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23-11231-F

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

ELIAS MAKERE, FSA, MAAA
(Appellant/Plaintiff)

v.

HON. MARTIN FITZPATRICK, ET AL
(Appellee/Defendant)

On Appeal From The
United States District Court, Florida, Northern District
4:22-cv-000315

APPELLANT'S OPENING BRIEF

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ORAL ARGUMENT REQUESTED

January 12, 2024

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Makere v Early, 23-11231

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Lower Tribunal:

Bolitho, Zachary (Hon.)	Magistrate
Winsor, Allen (Hon.)	District Judge

Non-Parties:

Early, Edward Gary	(Tallahassee, FL)
--------------------	-------------------

Parties:

Cannon, Hope (Hon.)	Appellee
Fitzpatrick, Hon. Martin	Appellee
Frank, Hon. Michael	Appellee
Schreiber, Charles JF (Jr.)	Appellee
Walker, Hon. Mark	Appellee
Winsor, Hon. Allen	Appellee
USFLND	Appellee
Makere, Elias (FSA, MAAA)	Appellant

Appellant is not a subsidiary/affiliate of a publicly owned corporation. Pursuant to Rule 26.1-2 11th Cir. R., Appellant does not know of any other entities that have interest in this case. Appellant hereby certifies that this CIP is complete.

*at first, the plaintiff_[below] presented researched data¹/
yet, the first defendant_[below] resented lost facts like a hater/*

*then, the last defendant_[below] amassed his own bad data²/
to dole out punishment - like a mad-hatter/*

*so, going forward, may this court pronounce the latter/
as a reversible denunciation of the law...*

...then announce the order [from below] as shattered//

¹ the first "a" [in data]* is pronounced like "ay" (as in "day");

² the first "a" [in data]* is pronounced like "ah" (as in "spa");

* the second "a" in each pronunciation is the same (ie, the relaxed "ah")

STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully requests oral argument as this case presents topics of law and public trust. In particular, he believes verbal presentation will benefit Issues I (¶73), II (¶90), III (¶102), and IV (¶115). Pursuant to Rule 34(a) Fed. R. App. P. a party can request oral argument from this Honorable Court (also see Rule 28-1(c) 11th Cir. R.).

At this point, Appellant does not know whether Appellees will file a brief. Nor is he sure if he will file a subsequent reply brief. Thus, it appears important for this Honorable Court to entertain oral argument so that any questions that it has may be addressed.

Lastly, Appellant asserts that none of the factors listed in Rule 34(a)(2) Fed. R. App. P. exist in this appeal.

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INTRODUCTION

Appellant, Elias Makere, was the plaintiff in the lower tribunal; and will be referred to in this brief as "Civilian X" (Rule 28(d) Fed. R. App. P.). Appellees (ie, Judge Martin Fitzpatrick, et al), were the defendants below; and will be referred to as "Those Officials". The person whom Those Officials were covering for was a state hearing officer named Edward Gary Early; hereinafter referred to as "Judge Y".

The following references will be used in this brief:

[A_] Appendix on Appeal^{1/}

The following abbreviations will also be used:

ALJ	Administrative Law Judge
DCA	District Court of Appeals (FL)
DOAH	Division of Administrative Hearings (FL)
EEOC	Equal Employment Opportunity Commission
FAC	Florida Administrative Code
FCHR	Florida Commission on Human Relations
FS	Florida Statute
LT	Lower Tribunal
USFLMD	US District Court, Florida, Middle District
USFLND	US District Court, Florida, Northern District

All statutory and rule references are made to their 2020 versions (unless otherwise indicated).

JURISDICTIONAL STATEMENT

The District Court had jurisdiction over this matter under 42 USC §1983 (by virtue of 28 USC §1331 (*federal question jurisdiction*)). On November 23, 2022, the LT entered final judgment dismissing Civilian X's complaint on the grounds of absolute judicial immunity. Months later - on March 22, 2023 - the LT entered sanctions against Civilian X. So, on-or-around April 10, 2023, Civilian X filed a timely notice of appeal (Rule 3(a) Fed. R. App. P.). Thus, this Court has jurisdiction over this case under 28 USC §1291 (also see 28 USC §1294(1)).

STATEMENT OF THE ISSUES ON APPEAL

- I. Whether district courts can use a demonstrably false basis to sanction litigants.
- II. Whether district courts can impose sanctions upon making a false finding of 'fact'.
- III. Whether district courts can impose sanctions upon making two false findings of 'fact'.
- IV. Whether district courts can impose sanctions upon making three false findings of 'fact'.
- V. Whether district courts can fail to respect the constitutional guarantee of *Equal Protections Under the Law*.
- VI. Whether district courts can fail to respect the constitutional guarantee of *Due Process*.

STATEMENT OF THE CASE

Overview

1. This is a civil rights case (42 USC §1983) between a civilian (Appellant-`Civilian X`) and several public officials (Appellee-`Those Officials')^{2/}. Civilian X charged Those Officials with violating Civilian X's constitutional rights; while they operated under the *color of state law*.
2. Those Officials consisted of: five (5) federal judges; one (1) district court; and one (1) state assistant attorney general (FL). The three most prominent acts that Civilian X charged them with were: (a) **legislating an unconstitutional local rule**; (b) **mutilating documents that were sent to the clerk**; and (c) **committing perjury**.
3. In order to understand how/why the parties had occasion to interact, we must review the preceding/originating disputes.
 - a. The first: an employment discrimination lawsuit between Civilian X and Allstate Insurance Company ("Allstate"); and
 - b. The second: a §1983 (ie, the `Ku Klux Klan Act of 1871`) lawsuit between Civilian X and Judge Y (ie, Edward Gary Early, FL ALJ).

Originating Legal Action (Civilian X v Allstate)

4. On June 30, 2017, Civilian X filed an employment discrimination complaint with the FCHR. Pursuant to §760.11(1) FS, he alleged that his former employer (Allstate) had violated his civil rights on the bases of race **and** sex (see **[A0038]**).
5. On September 8, 2017, Allstate denied **both** allegations (see **[A0040]**). Importantly, the former employer explicitly acknowledged that Civilian X's charge contained "*allegations of discrimination based upon race and sex discrimination*":
6. On December 15, 2017, the FCHR concluded its investigation. Notably affirming that race **and** sex were the bases of Civilian X's complaint (see **[A0044]**).
7. On January 19, 2018, Civilian X filed his Petition for Relief with the FCHR. Just as in his original charge, he listed only race and sex as the protected characteristics for his complaint (see **[A0046]**). Thus, pursuant to §760.11(7) FS and §120.569 FS, the FCHR transmitted it to DOAH.
8. After a series of irregularities (authority breaches, deposition sit-ins, recusals, etc.), Judge Y became the administrative hearing officer over Civilian X's case (circa November 13, 2018).
9. Despite the procedural incongruities, the facts continued to develop in Civilian X's favor; heavily. Facts which included - but were not limited to:

- a. Unwanted date requests [A0062]; racist dolls [A0067], racist characterizations [A0067]-[A0069];
- b. Cursing at Plaintiff for buying a condolence card [A0069];
- c. Death threats; smear campaigns; lethal attacks [A0085];

10. Importantly, Allstate made it known that many of its other employees had also failed exams. Yet, Allstate never fired any of them. This was the '*smoking gun*' for proving that Allstate was guilty of discriminating against Civilian X.

Reason: Allstate claimed that it fired Civilian X "solely" because he failed an actuarial exam [A0075]-[A0077].

11. Moreover, at the hearing, three other revelations were cementing:

- a. Allstate granted the **work-from-home privilege** to its other employees. An accommodation it denied to Civilian X many times [A0070], [A0081], [A0101].
- b. Allstate made Civilian X **pay \$1,025** for an actuarial exam fee; a payment it never required from any of its other employees [A0073], [A0101].
- c. Allstate paid Civilian X an **annual salary** that was significantly lower than his similarly-situated comparators.

12. These core facts rendered Civilian X's lawsuit (against Allstate) a textbook case of employment discrimination. One which - unfortunately - ran counter to widespread propaganda (as foretold by the Ku Klux Klan itself; and its progenies).

13. Faced with these probative facts, **Judge Y went on the attack.**

Judge Y's Unlawful Conduct: (A) Spoliation of Evidence

14. On November 30, 2018, during the moments in which the payment disparity was being revealed at trial (see ¶11b, *supra*), Judge Y ordered Civilian X to cease questioning **[A0026]**.

15. After the hearing - around January 9, 2019 - Civilian X asked Judge Y for a redress of the cessation order (citing due process). He further detailed the importance of the requested testimony/revelation **[A0027]**.

16. Two days later (January 11, 2019), Civilian X received a copy of the hearing transcript. It was missing one page (and one page only). That crucial page was the one that contained testimony on the payment disparity (¶11b) - and Judge Y's cessation order.

[A0027]

a. It must be noted that DOAH's clerk told Civilian X (over the phone) that Judge Y was the person who scanned/photocopied the transcript. A task, of course, which non-judges primarily complete **[A0211]-[A0219]**.

17. Given these circumstances, it was clear that **Judge Y willfully and knowingly hid material evidence.**

Judge Y's Unlawful Conduct: (B) Perjury

18. Judge Y took it one step further, though, by making a wholesale removal of Civilian X's sex discrimination charge.

a. Notably, on April 10, 2019, Civilian X filed a second [and final] charge of discrimination against Allstate. It was due to the former employer's post-termination retaliation (which included death threats and lethal attacks).

19. On April 18, 2019, Judge Y entered his Recommended Order ("RO").

20. The first page of the document had a section titled "Statement of the Issue". Where Judge Y excluded Civilian X's sex discrimination charge (see [A0048]-[A0049]).

21. The second page had a section titled "Preliminary Statement". Where Judge Y continued to exclude Civilian X's sex discrimination charge. This time, however, Judge Y made the fateful declaration that Civilian X never complained of sex discrimination prior to the DOAH proceedings (see ¶7, *supra*) (see [A0046]) (highlights added).

"[Civilian X], also for the first identifiable time, alleged that Allstate, and in particular [Civilian X's manager], engaged in sexually provocative and inappropriate behaviors, which [Civilian X] alleged to be "sexual harassment and discrimination""

- Judge Y | 4/18/19 | [A0051]

22. Judge Y repeated that highlighted line (ie, "for the first identifiable time") several more times throughout his authored RO.

23. **That statement, of course, was false.**

24. Civilian X did charge Allstate with sex discrimination.

- a. He did so in his original charge (6/30/17, see ¶4);
- b. Allstate acknowledged the sex basis (9/8/17, ¶5); and
- c. The FCHR explicitly ruled on the basis of sex (12/15/17, ¶6)

25. Nevertheless, the force and effect of Judge Y's statement made the FCHR change its tune.

26. On June 27, 2019, the FCHR issued its Final Order ("FO"). In which it listed race as the only protected characteristic in Civilian X's complaint (see [A0053]); and adopted Judge Y's ruling.

27. Judge Y's lie had its intended effect.

28. Now, it is important to recognize Judge Y's knowledge of the truth.

Judge Y's Knowledge of the Truth

29. Prior to authoring his RO, Judge Y deliberately acknowledged that the sex discrimination charge was in Civilian X's originating complaint. [A0028] - [A0029]

30. On February 6, 2019, Allstate moved Judge Y to take official recognition of the FCHR's Determination (under §90.201 FS).^{3/}

31. That state-issued Determination letter read, in pertinent part, as follows (highlights added):

"Complainant worked for Respondent as an Actuary. Complainant alleged that Respondent discriminated against him based on his race and sex."

- The FCHR | 12/15/17 | **[A0044]**

32. On February 18, 2019, Judge Y granted the motion **[A0146]**. Thereby cementing - unequivocally - that he **knew** that Civilian X charged Allstate with sex discrimination. He said the following (highlights added).

"[Allstate's] Motion for Official Recognition requests that official recognition be taken of the Notice of Determination... Those documents provided the point of entry to [Civilian X] for this proceeding."

- Judge Y | 2/18/19 | **[A0147]**

33. Thus, Judge Y's repeated "statements" to the contrary were a known lie (a massive lie - in fact).

34. A lie that impacted the outcome of Civilian X's lawsuit against Allstate. A case which sought monetary damages (among other things).

35. Another case which sought monetary damages was/is the federal lawsuit Civilian X filed against Allstate on August 12, 2020 **[A0054]**. A lawsuit seeking full relief from Allstate's damaging discrimination; via a full & fair proceeding emancipated by

Judge Y's klan-destined conduct. A lawsuit, importantly, that continues to this day **[A0150]**.

Preceding Federal Action (Civilian X v Judge Y)

36. Given the harm that Judge Y's unlawful conduct inflicted, Civilian X filed civil rights charges at USFLND - on February 16, 2021 (hereinafter "That Case"). **[A0019]**

37. On April 6, 2021, USFLND processed Civilian X's filing fee (see **[A0161]**).

38. Three days later, however, USFLND's magistrate entered a Report & Recommendation ("R&R"); requesting a [sua sponte] dismissal of Civilian X's complaint against Judge Y **[A0163]**. Doing so under the authority of 28 USC §1915; a statute permitting dismissal of unpaid (ie, '*forma pauperis*') lawsuits.

a. Note: in a simultaneously filed order, the magistrate acknowledged that **Civilian X paid the filing fee:**

"The docket also shows that [Civilian X] has now paid the \$402.00 filing fee."

- USFLND | 4/9/21 | **[A0175]**

39. The R&R also recommended dismissal on the basis of **absolute judicial immunity**.

40. Soon thereafter - on April 29, 2021 - the LT entered Final Judgment; adopting the R&R's recommendation.

41. Neither the R&R nor the Final Judgment cited a law/statute/rule permitting it to dismiss Civilian X's paid complaint.

42. It must also be noted that Judge Y (ie, the case defendant) had yet to appear.

43. In due time (ie June 4, 2021), Civilian X filed an appeal.

44. On December 30, 2021, Civilian X won his case (21-11901-G; USCA11). Yet, upon recommencing his lawsuit against Judge Y, Those Officials' non-judicial obstructions became more pronounced.

45. The key obstruction from the federal officials was the legislation (and enforcement) of an unconstitutional local rule (ie, USFLND Local Rule 5.1(E) and 5.4(A)). The key obstruction from the state official (ie, Appellee Schreiber) was defrauding the LT.

Immediate Federal Action (Civilian X vs Those Officials)

46. On-or-around April 26, 2022, Civilian X sued Those Officials for constitutional violations. Therein, Civilian X levied two counts against the lone state official (Appellee Schreiber (2)); doing so under 42 USC §1983 ('*Ku Klux Klan Act of 1871*') and 42 USC §1985. Civilian X also filed one Bivens count against each of the six federal officials (Appellee Fitzpatrick (1); Appellee Walker (1); Appellee USFLND (1); Appellee Frank (1); Appellee Cannon (1); and Appellee Winsor (1)).

a. Importantly, Civilian X initiated this action in state court (Florida; Duval County; 2022-CA-2333). **[A0178]**^{4/}

47. Specifically, Appellee Schreiber - an attorney for Florida's Attorney General's office - obstructed That Case by defrauding the LT.

48. On March 11, 2022, Appellee Schreiber made his appearance; purporting to be Judge Y's representative. He did so via motion ("That Motion"). [A0185]

49. On Page 7 of That Motion, he acknowledged the truth: that Civilian X had sued Judge Y in Judge Y's individual capacity only:

"[Civilian X] sues [Judge Y] only in an individual capacity. [ECF 26 at 22, 23]"

- Charles JF Schreiber, Jr. | 3/11/22 | [A0188]

50. On Page 25 of That Motion, though, Appellee Schreiber stated the opposite:

"[Civilian X] sues [Judge Y] in his official capacity, and in essence, the claims against [Judge Y] are claims against the State of Florida..."

- Charles JF Schreiber, Jr. | 3/11/22 | [A0189]

51. **Appellee Schreiber, importantly, was lying** (a l^â Judge Y in April 2019; ¶19-34 *supra*). Following Appellee Schreiber's 3/11/22 submission, Civilian X pointed out (1) the facts; and (2) Appellee Schreiber's own contradictions. Appellee Schreiber responded by failing to state any fact, rule, statute, case law, or common law practice to overcome his materially false

statement. Instead, Appellee Schreiber said the facts were 'subjective/speculative', and that he was going to change nothing.

52. Appellee Schreiber, importantly, used his lie as the basis for his appearance/interference. As an Assistant Attorney General (FL), Appellee Schreiber was/is prohibited from representing (a) private citizens; and/or (b) public officials sued in their individual capacities. The Florida Attorney General's website says this:

"The Lawyer Referral Service at the Florida Bar can assist you in contacting an attorney in Florida with expertise relevant to your situation. By law, the Office of the Attorney General may not represent private citizens in legal disputes."

- <http://MyFloridaLegal.com/Questions> | 6/24/21"

53. The bottom line is that Appellee Schreiber was prohibited from appearing in That Case on behalf of Judge Y. He lied to evade that prohibition, though. And his lies have been borne out of the same invidious discrimination that compelled Judge Y to commit perjury. Appellee Schreiber's aims - as well as those of his companions - have been to abridge Civilian X's constitutional rights.

54. Sharing in Appellee Schreiber's invidious discrimination against black people were Appellees Fitzpatrick; Walker; USFLND; Frank; Cannon; and Winsor ("Appellees Fitzpatrick/etc")

55. Appellees Fitzpatrick/etc entered into a pre-suit pact (and carried it out) to impede/defeat Civilian X's constitutional rights (to a fair trial; to a trial-by-jury; and to the equal protections of the law). With full certainty, Those Officials upheld their end of the bargain by: (a) entering unauthorized decisions; (b) lying; (c) refusing to disqualify themselves (in contravention of 28 USC §455); (d) manipulating the trial docket; (e) drafting unconstitutional local rules; and (f) enforcing unconstitutional local rules.

56. The record is clear on their misdeeds.

a. Appellee USFLND has a rule that prohibits *pro se* litigants from utilizing electronic filing (Rules 5.1(E), 5.4(A)).

i. Throughout That Case, Civilian X was *pro se*. Judge Y, on the other hand, was not.

ii. Despite Civilian X's numerous pleas for relief, Appellees Fitzpatrick/etc forced Civilian X to suffer unequal hardships due to the rule.

1. Hardships in terms of money spent (ie, Civilian X had to spend hundreds of dollars on shipping costs, while Judge Y spent 0);

2. Hardships in terms of time spent (ie, Civilian X had to spend dozens of hours printing & shipping court documents, while Judge Y spent 0); and

3. Hardships, most importantly, in terms of litigation efficacy (ie, days lost for physically filing vs electronically filing; functional deficiencies of hardcopies vs electronic copies).

a. For instance, it took 12 days for Appellee Fitzpatrick/etc to enter Civilian X's 3/17/22 motion. By contrast, it took 0 days for Appellee Fitzpatrick/etc to do the same for Judge Y's 3/18/22 motion.

b. Another example: it took 6 days for Appellee to receive Appellee Fitzpatrick/etc's 3/31/22 paper ({{#40}} from That Case). It took 0 days, though, for Judge Y to get it.

The unequal expenditures further show that justice is/was for sale with Appellees Fitzpatrick/etc; while constitutional subversions are/were a bonus.

iii. Moreover, in April 2022, Appellees Fitzpatrick/etc approved trial docket manipulation. **[A0192]-[A0193]**

1. That month, Civilian X sent USFLND several legal documents.

2. He sent them via postal mail (see ¶56a, *supra*).
He organized them; and fastened them with paper clips.

3. Despite that, though, Appellees Fitzpatrick/etc's assistant transposed Civilian X's documents, and entered them into the docket.

4. Days later, Appellees Fitzpatrick/etc acknowledged the transposition. Thereby approving the assistant's manipulation of Civilian X's filings.

5. A manipulation that Appellees Fitzpatrick/etc used to deny Civilian X relief.

b. Appellees Fitzpatrick/etc further abused their government positions in January 2023. They did so by delaying Civilian X's filing [so that it would be late], then punishing Civilian X for the 'late' filing. **[A0194]-[A0197]**

i. Briefly put: on October 4, 2022, Civilian X mailed two documents to the LT.

ii. The LT did not file the documents until January 30, 2023 (110+ days later).

iii. Nevertheless, the LT used its self-produced delay to spark its subsequent punishment [of Civilian X]. Because ten (10) days later - on February 9, 2023 - the magistrate recommended sanctions.

c. The record is also clear on the fact that Appellee Winsor was both: (i) one of the defendants below, and (ii) the presiding district judge [from below]. In other words, the LT was judging itself (and adjudicating its own misdeeds).

57. As specified before (¶56), Appellees Fitzpatrick/etc discriminate against different classes of litigants. USFLND Local Rule 5.4(A)(3) states that *pro se* parties must send hard copies of their court papers. That same rule, though, alleviates represented parties from this hardship.

58. Moreover, there is no legitimate reason for the disparity. Neither USFLND's rules nor USFLND's website state a compelling government interest in the discrimination.

59. Plus, there is no record that USFLND has ever allowed the public to weigh in on the rule. Instead, the LT has dictated to the people how the people will be governed.

60. Importantly, the *pro se* distinction is just a cover for targeting black people (especially black men who litigate civil rights cases).

a. Records show that *pro se* litigants are disproportionately black. Records also show that civil rights litigants are disproportionately black.

i. To be precise, statistics show that 84% of Florida's *pro se* civil rights litigants are black. This value is

dramatically high, because government census shows that only 17% of Floridians are black.

b. Appellees Fitzpatrick/etc have always known that its rule would have (and has had) a disparate impact on black people.

i. On June 10, 2022, Civilian X asked Appellees Fitzpatrick/etc (via email) whether they disputed these statistics. Appellees Fitzpatrick/etc laid silent.

ii. The following month - on July 13, 2022 - Civilian X asked again. Appellees Fitzpatrick/etc - again - did not dispute the facts/statistics related to its discriminatory rule.

c. The fact of the matter is that discrimination was Appellees Fitzpatrick/etc's aim all along.

d. Additionally, USFLND's pro se vs attorney distinction is flawed on its face. There are many pro se litigants who are attorneys.

e. Lastly, one of the most influential federal cases (*Bivens v Six Narcotics Agents*) was initiated by a pro se litigant. Further showing that USFLND's pro se distinction lacks legitimacy.

61. Appellees Fitzpatrick/etc have a pattern & practice of manipulating federal dockets in order to produce fake

statistics. Fake statistics that it uses to justify discriminating against black litigants.

a. A practice that Appellees Fitzpatrick/etc exercised against Civilian X (§56a.iii, *supra*)

62. The real-world statistics - and the efforts needed to procure them - reveal the illegitimacy of Those Officials' conduct.

Undisputed Facts Revealing Those Officials' Unconstitutional Predation of Black People

63. On April 19, 2022, Civilian X began researching Those Officials' discriminatory local rule (ie, USFLND Local Rule 5.4). Over the next five days, he spent a total of 55.75 hours analyzing the relationship between *demographics* & *pro se status* (within the civil rights realm).

64. He completed his six-day effort on April 24, 2022. Two days later, of course (ie, 4/26/22), he filed suit (§46 *supra*).

65. In fact, Civilian X presented these results (of Those Officials' discrimination) directly to Those Officials. **[A0209]** (§60b)

66. Plus, Civilian X published this analysis (and underlying data) on his website.

a. The first piece was the demographics analysis (which Civilian X worked on between 5/16/22 and 5/29/22). It can be found here:

TextBookDiscrimination.com/Analysis/Demographics/DOAH/

b. The second piece was the pro se status analysis (which Civilian X worked on between 5/30/22 and 6/12/22). The results of this analysis can be found here:

TextBookDiscrimination.com/Analysis/ProSe/

67. Put simply, evidence of Those Officials' unconstitutional discrimination has always had a deep basis in fact.

68. Furthermore, these facts lead to the realization that Appellees Fitzpatrick/etc use Local Rule 5.4 to effectuate their self-fulfilling prophesy [of abridging the constitutional rights of black people].

a. The rule is repugnant on its face, and diabolic upon closer inspection.

b. Those Officials use the anti-black stratification to deter others (eg, prospective attorneys) from helping black litigants.

i. A tactic, notably, that Judge Y previously employed [against Civilian X] (circa November 2018).

69. Thus, given the facts & circumstances; Appellant will hereby present the reasons why this Court is well-positioned to **reverse the judgment from below**. A judgment that was falsely premised, erroneous, constitutionally violative, and harmful.

STANDARD OF REVIEW

70. A district court's imposition of sanctions is reviewed for an ***abuse of discretion*** (see Peer v Lewis, 606 F. 3d. 1306 (11th Cir. 2010)). Under that standard, an appellate court examines whether an LT: (a) applied an incorrect legal standard; (b) applied the law in an unreasonable/incorrect manner; (c) failed to follow proper procedures in making a determination; or (d) made findings of fact that were clearly erroneous (see Taylor v. Pekerol, 760 Fed. App'x, 647 (11th Cir. 2019)).

SUMMARY OF ARGUMENT

71. The LT abused its discretion in six different ways. The first was its decision to ignore the material facts that brought this legal action to bare. The next three were its false findings of fact: some of which were debunked by government record; others of which were unsupported, court-issued accusations. Plus, the LT departed from the essential requirements of law. Doing so in two ways: (1) failing to comport with the Equal Protections clause of the US Constitution; and (2) failing to afford Civilian X his constitutionally-guaranteed due process rights.

72. Thus, this Court of Appeals is well-positioned to reject the LT's order; and eradicate the unconstitutional/discriminatory provisions of USFLND's Local Rules.

ISSUE I

The District Court Erred by
Failing to Recognize the 'Reasonable Factual Basis'
regarding Those Officials' Unconstitutional Local Rule
(which preys on black people)

OVERVIEW I

73. The Lower Tribunal erred when it [falsely] claimed that Civilian X's complaint lacked a factual basis.

STANDARD OF REVIEW I

74. Fortunately, this appellate court has the power to reverse the decision below [on this issue], because sanction orders are reviewed for an **abuse of discretion** (highlights added):

"[The 11th Circuit Court of Appeals] reviews the district court's award of sanctions under Rule 11 and 42 USC §1988 for abuse of discretion."

- Baker v. Alderman, 158 F.3d 516 (11th Cir. 2001)

75. As the federal circuit courts have long established, discretion is abused when a lower court bases its decision on a false premise (highlights added):

"Finally, discretion may be abused by an exercise that is flawed by erroneous factual or legal premises."

- James v. Jacobson, 6 F.3d 233 (4th Cir. 1993)

ARGUMENT I

76. The LT - in the instant case - abused its discretion when it sanctioned Civilian X on a false factual premise.

77. To be specific, Page 4 of the magistrate's order claimed that the action below had no reasonable factual basis:

"...far-fetched government conspiracy that had no reasonable factual basis"

- [A0198]-[A0199]

78. **This is false.**

79. The discriminatory/unconstitutional nature of Local Rule 5.4 is clear. In fact, Civilian X outlined its illegitimacy in his complaint (highlights added):

"...[Those Officials discriminate] against different classes of litigants. Local Rule 5.4(A)(3) states that pro se parties must send hard copies of their court papers. That same rule, though, alleviates represented parties from this hardship.

64. Not only does the disparity affect time & money, it also affects the efficacy of litigation.

a. Pro se litigants lose multiple days due to the transit times (mailing documents to & from USFLND). Days which they could use for research, evidence collection, writing, and self-representation...

65. Moreover, there is no legitimate reason for the disparity. Neither USFLND's rules nor USFLND's website state a compelling government interest in the discrimination.

- [A0208]

80. Moreover, the US Supreme Court has deemed unexplained government discrimination to be unconstitutional (highlights added):

"The Court of Appeals for the Fourth Circuit affirmed in all respects save one. It found that the library plan denied women prisoners the same access rights as men to research facilities. Since there was no justification for this discrimination, the Court of Appeals ordered it eliminated.

But the cost of protecting a constitutional right cannot justify its total denial."

- Bounds v Smith, 430 US 817 (1977)

81. Importantly, Civilian X performed an in-depth analysis of the discriminatory ventures of Those Officials (§63-68, *supra*).

82. The aforementioned in-depth analysis took Civilian X a significant amount of time (§63-66, *supra*).

83. In fact, Civilian X presented these results directly to Those Officials; he even disclosed this presentation in his complaint (§65, *supra*).

84. Plus, Civilian X published this analysis (and the underlying data) on his website. A process that took him hundreds of hours to complete (over a 7-week period) (§66, *supra*).

85. Put simply, evidence of Those Officials' discrimination & unconstitutionality has a deep basis in fact.

86. This factual basis is important, because it refutes the LT's order. Courts have held - for a long time now - that sanctions

are inapplicable when a factual basis [for a complaint] exists (highlights added):

"[appellant] also argues that Rule 11 sanctions were not appropriate because [appellee] failed to provide the district court with evidence that [appellant]'s case or pleadings (1) had no reasonable factual basis...

...We therefore VACATE the order imposing sanctions and REMAND to the district court for further proceedings consistent with this opinion.

- Massengale v Ray, 267 F.3d 1298 (11th Cir. 2001)

CONCLUSION I

87. So, since the LT based its appealed order [from below] on a materially false statement, this Court is well-positioned to reject it. And Civilian X hereby asks this Court to do just that.

88. Plus, given the US Supreme Court mandate (ie, the Bounds decision) for abolishing discriminatory rules/customs, this Court is also well-positioned to direct the LT to eradicate the unconstitutional provisions from its set of Local Rules (ie, Local Rule 5.1(E); and Local Rule 5.4(A)(3)).

89. At the very least - and notwithstanding the Lower Tribunal's other flaws (*infra*) - the LT's false basis is sufficiently ripe for this Court's reversal of its appealed order [from below].

ISSUE II

The LT's [Appealed] Order Featured a False Finding of 'Fact'
(regarding Civilian X's Litigation History)

OVERVIEW II

90. The LT erred by making a false finding of 'fact' regarding Civilian X's litigation history.

STANDARD OF REVIEW II

91. Fortunately, this appellate court has the power to reverse the decision below [on this issue], because sanction orders are reviewed for an **abuse of discretion** (highlights added):

"[The 11th Circuit Court of Appeals] reviews the district court's award of sanctions under Rule 11 and 42 USC §1988 for abuse of discretion."

- Baker v. Alderman, 158 F.3d 516 (11th Cir. 2001)

92. As the 11th Circuit has previously established, discretion is abused when a lower court makes an erroneous finding of fact (highlights added):

"A district court abuses its discretion if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous."

- Taylor v. Pekerol, 760 F. App'x 647 (11th Cir. 2019)

ARGUMENT II

93. The LT - in the instant case - abused its discretion when it used a false finding [of fact] to impose sanctions on Civilian X.

94. To be specific, Page 5 of the magistrate's order claimed that "[Civilian X] has a history of filing frivolous complaints" **[A0199]**.

95. **This - once again - is false.**

96. Civilian X did not have any history of filing frivolous complaints.

97. No Court had ever entered a "with prejudice" dismissal (which featured a judgment of "frivolity") against any of Civilian X's complaints.

98. In fact, the LT's appealed order failed to cite any case that fit that description.

99. Moreover, no Court (nor civil opponent) had ever [even] threatened Civilian X with the label "frivolous".

100. According to Florida's Supreme Court, the incorrect nature of the LT's finding of 'fact' renders its decision as being 'clearly erroneous'; and subject to reversal (highlights added):

"In considering this matter we should also decide whether under existing statutory law we should adhere to our pronouncement that "the probity of the evidence is for the industrial commission to

determine and their findings should not be reversed unless shown to be clearly erroneous."

- USCS v. Maryland Casualty, 55 So. 2d 741 (Fla. 1951)

CONCLUSION II

101. Thus, due to the LT's verifiably false statement, this Court is in prime position to reverse the decision from below. And Civilian X hereby asks this Court to do just that. Especially considering the following - slightly related - erroneous '*finding*' [from the LT] (ie, Issue III, *infra*).

ISSUE III

The LT's [Appealed] Order Featured a 2nd False Finding of 'Fact'
(regarding Civilian X's Ongoing Discrimination Charges)

OVERVIEW III

102. The LT further erred by making a second false finding of 'fact'. This time, the 'finding' was about Civilian X's two [ongoing] charges of employment discrimination against Allstate Insurance Company.

STANDARD OF REVIEW III

103. As before, this appellate court has the power to reverse the decision below [on this issue], because sanction orders are reviewed for an abuse of discretion (§91, *supra*).

104. More specifically, this Circuit has previously established that an 'abuse of discretion' occurs when a lower court makes an erroneous finding of fact (highlights added):

"A district court abuses its discretion if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous."

- Taylor v. Pekerol, 760 F. App'x 647 (11th Cir. 2019)

ARGUMENT III

105. The LT - in the instant case - abused its discretion by [once again] using a false finding 'of fact' to impose sanctions on Civilian X.

106. This time, the LT claimed that Civilian X had filed five administrative charges of discrimination:

"Civilian X has filed five state administrative claims "seeking redress for his termination""

- [A0200]

107. Once again, the LT is wrong; because **this statement is false.**

Verifiably false

108. Civilian X has not filed five administrative claims *"seeking redress for his termination [from Allstate]"*.

109. Civilian X has filed two (2).

a. The first was on June 30, 2017 (FCHR 2017-01432) (§4); and

b. The second was on April 10, 2019 (FCHR 2019-19238) (§18a).

110. In fact - and like before (§98, *supra*) - the LT's [appealed] order failed to cite any of the supposed *"five state administrative claims"* that it was using in its false statement.

111. According to the 11th Circuit Court of appeals, the LT's finding was *"clearly erroneous"*:

"For a factual finding to be "clearly erroneous," this court, "after reviewing all of the evidence,

must be left with a definite and firm conviction that a mistake has been committed."

- USA v Rodriguez, 363 F.3d 1134 (11th Cir. 2004)

112. In the instant case, the government records (see ¶109) should leave this Court with the "definite and firm conviction" that the LT was wrong (ie, Civilian X only filed 2 discrimination charges against Allstate - not 5).

113. Moreover, both of those administrative charges graduated & congealed into Civilian X's **ongoing** federal lawsuit against Allstate (¶35 *supra*).

CONCLUSION III

114. Thus, since the LT based its rationale on a verifiable falsehood, this Court is in great position to reverse the decision from below. And - as before - Civilian X hereby asks this Court to do just that. Especially considering the LT's following erroneous '*finding*' (ie, Issue IV, *infra*).

ISSUE IV

The LT's [Appealed] Order Featured a 3rd False Finding of 'Fact'
(regarding Civilian X's Motivations)

OVERVIEW IV

115. As was commonplace in the appealed order, the LT erred by making another false '*finding of fact*'. This third false finding centered around the motivations behind Civilian X's complaint.

STANDARD OF REVIEW IV

116. Of course, this court of appeals is authorized to reverse the decision below [on this issue], because sanction orders are reviewed for an abuse of discretion (#91, *supra*).

117. Plus, for this particular issue, this Court has the impetus for reversal. An impetus which exists due to this Court's previously established precedent for rebuking erroneous findings of fact (highlights added):

"A district court abuses its discretion if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous."

- Taylor v. Pekerol, 760 F. App'x 647 (11th Cir. 2019)

ARGUMENT IV

118. Once again, the LT - in the case below - abused its discretion by using a false '*finding of fact*' to impose sanctions on Civilian X.

119. Page 9 of the magistrate's order claimed that "*Plaintiff became vindictive and began acting out of spite and anger*" [A0201].

120. **This statement is false.**

121. Civilian X never acted out of spite/vindictiveness/anger in the LT. Nor did he ever act with those motivations in any of his contemporaneous legal actions (ie, *Makere v Allstate; Makere v Early*).

122. Instead, Civilian X proceeded on truth, facts, and logic. The facts - in this case and in others - have been produced; and they have gone **undisputed**.

All of them

123. Plus - and as the record shows (§63-68, *supra*) - Civilian X spent hundreds of hours procuring the facts, analyses, and legal vehicles needed to "*petition the government for a redress of grievances*".

124. Additionally, Civilian X has spent thousands of hours developing & updating a free, comprehensive, self-help website for pro se litigants. As of December 31, 2023, Civilian X has spent 9,806

hours building TextBookDiscrimination.com. It has well-over 35,000 webpages; which are:

- a. Free;
- b. Fast;
- c. Available for all;
- d. Devoid of ads;
- e. Devoid of contracts;
- f. Devoid of sign-ups; and
- g. Devoted to civil rights litigants

Thus, Civilian X has had no time (or interest) to engage in personal exploits with any of the above-named appellees. In fact, Civilian X has never wanted anything to do with any of them; and has been working diligently to repair the damages that they have caused. Damages to Civilian X directly; damages to civilians nationwide; and damages to the United States of America.

125. Moreover, the LT's appealed order failed to produce any evidence to support its false statement. The record shows that the LT never observed Civilian X [do anything - of any kind] (neither via phone nor via in-person hearing). Nor has the LT ever attempted to commandeer Civilian X into its presence for the purpose of questions/observations.

126. Of course - as the Courts have held - erroneous statements equate to abuses of discretion (highlights added):

"We conclude that the ALJ erred in assigning little weight to Wang and Anderson's opinions, erred in her characterization of General's opinion, and failed to offer specific, clear, and convincing reasons for discrediting part of Garrison's testimony. We further conclude that the district court abused its discretion"

- Garrison v. Colvin, 759 F.3d 884 (9th Cir. 2014)

127. At the end of that same vein lies the heart of the LT's infarction. An infarction which the Garrison court unclogged with a reversal (highlights added):

"We reverse the judgment of the district court"

- Garrison v. Colvin, 759 F.3d 884 (9th Cir. 2014)

CONCLUSION IV

128. Thus, with precedent [for unclogging the LT's infarction] present, this Court is primed to gift the judiciary relief from the LT's infraction. And Civilian X hereby asks this Court to perform that operation.

129. Unfortunately, though, the above-detailed infraction was just a fraction of the LT's abuses. Because, the lower court's departure from *the essential requirements of law* points to a systemic issue (ie, Issue V *infra*). One which has *tumored* enough to receive this higher court's remedy.

ISSUE V

The Lower Tribunal Failed to
Comport with the Essential Requirements of Law
(Equal Protection Clause of the US Constitution)

OVERVIEW V

130. The LT's aforementioned abuses and errors were further invalidated by its departure from the essential requirements of law. A departure that has resulted in a miscarriage of justice; one which this Court has the power to fix.

STANDARD OF REVIEW V

131. Since this type of analysis (of the essential requirements of law) is a pure question of law, this Court can review *it de novo* (highlights added):

"...in determining whether there was a 'departure from the essential requirements of law' reviewing courts have inquired: (1) whether the lower court proceeded 'according to justice' or deprived the petitioner of fundamental rights, resulting in serious and material injury or gross injustice; (2) whether the judgment is authorized by law or is invalid, illegal, essentially irregular, or prejudicial; (3) whether the court rendering judgment lacked jurisdiction; (4) whether the circuit court's appellate judgment violates established principles of law; (5) whether the judgment results in a substantial injury to the legal rights of the petitioner; (6) whether the judgment constitutes a palpable miscarriage of justice; or (7) whether the lower court applied the wrong rule of law to the evidence"

- Haines v. Heggs, 658 So. 2d 523 (Fla. 1995)

ARGUMENT V

132. The record below shows that the LT deprived Civilian X of his 14th Amendment right to equal protection.

133. The LT did that, most notably, by denying Civilian X access to electronic filing (despite granting each defendant/appellee that access) (§55-68, *supra*). Access that has been material.

134. For starters, the disparity in treatment has expressed itself financially. Civilian X spent dozens of dollars printing & shipping papers to the LT. Those Officials spent \$0.

135. The disparity in treatment also expressed itself timewise. Civilian X spent roughly 5 hours printing & shipping papers to the LT. Those Officials spent 0 hours doing the same.

136. Most importantly, however, is the legal disadvantage that the disparity caused Civilian X. Who had to wait multiple days to receive Court orders (5 days on average). Those Officials waited 0 days (per order). (§56 *supra*)

137. All of these discriminatory injuries (financial, temporal, efficacy) violated Civilian X's '*fundamental right*' to equal protection. According to the US Supreme Court, such a violation is cause for reversal (highlights added):

"Thus, the Court has found a denial of equal protection where the procedures implementing a neutral statute operated to exclude persons from the venire on racial grounds... decisions of this Court have been concerned largely with

discrimination. Since the Fourteenth Amendment protects an accused throughout the proceedings bringing him to justice, Hill v. Texas, 316 U. S. 400, 406 (1942), the State may not draw up its jury lists pursuant to neutral procedures but then resort to discrimination at "other stages in the selection process,

...

In this case, petitioner made a timely objection to the prosecutor's removal of all black persons on the venire. Because the trial court flatly rejected the objection without requiring the prosecutor to give an explanation for his action, we remand this case for further proceedings. If the trial court decides that the facts establish, prima facie, purposeful discrimination and the prosecutor does not come forward with a neutral explanation for his action, our precedents require that petitioner's conviction be reversed."

- Batson v Kentucky, 476 US 79 (1986)

138. The above-quoted Supreme Court holding fits the instant case with near-perfection. Civilian X - like Batson - has provided clear evidence of racial discrimination (¶63-68, supra). Discrimination that has impaired the proceeding below (¶56). And discrimination that none of the transgressors have rebutted.

CONCLUSION V

139. Thus, this Appellate Court has Supreme reason to reverse the LT's appealed order [from below]. And Civilian X hereby asks this Court to perform that supreme act.

140. In addition to departing from the essential requirements of law regarding the Equal Protection clause, the LT also departed from them in terms of the US Constitution's Due Process guarantee (Issue VI, *infra*).

ISSUE VI

The Lower Tribunal Repeated its Failure
'To Comport with the Essential Requirements of Law'
(Due Process Clause of the US Constitution)

OVERVIEW VI

141. The LT's departures [from the essential requirements of law] also included a violation of Civilian X's due process rights. A violation grounded in the LT's partiality and inequity.

STANDARD OF REVIEW VI

142. Of course, constitutional violations are pure questions of law, and therefore receive *de novo* review (highlights added):

"Cooper's petition for a writ of certiorari asked us to decide whether the Court of Appeals reviewed the constitutionality of the punitive damages award under the correct standard and also whether the award violated the criteria we articulated in Gore. We granted the petition to resolve confusion among the Courts of Appeals on the first question. [4] 531 US 923 (2000). We now conclude that the constitutional issue merits de novo review."

- Cooper v. Leatherman, 532 US 42 (2001)

ARGUMENT VI

143. The LT's partiality crystallized when it decided to adjudicate itself (§56c). An action that has violated 28 USC §455(a) ("*shall disqualify [when] impartiality might reasonably be questioned.*")

144. Partiality that the US Supreme Court deems to be a reversible violation of due process (highlights added):

"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases."

"..."

"The judgment of the District Court is reversed, and the case is remanded to that court for further proceedings consistent with this opinion."

- Marshall v Jerrico, 446 US 238 (1980)

145. As far as inequities go, the LT exhibited its own when it sparked sanctions on a pretended offense [of its own volition] (§56b). As explained, Civilian X was not responsible for the 110+-day delay (between the day he filed his legal papers and the day the LT docketed them). Legal papers, importantly, that sparked the LT's appealed order - which was entered ten (10) days later.

146. By dictated local rule, the LT was the culpable party (for docketing Civilian X's papers 110+ days after he mailed them). Yet, the LT punished Civilian X for the LT's own transgressions.

a. Transgressions which Civilian X foresaw, and attempted to cure/prevent with injunctive/declaratory action.

147. Fortunately, the Doctrine of Equitable Estoppel prohibits the government from punishing someone for something that the government did (see Machules v. Dept. of Administration, 523 So.2d 1132 (Fla. 1988)).

a. In the instant case, punishing Civilian X for something that the government did is the transgression that the LT committed.

CONCLUSION VI

148. Therefore, since the proceeding [below] violated fundamental fairness (and thereby failed to uphold the tenets of due process), this Court has Supreme authority to reverse the appealed order. Of course, Civilian X hereby asks this Court to do just that.

*Now, relaxed with this data¹|data² in tow/
May this Court rebuke the hater|hatter below//*

¹ the first "a" [in data]* is pronounced like "ay" (as in "day");
² the first "a" [in data]* is pronounced like "ah" (as in "spa");
* the second "a" in each pronunciation is the same (ie, the relaxed "ah")

CONCLUSION

Had the LT's appealed order not been based on a false premise, this appeal would not exist (Issue I). Yet it does, and the appealed order's continued falsehoods further eroded its legitimacy (II-IV). Plus, the proceeding itself departed from the essential requirements of law; thereby violating two crucial pillars of the US Constitution (VII-VIII).

WHEREFORE, Appellant (ie, Civilian X) asks this Court to reverse the lower tribunal's judgment, because it was falsely premised, erroneous, constitutionally violative, and harmful.

Dated this 12th day of January 2024.

Respectfully submitted,

/s/ Elias Makere

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1/12/2024

Date

/s/ Elias Makere

Elias Makere, FSA, MAAA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of January 2024, I electronically filed the foregoing with the Clerk of Courts by using PACER; which will send a notice of electronic filing to the attached service list.

/s/ Elias Makere

Endnotes:

^{1/} [A0210] means page 210 from the appendix.

^{2/} the appellees/defendants consist of: 5 federal judges; 1 district court; and 1 assistant attorney general (FL).

^{3/} at DOAH, "official recognition" = judicial notice.

^{4/} the case [below] began in state court before getting transferred into federal court (USFLMD; 7/5/22). USFLMD later transferred this action to the northern district (USFLND; 8/30/22). Notably, the final three federal officials were added via complaint amendment.

Link to Civil Complaint ([HTML](#), [PDF](#), [Video](#)) | *Makere v Fitzpatrick, et al*

HTML	TextBookDiscrimination.com/Info/Misc/CrookedCourt/Complaint
PDF	TextBookDiscrimination.com/Files/USFLMD/22000734_AAC_20220729_234622.pdf
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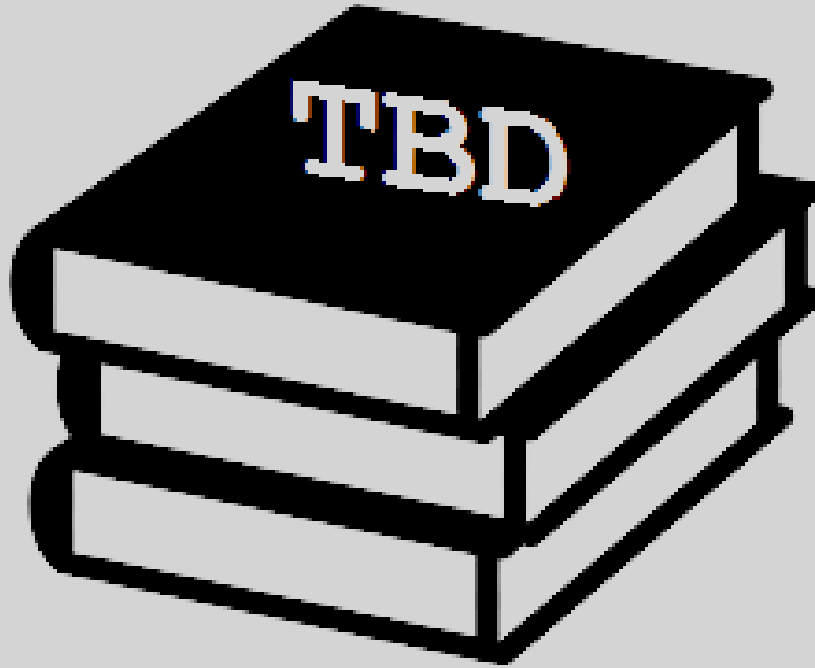
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