No. 19-1128

In The
Supreme Court of the United States

JOSE MENDES DA COSTA,

Petitioner,

v.

CITY OF MOUNT VERNON POLICE DEP. POLICE OFFICER PEREIRA, SGT. MARCUCILLI, POLICE OFFICER CAMACHO, DET. JESUS GARCIA, EX. M.V.P.D., TOWN OF EASTCHESTER POLICE DEPT. DET. M. MARTINS, CITY OF MOUNT VERNON LAW DEP. P.I. LENTINI, ATTORNEY AT LAW HINA SHERWANI, PRIV. PARTIES, MARQUES, COELHO, CASTRO, RODRIGUES,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the right to petition the government for redress of grievances in *42 U.S.C. § 1983*, U.S. Const. Fourth and Fourteenth Amendments, and the concepts set out by this Court in *Lawler* and *Carstarphen*, is violated by the procedure we challenge, that is, the claim preclusion Res Judicata, Bar Order under 28 U.S.C. § 1651, the opinion is not a fact of Law, *42 U.S.C. 1983, 10-CV-4125*, U.S. Const. Fourth Amendment, battery assault, on November 27, 2008, decided on the case facts by a stipulation of settlement, and dismissal with prejudice at the U.S.D.C. for the S.D.N.Y. on November 8, 2012, do not preclude the subsequent continued course of conduct in December 7, 2012, *18-CV-2948*, and contradicts *American Jurisprudence 2d Judgments § 460*; time of accrual of cause of action as test for claim preclusion. If the cause of action in the second action arises after the rendition of the judgment in the first action, it is a different cause of action not barred by the prior judgment. *Lawler v. National Screen Service Corp., 349 U.S. 322, 75 S Ct. 865, 99 L. Ed. 1122 (1955)*; *Carstarphen v. Milsner, 594 F. Supp. 2d 1201 (2009).*

2. Whether the right to a trial by a jury mandated by Fifth, Sixth and Fourteenth Amendments, and *U.S. Const. art. III § 2, cl. 3*, and the concepts set out by this Court in *Apprendi, and Alleyne*, was violated when the United States Court of Appeals for the Second Circuit, affirm the District Court opinion of claim preclusion *res judicata* Bar Order under 28 U.S.C. §1651, an Appellate Court sitting as a fact finder

QUESTIONS PRESENTED – Continued

cannot affirm, a not factual position of Law, that was not presented to a Jury, and where the *§ 1983* Civil Rights Claim, for the seizure on false allegation of Stalking 3rd, deprivation of Liberty for 47 days, the two years and six months malicious prosecution until 2015, when the allegation was dismissed without a trial by a Jury, and the City of Mount Vernon Court in a trial without a jury find a verdict of guilty for a pre-text allegation Harassment 2nd, whereas the Court Clerk tamper with the public record by false written statements on the Certificate of Disposition; plead guilty to Harassment 2nd, in full satisfaction, the device of deceit, whether made intentional or by mistake in the State of N.Y. is a Title K-Offences involving fraud, *Article 175 – Penal L. 175.25 (2012), 175.20 (2018)* . . . implies the intent to contravene and infringe the right to be free from unreasonable seizures, and the right to a trial by a Jury, while purporting to be authority, to conceal the infringements wrongdoing? *Apprendi v. New Jersey, 530 U.S. 466, S. Ct. 2348, 147 L. Ed. 2d 435 (2000); Alleyne v. United States, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013).*

3. Pursuant to *42 U.S.C. § 1983*, Civil Rights claims Fourth, Fourteenth Amendments Due Process of law, and the concepts set out by this Court in *Monell*, and *Owen*, the United States Court of Appeals for the Second Circuit, *de novo* review decision to affirm the District Court *res judicata* Bar Order under 28 U.S.C. § 1651, that, is not a fact of Law was rendered in error against the *§ 1983*, prima facie Const. Law tort, for

QUESTIONS PRESENTED – Continued

unreasonable seizure, the denial of Procedural Due Process of Law right to a trial by a jury malicious prosecution, and the negligent abuse of process by the City of Mount Vernon Court false written statements on the Certificate of Disposition, entered into the records during business transactions, are undisputed facts of infringement of Const. Civil Rights claim for loss of Liberty, that in part, on review could be held unconstitutional, moreover on petition for *rehearing en banc*, the Appellate Term of the S. Ct. of the State of New York, 9th & 10th Judicial Districts, Decision Order on February 21, 2019, *People v. Da Costa, Jose, App. Term doc. # 2015-1433 W CR (2019)*, reversed the trial without a jury verdict, and dismiss the lower Court doc. # 12-4996, accusatory instrument, the *U.S.C.A. for the 2d Cir.* Denied rehearing on the *Judicial Notice*, and mooted the *reversal* by *res judicata*, hence the continued course of conduct forfeitures by wrongdoing fraudulent concealment, are pervasive to infringe on Const. Amendments Law, and to force the loss of a remedy in *42 U.S.C. § 1983*, this is unacceptable, petitioner ask the Court for a *de novo* review for the City of Mount Vernon Court, gross misconduct, before the District Court opinion in error of *res judicata* claim preclusion, Bar Order under 28 U.S.C. § 1651, and the Appellate Court Affirmed. See: App. 20-22, and App. 23-32. *Monell v. Department of Social Services of New York, 436 U.S. 658, 690, 98 S. Ct. 2018, 2035-36, 56 L. Ed. 2d 611, 635 (1978)*; *Owen v. Independence, 445 U.S. 622, 100 S. Ct. 1398, 63 L. Ed. 2d 673, 1980 U.S. LEXIS 14.*

CERTIORARI RULE 14 COURT DECISIONS

Mendes Da Costa v. Marcucilli, No. 18-1859, U.S. Court of Appeals for the Second Circuit, Judgment, Summary Order, entered Oct. 31, 2019.

Mendes Da Costa v. Pereira, No. 18-2948, U.S. District Court for the Second Circuit, Judgment, claim preclusion Bar Order under 28 U.S.C. § 1658, entered June 12, 2018.

Mendes Da Costa v. Pereira, No. 18-2948, U.S. District Court for the Second Circuit, judgment, Order of dismissal and to show cause under 28 U.S.C. § 1658, entered May 14, 2018.

People v. Da Costa, Jose, App. term doc. # 2015-1433 W CR, Appellate Term of the Supreme Court of the State of New York for the 9th & 10th Judicial Districts, Judgment, Decision & Order, Reversed and Dismissed entered February 28, 2019.

People v. Da Costa, Lower Court doc. No. 12-4996, City of Mount Vernon Court, N.Y., Judgment, 1 charge dismissed, Certificate of Disposition false written statements read; plead guilty, after a no jury trial finding of a guilty verdict, entered May 12, 2015.

Mendes Da Costa v. Marcucilli, No. 18-1859, U.S. Court of Appeals for the Second Circuit, Judgment, Order, denial for rehearing, entered December 11, 2019.

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner Jose da Costa respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit

OPINIONS BELOW

The opinion of the Mount Vernon City Court, false written statements, conviction type; plead guilty, is unpublished and, appears at App. 23 (I) The opinion of the Appellate Term of the Supreme Court of the State of New York, 9th & 10th Judicial Districts, reversing the verdict of the no jury trial and entering a judgment of acquittal, is published at www.law.Justia.com., *People v. Da Costa, Jose, App. term doc. # 2015-1433 W CR (2019)*, lower court 12-4996, and appears at App. 20 (II) The opinion of the United States District Court for the Second District of New York, Order of Dismissal and to Show Cause Under *28 U.S.C. §1658* is published at *Mendes Da Costa v. Pereira, 18-CV-2948, 2018 U.S. Dist. LEXIS 81924*, and appears at App. 11 (III) The opinion of the United States District Court for the Second Circuit of New York, Bar Order Under *28 U.S.C. §1658*, is unpublished, see: (III), and appears at App. 8. (IV) The opinion of the United States Court of Appeals for the Second Circuit of N.Y. affirming the *U.S.D.C.* for the *S.D.N.Y.* Bar Order Under, *28 U.S.C. §1658*, is published at *Mendes Da Costa v. Marcucilli, 18-1859, U.S. App. LEXIS 32565 (2019) ___ Fed. Appx. ___, 2019 WL*

5618160 and appears at App. 1. (V) The opinion of the United States Court of Appeals for the Second Circuit of N.Y., denying Rehearing *en banc* is unpublished, see; (V), and appears at App. 35 (VI).

NOTICE: Roman numerals, pertain to this petition for Writ of Certiorari

STATEMENT OF JURISDICTION

On December 11, 2019, the United States Court of Appeals for the Second Circuit of N.Y., denied *Rehearing En banc* to affirm the *U.S.D.C.* for the *S.D.N.Y.* opinion of Res Judicata claim preclusion Bar Order Under, *28 U.S.C. §1651, Mendes Da Costa v. Marcucilli, 18-1859, U.S. App. LEXIS 32565 (2019) ___ Fed. Appx. ___, 2019 WL 5618160*, this Court has Jurisdiction.

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV

The Fifth Amendment to the United States Constitution provides in relevant part:

> No person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty, or property, without Due Process of law . . .

U.S. Const. Amend. V

The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. Amend. VI

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without Due Process of law; nor

deprive any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV

STATEMENT OF THE CASE

Introduction

This case presents three issues pertaining to *42 U.S.C. §1983* Civil Rights, the United States Appellate Court for the Second Circuit affirm the District Court opinion, of claim preclusion Res Judicata Bar Order Under *28 U.S.C. § 1651*, that by not being in fact Res Judicata, infringe on the Fourth Amendment right against unreasonable seizures, Sixth Amendment right to a trial by a jury, and the Due Process Clauses of the Fifth and Fourteenth Amendments application in Federal Court to guaranty individuals protection from mistaken or unjustified deprivation of life, liberty, or property on the basis of an erroneous or distorted conception of the facts or the law, and to limit the government's power to infringe on certain constitutional freedoms.

First, the United States Court of Appeals finding of sufficient evidence to affirm the District Court's decision for the element of claim preclusion Res Judicata, contradicts *American Jurisprudence 2d Judgments § 460*, time of accrual of cause of action as test for claim preclusion. If the cause of action in the second action arises after the rendition of the judgment in the first action, it is a different cause of action not barred by the

prior judgment, in violation of the right to petition for redress of grievances invoking the protections of the Fourth and Fourteenth Amendments and the concepts set out by this Court in *Lawler v. National Screen Service Corp., 349 U.S. 322, 75 S. Ct. 865, 99 L. Ed. 1122 (1955) Carstarphen v. Milsner, 594 F. Supp. 2d 1201 (2009).*

Second, the United States Court of Appeals sitting as fact finder cannot affirm the District Court Res judicata claim preclusion, decision that is not factual, where the important human values, such as the lawfulness of the continuing personal restraint of Liberty, by the City Mount Vernon Court prosecutor negligent lack of proof, denial of a trial by jury, in violation Fifth, Sixth, and Fourteenth Amendments, and Due Process Clauses and the concepts set out by this Court in *Apprendi* and *Alleyne*, in vindication of loss of Liberty Civil Rights *§1983*, and infringement on a prima facie claim of 1.) The unreasonable seizure of 47 days on false allegation of Stalking 3rd, 2.) Two years and six months wait for a trial by a Jury that was denied on account of dismissal that is an acquittal. 3.) City Court trial without no Jury, guilty verdict from a pretext false allegation of Harassment 2nd. 4.) The City Court Clerk false written statements on the Certificate of Disposition: Plead guilty to Harassment 2nd, in full satisfaction, implied tampering with public records whether made intentional or by mistake in the State of N.Y. is a *Title K-Offences involving fraud, Article 175-Penal L 175.25 (2012), 175.20 (2018)*, 5.) Appellate Term of the Supreme Court for the State of New York, Docket *No.*

2015-1433 W CR, Lower Court Doc. No. 12-4996, that on February 21, 2019, reversed and dismiss the accusatory instrument, and 6.) Proof of the acquittal, and false written statements fraud, account that on entering a plea of guilty, there could not been in fact Law an appeal, is the appellate Court, reversal and dismissal of the accusatory instrument, equivalent to acquittal?

Lastly, under *42 U.S.C. § 1983*, Civil Rights claim for loss of Liberty, invoking the protections of the Fourth and Fourteenth Amendments Due Process Clause, and Fifth Amendment protection from deprivation of life, liberty, or property without Due Process of Law, and the concepts set out by this Court *Monell v. Department of Social Services of New York, 436 U.S. 658, 690, 98 S. Ct. 2018, 2035-36, 56 L. Ed. 2d 611, 635 (1978). And, Owen v. Independence, 445 U.S. 622, 100 S. Ct. 1398; 63 L. Ed. 2d 673, 1980 U.S. LEXIS 14*, is violated by the procedure we challenge, that is the unreasonable seizure, the denial of trial by a jury malicious prosecution, and false written statements during a business transaction tampering with the City Court Certificate of Disposition, that include dates, the persons, the place, who did what, and the undisputed facts of law, by simple, clear, and concise statements within liberal interpretation of a well pleaded petition to the Court, petitioner asks this Court to review the decisions in this petition by District Court Hon. Judge Cathy Seibel, who was the sitting Judge for the stipulation settlement, and dismissal with prejudice of *42 U.S.C. § 1983 10-CV-4125*, and has since the first grievance matters at hand, denied federal Court rule *12(b)(6)*,

standard of liberal interpretation for review of claims, and ignored rule *9(b)* standard for heightened review, but has throughout applied an erroneous and distorted conception of fact law, to the limit of government's power to infringe on certain constitutional freedoms, to argue by wrong erroneous inferences 1.) Petitioner wants to litigate matters that were decided in *(DaCosta I)* 2.) Failure to state a claim on which relief may be granted in *(DaCosta II)*, and 3.) Flagrantly stating wrong dates on opinions *Mendes Da Costa v. Pereira, 18-CV-2948, 2018 U.S. Dist. LEXIS 81924, P. 2*, at Discussion "He challenges actions taken by the defendants and this Court in Mendes da Costa I, which was dismissed with prejudice on December 14, 2012, based on a settlement agreement reached by all parties" in *(DaCosta III)*, this point is incorrect, *10-CV-4125* was decided on November 8, 2012, the retaliatory seizure take place on December 6, 2012, and it is from Hon. Judge Seibel, failure to correct the continuum of errors apparent from record that the opinions have become distorted, an appellate court sitting as a fact finder, cannot affirm a decision that is not factual on a case that was not presented in a trial to a Jury.

Background Facts

Petitioner DaCosta was subject to a retaliation seizure by the City of Mount Vernon P.D., N.Y. on false allegation of PL 120.50 Stalking 3rd, for saying you people take one minute with forgery of evidence but you take forever to turn yourselves over to the authorities, to a person named Vera Almeida, P.O. Pereira

sign the accusatory instrument December 7, 2012, and bail was set $2000.00, for the accusation that mandate trial by a jury, on December 10, 2012, P.O. Yant not present at arrest sign an accusation instrument for violation PL 2402602 V2 Harassment 2nd, the pretext superseding misdemeanor information, and imprisoned 47 days, at the Westchester C. J., until January 12, 2013, after posting payment for bail.

Petitioner was forced to appear at the City Court every two months under the condition of an arrest warrant not be issued, that on execution would forfeit the bail, until March of 2015, when the prosecutor dismiss the false allegation Stalking 3rd, on pretext of the Court was proceeding to a trial without a Jury for Harassment 2nd, where Almeida testify not to know defendant, but he had followed her since October 2012, and only calling the police on December 6, 2012, and in April 2013, petitioner testify to have deposed Almeida at the U.S.D.C., the deposition transcript on July 12, 2011, is evidence of false testimony, and a letter from pro bono Attorney Professor at Law Michael Martin, stating on October 2012, law intern Jordan Franklin call the Mount Vernon Law Department Attorney Hina Sherwani, asking for the selective policing to stop, after petitioner was harassed by Castro at 114 Gramatan Avenue, while on the 1st floor Marques Bar, police detectives were taking photos they plan to use as evidence for the false allegation Stalking 3rd, hereto, the City Court prosecutor denial for a trial by a Jury, and Hon. Judge Hellen A. Blackwood suppression of evidence in favor of petitioner at a trial without a jury, for

a pretext Harassment 2nd, to find a verdict of guilty and perform 30 hours of community service, and the City Court Certificates of Disposition for Doc. No. 12-4996, false written statements fraud, of the petitioner plead guilty in full satisfaction after the infringement to contravene U.S. Const. Law of Civil Rights *42 U.S.C. §1983*. The appeal to the Appellate Term of the Supreme Court for the State of New York Docket *No. 2015-1433 W CR*, Lower Court Doc. No.12-4996, that on February 21, 2019, was reversed and dismissed the accusatory instrument, is an acquittal from the pretext false allegation instrument verdict.

Petitioner DaCosta, file *42 U.S.C. §1983, 18-CV-2948*, on April 3, 2018, at the *U.S.D.C.* for the *S.D.N.Y.*, The Daniel Patrick Moynihan Court House in the City of New York, because, in the City of White Plains, at the Hon. Charles L. Brieant Jr. Court House, I sincerely believe Hon. C. Seibel, opinions, to be biased in matters of Const. Law and fact, and I do not trust the opinions based on a continuum of fundamental errors on record.

Hon. Judge George B. Daniels, was assigned *18-CV-2948* (G.B.D.), and on May 7, 2018 petitioner request for a Clerk's Certificate of Default for the defendants after defendants fail to file a brief for their defense. On Notice of Reassignment Hon. Judge Seibel, *18-CV-2948* (C.S.) May 14, 2018, on the very same day decide the Order of Dismissal and show cause under *28 U.S.C. § 1651*, complaint is dismissed because it is barred under the doctrine of claim preclusion. See: *Mendes Da Costa v. Pereira, 18-CV-2948, 2018 U.S. Dist. LEXIS*

81924, at Discussion. It is clear that Plaintiff brings this action seeking to relitigate his prior claims in the complaints before this Court. He challenges actions taken by the defendants and this Court in Mendes da Costa I, which was dismissed with prejudice on December 14, 2012, based on a settlement agreement reached by all parties. Because Mendes da Costa I was dismissed with prejudice, Plaintiff may not bring another action attacking that judgment. See *Marvel Characters, Inc. v. Simon, 310 F.3d 280, 287 (2d Cir. 2002).*

Petitioner argued in declaration to show cause on June 7, 2018, at P. 9, the settlement date November 8, was terminated November 14, 2012, 10 CV 4125, on December 14, 2012, "petitioner was in prison for one week, not at a settlement agreement by all parties" the error contradict, *American Jurisprudence 2d Judgments § 460*, time of accrual of cause of action as test for claim preclusion, if the cause of action in the second action arises after the rendition of the judgment in the first action, it is a different cause of action not barred by the prior judgment, and June 12, 2018, Hon. Judge Seibel, opinion, Res Judicata claim preclusion Bar Order under 28 U.S.C. 1651, Petitioner Appeal June 27, 2018 to the United States Court of Appeals for the Second Circuit of N.Y., and the Appellate Court, affirm the erroneous grounds of claim preclusion res judicata, see: *Mendes Da Costa v. Marcucilli, 18-1859. U.S. App. LEXIS 32565 (2019) ___ Fed. Appx. ___. 2019 WL 5618160*, at Overview P. 1, HOLDING: [1]-A district court properly dismissed a pro se complaint as barred by res judicata . . . his addition of one new defendant

did not alter the outcome . . . and motion for judicial notice is denied as moot. On November 14, 2019, the petition for rehearing *En banc* was denied, the motion for judicial notice is mooted by Res Judicata on December 11, 2019.

Petitioner previously file *10-CV-8500*, October 28, 2015, for the December 6, 2012, unreasonable seizure, denial of a trial by a jury malicious prosecution, and the City Court abuse of process false written statements, Hon. Judge Seibel, in knowledge of facts for termination of previous Civil Rights Claim, opinion in error, that, *10-CV-4125*, was decided on December 13, 2012, and the complaint was 312 pages, and dismiss the complaint as frivolous, after petitioner argued in amended complaint, the Civil Rights Claim is 32 pages, a claim where relief can be granted is stated in detail for at pages 6 thru 8, and Complaint pages 9 thru 20, the other pages are, authorities, injuries, damages, and evidence, amended claim is 20 pages . . . , on appeal to the *U.S.C.A.* for the *S.D.N.Y.*, See: *DaCosta v. Marcucilli, 675 Fed. Appx. 15 (2017)*, the Appellate review argue, . . . while the claim contains some factual allegations concerning Mendes Da Costa's various arrests, it is virtually impossible to link the various defendants to Mendes DaCosta's alleged injuries . . . failure to follow *F.R.C.P. 8*.

Special Circumstances of Government Corruption, Fraud, Waste

Defendants wearing the colors of the State of New York, *Inter Alias* with defendants City of Mount Vernon residents. Petitioner resident of the City of Mount Vernon, 86 Gramatan Avenue, on November 6, Doc. 01-5100, and the 27, 2008, Doc. 08-5504, was subject of two battery assaults at 123 Gramatan Ave., and complain to Captain Barbara Duncan, at the interview, I object to Sgt. Marcucilli, because he was the senior official who threaten me and proceed with threats of immediate arrest, and any relief I sought would be thwarted. On June 1, 2009, Doc. 09-2158, a door closer was removed from 114 Gramatan Ave., a Marques rental inter vivo, petitioner was arrested on false allegation of property damage, and imprisoned until March 14, 2010, on May 19, 2010, I file 10-CV-4125, for November 27, 2008, assault, during pretrial defendants claim June 1, 2009, arrest was their probable cause of action for November 27, 2008, this do not do well as a pleading, I now know the arrests were being used as a device to force pleadings into action or inaction, and research the *Coercion Statute, Public Health and Morals Offences Title M, Article 230 P.L. 120.40* under the sub-heading of *"stalking" "course of conduct" "intent to defraud"*, I also depose Vera Almeida at *U.S.D.C.*, deposition transcript on July 12, 2011, and February 28, 2012, *10-CV-4125*, Doc. 62, at P. 20, I specify defendants future intent to false allegation Stalking and accuser Almeida.

During *10-CV-4125* proceedings, petitioner Da-Costa, was being now harassed with physical harm threats by the *Inter alias* defendants, and to deter their threats I went to the Antitrust Division of N.Y. to report business in the red by Marques, and Coelho at the site of the incidents, the result of which subpoenaed records show that, Coelho 117 Gramatan Ave. Pizzeria was order seized, and at a Government Accredited Agency, 88 Lincoln Ave. Elks 707, where Coelho could not had obtained a lease was ordered seized, I subpoena Marques irregular Bank records, I know seized, but he decline, City of Mount Vernon Law Department P.I. Lentini, used to be a patron of Cecilia's salon at 114 Gramatan Ave., Marques rental inter vivo under his Bar where the forgery of evidence removal of a door closer for the property damage allegation, and the Peoples witness Vera Almeida, is employed.

The retaliation seizure of December 6, 2012, at 120 Gramatan Ave., the Peoples witness Vera Almeida, that was deposed by petitioner at the U.S.D.C., deposition transcript on July 12, 2011, and Marques Bar on 1st floor above the rental inter vivos at 114 Gramatan Avenue where Almeida is employed, and Coelho's seized Pizzeria at 117 Gramatan Ave., prove a nexus to the defendants, the records of business in the red seizures, are with the petitioner, and at the U.S.D.C., are extensive in volume of 100 pages in detail of the pecuniary gain unlawful businesses, and City of Mount Vernon Law Department P.I. Lentini, patronage of Cecilia's salon at 114 Gramatan Avenue, where the forgery of evidence to allege property damage take place,

and the alleged Stalking 3rd, Peoples witness Almeida, is employed.

STANDARD OF REVIEW

Because this petition involves the interpretation of federal constitutional law and prior holdings of this Court, the standard of review is *de novo*. *See Salve Regina College v. Russell*, 499 U.S. 225, 231-32, 111 S. Ct. 1217, 113 L.Ed.2d 190 (1991).

REASONS FOR GRANTING THE WRIT

ISSUE ONE: Whether the right to petition government for redress of grievances in *42 U.S.C. §1983* U.S. Const. Fourth, and Fourteenth Amendments, and the concepts set out by this Court, in *Lawler*, and *Carstarphen* is violated by the procedure we challenge, that is, claim preclusion Res Judicata, Bar Order under *28 U.S.C. § 1651*, the opinion is not factual of Law, for *42 U.S.C. §1983 Mendes Da Costa v. Macucilli 10-CV-4125*, U.S. Const. Fourth Amendment, battery assault November 27 of 2008, decided on the case facts by a stipulation of settlement, and dismissal with prejudice at the *U.S.D.C.* for the *S.D.N.Y.* on November 8, 2012, do not preclude subsequent course conduct on December 6, 2012, *18-CV-2948*, the decision is erroneous.

The *American Jurisprudence 2d Judgments § 460*, Time of accrual of cause of action as test for claim

preclusion. If the cause of action in the second action arises after the rendition of the judgment in the first action, it is a different cause of action not barred by the prior judgment. In *Lawler v. National Screen Service Corp., 349 U.S. 322, 75 S. Ct. 865, 99 L. Ed. 1122 (1955).* The issue was whether the present suit was barred under the doctrine of res judicata by the former judgment of dismissal. This question was answered in the negative in an opinion by Warren, Ch. J., speaking for a unanimous court. The decision was rested on the ground that under the facts stated above the second suit involved a different cause of action and that the result was not affected by the circumstance that the complaint in the former suit, in addition to treble damages, sought injunctive relief which, if granted, would have prevented the illegal acts complained of in the second suit. With respect to five defendants who were not parties to the former suit, the decision was also rested on the ground that these defendants were not privies of the defendants in the former suit. In 1949, petitioners brought a similar action against the same defendants, plus five additional motion picture producers, alleging that settlement of the 1942 suit was merely a device used to perpetuate the conspiracy and monopoly, that the five additional producers had since joined the conspiracy, and that National Screen had deliberately made slow and erratic deliveries under the sublicense in an effort to destroy petitioners' business and had used tie-in sales and other means of exploiting its monopoly power. Petitioners sought damages for only those injuries sustained after the 1943 judgment.

Held: The 1949 action was not barred by the 1943 judgment under the doctrine of res judicata. Pp. 323-330.

It is of course true that the 1943 judgment dismissing the previous suit "with prejudice" bars a later suit on the same cause of action. It is likewise true that the judgment was unaccompanied by findings and hence did not bind the parties on any issue – such as the legality of the exclusive license agreements or their effect on petitioners' business – which might arise in connection with another cause of action. To this extent we are in accord with the decision below. We believe, however, that the court erred in concluding that the 1942 and 1949 suits were based on the same cause of action.

Hon. Judge Seibel, siting at trial of defendants to *§1983 10-CV-4125*, Sgt. Marcucilli, P.O. Martins, Camacho, and Garcia, adjudge matters of the November 27, 2008 assault only, allowing at closing for expert witnesses to testify in favor of defendants, while denying expert witnesses to testify in favor of petitioner, Hon. Seibel do not decide any matters of the June 1, 2009, Doc. 09-2158, *inter alias* tortfeasors, because the trespass evidence obtained after the fact by forgery, of an identical facts case to pad defendants at trial with probable cause was unconstitutional. In *Carstarphen v. Milsner, 594 F. Supp. 2d 1201 (2009)*, Edward C. Reed, J., the United States District Court for the District of Nevada does not and will not make a practice of addressing the merits of issues first raised in a reply, as the opposing party is not afforded any opportunity to respond to new issues raised in a reply, which is

ordinarily the last document submitted prior to the court's ruling on a motion. Plaintiff's first claim for relief arose out of transactions involving the sale of corporation A's stock to its Employee Stock Option Plan. Plaintiff argued that defendant's role in implementing the transactions resulted in a loss for plaintiff and a personal gain for defendant. *Federal Rule of Civil Procedure 9(b) provides*: "In alleging fraud . . . a party must state with particularity the circumstances constituting fraud. . . ." Rule *9(b)* imposes this heightened pleading requirement so that the fraud-action defendant "can prepare an adequate answer from the allegations." *Odom v. Microsoft Corp., 486 F.3d 541, 553 (9th Cir. 2007)* (internal quotation marks omitted). Applying this particularity requirement, the Ninth Circuit has held that a plaintiff must plead "times, dates, places" and other details. *E.g. Semegen v. Weidner, 780 F.2d 727, 731 (9th Cir. 1985)*. "How much additional specificity is required depends on the nature of the individual case." *Arroyo v. Wheat, 591 F. Supp. 141, 144 (D.Nev. 1984)*.

The court found that the facts pleaded were more than sufficient to constitute a short and plain statement of a claim for breach of fiduciary duty under *Fed. R. Civ. P. 8(a)*. Review on a motion pursuant to *Fed. R. Civ. P. 12(b)(6)* is normally limited to the complaint itself. See *Lee v. City of L.A., 250 F.3d 668, 688 (9th Cir. 2001)*. If the district court relies on materials outside the pleadings in making its ruling, it must treat the motion to dismiss as one for summary judgment and give the nonmoving party an opportunity to respond.

Fed. R. Civ. P. 12(b); see *United States v. Ritchie, 342 F.3d 903, 907 (9th Cir. 2003)*. "A court may, however, consider certain materials – documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice – without converting the motion to dismiss into a motion for summary judgment." *Ritchie, 342 F.3d at 908*. If documents are physically attached to the complaint, then a court may consider them if their "authenticity is not contested" and "the plaintiff's complaint necessarily relies on them." *Lee, 250 F.3d at 688* (citation, internal quotations, and ellipsis omitted). A court may also treat certain documents as incorporated by reference into the plaintiff's complaint if the complaint "refers extensively to the document or the document forms the basis of the plaintiff's claim." *Ritchie, 342 F.3d at 908*. Finally, if adjudicative facts or matters of public record meet the requirements of *Fed. R. Evid. 201*, a court may judicially notice them in deciding a motion to dismiss. *Id. at 909*; see *Fed. R. Evid. 201(b)* ("A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.").

It is well established that a single course of wrongful conduct may give rise to more than a single cause of action. See *Lawlor v. Nat'l Screen Serv. Corp., 349 U.S. 322, 327-28, 75 S. Ct. 865, 99 L. Ed. 1122 (1955)*. Where two claims involve the same course of conduct,

but involve a different time period, claim preclusion may not bar the subsequent suit. *Id. at 328*; see *Harkins Amusement Enters., Inc. v. Harry Nace Co., 890 F.2d 181, 183 (9th Cir. 1989)* ("Failure to gain relief for one period of time does not mean that the plaintiffs will necessarily fail for a different period of time."). Evidence of repeated conduct of the same type, but relating to a later period of time than was litigated in an earlier action, may involve evidence of the same type as the earlier period, but the temporal difference alone may mean that the evidence is not identical. See *Round Hill Gen. Improvement Dist. v. B-Neva, Inc., 96 Nev. 181, 606 P.2d 176, 178 (Nev. 1980)* (stating "if appellant's claim is based upon evidence of new and independent delinquencies," then there is no "identity of the facts"). It appears that the majority rule for claims for damages is that claim preclusion extends to claims in existence at the time of the filing of the original complaint in the first lawsuit and any additional claims actually asserted by supplemental pleading. See *Hatch v. Boulder Town Council, 471 F.3d 1142, 1149 (10th Cir. 2006)* ("[A] claim should not be precluded merely because it is based on facts that arose prior to the entry of judgment in the previous action"); *Rawe v. Liberty Mut. Fire Ins. Co., 462 F.3d 521, 530 (6th Cir. 2006)* (noting that the "majority rule" is " 'that an action need include only the portions of a claim due at the time of commencing the action' because 'the opportunity to file a supplemental complaint is not an obligation' "). Claim preclusion applies to preclude an entire second suit that is based on the same set of facts and circumstances as the first suit, while issue

preclusion applies to prevent relitigation of only a specific issue that was decided in a previous suit between the parties, even if the second suit is based on different causes of action and different circumstances. Now before the Court is Defendant's Motion to Dismiss. Defendant argues that Plaintiff's first claim for relief fails to comply with the heightened pleading requirements of *Fed. R. Civ. P. 9(b)*, and that Plaintiff's second claim for relief is barred by res judicata/claim preclusion. 1 Plaintiff has opposed the motion, and Defendant has replied. Plaintiff's First Claim for Relief alleges sufficient facts to state a claim for relief, even after disregarding any allegations that relate to fraud or mistake. Plaintiff's Second Claim for Relief is not barred by the claim preclusive effect of the earlier state court judgment.

Petitioner DaCosta, Civil Rights Claim *§ 1983 18-CV-2948*, asserts the elements of a claim where relief can be granted for loss of Liberty, in detail at pages 10 thru 13, and page 12 covers the Court fraud, for the unreasonable seizure on December 6, 2012, the two years and six months wait for a trial by a Jury, denied by the prosecutor decision for a trial without a Jury for a pretext allegation, where the prosecution suppress evidence in favor the petitioner to find a verdict of guilty, and whereas, the false written statements, tampering with the public record of the Court Certificate of Disposition, read; plead guilty to Harassment 2nd, in full satisfaction of Stalking 3rd, see: App. 23-32, whether entered intentional or by mistake, the false written statement in the State of N.Y. is a *Title K-Offences*

involving fraud, Article 175 – Penal L 175.25 (2012), the appeal to the Appellate Term of the Supreme Court for the State of New York Docket *No. 2015-1433 W CR*, Lower Court Doc. No.12-4996, that on February 21, 2019, reversed and dismissed the accusatory instrument, is an acquittal, that proves the fraud negligence at Court, regardless of outcome, and on the Declaration to show cause, the claim statement in detail from page 1 thru 5, . . . and from page 8 thru 14, on page 13 the petitioner challenged the decision to dismiss and issue an injunction is unjust and inconsistent with the concepts set out by this Court. Hereto, petitioner argues Civil Rights *15-CV-8500*, was decided on the same errors, that, are not harmless errors but fatal errors to the vindication of *§ 1983* Civil Rights Claim for the loss of Liberty. *(DaCosta IV)* See: *Mendes Da Costa v. Pereira, 18-CV-2948, 2018 U.S. Dist. LEXIS 81924.*

Honorable, Judge Cathy Seibel, knowledge of *10-CV-4125*, trial decision termination on November 14, 2012, by a continuum of errors apparent from record, of previous claim being decided on December 14, 2012, render a distorted conception of the filing for writ of mandamus, as for matters already decided by the Court, is a fatal error to the Civil Rights claim, allowing the defendants tortious conduct to contravene the rule of law, and gradually encroach infringements against U.S. Const. Law, the unlawful seizure of December 6, 2012, could not at any time been litigated during the proceedings of *10-CV-4125*, decided in favor of defendants, and terminated November 14, 2012, the December 6, 2012, false allegation seizure by P.O.

Pereira, was made in corrupt intent to retaliate, the Mount Vernon Police Department, operates only one precinct from the Court House, and the continued seizures at one incident site, involves persons in *nexus* to the aggravated trespasses, the City Court prosecutor decide not to prosecute, and the City Court Clerk, Certificate of Disposition false written statements of petitioner pleading guilty, speak for itself, of the tampering with a public record with the intent to deceive, or injure, or to conceal the wrongdoing, for the reasons stated above, claim preclusion res judicata decision is erroneous.

ISSUE TWO: Whether the right to trial by a jury mandated, by U.S. Const. Fifth, Sixth, and Fourteenth Amendments, and Due Process Clauses, and *U.S. Const. art. III § 2*, and the concepts set out by this Court in *Apprendi* and *Alleyne* was violated when the United States Court of Appeals for the Second Circuit of New York, affirm the District Court opinion of claim preclusion *Res Judicata* Bar Order under *28 U.S.C. § 1651*, an appellate court sitting as a fact finder cannot affirm a not factual position of Law that was not presented to a Jury, the *§ 1983*, for the seizure on false allegation of Stalking 3rd, deprivation of Liberty for 47 days, the two years and six months malicious prosecution until 2015, when the allegation was dismissed without a trial by a Jury, and City of Mount Vernon Court prosecutor, suppressed evidence in favor of petitioner in a trial without a Jury, to find a verdict of guilty for a pretext allegation Harassment 2nd, whereas the Court Clerk tamper with the public record by false

written statements on the Certificate of Disposition: plead guilty to Harassment 2nd, in full satisfaction, is a device of deceit, whether made intentional or by mistake in the State of N.Y. is a *Title K-Offence involving fraud, Article 175 – Penal L 175.25 (2012), 175.20 (2018)* . . . implies the intent to contravene and infringe the right to be free from unreasonable seizures, and right to a trial by a Jury, while purporting to be authority, to conceal the infringement by wrongdoing?

Petitioner DaCosta, was unreasonably seized December 6, 2012, on false allegation of PL 120.50 03 Stalking 3rd, a misdemeanor that carries a maximum sentence of one Year, and given a $2000.00 bail, and on December 10, 2012, a pretext superseding misdemeanor information count two, PL 2402602 V2, Harassment 2nd, that carries a maximum sentence of 15 days, and imprisoned 47 days until January 23, 2013, when I pay for the bail, the disparity between a one Year maximum sentence, and a 15 days sentence is clear, and do not justify the 15 appearances in Court until March 2015, and the denial of procedural due process of law, of a trial by a Jury, by the prosecutor dismissal of the false allegation, and proceeding to a trial without a Jury, where the evidence in favor of defense, of a previous deposition of the Peoples witness at the U.S.D.C. on July 11, 2012 was suppressed, to find a guilty verdict for the pretext Harassment 2nd, and to continue the abuse of process by false written statements on the Court Certificate of Disposition, of plead guilty to Harassment 2nd, in full satisfaction of Stalking 3rd.

Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), Stevens, J., opinion, Under the Due Process Clause of *U.S. Const. amend. V*, and the notice and jury trial guarantees of *U.S. Const. amend. VI*, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt. *U.S. Const. amend. XIV* provides for the proscription of any deprivation of liberty without due process of law, and *U.S. Const. amend. VI* guarantees that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. Under the due process clause of the *Federal Constitution's Fourteenth Amendment* – and under the *Constitution's Sixth Amendment* guarantee of a right to a jury trial – a criminal defendant is entitled to a jury determination that the defendant is guilty beyond a reasonable doubt of every element of the crime with which the defendant is charged, where the historical foundation for the United States Supreme Court's recognition of these principles extends down centuries into common law; a state cannot circumvent these protections by redefining the elements that constitute different crimes by characterizing them as factors that bear solely on the extent of punishment. At stake in this case are constitutional protections of surpassing importance: the proscription of any deprivation of liberty without "due process of law," *Amdt. 14*, and the guarantee that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury," *Amdt. 6*. together, these rights indisputably entitle a

criminal defendant to "a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *United States v. Gaudin, 515 U.S. 506, 132 L. Ed. 2d 444, 115 S. Ct. 2310 (1995)*; *see also Sullivan v. Louisiana, 508 U.S. 275, 278, 124 L. Ed. 2d 182, 113 S. Ct. 2078 (1993)*; *Winship, 397 U.S. at 364.*

This case turns on the seemingly simple question of what constitutes a "crime." Under the Federal Constitution, "the accused" has the right (1) "to be informed of the nature and cause of the accusation" (that is, the basis on which he is accused of a crime), (2) to be "held to answer for a capital, or otherwise infamous crime" only on an indictment or presentment of a grand jury, and (3) to be tried by "an impartial jury of the State and district wherein the crime shall have been committed."

Amdts. 5 and 6. See also *Art. III, § 2, cl. 3* ("The Trial of all Crimes . . . shall be by Jury"). Further, the Court has held that due process requires that the jury find beyond a reasonable doubt every fact necessary to constitute the crime. *In re Winship, 397 U.S. 358, 364, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970).*

"The Due Process Clause protects the accused against conviction except beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged"). First, the Court endorses the following principle: "'It is unconstitutional for a legislature to remove from the jury the assessment of facts *that increase the prescribed range of penalties* to which a

criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt.'" *Ante*, at 24 (emphasis added) (quoting *Jones, 526 U.S. at 252-253* (Stevens, J., concurring). Second, the Court endorses the rule as restated in Justice Scalia's concurring opinion in *Jones*. See *ante*, at 24. There, Justice Scalia wrote: "It is unconstitutional to remove from the jury the assessment of facts *that alter the congressionally prescribed range of penalties* to which a criminal defendant is exposed." *Jones, 526 U.S. at 253* (emphasis added). Thus, the Court appears to hold that any fact that increases or alters *the range* of penalties to which a defendant is exposed – which, by *definition*, must include increases or alterations to either the minimum or maximum penalties – must be proved to a jury beyond a reasonable doubt.

United States v. Alleyne, 133 S. Ct. 2151 186 L. Ed. 2d 314 (2013). The *Sixth Amendment* provides that those "accused" of a "crime" have the right to a trial "by an impartial jury." This right, in conjunction with the Due Process Clause, requires that each element of a crime be proved to the jury beyond a reasonable doubt. The substance and scope of this right depend upon the proper designation of the facts that are elements of the crime. The touchstone for determining whether a fact must be found by a jury beyond a reasonable doubt is whether the fact constitutes an "element" or "ingredient" of the charged offense. Both kinds of facts alter the prescribed range of sentences to which a defendant is exposed and do so in a manner that aggravates the punishment. Facts that increase

the mandatory minimum sentence are therefore elements and must be submitted to the jury and found beyond a reasonable doubt.

The U.S. Supreme Court held that the *Sixth Amendment* provides defendants with the right to have a jury find those facts beyond a reasonable doubt. While Harris limited Apprendi to facts increasing the statutory maximum, the principle applied in Apprendi applies with equal force to facts increasing the mandatory minimum. It is indisputable that a fact triggering a mandatory minimum alters the prescribed range of sentences to which a criminal defendant is exposed.

In *Harris v. United States, (2002) 536 U.S. 545, 122 S. Ct. 2406, 153 L. Ed. 2d 524, 2002 U.S. Lexis 4652*, the U.S. Supreme Court held that judicial fact finding that increases the mandatory minimum sentence for a crime is permissible under the *Sixth Amendment*. Harris drew a distinction between facts that increase the statutory maximum and facts that increase only the mandatory minimum. The U.S. Supreme Court concludes that this distinction is inconsistent with the decision in *Apprendi v. New Jersey, (2000) 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) U.S. Lexis 4304*, and with the original meaning of the *Sixth Amendment*. Any fact that, by law, increases the penalty for a crime is an "element" that must be submitted to the jury and found beyond a reasonable doubt. It follows, then, that any fact that increases the mandatory minimum is an "element" that must be submitted to the jury. Accordingly, Harris is overruled. (Thomas, J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

Because the legally prescribed range is the penalty affixed to the crime, it follows that a fact increasing either end of the range produces a new penalty and constitutes an ingredient of the offense. A fact that increases a sentencing floor, thus, forms an essential ingredient of the offense. Moreover, it is impossible to dispute that facts increasing the legally prescribed floor aggravate the punishment. The core crime and the fact triggering the mandatory minimum sentence together constitute a new, aggravated crime, each element of which must be submitted to the jury. The essential *Sixth Amendment* inquiry is whether a fact is an element of the crime. When a finding of fact alters the legally prescribed punishment so as to aggravate it, the fact necessarily forms a constituent part of a new offense and must be submitted to the jury.

ISSUE THREE: *Under 42 U.S.C. § 1983*, Civil Rights claim for loss of Liberty, and invoking the protections of the Fourth and the Fourteenth Amendments Due Process Clause, and Fifth Amendment protection from deprivation of life, liberty, or property without Due Process of Law, the December 6, 2012, unreasonable seizure, the denial of trial by a jury, malicious prosecution, and abuse of process false written statements tampering with the City of Mount Vernon Court Certificate of Disposition, to claim the petitioner plead guilty, when in fact there was not such a pleading, hereto, conceals the denial to a trial by a Jury, for the Stalking 3rd false allegation, they're undisputed facts of law on record for prima facie Const. torts that include the dates, persons, place, who did what, by

simple, clear, and concise statements within liberal interpretation of a well pleaded petition to the Court, petitioner ask this Court to review the decisions in this Civil Rights claim by District Court Hon. Judge Cathy Seibel, who was the sitting Judge for the stipulation settlement, and dismissal with prejudice of *42 U.S.C. § 1983 10-CV-4125*, and since the first grievance matters at hand, denied federal Court rule *12(b)(6)*, standard of liberal interpretation for review of claims, and ignored rule *9(b)* standard for heightened review, but has throughout applied an erroneous and distorted conception of fact law, to the limit of government's power to infringe on certain constitutional freedoms, by at first making the wrong statement of the petitioner wants to relitigate matters previously decided by the Court, and second that petitioner fail to state a claim where relief can be granted, and from the two wrong inferences deny petitioner's Const. Civil Rights claim.

The appeal to the Appellate Term of the Supreme Court for the State of New York, *People v. Da Costa, Jose, App. term doc. # 2015-1433 W CR (2019)*, Lower Court Doc. No. 12-4996, that on February 21, 2019, reversed and dismissed the accusatory instrument, is an acquittal from the pretext false allegation instrument verdict, and also proves there was not a pleading of guilty, on the date of May 12, 2015 by the petitioner at the City of Mount Vernon, N.Y. Court, see: *Mendes Da Costa v. Pereira, 18-CV-2948 2018, U.S. Dist. LEXIS 81924*, at Discussion, and at App. 20-22, 23-32.

In *Monell et al. v. Dept. of Soc. Serv. of the City of N. Y. et al., 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d*

611 (1978), Stevens, J., the United States Supreme Court analysis of the legislative history of the Civil Rights Act of 1871, 17 Stat. 13, compels the conclusion that Congress did intend municipalities and other local government units to be included among those persons to whom *42 U.S.C.S. §1983* applies. Local governing bodies, therefore, can be sued directly under *§ 1983* for monetary, 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. Moreover, although the touchstone of the *§ 1983* action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental custom even though such a custom has not received formal approval through the body's official decision making channels.

Owen v. Independence, 445 U.S. 622, 100 S. Ct. 1398, 63 L. Ed. 2d 673, 1980 U.S. LEXIS 14, Brennan J., A municipality has no immunity from liability under *§ 1983*, flowing from its constitutional violations and may not assert the good faith of its officers as a defense to such liability. Pp. 635-658. (a) By its terms, *§ 1983*, "creates a species of tort liability that on its face admits of no immunities." *Imbler v. Pachtman, 424 U.S. 409, 417.* Its language is absolute and unqualified, and no mention is made of any privileges, immunities, or defenses that may be asserted. Rather, the statute

imposes liability upon "*every person*" (held in *Monell v. New York City Dept. of Social Services, 436 U.S. 658*, to encompass municipal corporations) who, under color of state law or custom, "subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." And this expansive sweep of *§ 1983*s language is confirmed by its legislative history. Pp. 635-636. (b) Where an immunity was well established at common law and where its rationale was compatible with the purposes of *§1983*, the statute has been construed to incorporate that immunity. But there is no tradition of immunity for municipal corporations, and neither history nor policy supports a construction of that would justify the qualified immunity accorded respondent city by the Court of Appeals. Pp. 637-644.

(c) . . . The principle of sovereign immunity from which a municipality's immunity for "governmental" functions derives cannot serve as the basis for the qualified privilege respondent city claims under *§ 1983*, since sovereign immunity insulates a municipality from unconsented suits altogether, the presence or absence of good faith being irrelevant, and since the municipality's "governmental" immunity is abrogated by the sovereign's enactment of a statute such as *§ 1983*, making it amenable to suit. And the doctrine granting a municipality immunity for "discretionary" functions, which doctrine merely prevented courts from substituting their own judgment on matters within the lawful discretion of the municipality, cannot

serve as the foundation for a good-faith immunity under *§1983*, since a municipality has no "discretion" to violate the Federal Constitution. Pp. 644-650. (d) Rejection of a construction of *§ 1983* that would accord municipalities a qualified immunity for their good-faith constitutional violations is compelled both by the purpose of *§ 1983* to provide protection to those persons wronged by the abuse of governmental authority and to deter future constitutional violations, and by considerations of public policy. In view of the qualified immunity enjoyed by most government officials, many victims of municipal malfeasance would be left remediless if the city were also allowed to assert a good-faith defense. The concerns that justified decisions conferring qualified immunities on various government officials – the injustice, particularly in the absence of bad faith, of subjecting the official to liability, *1980 U.S. LEXIS 14*, and the danger that the threat of such liability would deter the official's willingness to execute his office effectively – are less compelling, if not wholly inapplicable, when the liability of the municipal entity is at issue. Pp. 650-656.

In *Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961),* Clark, J., the Court held that the due process clause of the Fourteenth Amendment extended to the States the Fourth Amendment right against unreasonable searches and seizures. And, as necessary to ensure such rights, the exclusionary rule, which prohibited the introduction into evidence of material seized in violation of the Fourth Amendment, likewise applied to the State's prosecution of state

crimes. The doctrines of the Fourth and Fifth Amendments apply to all invasions on part of the government and its employees of the sanctity of a man's home and the privacies of life.

Because the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth Amendment, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government.

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). The Court should not dismiss the complaint if the plaintiff has stated "enough facts to state a claim to relief that is plausible on its face".

In *Manuel v. City of Joliet, Ill., 137 S. Ct. 911 (2017),* the Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable . . . seizures." Manuel's complaint seeks just that protection. Government officials, it recounts, detained – which is to say, "seiz[ed]" – Manuel for 48 days following his arrest.

Cook v. Sheldon, 41 F.3d 73, 78 (2d Cir. 1994). The right not to be arrested without probable cause is a clearly established right. ("It is now far too late in our constitutional history to deny that a person has a clearly established right not to be arrested without probable cause."). Officers who arrested civil rights plaintiff for violation of Vehicle Identification Number (VIN) statute were not entitled to qualified immunity

where charges against plaintiff were dismissed and there was absence of probable cause for arrest. *§ 1983.*

New York General Municipal Law ~ 50 allows for an otherwise time barred cause of action against a municipality for failing to produce certain evidence for the benefit of a plaintiff whose previous action was lost due to the municipality's failure to produce said evidence. A cause of action in law or equity against any municipality in the state of New York, or its proper officers, arising from the action of such municipality in derogation of its previous grant or covenant, where a previous action shall not have succeeded, in whole or in part, owing to the failure of the said municipality to produce or prove certain written evidence, which was essential to the plaintiff's claim, shall not be barred by the operation of the statutes limiting the time for the enforcement of civil remedies in favor of the successor in interest to the person entitled to any benefit or damages by reason of such grant, covenant or action of said municipality. *Federal Rule of Evidence 804(b)(6)* sets out a principle of forfeiture by wrongdoing based on the defendant's misconduct that procured a witness's unavailability at trial.

CONCLUSION AND PRAYER

For the reasons stated in this petition, the United States Court of Appeals for the Second Circuit of New York decided important federal questions: (1) that have not been, but should be, settled by this Court, and (2) in ways that conflict with relevant decisions of this Court. Therefore, petitioner respectfully asks this Court to grant a writ of certiorari to the United States Court of Appeals, on the issues presented in this petition.

Respectfully submitted,

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