No.

IN THE

Supreme Court of the United States

MICHAEL A. DEEM, PETITIONER,

v.

LORNA M. DIMELLA-DEEM AND LINDA EICHEN, ESQ.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner filed federal question claims against Respondents for, *inter alia*, violation of his rights to exercise his religion, keep and bear arms, associate with his children, due process and malicious prosecution. The District Court dismissed the complaint *sua sponte*. The Second Circuit affirmed pursuant to its Domestic Relations Abstention Doctrine and awarded costs.

I. MAY LOWER FEDERAL COURTS REFUSE TO EXERCISE JURISDICTION OVER FEDERAL QUESTION CLAIMS IN THE ABSENCE OF A WARRANT TO DO SO FROM CONGRESS OR THIS HONORABLE COURT?

II. IS THE SECOND CIRCUIT'S DOMESTIC RELATIONS ABSTENTION DOCTRINE UNCONSTITUTIONALLY VAGUE?

III. DID PETITIONER DEMONSTRATE OBSTACLES TO A FULL AND FAIR DETERMINATION OF HIS FEDERAL QUESTION CLAIMS IN STATE COURT THAT PREVENT THE OPERATION OF THE SECOND CIRCUIT'S DOMESTIC RELATIONS ABSTENTION DOCTRINE?

RULE 14(1)(b)

PARTIES TO THE PROCEEDING

Petitioner

MICHAEL ANTHONY DEEM

Respondents

LORNA M. DiMELLA-DEEM,

LINDA EICHEN, ESQ.,

HON. HAL B. GREENWALD, F.C.J., and

HON. JOSEPH A. EGITTO, A.J.S.C.,

STATEMENT OF RELATED CASES*

I. *Deem v. DiMella-Deem, et al.*, No. 19-1111, U.S. Supreme Court. Petition for Writ of Certiorari to the U.S. Second Circuit Court of Appeals. Fully submitted.

Deem v. DiMella-Deem, et al., No. 18-2266, U.S. Court of Appeals for the Second Circuit. Judgment entered October 30, 2019. Published. Motion for Rehearing *en banc* denied December 11, 2019.

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* Petitioner has omitted all matters arising from his matrimonial and custody proceedings, including *Deem v. Colangelo*, No. 19-590 (U.S.), *pet. denied* (Jan. 13, 2019).

Deem v. DiMella-Deem, et al., No. 18-cv-6186 (NSR), U.S. District Court for the Southern District of New York. Judgement entered July 24, 2018.

II. *Deem v. DiMella-Deem/DiMella-Deem v. Deem*, File No. 153622, White Plains Family Court, New York State. *Ex Parte* Default Order entered June 7, 2019, denying Petitioner all contact with Ms. DiMella-Deem and the parties' two children until June 7, 2021, due to one violation against Ms. DiMella-Deem.

Deem v. Deem, No. 2018-7055, New York State Supreme Court Appellate Division, Second Department. Order entered June 18, 2018, denying application to vacate no contact restraining order.

Deem v. Deem, No. 2018-9179, New York State Supreme Court Appellate Division, Second Department. Order entered August 23, 2018, denying order to show cause to vacate no contact restraining order.

Deem v. Deem, No. 2018-14227, New York State Supreme Court Appellate Division, Second Department. Order entered January 9, 2019, denying order to show cause to vacate no contact restraining order.

III. *Matter of Deem, et al. v. Westchester County Dept. of Soc. Srvcs., et al.*, No. 2368-2018, Supreme Court of the State of New York, Westchester County. Judgment entered

December 14, 2018, denying review of Child Protective Service's investigation into Respondent DiMella-Deem for lack of standing.

IV. *Matter of the Pistol License of Deem*, No. 800073/2018, New York State County Court, Westchester County. Judgment entered May 28, 2019, dismissing Westchester County's application to revoke pistol license.

V. *People v. Deem*, No. 18110057, Briarcliff Manor Village Court, New York State. Judgment entered June 12, 2019, dismissing misdemeanor complaint on default.

VI. *Deem, et al. v. DiMella-Deem, et ano.*, No. 2020-1113, New York State Supreme Court Appellate Division, Second Department. Pending appeal of denial of writ of *habeas corpus* regarding Family Court Order.

Deem, et al. v. DiMella-Deem, et ano., No. 69596/2019, New York State Supreme Court, Westchester County. Judgment entered January 13, 2020, denying writ of *habeas corpus* regarding Family Court Order.

VII. *Deem, et al. v. DiMella-Deem, et ano.*, New York State Court of Appeals. Order denying petition for writ of *habeas corpus* regarding matrimonial action dated March 24, 2020.

Deem, et al. v. DiMella-Deem, et ano., No. 2020-204, New York State Supreme Court Appellate Division, Second Department. Refusal of writ of

habeas corpus regarding matrimonial action to be filed.

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Deem v. DiMella-Deem, et al., 18-11889-cv (S.D.N.Y. May 2, 2019) (KMK). Order of Dismissal. (5a)

JURISDICTION

Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1254(1).

RELEVANT PROVISIONS INVOLVED

U.S. Constitution, Article III, § 2

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution [and] the Laws of the United States[].

U.S. Constitution, Amendment XIV

> [N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any

State [], 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, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding.

New York State Constitution, Article VI, § 7

The supreme court shall have general original jurisdiction in law and equity [].

New York State Constitution, Article VI, § 13

b. The family court shall have jurisdiction over the following classes of actions and proceedings which shall be originated in such family court in the manner provided by law: (1) the protection, treatment, correction and commitment of those minors who are in need of the exercise of the authority of the court because of circumstances of neglect, delinquency or dependency, as the legislature may determine; (2) the custody of minors except for custody incidental to actions and proceedings for marital separation, divorce, annulment of marriage and dissolution of marriage; (3) the adoption of persons; (4) the support of dependents except for support incidental to actions and proceedings in this state for marital separation, divorce, annulment of marriage or dissolution of marriage; (5) the establishment of paternity; (6) proceedings for conciliation of spouses; and (7) as may be provided by law: the guardianship of the person

> of minors and, in conformity with the provisions of section seven of this article, crimes and offenses by or against minors or between spouses or between parent and child or between members of the same family or household. Nothing in this section shall be construed to abridge the authority or jurisdiction of courts to appoint guardians in cases originating in those courts.

STATEMENT

This matter is a continuation of the constitutional misconduct at bar in *Deem v. DiMella-Deem, et al.*, No. 19-1111 (U.S.), fully briefed and currently pending before this Honorable Court. That matter concluded with Judge Gordon-Oliver extending for two months a "no contact" restraining order (RO), based on fabricated allegations, without providing Petitioner a post-deprivation hearing.

The New York State Supreme Court Appellate Division, Second Department has several policies that violate constitutional and statutory rights of litigants. Those policies prevent litigants from successfully defending against ROs once they issue. Respondent Eichen and Judge Greenwald knew of those policies. They also knew that Respondent DiMella-Deem's request for a "no contact" RO could not be granted if Petitioner was afforded an opportunity to be heard and make a record. So, they conspired to deny Petitioner due process, tampered with public records and embroiled Petitioner in the Second Department's wheels of injustice, to continue to deny him his constitutional rights, property, money and children.

Procedural History

On December 18, 2018, Petitioner filed a complaint in the Southern District of New York pursuant to 28 U.S.C. §§ 1331 and 1343, 42 U.S.C. §§ 1983 and 1985, and the First, Second, Fourth and Fourteenth Amendments.

On April 22, 2019, Petitioner filed a proposed first amended complaint.

On May 2, 2019, the District Court dismissed the original complaint *sua sponte*, based on the Second Circuit's Domestic Relations Abstention Doctrine (DRAD). *Deem v. DiMella-Deem*, *supra*. (5a). The District Court ordered Petitioner to show cause why sanctions should not be imposed for filing said complaint.

On May 31, 2019, Petitioner filed a notice of appeal and affirmation in response to the show cause order. To date, the District Court has not imposed sanctions for filing said complaint.

On October 3, 2019, Petitioner filed a Reply to Respondent DiMella-Deem's Letter Brief in Opposition. *Deem v. DiMella-Deem*, 19-1630 (2d Cir.) (Dkt. 96). Said Reply provided in part,

> By way of background, [Petitioner] filed an action seeking divorce and joint custody of two adopted children, now 14 and 12 years old. Ms. DiMella-Deem answered seeking sole custody. [Petitioner] also filed the first petition in family court seeking a restraining order (RO) against Ms. DiMella-Deem compelling her to refrain from physically assaulting [Petitioner] and masturbating in the presence of their children. Also, [Petitioner]'s only arrest ever was the

result of a violation of a RO that he was unaware of because he texted his children that he loved them and would try to see them later that day. The criminal charge was dismissed on default subsequent to the filing of the underlying complaint.

On information and belief, Ms. DiMella-Deem suffers from untreated grave mental illness (borderline, narcissistic and/or anti-social personality disorders), bi-polyamorous sex addiction (including incest and pedophilia) and mythomania.

As a result of Ms. DiMella-Deem's and Ms. Eichen's misconduct, and the below described unconstitutional scheme, customs and practices, [Petitioner], a fit parent whose children are not abused or neglected, has not had any contact with his children since June 9, 2018 at 2:00 pm.

Pursuant to 22 NYCRR § 130-1.1(a), the filing of frivolous complaints is permitted in proceedings filed under Family Court Act, Article 8 (family offenses). Even fabricated allegations are permitted, in violation of a litigant's right to Due Process. 22 NYCRR § 130-1.1(c)(3).

On information and belief, the New York State Appellate Division, Second Department[1]has a custom and practice of not even attempting to

[1] The second Department contains slightly more than one-half of the State's population. (retrieved at http://www.courts.state.ny.us/courts/ad2/aboutthecourt.shtml, on May 5, 2020).

confirm the subject of an *ex parte* application (Target), typically the male, for a RO is unavailable before hearing the application, in violation of the Target's right to Due Process.

On information and belief, mothers file the vast majority of applications for *ex parte* ROs.

On information and belief, the Second Department [ha]s a custom and practice of issuing ROs without requiring the petitioner to meet statutory or constitutional standards required for ROs.

On information and belief, the Second Department has a custom and practice of requiring Targets of ROs to surrender all firearms to local law enforcement, even when based on frivolous allegations, in violation of the Target's Second Amendment rights.

New York State Family Court Act, § 842-a (7) requires courts to provide Targets a deprivation hearing, but no later than fourteen days after said RO is rendered.

On information and belief, the Second Department has a custom and practice of denying all discovery regarding ROs, in violation of the Target's right to Due Process.

On information and belief, the Second Department has a custom and practice of denying pre and post deprivation hearings for ROs, in violation of the Target's rights to

Parental Relations, Free Exercise of Religion, Second Amendment, Due Process and Equal Protection.

On information and belief, the Second Department has a custom and practice of invoking 18 U.S.C. §§ 2265 and 2266, compelling all State, tribal and territorial courts to give "full faith and credit" to ROs rendered within the Second Department because said Targets were given due process, when in fact they were not, in violation of the Target's right to Due Process.

On information and belief, the Second Department has a custom and practice of appointing attorneys for the child(ren) (AFC) in all family offense and contested matrimonial proceedings, even when the children are not abused or neglected, over fit parents' objections, in violation of the Target's right to Parental Relations.

On information and belief, AFCs have a custom and practice of raising the relative voice of one parent over the other, typically the female, in violation of the Target's, right to Free Speech.

On information and belief, the Second Department has a custom and practice of denying all custodial discovery to all litigants, including fit parents, in contested custody disputes, in violation of their rights to Free Speech, Due Process and Equal Protection. No such custom and practice exists in the Third or Fourth Departments.

On information and belief, the Second Department has a custom and practice of appointing forensic evaluators (FE) to control discovery and determine what recommendations and evidence will be obtained, considered or presented to the court, in violation of fit parents' rights to Parental Relations, Free Speech, Due Process and Equal Protection. No such custom and practice exists in the Third or Fourth Departments.

On information and belief, the Second Department has a custom and practice of compelling fit parents with sufficient means, as determined by the matrimonial courts without regard to statutory requirements, to pay the legal fees and expenses of the [AFCs and] FEs, in violation of fit parents' rights to Free Speech and under the Takings Clause. No such custom and practice exists in the Third and/or Fourth Departments.

In *N.Y.S. Bd. of Elections v. Lopez Torres*, the U.S. Supreme Court overruled this Court's affirmance that New York State's system of selecting judges was unconstitutional because selections are made by "political bosses." 522 U.S. 196, 128 S.Ct. 791, 169 L.Ed.2d 665 (2008). Justice Stevens, in his concurring opinion, quoted Justice Marshall's oft repeated statement that "The Constitution does not prohibit legislatures from enacting stupid laws."
[]
On information and belief, the vast majority of court appointed AFCs and FEs are closely

associated with or in fact are "political bosses" or "political elites," they use their court appointed positions to execute "political hits," and are permitted to ignore their legal obligations to the children by judges they either selected for the bench or can prevent their re-selection to the bench.

On information and belief, the Second Department's elaborate web of customs and practices is at base an elaborate scheme to separate fit parents from their money, [] by trick and deception, to the benefit of all involved except for targeted fit parents and their un-abused and un-neglected children.

On information and belief, litigants seeking *ex parte* ROs can purchase through their attorneys undue or political influence with court appointed AFCs, FEs and/or court personnel within the Second Department.

On information and belief, the Second Department's elaborate web of customs and practices uses judicial immunity to shield judges that enforce the aforementioned unconstitutional customs and practices from 42 U.S.C. § 1983 claims, because there is no material distinction in the caselaw between immunity for judges appointed pursuant to federal standards, or nearly equivalent thereto, as opposed to judges selected pursuant to "stupid" laws such as New York State's that permit, if not encourage, ongoing political influence in rendering decisions regarding fundamental constitutional rights.

On information and belief, New York State's system of selecting judges is unconstitutional because it permits, if not encourages or is designed to create, unconstitutional customs and practices.

On information and belief, New York State's system of disciplining judges is unconstitutional because it does not discourage judges from enforcing unconstitutional customs and practices.

On information and belief, New York State's system of selecting judges is unconstitutional because it has permitted the creation of a "super legislature" with the authority to enact and enforce unconstitutional customs and practices and usurp the powers of the rightfully elected state representatives.

On information and belief, the New York State Court of Appeals has knowledge of the aforementioned unconstitutional scheme, customs and practices, but is unable or unwilling to intervene.

On information and belief, the New York State Legislature has knowledge of the aforementioned unconstitutional scheme, customs and practices, but is unable or unwilling to intervene.

On information and belief, the matrimonial bar within the Second Department is aware of the aforementioned unconstitutional scheme,

> customs and practices, but has been silenced for fear of retaliation and being blackballed by the judges that enforce said unconstitutional customs and practices, or AFCs and FEs that may retaliate against their other clients.
>
> On information and belief, the aforementioned unconstitutional scheme, customs and practices overwhelmingly impacts fit fathers greater than fit mothers, of children that are not abused or neglected.
>
> Assuming, *arguendo*, [Petitioner] is mistaken, the Second Department does not have the aforementioned customs and practices, he has suffered the aforementioned misconduct individually.
>
> On information and belief, the deprivation of [Petitioner]'s aforementioned constitutional rights was a "political hit" bought and paid for by Ms. DiMella-Deem with the assistance of her prior counsel, Robin D. Carton, Esq., Carton & Rosoff PC, White Plains, New York.
>
> In light of the aforementioned, [Petitioner] is left with no other recourse but to seek federal court intervention in the instant and other matters for the protection of his rights and the health and well-being of his two young children who are already dealing with issues of parental abandonment.

On February 26, 2020, Petitioner also submitted excerpts from a transcript of the underlying family

offense proceedings. *Deem v. DiMella-Deem*, 19-1630 (2d Cir.), Plaintiff-Appellant's Supplemental Appendix, A-052-053 (Dkt. 140, pp. 4-5).

The excerpts provide,

> Ms. Eichen: [Petitioner] asked Judge Greenwald for discovery, which is not allowed in the Second Department orders of protection.
>
> []
>
> Mr. Deem: Your Honor, before we proceed, I just want the record to be clear that counsel stated, if I understood her correctly, that there is no discovery allowed for orders of protection in the Second Department. Is that accurate?

The family court refused to answer Petitioner's question.

Petitioner also submitted a letter drafted and filed by Respondent Eichen in Petitioner's matrimonial action that provided, in part, "A deposition of [a third party] is not warranted nor allowed in the Second Department." *Deem v. DiMella-Deem*, 19-1630 (2d Cir.), Plaintiff-Appellant's Supplemental Appendix, A-055 (Dkt. 140, p. 7).

On April 9, 2020, the Second Circuit affirmed in a summary order and held "[Petitioner]'s allegations in this case are nearly identical to the allegations we considered in his prior appeal." (3a) Costs were awarded to Respondents.

Facts

On July 13, 2018, Judge Gordon-Oliver, J.F.C., a respondent in *Deem v. DiMella-Deem, et al.*, No. 19-1111 (U.S.), recused herself *sua sponte*, then adjourned the underlying Article 8 family offense proceedings and extended the RO denying Petitioner and his children all contact with each other until September 13, 2018. The RO also required Petitioner to surrender his firearms. His statutory right to a post-deprivation hearing within fourteen days from the date the RO was entered, F.C.A., § 842-a (7), was summarily denied. To date, Petitioner has never received a post-deprivation hearing for any RO.

On September 13, 2018, Hal B. Greenwald, J.F.C., held a conference in the underlying family offense proceedings. Petitioner pressed his right to a post-deprivation hearing. Judge Greenwald refused to hear the matters until an attorney for the children (AFC) was appointed for each of Petitioner's two children, over his objections. The matter was adjourned and RO extended in court to November 9, 2018.

On November 9, 2018, said conference was held. Petitioner continued to press his right to a post-deprivation hearing and objected to the appointment of AFCs, particularly those that were appointed.[2] Judge

[2] One AFC was precluded from accepting "private pay" matters, like Respondent Miller in *Deem v. DiMella-Deem*, 19-1111 (U.S.), because his wife is an employee of the Westchester County Family Court. The AFC's wife also happens to be a former supervisor of Petitioner that was demoted, on information and belief, for subjecting Petitioner to a hostile work environment, in lieu of being terminated. The other AFC, on information and belief, is a close friend and political ally of another former female supervisor of Petitioner, and co-defendant in a civil rights lawsuit filed by

Greenwald "unappointed" both AFCs as a direct result of Petitioner's opposition during the conference. Petitioner also opposed the imposition of any RO, especially a "no contact" RO. During the conference Respondents DiMella-Deem and Eichen never raised the issue of extending the existing RO or entering a new RO. Judge Greenwald scheduled a fact-finding hearing for the underlying petitions and adjourned the conference. Petitioner left the courtroom believing he prevailed in his argument that no RO was warranted.

Respondents DiMella-Deem and Eichen waited for Petitioner to exit the courtroom, then requested an extension of the existing "no contact" RO. Judge Greenwald granted the request *ex parte*. Petitioner was neither informed of nor served with the new RO. The RO fraudulently provided that Petitioner "was advised in Court of issuance and contents of Order" and "Order personally served in Court upon [Petitioner]." *See*, RO dated November 9, 2018.

The next morning, November 10, 2018, believing no RO was in place, Petitioner texted his children that he loved them, missed them and would try to see them later that day. He presented to the local police department and requested an escort to the marital home. A police officer informed Petitioner that Respondent DiMella-Deem had just filed a complaint against him for violating the "no contact" RO signed the previous day. The officer showed Petitioner the fraudulent RO filed by Respondent DiMella-Deem and arrested Petitioner.

Petitioner contacted the chambers of Judge Greenwald and asked that the RO be corrected to

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Petitioner. *See, Deem v. Indelicato, et al.*, 7:09-cv-1842 (SCR) (voluntarily dismissed).

accurately reflect Petitioner was not advised in court of the issuance and contents of the RO, and the RO was not personally served upon him in court. Judge Greenwald's written response provided, "your request for a corrected [restraining] order is denied." The sole criminal charge was dismissed on default after several court appearances and review of the transcript of the family court conference on November 9, 2018. Said dismissal was prolonged due to Judge Greenwald's refusal to correct the RO.

From June 13, 2018 through January 8, 2019, no less than three ROs were issued against Petitioner. Each RO fraudulently invoked 18 U.S.C. §§ 2265 and 2266. Each RO was transmitted to https:www.ejustice.ny.gov and the National Instant Criminal Background Check System. The RO compelled all State, tribal or territorial courts to give full faith and credit to the referenced ROs because Petitioner "has or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect his rights." 18 U.S.C. § 2265. In fact, Petitioner was denied notice and opportunity to be heard, repeatedly.

Petitioner is without question a fit father. His children love him and want to have a relationship with him. However, they have been denied all contact with each other since June 9, 2018, at 2:00 p.m., after the last supervised visit. Petitioner has "no home, no money [and] no family," just as Respondent DiMella-Deem said would happen if he did not agree to take $10,000 as his share of the marital estate.

REASONS FOR GRANTING THE PETITION

I. LOWER FEDERAL COURTS MAY NOT REFUSE TO EXERCISE JURISDICTION OVER FEDERAL QUESTION CLAIMS IN THE ABSENCE OF A WARRANT TO DO SO FROM CONGRESS OR THIS HONORABLE COURT.

In *Dennis v. Sparks*, this Honorable Court held, "[p]rivate parties who corruptly conspire with a judge in connection with such conduct are thus acting under color of law within the meaning of § 1983." 449 U.S. 24, 29, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980). The holding is categorical. No exception is made for those who conspire with family court judges. Thus, § 1983 "provid[es] a remedy against those private persons who participate in subverting the judicial process [in family court] and in so doing inflict injury on other persons." *Dennis v. Sparks*, 449 U.S. at 32.

> In *Cohens v. Virginia*, Chief Justice Marshall famously cautioned, "It is most true that this Court will not take Jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. . . . We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. Among longstanding limitations on federal jurisdiction otherwise properly exercised are the so-called "domestic relations" and "probate" exceptions. Neither is compelled by the text of the Constitution or federal statute. Both are judicially created doctrines stemming in large measure from misty understandings of English

> legal theory. In the years following Marshall's 1821 pronouncement, courts have sometimes lost sight of his admonition and have rendered decisions expansively interpreting the two exceptions. In *Ankenbrandt v. Richards*, 504 U.S. 689 (1992), this Court reigned in the "domestic relations exception."

Marshall v. Marshall, 547 U.S. 293, 298-299, 126 S.Ct. 1735, 164 L.Ed.2d 480 (2006).

Here, as in *Ankenbrandt*, "the District Court *improperly refrained from exercising jurisdiction* over [Petitioner's] claim[s]." *Marshall v. Marshall*, 547 U.S. at 305 (emphasis added). Here, as in *Ankenbrandt*, there is "no Article III impediment to federal-court jurisdiction in domestic relations cases," *Id.*, at 306, or cases "on the verge of being matrimonial in nature." *See, Id.* Here, the Second Circuit, like the Ninth Circuit in *Marshall*, "had no warrant from Congress, or from decisions of this Court, for its sweeping [rule that denies federal question plaintiffs a federal forum]." *Marshall v. Marshall*, 547 U.S. at 299-300. A federal forum is guaranteed to Petitioner. *See, e.g. Dennis v. Sparks*, 449 U.S. at 32; *Knick v. Township of Scott, Pennsylvania*, 588 U.S. __, 139 S.Ct. 2162, 2167, 204 L.Ed.2d 558 (2019) ("[T]he guarantee of a federal forum rings hollow for [federal question] plaintiffs, who are forced to litigate their claims in state court.").

Finally, Petitioner sought sixteen forms of equitable relief; fourteen declaratory judgments and two injunctions. "[E]quitable jurisdiction is not to be denied or limited in the absence of clear and valid legislative command." *Porter v. Warner Holding Co.*, 328 U.S. 395, 398, 66 S.Ct. 1086, 90 L.Ed. 1332 (1946).

The Second Circuit's DRAD does not rely on any legislative command; clear, valid or otherwise. "And since the public interest is involved in a proceeding of this nature, those equitable powers assume an even broader and more flexible character than when only a private controversy is at stake." *Porter v. Warner Holding Co.*, 328 U.S. at 398.

The decision below should be reversed.

II. THE SECOND CIRCUIT'S DOMESTIC RELATIONS ABSTENTION DOCTRINE IS UNCONSTITUTIONALLY VAGUE.

> It is a basic principle of due process that an enactment [or judicially created doctrine] is void for vagueness if its prohibitions are not clearly defined. Vague laws [and judicially crafted rules] offend several important values. [W]e insist that laws [and court rules] give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.

See, Grayned v. *City of Rockford*, 408 U.S. 104, 108-109, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). The Second Circuit's DRAD is unconstitutionally vague for myriad reasons.

First, it fails to "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Grayned* v. *City of Rockford*, 408 U.S. at 108. For example, the Second Circuit held, "Our decision today is consistent with our unbroken practice of citing *American Airlines* when upholding, in unpublished decisions, the dismissal of both federal question and diversity cases involving domestic

relations disputes." *Deem v. DiMella-Deem*, 941 F.3d 618, 625 (fn. 1) (2d Cir. 2019). That decision is published. So, why did the Second Circuit affirm?

Also, the Second Circuit fails to explain the factors in determining whether a decision will be published or not. As such, federal question plaintiffs are unable to determine if they are willing to forego filing papers in federal court or risk the imposition of associated costs should their claims be dismissed, as in the instant matter.

Further, the Second Circuit has not clearly explained what it means by claims that are "on the verge of being matrimonial in nature." (4a) In *Schottel v. Kutyba*, the Second Circuit distinguished *Ankenbrandt* because "[Ankenbrandt's] tort claims were distinct from the domestic relationship." 06-1577-cv (2d Cir. Feb. 2, 2009). Therefore, the Court reasoned, the District Court was correct in not abstaining. *Id.*

However, in the instant matter, the Second Circuit affirmed the District Court's abstention even though Petitioner pleaded violations of his rights under the First, Second, Ninth and Fourteenth Amendments. Petitioner's claims, like Ankenbrandt's claims, are distinct from a domestic relationship. Indeed, Petitioner does not even have, nor has he ever had, a domestic relationship with Respondent Eichen.

Petitioner's claims involve material fraud by a judge and Petitioner's legal opponent, on every tribunal within the jurisdiction of this nation, and attendant damages. Those allegations are far removed from divorce, alimony or custody. Yet, they apparently fall within the Second Circuit's phrase "on the verge of being matrimonial in nature."

If the instant claims fall within the definition of that term, then any claim can fall within the definition

of that term, including actions that challenge 42 U.S.C. § 603, as written or as applied by the Office of Child Support Enforcement, the Administration for Children and Families, the U.S. Department of Health and Human Services or their partners. As such, the Second Circuit's judicially crafted doctrine is so egregiously vague that it also violates the separation of powers doctrine. *See, Sessions v. Dimaya*, 584 U.S. ___, 138 S.Ct. 1204, 1227, 200 L.Ed.2d 549 (2018) (Gorsuch, J., concurring in part and concurring in the judgment).

The decision below should be reversed.

III. PETITIONER DEMONSTRATED OBSTACLES TO THE FULL AND FAIR DETERMINATION OF IS FEDERAL QUESTION CLAIMS IN STATE COURT THAT PREVENT THE OPERATION OF THE SECOND CIRCUIT'S DOMESTIC RELATIONS ABSTENTION DOCTRINE.

In *Monroe v. Pape*, this Court cited the debates of the Civil Rights Act of 1871. 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961), *overruled in part on other grnds*, *Monell v. New York City Dept. of Soc. Srvcs.*, 436 U.S. 658, 98 S.Ct. 20118, 56 L.Ed.2d 611 (1978). The debates detailed the "lawless conditions existing [at the time]." *Monroe v. Pape*, 365 U.S. at 175. For example, Mr. Lowe of Kansas stated,

> [W]hile [judicial] whippings and lynchings and banishment have been visited upon unoffending American citizens[, including fathers and their children], the local administrations [and family courts] have been found inadequate or unwilling to apply the proper corrective. Combinations,

> darker than the night that hides them, conspiracies, wicked as the worst of felons could devise, have gone unwhipped of justice. Immunity is given to crime [and fabricated allegations], and the [fraudulent] records of the public tribunals are searched in vain for any evidence of effective redress.

Monroe v. Pape, 365 U.S. at 175.

Senator Osborn of Florida stated,

> That the State courts [] have been unable to enforce the criminal [or civil] laws [] or to suppress the disorders existing.

Monroe v. Pape, 365 U.S. at 176.

After considering arguments of other debaters the *Monroe* Court held,

> The debates were long and extensive. It is abundantly clear that one reason the legislation was passed was to afford a federal right *in federal courts* because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies.

Monroe v. Pape, 365 U.S. at 180 (emphasis added).

In the instant matter, Petitioner made equally compelling arguments why he cannot obtain a full and fair determination of his federal claims in state court. For example, Petitioner described in detail the specific

constitutional shortcomings of state courts, with references to the corresponding constitutional provisions that were violated. *See*, (6a-14a); Reply to Respondent DiMella-Deem's Letter Brief in Opposition. *Deem v. DiMella-Deem*, 19-1630 (2d Cir.) (Dkt. 96). He provided written admissions in open court by Respondent Eichen about the unavailability of discovery in state courts, and two judges' failure to rebut said admissions. *See*, *Deem v. DiMella-Deem*, 19-1630 (2d Cir.), Plaintiff-Appellant's Supplemental Appendix, A-051-055 (Dkt. 140, pp. 3-7). And, Petitioner referenced a custom and practice of entering fraudulent ROs. It is a matter of public record that New York State courts publish ROs through https:www.ejustice.ny.gov. *See*, N.Y.S. Division of Criminal Justice Services, eJusticeNY Integrated Justice Portal, Applications & Access (retrieved at https://nysamcc.com/DocumentCenter/View/390/1--EJustice--Court-Clerk-Basic, on May 1, 2020).

Petitioner's allegations should have been "construed liberally, accept[ed] as true, and [] all reasonable inferences [drawn] in [his] favor." *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002). With all due respect to the learned courts below, Petitioner was denied such a reading of his complaint.

Moreover, the Second Circuit held, "federal courts may properly abstain from adjudicating [federal question] actions in view of the greater interest and expertise of state courts in this field." *Deem v. DiMella-Deem*, 941 F.3d at 621. It is a matter of public record that the court from which Petitioner's claims arose is a court of limited jurisdiction. *Compare*, N.Y. Const., Art. VI, § 7(a) ("The supreme court shall have general jurisdiction"), *with*, § 13(b), (c) (enumerating the classes of actions, proceedings and matters over which the

family court has jurisdiction, and omitting federal civil rights claims). The family court cannot preside over federal civil rights claims. Therefore, the family court does not have any interest or expertise, let alone "greater interest or expertise" in Petitioner's federal civil rights claims.

In light of the above, Petitioner demonstrated insurmountable "obstacle[s] to the full and fair determination in state courts [of federal question claims]." *Deem v. DiMella-Deem*, *supra*, (3a). He was wrongfully denied his right to a federal forum for his federal question claims "to prevent even the probability of unfairness." *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 428, 115 S.Ct. 2227, 132 L.Ed.2d 275 (1995).

CONCLUSION

For the foregoing reasons Petitioner respectfully requests that this Honorable Court grant this Petition for Writ of Certiorari.

Respectfully submitted,

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