

No. 19-8887

In the Supreme Court of the United States

In re: Miriam Soler,
Debtor.

MIRIAM SOLER

Debtor-Petitioner,

v.

JPMORGAN CHASE BANK
Creditor-Respondent.

ORIGINAL

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SUPREME COURT, U.S.

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

PETITION FOR WRIT OF CERTIORARI

Miriam Soler
Debtor/Petitioner
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QUESTIONS PRESENTED

Whether the Eleventh Circuit Court of Appeals infringed the ex post facto clause, depriving Petitioner's right of remedy sustaining no due process at all ever existed below and up to above, by applying the amended rule eff. 12/1/2017 retrospectively to affirm the appeal and not instead applying the rule that was under review the pre-amended rule from proceeding in 2016.

Whether the Court as "original jurisdiction" to review the Courts of Appeal noncompliance with this Court's directives on the application of amend/new rule to the Federal Rules of Bankruptcy Procedure.

On April 27th, 2017, pursuant to 28 USC 2075, this Court directed all courts below on the application of amended Fed. R. Bankr. P. 3002C; "shall take effective on 12/1/2017 governing bankruptcy cases thereafter and pending if practicable". The amended rule provides: "a proof of claim is timely filed if it is filed not later than 70 days of the order of relief"

The Court of Appeals affirmed the appeal concluding "the bankruptcy court did not deprived Soler's of due process by the closing the case when it did because her proof claim on behalf of the creditor's came too late was not filed within 30-days after 70-days from petition filing date" although the rule under review was the pre-amended rule from proceeding in 2016 which was "within 30-days after 90 days from first set 341 meeting of creditor date"

Had the Court of Appeals applied FRBP 3002C of 2016, the rule that was under review-the pre-amended rule, Petitioner's appeal would have been reversed.

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Had the Court of Appeals applied FRBP 3002© of 2016, *the rule that was under review-the pre-amended rule*, Petitioner's appeal would have been reversed.

PARTIES TO PROCEEDING

The caption hereto correctly identifies all the parties to the proceeding in the court whose judgment is sought to be reviewed

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PETITION FOR WRIT OF CERTIORARI

Petitioner, the appellant and the debtor below, respectfully submit this petition for writ of certiorari to review the judgment of the U.S. Court of Appeals for the Eleventh Circuit Court affirming the District Court below on appeal from the Bankruptcy Court.

OPINION BELOW

The order of the court of appeal denying panel rehearing is not reported. The panel disposing of the case with an unpublish opinion on December 7th, 2018 Petitioner was not able find the Appex reference citation.

STATEMENT OF JURISDICTION

The court of appeals entered its order denying panel rehearing on January 16th, 2019. The writ of certiorari is due on or before April 16th, 2019. The jurisdiction of this Court is invoked under 28 U.S.C 1254(1) and, *requested by a question for review*, under this Court original jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

1. The ex post facto clause under article 1 section 9 of the U.S. Constitution;
2. The right of remedy under the petition clause of First Amendment to the U.S. Constitution
3. The right to due process of Fifth Amendment to the U.S. Constitution;
4. The U.S. Supreme Court authority, *ordered dated April 24, 1973*, effective October 1973, pursuant to 28 U.S.C 2075 on the promulgation and application of Bankruptcy Rules.

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STATEMENT OF THE CASE [1]

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Fed R. of Bankr. P. 3002(c) of 2016 provides;

(c) TIME FOR FILING. In a Chapter 7 liquidation.....
a proof of claim is timely filed if it is filed not later than **90 days**
after the first date set for the meeting of creditors.....

eff. Dec. 1, 2008

Fed R. Bankr. P. 3004 of 2016 provides;

*If a creditor does not timely file a proof of claim under Rule 3002(c),
the debtor or trustee may file a proof of claim within 30-days after
the expiration of the time for filing claims prescribed by Rule 3002(c)
or 3003(c), whichever is applicable. The clerk shall forthwith
give notice of the filing to the creditor, the debtor and the trustee*

eff. Dec. 1, 2005

On May 12th, 2016, Debtor-Petitioner filed her Code 7 Bankruptcy Petition.
Respondent-Creditor Chase was given matrix notice.

Debtor-Petitioner bankruptcy schedules declared homestead property totally
exempt, not having neither a secured nor unsecured debt over her property also
declared being a defendant in a pending state court foreclosure case Creditor-
Respondent Chase as plaintiff.

Debtor-Petitioner first set date for 341 meeting of creditors was June 13th, 2016
Under FRBP 3002(c) 90-days from June 13, 2016 is September 12th, 2016 the
creditor deadline to file a timely proof of claim (PoC).

1

On March 3rd, 2013, respondent Chase filed a foreclosure complaint against Petitioner's
homestead property. (Florida 11th Judicial Circuit 2013-8187, notwithstanding Petitioner not the
borrower and the borrower not the title owner **unsecured** lien, judgment 3/9/2018-the case is
presently on appeal, Florida 3DCA18-1650)

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On September 12th, 2016, for being Creditor-Respondent Chase deadline in filing their PoC, Debtor-Petitioner contacted her counsel to ask the Trustee if they will be filing a proof of claim (PoC) on behalf of the Creditor Chase since they have not and deadline was today.

On the same day on creditor's deadline the Trustee decided and filed abandoning the homestead property reporting no assets for distribution after first claiming 3-times that there was.

On the very next day, the 13th, Sept 2016, the bankruptcy court granted discharge although Debtor's-Petitioner under FRBP 3004 had within 30-days to file PoC on behalf of Creditor Chase which was on or before October 12th, 2016.

On September 16th, 2016, Debtor-Petitioner attorney email the Trustee as to why the premature discharge when the Debtor-Petitioner with 30-days to file PoC on behalf of Creditor Chase. Trustee replied: "I can't help you with that".

Debtor-Petitioner terminated the services of her attorney for incompetency and proceeded on her own

On September 20th, 2016, Debtor-Petitioner email the Trustee on the same question about rule 3002C and 3004 in which the Trustee refused again to address the question advising "you need to hire an attorney".

On September 26th, 2016, Petitioner-Debtor filed a PoC of \$1 on Chase behalf within 14-days of the 30-days allowed from 9/12.

On September 27th, 2016, the BKC Clerk's gave notice to Chase on Debtor-Petitioner \$1 PoC advising them on the requirement to response.

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On October 14th, 2016, notwithstanding PoC timely filed and still pending on behalf of Creditor-Respondent, the bankruptcy court enter final decree closing the case.

On October 28th, 2016, Debtor-Petitioner filed an objection against PoC of \$1 declaring being exempt on her homestead property.

On the same day, Debtor-Petitioner filed a timely FRBP 9023 motion rehearing for the Bankruptcy Court to reopen the case stating; *shouldn't have be closed in the first place since she timely filed her PoC on behalf of the Creditor within 30-days as require by rule 3002© in which the Trustee violated the notice requirement for any objection filed that foreclosed debtor's PoC on behalf Chase that would have discharged the unsecured lien over her homestead property.*

On November 23rd, 2016, a hearing was held, Debtor-Petitioner 9023 was denied.

District Court Appeal 2017

On April 19th, 2017 the District Court dismissed the appeal concluding Debtor-Petitioner settlement with Capital One also settles issue as to Creditor Respondent Chase.

On April 27th, 2017, the U.S. Supreme Court pursuant to 28 USC 2075, approved the amended Bankr. Rule 3002© providing directive to all courts below on the rule application as follow:

"shall take effective on 12/1/2017 and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceeding then pending"

On August 7th, 2017, the District Court denied IFP status.

Eleventh Circuit Court of Appeals 2018

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On July 9th, 2018 Debtor- Petitioner filed her initial brief in the court of appeals raising that she was deprived of right of remedy and due process for the Bankruptcy Court not enforcing rule 3002© after she timely filed the PoC on behalf of creditor and objecting to the PoC to be able to discharge the creditor's unsecured lien over her homestead property.

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On January 16th, 2019 rehearing was denied. B-5

On January 20th, 2019 Debtor-Petitioner filed USPS mail her request for Stay of the Mandate.

On February 1st, 2019 the Clerk of the Court of Appeals rejected the filing for being untimely. C-6

The next day Debtor- Petitioner called the deputy clerk of the court of appeal assigned to her case leaving a message saying it was timely filed by the certificate of service date mail out since she is not a bar member proceeding pro-se not allowed to use the pacer filing online system.

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REASONS FOR GRANTING THE WRIT

A question of Constitutional law never seen before shouldn't have even occurred at all shocks all law conscious if it does and it did, outrageous as it sounds to be for it is, a *Court of Appeals on appeal review violating the ex post facto clause* to be able to affirm to avoid not to reverse as it was by the other 2 courts below it, all 3 federal courts annihilated Petitioner's right of remedy 3-times which affirms due process never existed at all from below up to above. [2]

This case will settle what this Court been muddling throughout the years *ex post facto in the civil context* but not in the norm but during appeal review process which has never happen which this Court never having it to grant, so why even grant it.

Notwithstanding this writ likely will not be granted for being compounded 2 ways highly denied, Debtor-Petitioner still having hope still having this last chance to at least try which brings peace even if again defeated so as a matter of law on the question presented further says;

Petitioner obviously didn't find a case nor state nor federal and clearly not any at the U.S. Supreme Court that did had a case like this one but Debtor-Petitioner cites 2 cases from this Court that somewhat comes close relating to the question raised and the facts how the ex post facto violated occurred.

In *Rogers v. Tennessee*, 532 US 451(2001), although wholly unrelated not coming

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Obviously for what shocked the conscious as a matter of fact for the matter of the law written in black on white for all to read all that practice law and wears a robe is an embarrassment to a Court of Appeals that this Court will obviously be heisted to even take up the case on that fact alone after already the granting of the writ will be highly unlikely for being filed by a nonmember of the bar the highest of percentage of all writs denied in the first place.

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The 2nd case an 1810 case somewhat related in the procedural context but at a different level of the case; *United States, v. Hall & Worth*, 10 U.S. 171 (1810), (affirmative defense available during the time of the alleged offense and later not at the time of trial)

Thus, since *Bouie* came after Hall and Rogers came after both *Bouie* and *Hall*, *Rogers* controls here since there's nothing about here after Rogers and even if Rogers does not control, is just as to a matter of fact not but not but does control here as to a matter of law on the question raised if Petitioner was deprived of due process for no right of remedy by the Court of Appeals retrospectively applying the amended rule, *ex post facto act per-se*, to affirm the appeal, *punitive result per-se*, and if it did applied the rule before amended the rule that was the issue under review, *reckless disregard of the law that was clear in black on white said it was 2016*, the appeal would have been reversed remedy given due process cured.

This case does raise to a clear violation of due process by the Court of Appeals retrospective act under the concept of *Hall* not Bouie.

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A question of "original jurisdiction" on the constitutional functions of this Court statutory duties under 28 USC 2075 that directs all courts below on the application

of new and amended rules of the bankruptcy rules of procedures.

This Court with original jurisdiction to enforce its statutory duties upon any court below that has function unconstitutionally during appeal review for decision on the merits.

Petitioner's Personal Statement as to the issue of the writ.

Obviously, the Court of Appeals panel Circuit Judges attorney and clerks mess it up not thinking clear ok Petitioner understand no one perfect but why not fixing the mistake since Petitioner did file rehearing so the panel knows it clear.

Did any panel member every got to read the rehearing and the attorneys the ones that did and didn't want any panel member to see the wrong they affirmed under oath.

Maybe that and why Petitioner also filed a petition to stay the mandate to again make a effort to correct such wrong act on appeal review, but no the mandate was not filed never was entertained for the clerk saying untimely when it was not so since that also was done wrong again so it looks more clear that the Circuit Judges of the Court of Appeals are having others do their job and those won't handle the truth they were wrong because they will have to answer to their Circuit Judge boss if they can stay with their job never should have been giving the job in the first place.

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CONCLUSION

Wherefore Petitioner respectfully says if this Court is the first and last word of the land we all and those all around the world calls free, the whole Court not just 4 should all agree grant the writ opt-Outing briefing by summarily vacating and directly sending to where it fits that fix the gross wrong done that must be undone; either the Court of Appeals to conform with the norm on appeal review or all the way below decreeing instructing the Bankruptcy Court to provide the remedy Rule 3002(c) is accord as applied in 2016 with the process of rule 3004 that is due

Dated April 15th, 2019

Respectfully submitted,

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CONCLUSION

Wherefore Petitioner respectfully says if this Court is the first and last word of the land we all and those all around the world calls free, the whole Court not just 4 should all agree grant the writ opt-outing briefing by summarily vacating and directly sending to where it fits that fix the gross wrong done that must be undone; either the Court of Appeals to conform with the norm on appeal review or all the way below decreeing instructing the Bankruptcy Court to provide the remedy Rule 3002(c) is accord as applied in 2016 with the process of rule 3004 that is due

Dated April 15th, 2019

Respectfully submitted,

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