

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 Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit**

PETITION FOR REHEARING

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

Petitioner Jose A. Mendes da Costa respectfully petitions for a Writ of Certiorari Rehearing to review the unconstitutional adjudgment affirmed by the United States Court of Appeals for the Second Circuit.

**IN RE PETITION FOR
CERTIORARI REHEARING**

We respectfully address the Justices of the United States Supreme Court, in our formal request for Certiorari Rehearing, on grounds of the unconstitutional statute misrepresentation, was instituted on the record by C. J. Seibel, negligent misstatement of the wrong date for termination of a proceeding that Hon. Judge Seibel, terminated on November 14, 2012, as to have been terminated December 14, 2012, and too restate in omission of the personal misstatement, that the respondents December 7, 2012, Constitution amendments, and federal law violations infringements against the petitioner, that were stated in §1983 18-CV-2948, to be barred by claim preclusion Res Judicata, and too decide by the clearly wrong standard for §1983 review, the made per incuriam 18-CV-2948 (CS) BAR ORDER UNDER 28 U.S.C. §1651. We respectfully petition the Honorable Justices of the Supreme Court of the United States for Certiorari Rehearing, to review U.S.D.C. for the S.D.N.Y., C. J. Seibel, decision made per incuriam, by misleading the correct dates for the proceedings on record, causing the fundamental

errors apparent from record, and then misusing the distorted conception to divert from the respondents' constitutional infringements to attribute them to the petitioner, is not a valid New York State interest nor is it the State's Constitution, and it is inadmissible as a means of serving its legitimate end.

We disagree, with the decision to dismiss §1983 18-2948 Constitution Amendments Civil Rights claim that is plausible on its face, in view of the Federal Statutes Law applied to fact, is distorted and erroneous from the very misrepresentation of the fundamental errors apparent from record, which the made per incuriam decision has expressly treated as base, is a fatal error, in violation the U.S. Const. Fourth, Fifth, Sixth, and Fourteenth Amendments and the respective Fifth and Fourteenth Amendment Clauses.

We disagree, that the respondents wearing the colors of the State, were at any given time committed to furthering a valid State interest, when they singled out the petitioner to initiate the retaliation false arrest imprisonment malicious prosecution with the prosecutor suppression of evidence in favor of the defense, the denial of a trial by a Jury, and subsequent abuse of process by misdeed of tampering with the Court public records to make it appear, as if the petitioner was convicted after a waiver of Constitutional Civil Rights.

Tampering with public records in the State of New York is a felony crime involving fraud, N.Y. Title K-Offences involving fraud, Article 175, Penal L. 175.25 (2012). The de facto is not admissible viewed in light

more favorable to the respondents, forthwith we cannot consider it a permissible means of serving its legitimate ends.

We disagree expressly, with C. Judge Seibel, decision in view that it contradicts the unanimous decision by the Justices of the Supreme Court of the United States, in *Lawler v. National Screen Service Corp.*, to dismiss the Civil Rights suit at law, from a distorted erroneous account attributed to the petitioner, for failure to state enough facts on which a claim can be granted, and to figuratively state the wrong date for the termination of 10-CV-4125 for which, C. J. Seibel terminated the proceedings on November 14, 2012 as to have been terminated on December 14, 2012, to again wrongfully state the respondents' retaliation on December 7, 2012 claim was precluded by Res Judicata, the fundamental error apparent from record is fatal, and serves a conflict of interest without legitimate Constitutional Law purpose.

We respectfully ask the Justices of the Supreme Court of the United States for a facial challenge of the decision & order, by D.C. C. J. Seibel, in light of the wrong decision, divert respondents' infringement on Constitution that encompasses the cause of action for the loss of Civil Rights Liberties, and contradicts both the U.S. Constitution, and Federal law in cases decided by the Justices of this Court, and lastly, the infringement on U.S. Constitution inherent protected rights, to be free from illegal acts or injustice, that clearly are not committed in furtherance of a valid New York State interest or the State's Constitution, is inadmissible as

a means of serving its legitimate end, the deprivation of First Amendment right to petition the U.S. in a Court of equity, is in need of constitutional law, and federal law facial challenge.

The fundamental error apparent from record is unconstitutional, and made per incuriam, the fatal error, requires reversal by the U.S. Court.

Facial Challenge Points

- 1) November 8, 2012 U.S.D.C. for the S.D.N.Y. C. J. Seibel, adjudge §1983 10-CV-4125, trial's conclusion, by a settlement with prejudice to the petitioner, and November 14, 2012, Order proceeding terminated.
- 2) December 6, 2012 False arrest and imprisonment for 47 days.
- 3) Malicious Prosecution, duress until May 15, 2015.
- 4) Denial of a Trial by a Jury, U.S. Const. art. III § 2, cl. 3
- 5) Prosecution suppress evidence in favor of the defense.
- 6) April 12, 2015, City of Mount Vernon Court J. Hellen M. Blackwood, trial without a Jury, until May 15, 2012 verdict of guilty.
- 7) May 15, 2012, the City of Mount Vernon Court, tamper with the public by misdeed to make it appear, as if the petitioner was convicted after waiving his Constitutional Civil

Rights by pleading guilty to a lesser charge at trial, the false statements in writing on Court Certificate of Disposition, in the State of New York, the year of 2015, tampering with a public record is a felony crime involving fraud, N.Y. Title K-Offences involving fraud, Article 175, Penal L. 175.25 (2012).

- 8) Petitioner file appeal to the Appellate Term of the Supreme Court of the State of New York for the 9th & 10th Judicial Districts. The People of the State of New York, Respondent v. Jose DaCosta, Appellant. Lower Court # 12-4996. Appellate Term Docket No. 2015-1433 W CR
- 9) January 27, 2016, U.S.D.C., C. J. Seibel, Order §1983 15-CV-8500 Civil Rights claim against the respondents, terminated, on the same fundamental and fatal errors, for not stating enough facts on which a claim can be granted, and petitioner wants to relitigate matters from §1983 10-CV-4125, that had already been decided December 13, 2012.
- 10) January 10, 2017, the U.S.C.A. for the S.D.N.Y., Affirm the unconstitutional decision, and February 24, 2014 denied rehearing.
- 11) June 12, 2018, U.S.D.C., C. J. Cathy Seibel, Bar Order Under 28 U.S.C. §1651, to Civil Rights Claim §1983 18-CV-2948, the unconstitutional decision misrepresent the fundamental errors apparent from record, restates the made per incuriam decision in 15-CV-8500, failure to state enough facts on which a claim can be granted, and claim is precluded by Res

Judicata, plaintiff wants to relitigate matters in 10-CV-4125 that were already decided December 14, 2012.

- 12) February 28 2019, The Appellate Term of the Supreme Court of the State of New York for the 9th & 10th Judicial Districts, reverse the no-Jury guilty verdict, and dismiss 12/07/2012 accusatory instrument.
 - 13) October 31, 2019, the U.S.C.A. for the S.D.N.Y., Justices, in knowledge of a decision that was not tried by a Jury cannot be affirmed, and in knowledge of the Appellate Term of the Supreme Court of the State of New York, reverse the no-Jury guilty verdict, and dismiss accusatory instrument, moved to mute the Order & Decision to deny rehearing, and Affirm U.S.D.C. C.J. Seibel, made per incuriam adjudgment.
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REASON FOR GRANTING CERTIORARI, REHEARING

We respectfully petition for a rehearing, in view of light more favorable to cases decided by the Justices of the United States Supreme Court, as these cases clearly conflict with, and overrule, the U.S.D.C. for the S.D.N.Y., Hon. C.J. Seibel, careless negligence in misstating the wrong date for the termination of §1983 10-CV-4125, as December 14, 2012, when the date is in fact November 14, 2012, too again misrepresent Constitution Amend. Law applied to facts, and misstate the respondents' December 7, 2012, unlawful arrest

misprision for 47 days, infringement of the U.S. Constitution Amend., were barred by claim preclusion and Res Judicata, lacks syllogistic reasoning, and needs to be reversed and remanded to District Court for further proceedings.

The cases decided by the Justices of the United States Supreme Court, in unanimity, conflict with the made per *incuriam* decision by C.J. Seibel!

In *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 195 L. Ed. 2d 665 (2016), the question of the State's legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that insure maximum safety for the patient. But a statute which, while furthering a valid state interest, has the effect of a substantial obstacle in the path of a woman's choice cannot be considered a permissible means of serving its legitimate ends.

Civil Procedure > Judgements > Preclusion of Judgements > Res Judicata

The doctrine of claim preclusion (an aspect of res judicata) prohibits successive litigation of the very same claim by the same parties. Development of new material facts can mean that a new case and an otherwise similar previous case do not present the same claim. Material operative facts occurring after the decision of an action with respect to the same subject matter may in themselves, or taken in conjunction with the antecedent facts, comprise a transaction which may be made the basis of a second action not precluded by the first.

A valid and final personal judgment for the defendant, which rests on the prematurity of the action or on the plaintiff's failure to satisfy a precondition to suit, does not bar another action by the plaintiff instituted after the claim has matured, or the precondition has been satisfied.

Res judicata does not bar claims that are predicated on events that postdate the filing of the initial complaint. Where important human values, such as the lawfulness of continuing personal disability or restraint, are at stake, even a slight change of circumstances may afford a sufficient basis for concluding that a second action may be brought.

Factual developments may show that constitutional harm, which seemed too remote or speculative to afford relief at the time of an earlier suit, was in fact indisputable. Such changed circumstances will give rise to a new constitutional claim. Where suit was brought immediately upon the enactment of the law, a decision sustaining the law cannot be regarded as precluding a subsequent suit for the purpose of testing its validity in the lights of the later actual experience.

A judgment that precludes recovery on claims arising prior to its entry nonetheless cannot be given the effect of extinguishing claims which did not even then exist.

The constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist. A statute valid as to one set of facts

may be invalid as to another. A statute valid when enacted may become invalid by change in the conditions to which it is applied. A question cannot be held to have been adjudged before an issue on the subject could possibly have arisen.

Res Judicata Constitutional Law > Case or Controversy > Constitutionality of Legislation > Anticipatory Challenges

For res judicata purposes, when individuals claim that a particular statute will produce serious constitutionally relevant adverse consequences before they have occurred, and when the courts doubt their likely occurrence, the factual difference that those adverse consequences have in fact occurred can make all the difference.

Entry of Judgments Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation Civil Procedure > Remedies > Injunctions

Judgments, Entry of Judgments

The Federal Rules of Civil Procedure state that (with an exception) a final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings. Fed. R. Civ. P. 54(c). And if the arguments and evidence show that a statutory provision is unconstitutional on its face, an injunction prohibiting its enforcement is

proper. In the exercise of its judicial responsibility it may be necessary for a court to consider the facial validity of a statute, even though a facial challenge was not brought. Once a case is brought, no general categorical line bars a court from making broader pronouncements of invalidity in properly as-applied cases.

For res judicata purposes, the U.S. Supreme Court has never suggested that challenges to two different statutory provisions that serve two different functions must be brought in a single suit. And lower courts normally treat challenges to distinct regulatory requirements as separate claims, even when they are part of one over-arching government regulatory scheme.

Suppression of Evidence at the U.S.D.C. for the S.D.N.Y., by C.J. Seibel

C. J. Seibel, has knowledge from §1983, 18-CV-2948, the People's witness Vera Almeida, was deposed at the U.S.D.C. for the S.D.N.Y., on the date of July 11, 2011, because petitioner knew of the respondents' intent to retaliate by misusing this person who was not a party to the §1983 10-CV-4125, as the People's witness for the false arrest on December 7, 2012, the intent to retaliate was known to the U.S.D.C., C.J. Seibel, since February 28, 2012, Doc. # 62 affirmation in opposition to defendants' motion for summary judgment, the U.S.D.C. deposition transcript of de facto red flag for respondents' misuse of process as a device, should had not been ignored.

We formally complain to C. J. Seibel, on February 28, 2012, Doc. # 62 on page(s) 19-20, of 10-CV-4125, the respondents were planning to retaliate with continued course of conduct deprivation of Civil Rights Liberties against the petitioner, by forgery of evidence to in the future misuse Vera Almeida as the People's witness to obtain a case with identical trier facts to the case being trialed, to pad themselves with probable cause and too, mislead the misuse of the Public Health and Morals Offences Title M, Article 230.

The coercion statute refers to the actor's accusing some person of a crime or causing criminal charges to be instituted [Penal Law ~ 135.60(4)]. This statute adds the causing of the deportation proceedings to be instituted [P.L. ~ 230.34(5)(d)].

The coercion statute catchall provision applies to conduct calculated to harm a person's "health, safety, business, calling, career, financial condition, reputation or personal relationships; 1. By "unlawfully providing a controlled substance to such person with intent to impair said person's judgment. 2. By "requiring that the labor be performed to retire, repay, or service a real or purported debt that the actor has caused by a "systematic ongoing course of conduct." There is no statutory definition of the term and it is only clear that an "isolated incident" does not constitute "a systematic ongoing course of conduct Com. P.L. 120.40 under the sub-heading of "stalking" "course of conduct" "intent to defraud" Causation and Repentance: Reexamining Complicity in Light of Attempts Doctrine 3 N.Y.U. J.L. & Liberty 155 (2008).

The Justices for the U.S.C.A. for the S.D.N.Y., adjudged to affirm the U.S.D.C, Hon. C. J. Seibel, unconstitutional application, of claim preclusion and Res Judicata to statutes, by careless negligence. When the Justices could simply look up the termination date for §1983 10-CV-4125, as November 14, 2012, and not December 14, 2012, for de novo review to correct, respondents' December 7, 2012, violations of Constitution Amendment statutes instead the Justices, chose not to review de novo, the fundamental error apparent from the record, and chose to mute the Appellate Term of the Supreme Court of the State of New York, February 28, 2019, Decision & Order that reversed the no-Jury trial guilty verdict, for which the Mount Vernon City Court abused of process by making false written statements on a public record of the petitioner plead guilty, and the dismissal of the accusatory instruments for the December 7, 2012, unlawful arrest misprision malicious prosecution. Lower Court # 12-4996, Appellate Term Docket No. 2015-1433 W CR.

U.S.D.C. for the S.D.N.Y., Hon. C. J. Cathy Seibel, careless negligence, not to correct the wrong date of the proceeding termination that Hon. C. J Seibel, terminated on November 14, 2012, as to have been terminated December 14, 2012, and too restate the instituted fundamental error on record in omission of the personal misrepresentation, for the respondents' unlawful misprision on December 7, 2012, to be barred by claim preclusion and Res Judicata, and proceed to adjudge the unconstitutional application of the statute, for the made per incuriam decision against the

legislative intent of the statute, was not executed in furtherance of a valid State interest and we cannot consider a permissible means of serving its legitimate ends.

The United States Court of Appeals, is required by the U.S.A. Constitution, to reverse § 1983 unconstitutional statutes, and remand for further proceedings at the U.S.D.C., on account of, the inadmissible fatal error injustice and the loss of Civil Rights Liberties, was made per incuriam.

CONCLUSION AND PRAYER

For the reasons stated in this petition for Certiorari Rehearing, 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 Rehearing for Certiorari to the U.S.C.A. on the issues presented in this petition.

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CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, Petitioner certifies that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented. Petitioner certifies that this Petition is presented in good faith and not for delay.

JOSE MENDES DA COSTA