare that the constitution under the Supremacy Clause requires a state court's discipline or disbarment action against an attorney for bringing federal actions under the Civil Rights Acts including 42 USC § 1981; the Sherman Antitrust Act 15 U.S.C. §§ 1 et seq., and RICO 18 U.S.C. § 1961 et seq. or federal claims in state court under federal statutory law is subject to an evidentiary hearing in a US District Court when requested to retain or obtain admission in a US District or Appeals Court."

Am. Complaint, R.11, Exb.1 pg. 50, ¶ 2.

18. In Count III, Cause Of Action For Injunctive Relief Under Due Process Of United States Constitution (R.11, Exb.1 pg. 50-53), the plaintiffs seek to have Justice Roberts restrained from repeated ethics violations and his open rebellion against the Federal Rules of Civil Procedure, specifically the duties a party and their counsel have under F. R. Civ. P. Rule 11 and F. R. Civ. P. Rule 15(a)(1)(B) that were in danger of disrupting the machinery

of justice and in fact did deprive the plaintiffs of their Due Process rights in the District of Columbia court.

19. The plaintiffs were forced to take the extraordinary measure of incorporating the demand for their rights to amend their complaint as a matter of course under F. R. Civ. P. Rule 15(a)(1)(B) in their amended complaint while having to defend a show cause Fox order (R. 10) instigated by Justice Roberts' intentional material misrepresentations of even procedural law to the court:

> "1. The plaintiffs seek to have the defendant Chief Justice Hon. JOHN G. ROBERTS, JR.'s Motion to Dismiss (Doc. #9) stricken and that he be directed to answer or otherwise respond to this amended complaint."

Am. Complaint, R.11, Exb.1 pg. 52, ¶ 1.

20. The plaintiffs had to amend their complaint because of the subsequent violations of their clearly established constitutional rights committed by Justice Roberts under the unpublished USA PATRIOT Act policy Justice Roberts directed AG Holder to injure the plaintiffs and their intimate associates in retaliation for filing the action while Justice Roberts used Ronald C. Machen Jr.; R. Craig Lawrence; and Claire Whitaker to prevent the plaintiffs' claims from being heard by having his counsel repeatedly make misrepresentations of the material facts and controlling precedent:

> "2. The plaintiffs seek to have the defendant Chief Justice Hon. JOHN G. ROBERTS, JR. enjoined from misrepresenting the legal authority or factual basis for his pleadings."

Am. Complaint, R.11, Exb.1 pg. 52, ¶ 2.

21. In the proposed Second Amended Complaint ("2nd Am. Complaint"), the plaintiffs added injunctive and declaratory relief against Justice Roberts and AG Holder to stop continuing violations of the plaintiffs' clearly established rights under the unpublished USA PATRIOT Act policy.

22. In Count IV, Cause Of Action For Injunctive Relief, Against Chief Justice Hon. John G. Roberts, Jr., Under The Fifth Amendment Due Process Clause Of United States Constitution Against Discriminatory Prosecution (R.17-3, Exb.2 pg. 54-56), the plaintiffs seek to have the court declare Justice Roberts' administration of the courts violate the plaintiffs' rights under the constitution when they deprive Landrith of an evidentiary hearing on his character and fitness to serve as counsel in federal courts because State of Kansas judicial branch officials have seceded from the rule of law and have abrogated 42 USC § 1981 in violation of 18 §§ USC 241, 242 and 245. See Am. Complaint R.11 Exb. 1 pgs. 3-4 at ¶¶ 3-6. The Am. Complaint seeks that the court grant declaratory relief addressing the unlawfulness:

> "2. The plaintiffs request that this court declare that LANDRITH has a right under the constitution to clear his name in federal courts and that discriminatorily permitting state licensed attorneys to serve as officers of the federal courts despite the open commission of ethics violations

> and crimes to obstruct justice while depriving other persons of being admitted to practice in federal courts for their lawful vindication of federal statutory rights and when they are protected under federal statute violates the constitution's Fifth Amendment Due Process clause and Sixth Amendment guaranteed right of access to the courts."

2nd Am. Complaint, R.17-3, Exb.2 pg. 56 ¶ 2.

23. The plaintiffs seek to have the court declare Justice Roberts' administration of the courts violate the plaintiffs' rights under the constitution when they deprive parties from having standing as an unincorporated solo business operator under state law and as a sole property owner of the rights of a dissolved corporation where state law permits assignment of that interest:

> "3. The plaintiffs request that this court declare that LlPARI has a right under the constitution to enforce contracts and obtain legal counsel free from retaliation or coercion against lawful representation of his rights in federal court and furthermore that LlPARI has the right to vindicate the Federal antitrust laws and his own right to Equal Protection under the Fourteenth Amendment of the constitution not withstanding the open and naked threats of Kansas District Court Judge Carlos Murguia for doing the same in the *Medical Supply Chain* cases."

2nd Am. Complaint, R.17-3, Exb.2 pg. 56 ¶ 3.

24. In Count V, Cause Of Action For Injunctive Relief Against Attorney General Eric S. Holder Under The Fourth And Fifth Amendments Of The United States Constitution Against Warrantless Surveillance, Malicious Prosecutions, And Extra Judicial Seizures Of Plaintiffs' Property, the plaintiffs seek to have declaratory relief against AG Holder who seized the

plaintiffs property, records, files, papers, and communications, and entered the plaintiffs' homes extra judicially and without warrants in furtherance of Justice Roberts' unpublished USA PATRIOT Act policy and as directed by Justice Roberts even subsequent to the plaintiffs filing their action in the District of Columbia court:

> "2. The plaintiffs request that this court declare that the investigations and extrajudicial seizure of property by the DOJ were malicious and violated the plaintiffs' Fourth and Fifth Amendment Rights."

2nd Am. Complaint, R.17-3, Exb.2 pg. 64 ¶ 2.

25. The plaintiffs seek to have declaratory relief against AG Holder continuing to subject the plaintiffs to extra judicial warrantless surveillance to gain information from the plaintiffs telephone calls, electronic data transmissions, and paper US Mail communications to disrupt the plaintiffs' legitimate business for the purpose of obstructing justice and to deprive the plaintiffs of their property right to earn a living in furtherance of Justice Roberts' unpublished USA PATRIOT Act policy and as directed by Justice Roberts even subsequent to the plaintiffs filing their action in the District of Columbia court:

> "3. The plaintiffs request that this court enjoin the defendant Attorney General Eric Holder and his agents from conducting surveillance against the plaintiffs and from contacting the plaintiffs' contractors, associates or business prospects for the purpose of obstructing justice by depriving the plaintiffs of resources or income."

2nd Am. Complaint, R.17-3, Exb.2 pg. 64 ¶ 3.

26. The plaintiffs seek to have declaratory relief against AG Holder continuing to subject the plaintiffs to extra judicial oppression and denial of their constitutional property right to business and employment opportunities for their lawful protected speech to report violations of federal statutes by inclusion of harmful data in published records maintained by AG Holder:

> "3. [Sic.]The plaintiff request that this court enjoin the defendant Attorney General ERIC HOLDER and his agents from maintaining any databases that report negative information about the plaintiffs for their private civil litigation in vindication of federal antitrust and civil rights statutes."

2nd Am. Complaint, R.17-3, Exb.2 pg. 64 ¶ 3.

27. Subsequent to the filing of the proposed 2nd Am Complaint (R.17-3 Exb. 2), the plaintiffs experienced some of the constitutional rights violations they had sought to enjoin. The Missouri Highway Patrol determined that Lipari's business car (R. 11 pg. 4-5 ¶ 10) had been converted through fraud on the Department of Revenue by the 18 USC § 1962 RICO defendant Wells Fargo and discovered that the car had been taken to Wisconsin where without access to federal court resulting from Justice Roberts' Sixth Amendment violations he cannot recover it.

28. The Tenth Circuit Chief Judge Mary Beck Briscoe assigned both actions described in the Am. Complaint R. 11 pg. 24-5 ¶ 84 to the same

three judge panel headed by Judge John Carbone Porfilio instead of following the court's random selection policy.

29. Raúl N. Rodriguez former Inspector General Inspector General for the Office of Compliance of the Action Agency and agent of Larry A. Mizel Chairman and Chief Executive Officer of M.D.C. Holdings became involved as a nonparty in influencing judicial determinations to preserve Judge Carlos Murguia's rulings R. 11 pg. 38 ¶ 127 in the Medical Supply Chain cases that repeatedly sanctioned Lipari and Landrith for meeting the pleading requirements and conforming to the controlling law for the jurisdiction, and to prevent Landrith RICO claims against the Larry A. Mizel's mortgage finance RICO enterprise R. 11 pg. 36 ¶ 126 from being exposed like Lipari and Landrith had previously exposed the Novation LLC cartel's take over of the electronic hospital supply marketplace GHX in Westminster, Colorado.

29. Landrith lost his First Amendment right to seek redress in federal court, like Lipari had through the device of requiring counsel in order to provide leverage for extortion against vindicating Lipari and Landrith's First, Fourth, Fifth and Sixth Amendment rights.

30. Landrith was also deprived of $72,000.00 of rent, his only income from the Leawood, Kansas house that was the subject of the Bank of

America Mortgage RICO case, but has filed the deed with the registered and a state court action to evict the Bank of New York Mellon from the property.

MEMORANDUM OF LAW

The plaintiffs invoked federal jurisdiction and the Am. Complaint met the burden of establishing the elements of Article III standing:

> "First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."

WildEarth Guardians v. Jewell, at 7 to 8 (D.C. Cir., 2013) citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The above statement of facts shows that the plaintiffs' Am. Complaint (R. 11) and proposed 2nd Am. Complaint (R.17-3) met each of the three *WildEarth Guardians* elements from *Lujan* that are requirements for standing.

I. The Am. Complaint Pled Injury in Fact

The Am. Complaint pled an injury in fact—an invasion of a legally protected interest which is concrete and particularized and which the plaintiffs are in imminent danger of suffering from continued conduct under the unconstitutional policies complained of, and which the plaintiffs did in

fact get injured subsequent to filing the action in the District of Columbia Court for prospective injunctive relief while the defendant repeatedly misrepresented the controlling precedent and material facts of the plaintiffs' Am. Complaint to the court.

(a) concrete and particularized

The Am. Complaint R. 11 alleged that the defendant Justice John G. Roberts implemented an unpublished USA PATRIOT Act policy in his agency, the Judicial Conference of the United States that foreseeably would subject the plaintiffs to, and did subject the plaintiffs to violations of clearly established Fourth Amendment right to be free from warrantless wiretapping; would subject the plaintiffs to extrajudicial prior restraint of their publication of public court records and evidence on the plaintiffs' web site www.medicalsupplychain.com in clearly established violation of the plaintiffs First Amendment right; that this application of the unpublished USA PATRIOT Act policy subjected the plaintiffs to the taking of property in the form of depriving them of their constitutional property right to pursue their trade of selling hospital supplies, and deprive Landrith of his profession of practicing law for his protected advocacy of the statutory race based civil rights of an African American and his American Indian witness, and deprive Landrith and Lipari of property rights in federal statutory benefits they

became eligible for after being impoverished from years of being targeted by the unpublished USA PATRIOT Act policy including Landrith's food stamps and Lipari's disability benefits; and depriving the plaintiffs of being able to enforce federal property rights including personal contracts in court.

Like this court determined in *Dahlberg v. United States* (D.C. Cir., 2012), the plaintiffs' injuries are "concrete and particularized, traceable to the IRS's actions, and redressable by a favorable decision." In the present case, the agency is not the IRS but the Judicial Conference of the United States, and the relief of enjoining the head of that agency Chief Justice Roberts from continuing to violate the plaintiffs' rights through the unpublished USA PATRIOT Act policy that violates the Constitution with warrantless electronic surveillance, prior restraint of the plaintiffs' speech and extrajudicial taking of the plaintiffs' property. The plaintiffs have standing:

> "the well-established principle that standing will lie where 'a plaintiff demonstrates that the challenged agency action authorizes the conduct that allegedly caused the plaintiff's injuries, if that conduct would allegedly be illegal otherwise,'"

Am. Trucking Assocs., Inc. v. Fed. Motor Carrier Safety Admin. At pg. 8 (D.C. Cir., 2013) citing *Animal Legal Def. Fund, Inc. v. Glickman,* 154 F.3d 426, 440 (D.C. Cir. 1998).

(b) actual or imminent, not conjectural or hypothetical.

The plaintiffs' complaint details clearly established violations of the plaintiffs' First, Fourth, Fifth and Sixth Amendment rights including the taking of property extra-judicially and without Due Process. These injuries are actual and described in the Complaint R.1 and the Am. Complaint R.11 along with allegations of imminent, not conjectural or hypothetical, injuries to the plaintiffs constitutional rights that would result if the court took no action. In fact, the Am. Complaint R. 11 detailed further conduct against the plaintiffs by the defendant subsequent to the filing of the original Complaint R.1 meeting this court and the US Supreme court's imminence requirements."[T]hreatened injury must be ' "certainly impending" ' to constitute injury in fact," *Whitmore v. Arkansas*, 495 U.S. 149, 158, 110 S.Ct. 1717, 109 L.Ed.2d 135. Pp. 1146 – 1150.

Unlike the plaintiffs in *Clapper v. Amnesty Int'l United States*, 133 S.Ct. 1138, 185 L.Ed.2d 264, 81 USLW 4121 (2013) who complained of the possibility that in the future wire taps would be made against their communications to foreign contacts, an allegation the Supreme Court found too speculative to confer standing, the plaintiffs have alleged that the unpublished USA PATRIOT Act policy implemented by Justice John G. Roberts and executed by AG Eric Holder at Justice Roberts' direction caused the plaintiffs telephone, email, and Internet publishing

communications to be subject to warrantless electronic surveillance in violation of the plaintiffs' clearly established Fourth Amendment right to be free from warrantless wire tapping and expressly for the purpose of facilitating USDOJ officials at the direction of AG Holder and under the unpublished USA PATRIOT Act policy implemented by Justice John G. Roberts and executed by AG Eric Holder to take the plaintiffs' property in violation of the Fifth Amendment and to extra-judicially impose a prior restraint of speech in violation of the plaintiffs' First Amendment Rights in conduct that occurred prior to the plaintiffs' filing the present action in the district court. The Am. Complaint R. 11 details how these rights violations were intensified by AG Holder and USDOJ officials to include violations of the rights of the plaintiffs' intimate associates to retaliate against the plaintiffs for filing the present action and in coordination with the misconduct of USDOJ counsel Ronald C. Machen Jr.; R. Craig Lawrence; And Claire Whitaker before the District of Columbia Court.

> "No one here denies that the Government's interception of a private telephone or e-mail conversation amounts to an injury that is "concrete and particularized." Moreover, the plaintiffs, respondents here, seek as relief a judgment declaring unconstitutional (and enjoining enforcement of) a statutory provision authorizing those interceptions; and, such a judgment would redress the injury by preventing it."

Clapper (dissent) 133 S.Ct. 1138 at 1155-6.

The plaintiffs Am. Complaint R. 11 alleges ongoing violations of the plaintiffs' constitutional rights by the defendant that are absolute dangers to their rights if the court does not take action and a literal certainty will result in new and additional violations to the plaintiffs' First, Fourth, Fifth, Sixth Amendment and Due Process rights under *Babbitt v. Farm Workers*, 442 U.S. 289, 298, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979).

II. Causal Connection To The Conduct Complained Of

The Am. Complaint R. 11 and the 2nd Am. Complaint 17-3 allege a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant Justice Roberts in creating a secret USA PATRIOT Act policy and in withholding the names of judges from published complaints.

III. Likelihood the injury will be redressed

The plaintiffs Am. Complaint R.11 and 2nd Am. Complaint bring claims against Justice Roberts and AG Holder which are certain to result in relief by a favorable decision; or it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Neither Justice Roberts or AG Holder are immune from prospective injunctive relief directly under the constitution. The controlling Supreme Court precedent is *Bell v. Hood*, 327 U.S. 678, 681-83 (1946) that federal

courts have jurisdiction to entertain complaints seeking redress directly under the Constitution. This circuit is bound by the mandate to the District of Columbia court in *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954) holding that prospective injunctive relief was available directly under the Fifth Amendment. The Supreme Court in *Marbury v. Madison*, 5 U.S. 137, 2 L. Ed. 60, 1 Cranch 137 (U.S., 1803) determined a claim injunctive relief is an original jurisdiction action and must be brought in a trial court. This circuit must obey the Supreme Court precedent that judges are not immune from prospective injunctive relief in *Pulliam v. Allen*, 466 U.S. 522 (1984); that judicial immunity does not apply to non judicial function conduct in *Stump v. Sparkman*, 435 U.S. 349, 362-63, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978); and that a Supreme Court Chief Justice is a proper defendant in a suit for declaratory and injunctive relief over the exercise of his enforcement capacity as the plaintiffs assert against Justice Roberts over his enforcement of and the unpublished USA PATRIOT Act, *Supreme Court Of Virginia v. Consumers Union of United States, Inc*., 446 U.S. 719 at Syl. 2, 100 S. Ct. 1967, 64 L.Ed.2d 641 (1980).

Unlike in *Ashcroft v. Iqbal*, there is no need to allege the defendants personally targeted or participated in the violations of the plaintiffs' rights. Justice Roberts and AG Holder are liable to "declaratory, or injunctive relief

where ... the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Social Svcs*., 436 U.S. 658, 690-91, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

Standing must be determined "as of the commencement of suit." *Rothe Dev. Corp. v. Dep't of Def.*, 413 F.3d 1327, 1334 (Fed. Cir. 2005).

For purposes of the asserted declaratory judgments against the warrantless wiretapping and disruption of the plaintiffs business communications and political speech by blocking the plaintiffs' web sites as part of Justice Roberts' unpublished secret USA PATRIOT Act policy, and against the unconstitutional execution of Justice Roberts policy by AG Holder, it is only necessary that one plaintiff has standing. See *Bowsher v. Synar,* 478 U.S. 714, 721, 106 S.Ct. 3181, 92 L.Ed.2d 583 (1986) (deciding a challenge to the constitutionality of a statute because at least one plaintiff had standing).

As victims of warrantless wiretapping and the extrajudicial taking of property without Due Process under the unpublished USA PATRIOT Act policy implemented by Justice Roberts and through which Justice Roberts directed AG Holder to violate the plaintiffs rights, the plaintiffs irrefutably had standing to seek injunctive and declaratory relief against Justice Roberts

and AG Holder from the concrete and particularized injury of warrantless wire tapping that violates 18 U.S.C. § 2520 and also violates the plaintiffs' Fourth Amendment, followed of course by AG Holder and Justice Roberts retaliating against the plaintiffs' intimate associates for having brought the action in district court (actionable under *Thompson v. N. Am. Stainless, LP*, 131 S.Ct. 863, 178 L.Ed.2d 694 (2011)), all as part of a Judicial Branch, not Executive Branch policy implemented by Justice Roberts as head of the Judicial Conference and executed by AG Holder in his capacity of reporting to Justice Roberts under 28 U.S.C. § 331:

> "Both the ECPA and the FISA prohibit electronic interception of communications absent compliance with statutory procedures. The SCA likewise prohibits the government from obtaining certain communication records.
>
> ***
>
> In a similar vein, with respect to her constitutional claim, Jewel alleges a concrete claim of invasion of a personal constitutional right—the First Amendment right of association and the Fourth Amendment right to be free from unreasonable searches and seizures. Just last term, the Supreme Court confirmed an individual's right to challenge the legality of Executive Branch conduct on separation-of-powers grounds, Jewel's third constitutional claim: "[I]ndividuals sustain discrete, justiciable injury from actions that transgress separation-of-powers limitations.
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> ***
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> The structural principles secured by the separation of powers protect the individual as well." *Bond*, 131 S.Ct. at 2365. [Emphasis added]

Jewel v. Nat'l Sec. Agency, 12 Cal. Daily Op. Serv. 15, 673 F.3d 902, 2011 Daily Journal D.A.R. 18617 (9th Cir., 2011).

The plaintiffs have standing for the taking of their property, their constitutional right to pursue their calling to sell hospital supplies, to practice law, and to even work at McDonalds making French fries without AG Holder maintaining the plaintiffs on government databases to deprive them of employment and from AG Holder blocking their interstate commerce via blocking their hospital supply sales transactions, procurement of the services of contractors, and the disruption. See generally *Family Div. Trial Lawyers of Superior Court-D.C., Inc. v. Moultrie*, 725 F.2d 695, 233 U.S.App.D.C. 168 (C.A.D.C., 1984).

This court has repeatedly held that parties such as the plaintiffs have standing regarding the enforcement and application of federal statutes. This court has recognized that even *Lujan* found parties had standing when procedural requirements were disregarded, materially the same circumstances as where the interests of the plaintiffs are repeatedly injured by the ineffectiveness of Judicial ethics rules as enforced by Justice Roberts under 28 U.S.C. § 331:

> "In the administrative context, for example, we have held that when agencies adopt procedures inconsistent with statutory guarantees, parties who appear regularly before the agency suffer injury to a legally protected interest in "`fair decision making.'" *Electric Power Supply Ass'n v. FERC*, 391 F.3d 1255, 1262 (D.C.Cir.2004) ("EPSA") (quoting *Prof'l Air Traffic Controllers Org. v. FLRA*, 685 F.2d 547, 563 (D.C.Cir.1982) ("PATCO")) (upholding repeat litigant's standing to challenge allegedly unlawful agency rules on ex parte communication);

> see also *Lujan*, 504 U.S. at 572-73 & nn. 7-8, 112 S.Ct. 2130 (indicating that plaintiffs possess standing "to enforce a procedural requirement the disregard of which could impair a separate concrete interest of theirs" and giving as an example "the procedural requirement for an environmental impact statement before a federal facility is constructed next door to them"); *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658, 664 (D.C.Cir.1996) (en banc) (holding that litigants may establish injury in fact by "show[ing] that the government act performed without the procedure in question will cause a distinct risk to a particularized interest of the plaintiff").

Shays v. Federal Election Com'n, 414 F.3d 76 at 85, 367 U.S. App. D.C. 185 (Fed. D.C. Cir., 2005).

The District of Columbia Court of Appeals has an interest in submitting the plaintiffs' claims to an evidentiary trial to protect the rights of the plaintiffs and other litigants in our nations courts by hearing the plaintiffs complaint that Chapter 16 of 28 U.S.C. §§ 351 et seq. as applied by Justice Roberts violates the plaintiffs' constitutional rights just as if a court would find a municipal ordinance to be unconstitutional as applied:

> "…whether the judiciary, in implementing the Act, has failed to apply the Act strictly as Congress intended, thereby engaging in institutional favoritism. This question is important not only to Congress and the public, but to the judiciary itself."

Judicial Conduct Study Committee, id. pg. 2 This court, like Justice Breyer's committee found and Justice Roberts attempted to remedy through changing the policy of the Judicial Conference to require Internet posting of judicial ethics complaints (in what turned out to be ineffective in deterring judicial

misconduct due to the exclusion of the judges' names), must act to protect the Due Process rights of litigants because it is a constitutional requirement. The Due Process Clause of the U.S. Constitution is under *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.").

IV. Review of Denial of Leave to amend

The trial court issued a *Fox* show cause order (R.10) at the instigation of Justice Robert's *ex parte* communications misrepresenting the plaintiffs' filing of the AM. Complaint R.11 under Fed.R.Civ.P. 15(a)(1). Then, the trial court denied the plaintiffs leave to amend to include A.G. Holder as a defendant and the inclusion of declaratory and injunctive relief claims

> "Under the Federal Rules of Civil Procedure, a party may amend its pleadings once as a matter of course within a prescribed time period. *See* Fed.R.Civ.P. 15(a)(1). When a party seeks to amend its pleadings outside that time period or for a second time, it may do so only with the opposing party's written consent or the district court's leave. *See*Fed.R.Civ.P. 15(a)(2). The decision whether to grant leave to amend a complaint is entrusted to the sound discretion of the district court, but leave "should be freely given unless there is a good reason, such as futility, to the contrary."

Hajjar–Nejad v. George Wash. Univ., 873 F.Supp.2d 1 at 8-9 (D.D.C., 2012) citing *Willoughby v. Potomac Elec. Power Co.,* 100 F.3d 999, 1003 (D.C.Cir.1996).

The material substance of the new claims in the 2nd Am. Complaint (R. 17-3, Exb. 2) discriminatory enforcement of attorney character, and fitness by Justice Roberts and the warrantless wiretapping by an official, though unpublished policy of Chief Justice Roberts And Attorney General Eric Holder; had already been addressed without objection by the parties making them tried by consent under Fed.R Civ. 15(b)(2) and Justice Roberts Memorandum in Opposition to Amendment R. 21 did not refute that they had already been tried by consent.

V. Rule 11 Sanction Should be Remanded for Hearing

The defendant Justice Roberts has now subjected this tribunal to wholesale misrepresentation of the facts of this matter and the facts related to the prior action in the District of Columbia District Court against a federal Chief Judge and head of a circuit Judicial committee under the First Amendment, *McBryde v. Committee to Rev. Cir. Council Conduct*, 83 F.Supp.2d 135 (D.D.C., 1999) where the district court found Judge McBryde lacked standing for his statutory controlled claims due to 28 U.S.C. § 372(c)(10) but had First Amendment standing to challenge the constitutionality of 372(c)(14) which was not counter appealed by the USDOJ (Exb. 4 pg. 2 ¶ 3). Justice Roberts made this misrepresentation solely for the purpose of supporting a material misrepresentation of the

applicable and clearly established controlling precedent and depriving the plaintiffs of their Due Process rights. The plaintiffs noticed the defendant and each of his USDOJ counsel of the Rule 11 violations (see exb. 4 pg. 2), but the misrepresentations were not withdrawn as required under the D.C. Rules of Professional Conduct, and subsequent pleadings of Justice Roberts also included these same material misrepresentations of fact and law in violation of D.C. R. of Prof. Conduct 3.3(a)(4). See exb. 4 pg. 6.

Justice Roberts demonstrates a calculating indifference to the prior rulings of the district court and his pleadings constitute an intent to bring defenses in bad faith. *See McLaughlin,* 602 F.Supp. 1412 at 1418 (D.C.Cir.1985); *see also McLaughlin v. Bradlee,* 803 F.2d 1197, 1205 (D.C.Cir.1986). Justice Roberts dishonestly and repeatedly maintained injunctive relief under the First Amendment was precluded under 28 U.S.C. § 372. The District of Columbia Court has established that ignoring published opinions that government attorneys should be aware of requires sanctioning under Rule 11 *Blackman v. District of Columbia*, 150 F.Supp.2d 133 (D.D.C., 2001). The D.C. Circuit has held that "once the district court finds that a pleading is not well grounded on fact, not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, or is interposed for any improper purpose, `Rule 11 *requires*

that sanctions of some sort be imposed.'" *Rafferty v. NYNEX Corp.,* 60 F.3d 844, 852 (D.C.Cir.1995) (citing *Westmoreland v. CBS, Inc.,* 770 F.2d 1168, 1174-75 (D.C.Cir.1985)) (emphasis in the original).

VI. Motion To Affirm Untimely Under Circuit Rule 27 (g)(1)

The appellee's motion to affirm the trial court is untimely and should not be granted.

This court docketed the appeal on 12/12/2013, the appellants filed their notice of appeal on 12/12/2013, their docketing statements on 01/06/2014 , and their appeal fee was received on 01/21/2014.

The appellee's motion for summary affirmance [Doc. 1484851] was filed on 03/21/2014, 98 days later, more that the 45 day time limit under Circuit Rule 27 (g)(1).

Justice Roberts' Motion for Summary Affirmance does not include a copy of the Am. Complaint R.11 as an attachment. To procure from this court a summary affirmance, the operative complaint would have had to have been included as a "paper" under FRAP Rule 27(a)(2)(B)(i). This was not done because of Justice Roberts' bad faith motive to deprive the plaintiffs of Due Process where an appeals court reviews a district court's dismissal of a complaint *de novo*.

> "Because this case comes to us on an appeal from a motion to dismiss, we review the District Court decision *de novo*. This is true regardless of

> whether the OCAO's motion is characterized as one to dismiss for lack of jurisdiction under Rule 12(b)(1), FED. R. CIV. P. 12(b)(1), *Herbert v. Nat'l Acad. of Sci.*, 974 F.2d 192, 197 (D.C. Cir. 1992), or as one to dismiss for failure to state a cause of action under Rule 12(b)(6), FED. R. CIV. P. 12(b)(6), *Atherton v. D.C. Office of Mayor*, 567 F.3d 672, 681 (D.C. Cir. 2009)."

Howard v. Office of the Chief Admin. at pg. 10 (D.C. Cir., 2013).

Justice Roberts obstructs justice by misrepresenting material facts to this tribunal as he did before the trial court to fraudulently procure the dismissal. The law of this circuit and every circuit is that the allegations (when supported by sufficient averments of facts to be plausible under *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557, 570 (2007)) are reviewed in a light favorable to the plaintiffs and not construed implausibly against their express wording in the complaint. *Payne v. Salazar*, 628 F.Supp.2d 42 at 45 (D.D.C., 2009).

CONCLUSION

Whereas for the above stated reasons the appellants respectfully request that the court deny the appellee's motion for summary affirmance and instead summarily reverse the trial court reinstating the appellants' claims in the district court under the Second Amended Complaint (R. 17-3 Exb. 2) and order a scheduling conference to begin the exchange of discovery for an evidentiary trial of the appellants' claims.

S/ Samuel K. Lipari
Samuel K. Lipari
Appellant, pro se

S/Bret D. Landrith
Bret D. Landrith
Appellant, pro se

CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the above was sent to the appellee's counsel at the address below via U.S. Mail, postage pre paid

on 31st of March, 2014

R. Craig Lawrence
Email: craig.lawrence@usdoj.gov
U.S. Attorney's Office
(USA) Civil Division
Firm: 202-252-2500
555 4th Street, NW
Washington, DC 20530

S/Bret D. Landrith
Bret D. Landrith
Appellant, pro se
Apt. B
12820 SW Hwy. K4,
Topeka, KS 66610
Ph. 913-951-1715
bret@bretlandrith.com

S/ Samuel K. Lipari
Samuel K. Lipari
Appellant, pro se
803. S. Lake Dr.
Independence, MO 64064
saml@medicalsupplyline.com
816-365-1306