NO. 19-810

In the Supreme Court of the United States

AVTAR S. BADWAL,

Petitioner,

v.

RAMANDEEP BADWAL and
JEFFREY S. BROWN, In His Official and Personal Capacities,

Respondents.

On 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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AUGUST 20, 2019

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QUESTION PRESENTED

Pursuant to 42 U.S.C. § 1983, Judge Jeffrey Brown who presided over the Divorce hearing acted in a manner that created an impermissible risk of systemic judicial bias, thereby violating due process. The Question Presented is:

Can the Petitioner request and receive a new trial from the Matrimonial Judge in a Divorce case whom acted against him with bias because he filed a judicial complaint against him?

LIST OF PROCEEDINGS BELOW

United States Court of Appeals for the Second Circuit

Case No. 18-827

Avtar S. Badwal, Plaintiff-Appellant *v. Ramandeep Badwal, Jeffrey S. Brown, In His Official and Personal Capacity,* Defendants-Appellees.

Decision Date: March 12, 2019

Rehearing Denial Date: May 28, 2019

United States Court of Appeals for the Eastern District Court, Eastern District of New York

Case No. 17-CV-4310

Avtar S. Badwal, Plaintiff *v. Ramandeep Badwal, Jeffrey S. Brown, In His Official and Personal Capacity*, Defendants.

Decision Date: February 2, 2018

New York Court of Appeals

No. 2016-923

Ramandeep Badwal, Respondent *v.* *Avtar S. Badwal,* Appellant

Decision Date: November 22, 2019

Supreme Court of the States of New York
County of Nassau

No. 201751/06

Ramandeep Badwal, Respondent *v.*
Avtar S. Badwal, Appellant

Decision Date: November 22, 2016

New York Appellate Division, Second Judicial Dept.

20152013-06098 (N.Y. App. Div. 2015)

Ramandeep Badwal, Plaintiff, v.
Avtar S. Badwal, Defendant

Decision Date: October 2, 2015

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit, dated March 12, 2019 is included below at App.1a. The opinion of the United States District Court for the Eastern District Court, Eastern District of New York, dated February 2, 2019 is included below at App.5a.

JURISDICTION

The Second Circuit issued its final opinion on March 12, 2019 and denied a petition for rehearing on May 28, 2019. (App.13a) This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XI

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const., amend. XIV, § 1

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof,

are citizens of the United States and of the state wherein they reside. 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 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 or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof 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 for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

PRELIMINARY STATEMENT

Appellant believed the Matrimonial Judge in the Divorce case acted with bias against him because he filed a judicial complaint against him. He requests a new trial with a different unbiased Judge. Appellants brought this suit pursuant to 42 U.S.C. § 1983 claiming, inter alia, that the Judge who presided over his Divorce acted in a manner that created an impermissible risk of systemic judicial bias, thereby violating due process.

FACTUAL ALLEGATIONS AND DECISION BELOW

Appellant alleges that this is an action for declaratory and injunctive relief and damages, for actual, statutory damages brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983; the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. This is also under Title 42 U.S.C. § 1983 *et Seq.*, and violation of Section 8 Article 1 of the New York State Constitution and under common law and policy of the State of New York.

Facts

1. The factual history of this case is that my due process was violated and the State Court was bias and the decisions were prejudicial.

2. That upon information and belief there was a Prejudicial Order issued as a result of the Divorce proceedings.

3. That the Plaintiff/Appellant replies and respectfully asks this Honorable Court to grant his appeal and set up a schedule for discovery and for this matter to be decided on the merit because of the obvious bias of Jeffrey S. Brown and his abuse of judicial power. Judges should render decisions based on what the law states so as not to ensure mediocrity in the judiciary. That upon information and belief Jeffrey S. Brown tampered with the records and certain documents were removed from the records to purposely harm me. He should have recused himself from the matter. He showed lack of judicial knowledge and real understanding of the case. He purposely did everything he could to punish me. Instead of being a neutral umpire he descended onto the arena and showed personal hatred, bias and discriminatory tendencies towards me. That contrary to the Appellees response my ex-wife's property was actually purchased with my money and most of their false claims leave me speechless and I am very troubled by it. A lot of things were done wrong in this case and they are afraid of the exposure this will bring.

I pray this Honorable Court to grant my appeal and for this matter to proceed to discovery where I would be able to expose what actually happened in this matter. I really need much time as a Pro Se to do proper research in my case. This case is about violation of my Constitutional rights pursuant to Title 42 Section 1983 Fraud upon the Court pursuant to Title 28 Section 455a. In his response, he does not oppose the claims

at all, but rather immunity and he is not immune from fraud. *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981). The case leaves the Judge to pay damage award personally. *See, e.g., Zarcone v. Perry*, 572 F.2d 52 (2d Cir. 1978) Damage award upheld against judge who had a coffee and frankfurter vendor brought handcuffs to his chambers were the judge berated and threatened the vendor for selling a "putrid" cup of coffee. *See, Braatelien v. United States*, 147 F.2d 888, 895 (8th Cir. 1945) "Judicial title does not render its holder immune to crime even when committed behind the shield of judicial office." (Citation Omitted). *Vickrey v. Dunivan*, 59 N.M. 90, 279 P.2d 853 (1955) Justice of the peace, who tried motorist under a village ordinance he knew did not exist, and who offence, if any, occurred outside his village, was not empowered with jurisdiction and thus was not immune.

In order to implement the Civil Rights amendments, Congress enacted the Civil Rights Act of 1871 codified as 42 U.S.C. § 1983. Section 1983 imposes civil liability on "every person who under the color of state law causes another person within the jurisdiction of the United States deprivation of any rights, privileges or immunities secured by the Constitution and laws. Magistrate Pulliam was shock when in 1984; the Supreme Court ruled that she was liable for over $80,000 because her conduct caused private injury to a plaintiff—even though her actions were indisputably judicial acts within her subject jurisdiction. *Pulliam v. Allen*, 466 U.S. 522 (1984).

The provisions of the Bill of Rights now applicable to the States contain basic guarantees of a fair trial-

right to counsel, right to speedy and public trial, right to be free from use of unlawfully seized evidence and unlawfully obtained confessions, and the like. But this does not exhaust the requirements of fairness. "Due process of law requires that the proceedings shall be fair, but fairness is a relative, not an absolute concept . . . What is fair in one set of circumstances may be an act of tyranny in others." *Snyder v. Massachusetts*, 291 U.S. 97, 116, 117 (1934). *See also Buchalter v. New York*, 319 U.S. 427, 429 (1943). In order to declare a denial of it . . . [the Court] must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial." *Lisenba v. California*, 314 U.S. 219, 236 (1941). *Ex parte Young*, 209 U.S. 123, 159-60 (1908) (stating that the state official is "stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.") (citation omitted). In *Ex parte Young*, the Court held that the Eleventh Amendment does not bar suit against a state official acting in violation of federal law. Although often termed a legal fiction the doctrine is premised on the unassailable idea that a state cannot authorize its officials to violate the Constitution and laws of the United States. Thus, such an action is not considered an action of the state and cannot be shielded from suit by a state's immunity. Therefore, when this doctrine applies, a state officer can be sued for violating a mandatory federal duty. *See Hafer v. Melo*, 502 U.S. 21, 30 (1991) ("[S]ince *Ex parte Young,"* we said, 'it has been settled that the

Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law.'") (quoting *Scheuer v. Rhodes*, 416 U.S. 232,237 (1974)) (first alteration in original) (internal citation omitted); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984) (stating that the *Ex parte Young* doctrine is necessary "to permit the federal courts to vindicate federal rights and hold state officials responsible to 'the supreme authority of the United States'") (quoting *Ex parte Young,* 209 U.S. at 160). If such a suit is successful, the state officer may be held personally liable for damages under 42 U.S.C. § 1983 based upon actions taken in his official capacity. *See Hafer*, 502 U.S. at 30-31.

In the recent Third Circuit section 1983 case, fathers of minor children brought actions seeking declaratory and injunctive relief against various defendants, including state court judges, alleging that custody standards violated the Fourteenth Amendment. Finding *Rooker-Feldman* inapplicable, although ultimately ruling for the defendants, the Third Circuit pointed out that the plaintiffs did not challenge state court judgments but the underlying policy that governed them, namely, allegedly stripping parents of custody in favor of other parents without a plenary hearing and using an improper best-interests-of-the-child standard. *Allen v. DeBello*, 2017 WL 2766365 (3rd Cir. 2017). The Plaintiff/Appellant replies and respectfully asks this Honorable Court to grant his appeal and set up a schedule for discovery and for this matter to be decided on the merit because of the obvious bias of Jeffrey S. Brown and his abuse of judicial power. Judges should render decisions based on what the law

states so as not to ensure mediocrity in the judiciary. That upon information and belief Jeffrey S. Brown tampered with the records and certain documents were removed from the records to purposely harm me. He should have recused himself from the matter. He showed lack of judicial knowledge and real understanding of the case. He purposely did everything he could to punish me. Instead of being a neutral umpire he descended onto the arena and showed personal hatred, bias and discriminatory tendencies towards me. That contrary to the Appellees response my ex-wife's property was actually purchased with my money and most of their false claims leave me speechless and I am very troubled by it. A lot of things was done wrong in this case and they are afraid of the exposure this will bring.

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pointed out that the plaintiffs did not challenge state court judgments but the underlying policy that governed them, namely, allegedly stripping parents of custody in favor of other parents without a plenary hearing and using an improper best-interests-of-the-child standard. *Allen v. DeBello,* 2017 WL 2766365 (3rd Cir. 2017). Plaintiff's due process was violated without valid notice and hearing.

5. The actions specified here amounts to violations of the United States Constitution and federal and local civil rights laws. Plaintiffs seek a declaratory judgment, injunctive and equitable relief and compensatory damages and costs.

6. That this was a matrimonial action in the Supreme Court Mineola, Nassau County in the State of New York before Judge Jeffrey Brown. The Judge violated Plaintiff's civil rights because the Plaintiff filed a grievance and to which he believed the Judge took personal to deny him equal protection under the law. I believe that as a result of this, Judge Jeffrey Brown abused his Judicial office and power and instead of being an unbiased arbiter decided to descend into the arena and to dust himself and he made the fight between me and him instead of my ex-wife Ramandeep Badwal.

7. That the on the issue of the equitable distribution and with regard to the property located at 110-30 62 Drive, Forest Hills, NY was sold for about $780,000.00 even though the property was worth more than $899,000 or even appraised more and plaintiff received nothing from the sale because my rights were trample by Judge Jeffrey Brown as a vendetta.

That upon this Judge Jeffrey Brown did not conduct proper hearing and gave the marital property located at 304 Brymawar Road, New Hyde Park, NY completely to Ramandeep Badwal and leaving me with no compensation.

8. That Plaintiff paid for the School expenses of Ramandeep Badwal who acquired Bachelor of Nursing degree during the marital period and because Judge Jeffrey Brown was biased, he failed to consider that I was entitled to that certificate and her pensions.

9. That in addition the marital bank account of about $32,000 was given to Ramandeep Badwal and I received nothing. The injustice here was so glaring that would shock any fair minded person. That upon all these I was left with marital debts. They fail to properly allocate money for the hotel sale. That Judge Jeffrey Brown did everything intentionally to deny me due process.

That I believe that proper records were not maintained in my case and that I was denied due process.

The child support payments were wrongfully calculated as a way to punish me.

The Court did not give me the credit that I invested in the Taxi business. When the Medallion was sold it was invested in the Diamond Motel, Abilene, Kansas. They failed to divide the funds 50/50 and equitably. Facts were misrepresented by Judge Jeffrey Brown with claim that Mr. Badwal did not recall the Prudential loan when he presented real proof the $29,000 was borrowed and I was never credited for the amount.

The Court system is skewed against certain people who have personality clash with the State Court Judges

and some courts are wracked with systemic bias that infected some Judges opinions and decisions.

ARGUMENT

I. DUE PROCESS REQUIRES AN UNBIASED DECISION-MAKER

The Due Process Clause of the Fourteenth Amendment provides that no state may "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The protections of the Due Process Clause attach to licenses essential to the pursuit of an occupation, including the taxi licenses at issue in this case. *See Bell v. Burson*, 402 U.S. 535, 539 (1971). "A fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955). Accordingly, "under the Due Process Clause no judge can be a judge in his own case or be permitted to try cases where he has an interest in the outcome." *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 822 (1986) (quoting *In re Murchison*, 349 U.S. at 136) (internal quotations and alterations omitted).

A hearing before a tribunal with a financial stake in the proceeding's outcome does not comport with the requirements of due process. *See Gibson v. Berryhill*, 411 U.S. 564, 579 (1973); *Ward v. Vil. of Monroeville*, 409 U.S. 57, 59 (1972); *Tumey v. Ohio*, 273 U.S. 510, 522 (1927). In *Tumey v. Ohio*, the Supreme Court held that a judge would be deemed impermissibly biased where he maintained a "direct, personal, substantial pecuniary interest" in the case before him.

Tumey, 273 U.S. at 523. In *Tumey*, the mayor of the town, sitting as a judge, received a portion of the fines that he assessed. *Id.* at 520. The Court found that even if the mayor's decision-making was unaffected by this conflict of interest, it was the mere possibility of temptation that violated due process. *Id.* at 535; *see also Caperton v. A.T. Massey Coal Co.*, 129 S.Ct. 2252, 2260 (2009) (discussing *Tumey*).

There is no requirement that a judge's pecuniary interest be "as direct or positive as it appeared in *Tumey*," to violate due process. *Gibson*, 411 U.S. at 579; *see also Caperton*, 129 S.Ct. at 2265. For example, in *Gibson v. Berryhill*, the Court found that due process was violated where a license revocation proceeding was presided over by the Alabama State Optometry Board, whose members stood to gain financially by limiting the number of practicing optometrists in the state. 411 U.S. at 578. It is clear that this due process analysis "applies to administrative agencies which adjudicate as well as to courts." *Withrow v. Larkin*, 421 U.S. 35, 46-47 (1975). When it comes to evaluating whether the financial interest of a tribunal in the outcome of a case violates due process, a court need not determine whether the tribunal was in fact biased; rather, the proper constitutional inquiry is whether, under the circumstances, the decision-maker's financial interest "would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true." *Caperton*, 129 S.Ct. at 2264 (quoting *Tumey*, 273 U.S. at 532). A judge's interest in a case will disqualify him from sitting in judgment when "under a realistic appraisal of psychological tendencies and human weakness, the [judge's] interest poses such a risk of actual bias or prejudgment

that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Caperton*, 129 S.Ct. at 2264 (quotations omitted).

If Appellants' allegations are true, then there was systemic bias built into the challenged TLC hearing procedures, thus raising serious due process concerns. Because the alleged "pay-to-play" system would have affected every ALJ employed by the TLC, it follows that there exists a triable issue of fact as to whether the ALJs presiding over the Appellants' hearings had a constitutionally impermissible interest in the outcome of their cases.

II. WHETHER THE AVAILABILITY OF AN ARTICLE 78 PROCEEDING SATISFIES DUE PROCESS DEPENDS ON THE NATURE OF THAT PROCEEDING, AND THE PROCEEDING AVAILABLE TO APPELLANTS WAS INSUFFICIENT TO CHALLENGE THE ALLEGED SYSTEMIC BIAS IN THEIR ADMINISTRATIVE HEARINGS.

In the decision below, the court relied on *Locurto v. Safir*, 264 F.3d 154 (2d Cir. 2001) to hold, for due process purposes, that "an Article 78 proceeding . . . is sufficient for claims that the agency adjudicator was biased and prejudged the outcome or that ex parte communications with other officials may have infected the adjudicator's ruling." Mag. J. R. & R. at 23 (also citing *Nuebe v. Daus*, 665 F.Supp.2d 311 (S.D.N.Y 2009)). The Association respectfully submits that this conclusion was based on a misreading of *Locurto* and a failure to distinguish among the various forms of Article 78 proceedings, with the result that serious due process claims— based on allegations of systemic judicial bias—could go unheard by a neutral tribunal. Appellants' allegations of systemic bias—including

direct financial incentives and a 100% success rate for the TLC—plainly distinguish this case from the ordinary administrative proceeding, where ALJs are merely employed by the agency whose actions are being challenged.

A. *Locurto* Requires a Full Adversarial Hearing in Order to Satisfy Due Process.

In *Locurto v. Safir*, this Court held that the presence of a biased decision-maker at a pre-termination administrative hearing was not a violation of due process so long as "the state affords [the petitioner], subsequent to his termination, a full adversarial hearing before a neutral adjudicator." 264 F.3d at 174. This Court went on to explain that such a hearing must afford the petitioner the opportunity to submit new evidence and "have a trial of . . . disputed issues, including constitutional claims." *Id.* The plaintiffs in *Locurto* did not dispute the court's finding that an Article 78 proceeding would satisfy these requirements. *Id.*

B. Whether an Article 78 Proceeding Satisfies Due Process Depends Critically on the Type of Proceeding Available Under the Circumstances.

Article 78 of the New York Civil Practice Law and Rules ("CPLR") permits a special proceeding to challenge agency action. *See Campo v. New York City Emp. Ret. Sys.*, 843 F.2d 96, 101 (2d Cir. 1988). An Article 78 proceeding may provide relief previously available through the common law writs of (1) certiorari, (2) mandamus to review, (3) mandamus to compel, and (4) prohibition. *See* CPLR 7801. Although these common law writs have now been consolidated into a

single type of proceeding, the scope of review of the agency action challenged in an Article 78 proceeding varies significantly depending upon which type of relief is sought. Importantly, not all types of proceeding afford the "full adversarial hearing"—with an opportunity to submit new evidence and "have a trial of . . . disputed issues"—critical to the holding in *Locurto*, 264 F.3d at 174. As such, a due process claim like the Appellants' cannot be dismissed simply on the ground that an Article 78 proceeding was available to them; the nature of the available proceeding should be a critical component of the determination.

An Article 78 proceeding challenging a denial or termination of a license will necessarily fall within the relief previously sought by the writs of certiorari or mandamus to review. If the challenge is made after a quasi-judicial evidentiary hearing, then it is in the character of certiorari review; if the challenged agency action did not involve a hearing at the agency level, then the Article 78 proceeding is in the form of mandamus to review. *See* David D. Siegel, New York Practice § 561 at 927 (3d ed. 1999). This distinction is critical, as the scope of the Article 78 court's review differs significantly between the two types of proceeding. We do not, therefore, address the other types of Article 78 proceeding, mandamus to compel and prohibition. the form of mandamus to review could satisfy the requirements set forth in *Locurto*.

The inquiry under certiorari review is whether the agency decision is supported by substantial evidence in the record below. *See* CPLR 7803; *Yarbough v. Franco*, 95 N.Y.2d 342, 347 (2000); *see also Pell*, 34 N.Y.2d at 230. Certiorari entails a limited review of

the ALJ's findings, and does not permit introduction of new evidence on appeal. *See* CPLR 7803(4). Certiorari is "confined to the facts and record adduced before the agenc[y]." *Yarbough v. Franco*, 95 N.Y.2d 342, 347 (2000); *see also Pell v. Board of Educ.*, 34 N.Y.2d 222, 230 (1974). This means that an Article 78 court on certiorari has no power to make new factual findings, *see Kelly v. Safir*, 96 N.Y.2d 32, 38 (2001), to disturb the credibility determinations of the hearing officer, *see Berenhaus v. Ward*, 70 N.Y.2d 436, 443-44 (1987); *Rodriguez-Rivera v. Kelly*, 2 N.Y.3d 776, 777 (2004), or "to review the facts generally as to weight of evidence, beyond seeing to it that there is substantial evidence." *Pell*, 34 N.Y.2d at 230. This is true even where petitioner has alleged judicial bias at the agency hearing itself. *See Hughes v. Suffolk county Dep't of Civil Serv.*, 74 N.Y.2d 833, 834, *amended*, 74 N.Y.2d 942 (1989). A proceeding in the character of mandamus to review, on the other hand, provides a plenary review of whether the agency action was contrary to law or arbitrary and capricious. *See* CPLR 7803. Where issues of fact are raised by the parties' affidavits, a trial may be held to determine whether an agency's decision was arbitrary and capricious. *See* CPLR 7804(h); *In re Pasta Chef, Inc. v. State Liquor Auth.*, 389 N.Y.2d 72, 74-75 (App. Div. 4th Dept. 1976) (holding that trial court's evidentiary hearing of Article 78 seeking mandamus to review was not in error). In such a trial, the Article 78 court could develop a record and make its own factual findings. *See, e.g.*, *Lakeshore Nursing Home v. Axelrod*, 586 N.Y.S.2d 433, 438 (App. Div. 3d Dept. 1992). The above descriptions make clear that, as between certiorari and mandamus to review, only the latter type of

proceeding could meet *Locurto's* requirement of "a full adversarial hearing before a neutral adjudicator." 264 F.3d at 174. In a certiorari review, the Article 78 court may not hold a new trial, but instead is limited to a review of the record developed at the hearing. It may not make new factual findings, substitute its judgment for the agency's, or overturn credibility determinations. While the court might identify blatant individualized bias appearing on the record below, it is difficult to see how such a proceeding could address claims that more insidious or systemic bias infects the whole administrative process.

The need for access to a mandamus-to-review-type Article 78 proceeding in order to comport with *Locurto's* requirements is consistent with a line of cases in which this Court found that the availability of an Article 78 proceeding was sufficient to provide due process where no evidentiary hearing was held at the agency level, given that Article 78 afforded plaintiffs subsequent access to such a hearing on their claims. *See Interboro Inst., Inc., v. Foley*, 985 F.2d 90, 93-94 (2d Cir. 1993); *see also, e.g., Campo*, 843 F.2d at 102-03; *Hellenic Am. Neighborhood Action Comm. v. City of New York*, 101 F.3d 877, 881 (2d Cir. 1996); *Beechwood Restorative Care Ctr. v. Leeds*, 436 F.3d 147, 156-7 (2d Cir. 2006). It would be inappropriate to extend *Locurto* to conclude that a certiorari-type Article 78 proceeding —with no evidentiary hearing and no new fact-finding —is sufficient to address allegations of systemic violations of due process at quasi-judicial hearings. There is a separate line of Second Circuit cases finding that the availability of a certiorari-type Article 78 proceeding can suffice to prevent a due process violation, but these cases involve challenges to random or unauthor-

ized conduct rather than deprivations resulting from established state policies or procedures. *See Vargas v. City of New York*, 377 F.3d 200.

C. Appellants Did Not Have Access to the Proceeding That Met the Requirements of *Locurto.*

The Appellants in this case did not have access to a proceeding that satisfied the requirements in *Locurto. See* 264 F.3d at 174. Since they all received quasi-judicial evidentiary hearings in front of the TLC, any Article 78 proceeding that they could have brought would have been in the character of a certiorari review, and the record reviewed by the Article 78 court would have been limited to the record adduced in front of the TLC in each individual driver's case.

The Appellants' due process claims rest on their contention that their termination hearings were tainted by systemic bias. The bias they allege is insidious in nature, reflected in the per diem compensation rate for ALJ termination decisions, the hidden pressures on the ALJs to rule in favor of the TLC, and aggregate numbers indicating a 100% ALJ decision rate in (2d Cir. 2004); *Munafo v. Metropolitan Transp. Auth.*, 285 F.3d 201, 214 (2d Cir. 2002). In due process challenges to random or unauthorized conduct, the only issue to be decided is whether the state has provided an adequate post-deprivation remedy. *See Gudema v. Nassau County*, 163 F.3d 717, 724-25 (2d Cir. 1998). Such an inquiry has no place where, as here, the authorized procedures are themselves the subject of the challenge and the issue is whether the plaintiffs have received due process in the first instance. *See Zinermon v. Burch*, 494 U.S. 113, 136 (1990). favor of

the TLC. If Appellants were unable, in the context of their individual administrative proceedings before the TLC, to depose their ALJs or obtain the agency documents and email messages produced during discovery in their federal court action, they would not even have been able to properly allege the bias claim in an Article 78 proceeding. The Article 78 court would have been powerless to supplement the record, or overturn the credibility and factual determinations made by allegedly biased ALJs. Nor could the Article 78 court have addressed the weight of the evidence or overturned the discretionary determinations made by allegedly biased ALJs. *Locurto* should not be extended to a case like this one, where only certiorari review was available. Had Appellants availed themselves of Article 78, they would not have been able to enter new evidence, develop a record or have a trial to determine whether bias so infected their revocation hearings as to violate due process. Such a proceeding would not have It is possible that the *Locurto* plaintiffs erred in conceding that Article 78 afforded them access to a "full adversarial proceeding." *See Locurto*, 264 F.3d at 174. Like the Appellants here, the plaintiffs in *Locurto* had pre-termination hearings, *Locurto*, 264 F.3d at 160, and as such would likely have been permitted only a certiorari-type Article 78 review, which does not provide for new evidence or a trial of disputed constitutional issues. *See* CPLR 7803(4). In any event, Appellants have made no similar concession here, and we are unaware of any basis upon which they could bring an Article 78 proceeding in the nature of mandamus to review. provided the "full adversarial hearing" required by *Locurto*; rather such an Article 78 proceeding would be more in the character of an

appeal, and insufficient as a constitutional matter to provide due process. *See Ward v. Village of Monroeville*, 409 U.S. 57 (1972). We respectfully submit that this was not the intended result of *Locurto*, and urge the Court to permit Appellants' Section 1983 claims to proceed so as to provide an adequate forum to hear their allegations of systemic judicial bias.

In *Ward v. Village of Monroeville*, the Supreme Court invalidated traffic violation convictions obtained where the mayor of Monroeville sat as the trier of fact. *See* 409 U.S. at 57-58. The court found that the mayor, as chief executive of the municipality that stood to benefit financially from the convictions, was not an impartial decision-maker and, therefore, the convictions violated due process. *Id.* at 60. The village argued that "any unfairness at the trial level [could] be corrected on appeal and trial de novo in the County Court of Common Pleas." *Id.* at 61. The Court rejected this reasoning, holding that "Petitioner is entitled to a neutral and detached judge in the first instance." *Id.* at 62. This requirement was reaffirmed and extended to the administrative context by a unanimous court in *Gibson v. Berryhill*, 411 U.S. at 579. In *Gibson*, the availability of de novo review under state law did not alter the fact that the Board proceedings themselves violated due process. *Id.* That the plaintiff optometrists could have sought de novo review in state court did not mitigate the fact that the license revocation hearings were themselves heard by a tribunal with a financial stake in the outcome. *Id.* at 578. The Plaintiff/Appellant replies and respectfully asks this Honorable United States Supreme Court to grant his appeal and set up a schedule for discovery and for this matter to be decided on the merit

because of the obvious bias of Jeffrey S. Brown and his abuse of judicial power. Judges should render decisions based on what the law states so as not to ensure mediocrity in the judiciary. That upon information and belief Jeffrey S. Brown tampered with the records and certain documents were removed from the records to purposely harm me. He should have recused himself from the matter. He showed lack of judicial knowledge and real understanding of the case. He purposely did everything he could to punish me. Instead of being a neutral umpire he descended onto the arena and showed personal hatred, bias and discriminatory tendencies towards me. That contrary to the Appellees response my ex-wife's property was actually purchased with my money and most of their false claims leave me speechless and I am very troubled by it. A lot of things were done wrong in this case and they are afraid of the exposure this will bring. I pray this Honorable Court to grant my appeal and for this matter to proceed to discovery where I would be able to expose what actually happened in this matter. I really need much time as a Pro Se to do proper research in my case. This case is about violation of my Constitutional rights pursuant to Title 42 Section 1983 Fraud upon the Court pursuant to Title 28 Section 455a. In his response, he does not oppose the claims at all, but rather immunity and he is not immune from fraud. *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981). The case leaves the Judge to pay damage award personally. *See, e.g., Zarcone v. Perry*, 572 F.2d 52 (2d Cir. 1978) Damage award upheld against judge who had a coffee and frankfurter vendor brought handcuffs to his chambers were the judge berated and threatened the vendor for

selling a "putrid" cup of coffee. *See, Braatelien v. United States*, 147 F.2d 888, 895 (8th Cir. 1945) "Judicial title does not render its holder immune to crime even when committed behind the shield of judicial office." (Citation Omitted). *Vickrey v. Dunivan*, 59 N.M. 90, 279 P.2d 853 (1955) Justice of the peace, who tried motorist under a village ordinance he knew did not exist, and who offence, if any, occurred outside his village, was not empowered with jurisdiction and thus was not immune.

In order to implement the Civil Rights amendments, Congress enacted the Civil Rights Act of 1871 codified as 42 U.S.C. § 1983. Section 1983 imposes civil liability on "every person who under the color of state law causes another person within the jurisdiction of the United States deprivation of any rights, privileges or immunities secured by the Constitution and laws. Magistrate Pulliam was shock when in 1984; the Supreme Court ruled that she was liable for over $80,000 because her conduct caused private injury to a plaintiff—even though her actions were indisputably judicial acts within her subject jurisdiction. *Pulliam v. Allen*, 466 U.S. 522 (1984). The provisions of the Bill of Rights now applicable to the States contain basic guarantees of a fair trial-right to counsel, right to speedy and public trial, right to be free from use of unlawfully seized evidence and unlawfully obtained confessions, and the like. But this does not exhaust the requirements of fairness. "Due process of law requires that the proceedings shall be fair, but fairness is a relative, not an absolute concept . . . What is fair in one set of circumstances may be an act of tyranny in others." *Snyder v. Massachusetts*, 291 U.S. 97, 116, 117 (1934). *See also Buchalter v. New York*, 319 U.S.

427, 429 (1943). In order to declare a denial of it . . . [the Court] must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial." *Lisenba v. California*, 314 U.S. 219, 236 (1941). *Ex parte Young*, 209 U.S. 123, 159-60 (1908) (stating that the state official is "stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.") (citation omitted). In *Ex parte Young*, the Court held that the Eleventh Amendment does not bar suit against a state official acting in violation of federal law. Although often termed a legal fiction the doctrine is premised on the unassailable idea that a state cannot authorize its officials to violate the Constitution and laws of the United States. Thus, such an action is not considered an action of the state and cannot be shielded from suit by a state's immunity. Therefore, when this doctrine applies, a state officer can be sued for violating a mandatory federal duty. *See Hafer v. Melo*, 502 U.S. 21, 30 (1991) ("[S]ince *Ex parte Young*," we said, 'it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law.'") (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 237 (1974)) (first alteration in original) (internal citation omitted); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984) (stating that the *Ex parte Young* doctrine is necessary "to permit the federal courts to vindicate federal rights and hold state officials responsible to 'the supreme authority of

the United States'") (quoting *Ex parte Young*, 209 U.S. at 160). If such a suit is successful, the state officer may be held personally liable for damages under 42 U.S.C. § 1983 based upon actions taken in his official capacity. *See Hafer*, 502 U.S. at 30-31.

In the recent Third Circuit section 1983 case, fathers of minor children brought actions seeking declaratory and injunctive relief against various defendants, including state court judges, alleging that custody standards violated the Fourteenth Amendment. Finding *Rooker-Feldman* inapplicable, although ultimately ruling for the defendants, the Third Circuit pointed out that the plaintiffs did not challenge state court judgments but the underlying policy that governed them, namely, allegedly stripping parents of custody in favor of other parents without a plenary hearing and using an improper best-interests-of-the-child standard. *Allen v. DeBello*, 2017 WL 2766365 (3rd Cir. 2017).

CONCLUSION

In light of the law discussed above, the Appellant-Plaintiff respectfully asks that the decision of the United States Supreme Court be reversed to permit Appellant's Section 1983 claims of alleged judicial bias to proceed and/or in the alternative to order a new trial.

Respectfully submitted,

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