

No. _____

In The
Supreme Court of the United States

ISAAC M. NSEJJERE,

Petitioner,

v.

REUBEN SMITH and ADEN SMITH,

Respondents.

**On Petition For A Writ Of Certiorari
To The Court Of Appeals Of Washington,
Division 1**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is a state action constitutional when it leads to deprivation by denying a process that is “due”, and premised on *unequal* protection under the law?
2. Does a state’s failure to follow its own rules and principles that have been established in a system of jurisprudence violate constitutional due process when such failure leads to “depriv[ation]”?

PARTIES TO THE PROCEEDING

- I. Petitioner is Isaac Nsejjere.
- II. Respondents are Reuben Smith and Aden Smith, jointly as husband and Wife.

RELATED CASES

Bass v. Robinson, No. 97-1326, U.S. Court of Appeals for the Sixth Circuit. Judgment entered February 24, 1997.

Bogart v. Chapell, No. 03-2092, U.S. Court of Appeals for the Fourth Circuit. Judgment entered July 16, 2003.

Perez v. Miami Dade County, No. 01-15132, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered May 8, 2001.

Vail v. Board of Education of Paris Union School District, No. 82120, U.S. Court of Appeals for the Seventh Circuit. Judgment entered April 19, 1983.

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PETITION FOR WRIT OF CERTIORARI

Isaac M. Nsejjere respectfully petitions for a writ of certiorari to review the decision of The Supreme Court of The State of Washington in this case.

DECISION AND OPINION BELOW

The decision of the Washington State Supreme Court denying the petition for reviewing en banc is not published but is included in Petitioner's Appendix. Pet. App. A. The opinion of the Washington State Appeals Court second district affirming Superior Court of Snohomish County Judgment is not published but is included in (Pet. App. B). The Order of the Superior Court of Washington for the county of Snohomish is not published but is included in (Pet. App. C).

JURISDICTION

The court of appeals entered its Opinion on April 22nd, 2019. Pet. App. B. Petitioner Nsejjere filed a timely petition for reviewing en banc. On October 3rd, 2019, Washington State Supreme Court denied the petition for review. Pet. App. A. This Court's jurisdiction is invoked **under 28 U.S.C. § 1254(1)**.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

U.S. Const. amend. XIV.

The Fourteenth Amendment to the United States Constitution accords a party the right to a fair and open hearing. The Due Process Clause also encompasses a third type of protection, ***a guarantee of fair procedure.***

Appeals court opinion contravened this Court's decision in *Parratt*, 451 U.S., at 537; *Carey v. Piphus*, 435 U.S. 247, 259 (1978). The procedural component of the Due Process Clause requires the State to formulate [a]nd follow procedural safeguards to satisfy the dictates of fundamental fairness and the due process clause. *Ante*, at 127.¹

INTRODUCTION

In procedural due process claims, the deprivation by state action of a constitutionally protected

¹ Legal procedures were "UNEQUALLY" applied to petitioner, and thus led to what the Fourteenth Amendment seeks to prevent, i.e., **unfair procedure**. Pursuant to Fed. R. Civ. P. 36(a), court's denial to deem petitioner's request for admission "admitted" after 30 days from service and absent an answer and/or motion constitutes unequal protection under the law, [a]nd **contrary to the mandate of the Fourteenth Amendment** – state failure to follow its rules and principles that have been established in a system of jurisprudence; let alone the obvious **abuse of discretion**. *Koon v. United States*, 518 U.S. 81, 100 (1996).

interest in “life, liberty, or property” ***is not in itself unconstitutional; what is unconstitutional is the*** deprivation of such an interest *without due process of law*. *Parratt*, 451 U.S., at 537; *Carey v. Piphus*, 435 U.S. 247, 259 (1978).

The phrase due process embodies society’s basic notions of legal fairness. Legal procedures are devoid of legal fairness if they are “unequally” applied and thus violate the fairness doctrine championed by the Fourteenth Amendment.

The course of legal proceedings according to rules and principles that have been established in a system of jurisprudence for the enforcement and protection of private rights, i.e., due process, was unlawfully denied to petitioner Nsejjere **because Request for admission and treatment of its violations is part of this course of legal proceedings.**² The *Fourteenth Amendment* mandates that the State of Washington is subject to a federally enforceable due process restraint on its legislative and procedural activities, which at core, is the equal protection under the law that was – in this case – violated and now leads to two constitutional questions:

² Failure to comply with state or local procedural requirements does not necessarily constitute a denial of due process; the alleged violation must result in a procedure which itself falls short of standards derived from the Due Process Clause. *Ward v. Anderson*, 494 F.3d 929, 935 (10th Cir. 2007). The specific standards here are “fair procedure and unequal” protection of the law.

- 1. Is a state action that is in part imaged after federal law constitutional when it denies a process that is “due”?**

Here, the process that was “due,” which would have presented Petitioner’s reasons to the state not to take the action *and thus treat the proceeding as breach of Bailment agreement* – was deeming request for admission “admitted” after 30 days absent an answer and/or motion. Fed. R. Civ. P. 36. The consensus is that requests for admission were NEVER deemed “admitted” and thus never considered for purposes of the trial. Notably, the denial to deem them “admitted” was the exact opposite of [**h**]ow the state applies the same law **to** other parties. *Ag Sales v. Klose*, 199 Mont. 400, 404-05, 649 P.3d 477, 499 (1982); *Bronski v. Rite Aid Corp.*, 4th Dist. – hence the exceptional constitutional violation of due process and violation of “equal” protection under the law.

- 2. Does a state’s failure to follow its own rules and principles that have been established in a system of jurisprudence violate constitutional due process when such failure leads to “depriv[ation]”?**

The deprivation here (denial to deem Nsejjere’s request for admission “admitted” after 30 days – a well-established rule/system of jurisprudence) is not only abuse of discretion but is also “unauthorized” in the sense that it was not an act sanctioned by state law, but, instead, was a “depriv[ation] of constitutional rights to fair trial because Nsejjere’s **reasons why the**

proposed action should not be taken were NEVER considered for purposes of trial . . . ” *Monroe*, 365 U.S. 167, 172 (1961).

For these reasons, more fully explained below, the petition for writ of certiorari should be granted.³

STATEMENT OF THE CASE

Parties entered a **Bailment Agreement** in December 2015.

In March 2016, respondents **unilaterally** changed the bailment agreement to tenancy agreement, as evidenced, among other items, by respondents' own trial brief (CP 152 at 23). Respondents then sued petitioner for unlawful detainer.

Petitioner answered respondents' complaint alleging that the state should not take the action because the relationship was that of **Bailor/Bailee** and not landlord/tenant. Critically – petitioner properly propounded request for admission in the quest to support his defense as he sought to exercise his right to due process.

³ Respective to “required procedures” mandated by constitutional due process, Justice Henry Friendly asserted – and is supported by *Mathews v. Eldridge* that the opportunity to present **reasons why the proposed action should not be taken** is paramount. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Respondents acknowledged receipt of the properly propounded request for admission, but – failed to answer after 30 days. *Petitioner pled that trial court deems request for admission “admitted” after 30 days pursuant to CR 36; Fed. R. Civ. P. 36, and consistent with the well settled precedence on both state and federal level.*

Contrary to this and to [h]ow the court applies the same law to other litigants, the court denied deeming request for admission “admitted” after 30 days and thus expressly violating “**equal**” protection of the law guaranteed under the Fourteenth Amendment. Lower court’s resolution of the question directly conflicts with the decisions of other courts. This court’s authoritative voice in asserting **nationwide uniformity** is needed.

This unequal discharge of the law and failure of state agents to follow their own established rules and procedures are venomous acts to jurisprudence, and if left to stand, would incubate judicial decay. Accordingly, court’s authoritative voice is urgently needed.

REASONS FOR GRANTING THE PETITION

- I. Certiorari should be granted because the conflicting precedence adopted by appeals court and upheld by state supreme court will have an exceedingly significant nationwide impact to the constitutional right to equal protection of the law.**

“The action of state courts depriving parties of other substantive rights . . . has, of course, long been regarded as a denial of the due process of law guaranteed by the Fourteenth Amendment.” *Brinkerhoff-Faris Trust Savings Co. v. Hill*, *supra*. Cf. *Pennoyer v. Neff*, 95 U.S. 714 (1878).

“To determine whether a constitutional violation has occurred, it is necessary to ask what process the State provided, and whether it was constitutionally adequate; this inquiry examines the procedural safeguards built into the statutory or administrative procedure of effecting the alleged deprivation.” *Zinermon v. Burch*, 494 U.S. 113 (1990)

In procedural due process claims, the deprivation by state action of a constitutionally protected interest in “life, liberty, or property” ***is not in itself unconstitutional; what is unconstitutional is the*** deprivation of such an interest *without due process of law*. *Parratt*, 451 U.S., at 537; *Carey v. Piphus*, 435 U.S. 247, 259 (1978) (“Procedural due process rules are meant to protect persons not from, the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property”). Here, the requests for admission were

NEVER deemed admitted after thirty days (Fed. R. Civ. P. 36), and NEVER considered for purposes of trial **as is the case with other courts – clearly violating Nsejjere’s equal protection clause** of the Fourteenth Amendment.

Accordingly, this action is framed to challenge the constitutional adequacy of (fair procedure) within the context of the self-executing CR 36 or lack thereof. Here, **unequal** protection under the law was tantamount to unfair trial and violated Nsejjere’s Fourteenth Amendment right. *In re Murchison*, 349 U.S. 133 (1955).⁴

II. Certiorari should be granted to resolve a stark conflict among lower courts regarding deprivations premised on unauthorized failure of state actors to follow state’s own established procedures.

The constitutional due process clause doesn’t govern [h]ow a state sets the rules; but it does govern how that state applies those rules to litigants, grounded on the doctrine of fair play and the Fourteenth Amendment emphasizes the state’s legal obligation in this case.

⁴ Absent deprivation, Petitioner’s request for admission 4, 13, and 14 “[w]ould have” impugned respondents’ claims and led to a fair trial with a different outcome. Denying to deem Request for Admission “ADMITTED” unambiguously asserted that deprivation process was not only possible, but foreseeable.

In *Parratt*, the Court addressed a deprivation which “occurred as a result of the unauthorized failure of agents of the state to follow established state procedures, directly causing the deprivation.” 451 U.S., at 543.

Here, the deprivation as a result of the unauthorized failure of agents of the state to follow established state procedure (i.e., state denial to deem request for admission “admitted” after 30 days) is not only abuse of discretion but is also “unauthorized” in the sense that it was not an act sanctioned by state law, but, instead, was a “depriv[ation] of constitutional right to equal protection under the law, which unequal protection led to an unfair trial. . . .” *Monroe v. Pape*, 365 U.S. 167, 435-436 (1961).

Hudson applied this reasoning of intentional deprivation by state actors and confirmed the distinction between deprivation to an established state procedure and that pursuant to “random and unauthorized action.” *Hudson v. Palmer*, 468 U.S. 517, 532-533 (1984); cf. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435-436 (1982).

The state action was occasioned by unauthorized failure of the state to follow its own procedure, directly and invariably leading to **unfair process and unequal protection of the law – which IS THE UNCONSTITUTIONAL ACT IN ITSELF.** *Parratt v. Taylor*, 451 U.S. 527 (1981).

This is violation of Nsejjere’s constitutional due process right, [a]nd as in *Hudson* and *Parratt* – is

tantamount to intentional deprivation by state actors premised on “state *failure to follow its own ‘established rules and procedures of jurisprudence’*, and taking random unauthorized action.” *Hudson v. Palmer*, 468 U.S. 517, 532-533 (1984). *Parratt*, *supra*, at 541.

In *Grannis v. Ordean*, this court observed that, “The fundamental requisite of due process of law is the opportunity to be heard and the right to such a hearing is one of the rudiments of ‘fair play’ assured to every litigant by the 14th Amendment as a minimal requirement.” *Grannis v. Ordean*, 234 U.S. 385, 34 S. Ct. 779, 58 L. Ed. 1363 (1914).

State’s failure to follow its own established state rules and procedures of jurisprudence make *fair process*, and thus *fair trial* a practical impossibility.

CONCLUSION

The petition for writ of certiorari should be granted.

DATED: December 23, 2019.

Respectfully submitted,

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APPENDIX A

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON**

REUBEN SMITH
and ADEN SMITH,

Respondents,

v.

ISAAC M. NSEJJERE, aka
ISAAC MAYANJA, and JANE
DOE NSEJJERE aka JANE
DOE MAYANJA, husband
and wife, and the marital
community comprised thereof;

Appellants,

and

NSEJJERE SPORTS, LLC,
a Delaware limited
liability company,

Defendant.

No. 78323-8-I

DIVISION ONE

UNPUBLISHED
OPINION

FILED: April 22, 2019

SMITH, J. – Isaac Nsejjere appeals the judgment and writ of restitution in a commercial unlawful detainer action. Nsejjere contends that the case was improperly filed as an unlawful detainer action because he was a bailor, not a tenant. He additionally contends that the trial court erred in dismissing his counter-claims, failing to rule on discovery issues, and denying his CR 59 motion for reconsideration. We affirm.