

CASE NO. 19-1287

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IN THE  
SUPREME COURT OF THE UNITED STATES

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IN RE ROBERT SARHAN AND ANABELLA SOURY

Petitioners,

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On Petition for a Writ of Mandamus and  
Writ of Prohibition to the Eleventh  
Circuit Court of Appeals for the Eleventh Circuit

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**REPLY BRIEF FOR THE PETITIONER**

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## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
REPLY BRIEF FOR THE PETITIONER.....	1
CONCLUSION.....	4

## TABLE OF AUTHORITIES

<i>Wood v. Orange Co.</i> , 715 F.2d 1543 (11th Cir. 1983).....	4
<i>United States v. Napper</i> , 887 F.2d 1528 (11th Cir. 1989).....	4

## REPLY BRIEF OF THE PETITIONER

Respondent's "Brief in Opposition" and Appendix transgress the very same *dehors-the-record* prohibition of which they and derivatively the Eleventh Circuit Court of Appeal have been guilty in the proceedings below. Respondent falsely accuses the Petition for Writ of Mandamus and Prohibition of glossing over items in the record, but none of those accusations have any substance. The proverbial saying, that the (Respondent) pot is trying to call the (Petitioner) kettle black, exemplifies Respondent's accusations, which further evidence Respondent's pattern of *dehors-the-record* misconduct.

This is well characterized by Respondent's voluminous Appendix, consisting of 12 numbered exhibits, only one of which [Judge Hanzman's Order (App. 12)] was an exhibit [C1(G)] to the complaint that was before the district court when it sua sponte dismissed the complaint and was also before the Eleventh Circuit, included in Appellant's Appendix [C1(G)], when the dismissal was affirmed.

At p. 25 of the Brief, Respondents misrepresent that Petitioner "conveniently" omitted Judge Hanzman's order [C1(G)] from their Appendix, filed in this Court. Respondent's *dehors-the-record* Brief misfocuses on, and cites to, outside-the-record exhibits (App 1-11).

Respondent's Brief, at p. 3, miscites Supreme Court Rule 15.2, applicable to "certiorari" proceedings – which this mandamus and prohibition petition is not – requiring it to "address perceived misstatements." That Brief is itself filled with misstatements about allegedly misperceived statements. For example, at pp. 3-5, the Brief sets out a series of *dehors-the-record* statements in an effort to purportedly

summarize the contrary “four-corners” of the complaint and the record on appeal.

Unfortunately, Respondent has strayed outside the record and unreasonably burdened this Court to sift through these irrelevancies to verify Petitioner’s truthful representations. Exhibit [C1(A)], in the District Court docket, shows that Defendant/Respondent filed nothing in that court and therefore its alleged summaries and its 166-page Appendix, as to App 1-11, are entirely *dehors* the record. There are only 7 entries on that docket, none filed by Defendant/Respondent. No exhibit, filed therein, disputed any of the complaint’s following allegations:

"On June 18, 2019 Plaintiffs filed an Emergency Motion for Relief from Judgment as Void and a Declaration, [C1-(F)] copy of which are attached hereto, claiming that the unserved Judgments were denials of due process and were void."

That Motion came on for hearing before Circuit Court Judge Michael Hanzman on June 20, 2019. At the hearing, Judge Hanzman precluded counsel for Plaintiff Robert Sarhan from participating in the oral argument, in which Defendant's counsel was permitted to participate, and thereby denying Plaintiffs Robert Sarhan due process of law, ruling in advance that Robert Sarhan had no interest in the arguments raised in the Motion. That order also determined that the Final Judgment, entered in that case, would not be "void" even if Anabella Soury's claim that neither she nor her attorney were not served therewith were true.

In fact, according to court record, neither Anabella nor her attorney were served with the Final Judgment or the Amended Final Judgment, Robert Sarhan took an appeal from those Judgments but did not serve Anabella or her attorney, Anabella did not participate in that appeal. However, at page 2 of that order it is

wrongly stated that "Defendants [plural] appealed that Final Judgment" and that the appellate ruling of affirmance is binding on "Defendant" Anabella all in violation of her due process rights to be served and to have a reasonable opportunity to be heard.

The order also ruled in violation of Anabella's due process rights - that no further motions:

"collaterally attacking the Final Judgment or Amended Final Judgment" would be heard, despite the fact that neither Anabella nor her attorney were served with those Judgments. The one-year time limit for filing a Rule 1.540(b)(3) fraud-on-the court motion for relief from judgment does not apply to her because of that lack of service, so that it would be a denial of due process to treat fraud on-the-court as having been adjudicated as to her." [C1-(G)]

In fact, Plaintiff/Petitioner Anabella Soury's Declaration, filed as an exhibit [C1(F)] to the complaint, verified the allegations of the complaint. The complaint was also signed and verified by Plaintiff/Petitioner Robert Sarhan.[C1-(B)]

Most significant is the fact that Respondent's Brief has cited not a single case precedent authorizing the District Court to stray outside the "four corners" of the complaint or authorizing the Eleventh Circuit Court of Appeals to stray *dehors* the record and has attempted to distinguish only two of the extensive case precedents, cited by Petitioners, prohibiting *dehors*-the-record excursions.

At p. 26, the Brief quotes a decision authorizing such an excursion where the "extrinsic facts" are "undisputed," a circumstance not present in this case.

In an effort to counter Petitioners' arguments as to the District Court's federal jurisdiction, free and clear of the *Rooker-Feldman doctrine*, its Brief, at pp. 15-17, embarks on just such a *dehors*-the-record excursion, straying far outside the "four corners" of the complaint.

Included among the precedents cited by Petitioner showing the inapplicability of the *Rooker-Feldman doctrine* to the complaint filed in the District Court were *Wood v. Orange Co.*, 715 F.2d 1543 (11th Cir. 1983) and *United States v. Napper*, 887 F.2d 1528 (11th Cir. 1989).

At p. 32 of the Respondent's Brief, an attempt to distinguish those citations is ventured. However, that attempt involves an impermissible excursion outside the record. Based on the instant record, those cases are not distinguishable, they both involve the same deprivation of opportunity to raise due process violations for which a motion for relief from judgment would have been appropriate as in the case at bar. Respondent's argument, at pp. 33-36, that "Anabella Soury had a reasonable opportunity in State Court to raise any federal claim" and that "Judge Hanzman gave Mr. Morburger an opportunity to make said arguments," is directly contrary to the allegations of the complaint and the record and is based on Respondent's excursions outside the record.

### CONCLUSION

Wherefore, we pray that this U.S. Supreme Court will issue the Writ of Mandamus and Prohibition mandating the orders of the Eleventh Circuit and require them to stay within the boundaries of the record and not to stray out of the "four corners" of the complaint and require application of federal jurisdiction to the district court proceeding and vacate the *dehors* the record imposition of sanctions, where the judgment of foreclosure is void.

Respectfully Submitted,

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### **CERTIFICATE OF COMPLIANCE**

I, Arthur J. Morburger, Appellate Counsel for Robert Sarhan and Anabella Soury hereby certify that, according to the word-count tool in Microsoft Word, this Reply Brief of the Petitioner consists of 1218 words, including footnotes and excluding the sections enumerated by Rule 33.1(d). The Brief therefore complies with Rule 33.1(g).

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing US Supreme Court Brief and Appendix has been emailed to Raul Gastesi, Jr. at [rgastesi@gastesi.com](mailto:rgastesi@gastesi.com) on this 22 Day of June 2020.

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