

No. 20-1184

In The
Supreme Court of the United States

◆
KEE FOOD, INC., ET AL.,

Petitioners,

v.

STATE OF LOUISIANA,

Respondent.

◆
**On Petition For Writ Of Certiorari
To The Louisiana First Circuit Court Of Appeal**

◆
**OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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JURISDICTION

This court has jurisdiction under 28 U.S.C. § 1257(a), however, this jurisdiction should not be exercised in this case because the Petitioners did not adequately present the federal question to the state courts.

STATEMENT OF THE CASE

This matter arises from a civil forfeiture proceeding, under La. R.S. 40:2601 et seq., instituted by the State of Louisiana against Kassim Nagi, his father, Mohamed Nagi, and two entities owned by them – Kee Food, Inc. and Southla, LLC.¹ The state alleged that synthetic cannabinoids were being sold out of a convenience store owned by the defendants. Kassim Nagi was convicted of racketeering, money laundering, distribution of synthetic cannabinoids, and possession with the intent to distribute synthetic cannabinoids. Mohamed Nagi was also charged with criminal offenses but he was in Yemin, his home country, at the time of the arrest of his son and other employees of his companies and he has not yet returned to the United States.

The allegations which formed the basis of the petition for forfeiture were that the assets sought to be seized were generated from the sale of illegal substances and commingled with the proceeds of

¹ There was another defendant named in the original petition, Tawfiq Ali Almansoob, who is not a part of the current issue presented.

legitimate sales. The State seized cash, banking accounts, and a parcel of commercial real estate, all of which were owned by either the Nagis or the entities run by the Nagis.

In response to the State's petition, through counsel, Kassim Nagi, Mohamed Nagi, Kee Food, Inc., and Southla, LLC, answered and asserted claims pursuant to La. R.S. 40:2610, seeking immediate release of the seized property and termination of any forfeiture proceedings. The defendants maintained that certain seized funds were from the sale of legitimate merchandise and were not derived from or connected to any illegal activity.

Kassim Nagi answered the petition and appeared on behalf of himself, Kee Food, and Southla to assert its claims, and in doing so, Kassim Nagi stated that he is the agent, manager, and part owner of Kee Food. Kassim, through a power of attorney executed by Mohamed Nagi, asserted individual claims on behalf of Mohamed Nagi. Kassim Nagi also asserted that he was the agent and attorney-in-fact for Southla pursuant to the power of attorney executed by Mohamed Nagi and a resolution of Southla.²

Prior to trial, the State filed a motion for summary judgment, contending that the admissions, depositions, and records from the criminal matter proved that no genuine issue of material fact remained. The

² Although discussed at length at the trial level and in the appellate court decisions, the original of the power of attorney has never been introduced into the record.

trial court granted the motion for summary judgment and ordered the seizure of all the assets. All the defendants appealed the judgment granting the motion for summary judgment. The court of appeal affirmed the judgment as to Kassim Nagi, individually, but reversed the judgment as to Mohamed Nagi, Kee Food, and Southla due to improper service of the petition on those parties. *State v. Kee Food, Inc.*, 2017-0127 (La. App. 1st Cir. 9/21/17), 232 So.3d 29, 35, *writ denied*, 2017-1780 (La. 12/5/17), 231 So.3d 632.

STATE DISTRICT COURT PROCEEDINGS

Because Mohamed Nagi was not present in the country and could not be served personally with the Petition or the Motion for Summary Judgment, the State moved to have the trial court appoint an attorney ad hoc for Mohamed Nagi, Kee Food, and Southla. The trial court appointed Dustin Pellegrin and set the trial for September 24, 2018. Prior to the trial, the State petitioned the court to have Kassim Nagi brought to the trial court to serve as a witness as he was at that time serving his sentence with the Louisiana Department of Corrections.

When the trial court called for the trial to commence, the court asked all parties to state their appearance for the record. Kassim Nagi stood and asserted that he was there on behalf of himself, Kee Food, his father, Mohamed Nagi, and Southla. The record contains no request for Kassim Nagi to act as agent.

Dustin Pellegrin, the ad hoc attorney, appeared on behalf of Mohamed Nagi, Kee Food, and Southla.

Two other attorneys present were Baron Whipple and Mark Plaisance. Mr. Whipple informed the court that he had been retained to attempt to negotiate a settlement between the State and the defendants. However, he was not appearing in a representative capacity for Mohamed Nagi, Kee Food, or Southla at the civil forfeiture trial. Mr. Plaisance, who represented the Petitioners at the state court appellate level and who is currently representing the Petitioners in this application for writ of certiorari, stated he was present at the trial to preserve his motion for attorney's fees.

Because Kassim Nagi was no longer a party to the proceedings, the court ordered that he be removed from the courtroom for security reasons and that he be held at a secure location until he was called as a witness. No request was made by Pellegrin for Kassim to remain in the courtroom or to act as agent for the parties on trial. There was no objection by Kassim Nagi, or any of the attorneys present who had a professional relationship to the parties, to being removed from the courtroom.

During the trial, the State called Kassim Nagi as a witness, who invoked his Fifth Amendment right against self-incrimination after initially requesting to speak with his criminal attorney. Following his testimony, Kassim Nagi made no request to remain in the courtroom.

Upon the completion of the case, the trial court entered a judgment in favor of the State and issued an order of forfeiture of the remaining assets seized from Mohamad Nagi, Kee Food, and Southla.

STATE APPELLATE COURT RULING

Petitioners appealed this decision to the Louisiana First Circuit Court of Appeal asserting that because Kassim had been granted general power of attorney by Mohamad Nagi with the specific authority to act in judicial proceedings, he should not have been removed from the courtroom. Petitioners **did not** argue that his removal from the courtroom was a violation of their due process rights. The appellate court affirmed the trial court's judgment finding that, because there was no objection to Kassim's removal from the courtroom, this issue was not properly raised. The court stated, "Failure to object timely constitutes a waiver of that objection, and an appellant may not raise the issue for the first time on appeal." *State v. Kee Food, INC, Kassim Nagi, Tawfiq Ali Almansoob, Mohamed Nagi, Southla, LLC*, 2019-0795 (La. App. 1 Cir. 05/11/20), 303 So.3d 672.

STATE SUPREME COURT RULING

Petitioners then sought writ of review from the Louisiana Supreme Court, the highest court in the State of Louisiana. The Louisiana Supreme Court

summarily denied the writ application and did not address the issue of the alleged violation of Due Process rights. *State of Louisiana v. Kee Food, Inc., Kassim Nagi, Tawfiq Ali Almandoob, Mohamed Nagi, Southla, LLC*, 2020-C-00716 (La. 9/29/2020), 301 So.3d 1197. Petitioners now seek writ of certiorari from this court.

REASONS FOR DENYING THIS PETITION

- 1. Petitioners have failed to show that the federal question raised by this writ of certiorari was properly presented to the state courts nor have they shown that the state courts were given an opportunity to address the issue.**

This court has consistently followed the jurisprudential rule that it will not consider a Petitioner's federal claim unless it was either addressed by, or properly presented to, the state court. See *Cardinale v. Louisiana*, 394 U.S. 437, 89 S.Ct. 1161, 22 L.Ed. 398 (1969), *Heath v. Alabama*, 474 U.S. 82, 87, 106 S.Ct. 433, 88 L.Ed.2d 387 (1985); *Illinois v. Gates*, 462 U.S. 213, 217-219, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 434, 60 S.Ct. 670, 84 L.Ed. 849 (1940). Petitioners have failed to show that the federal question presented by this writ was ever presented in state court proceedings.

Petitioners in this case did not present the federal question of a due process violation in the trial court or

in the appellate court. Because the federal question of a due process violation was not presented in the appellate court, the written opinion affirming the lower court's ruling did not address this issue. Nor have the Petitioners proven that this issue was properly presented to the highest state court. The Louisiana Supreme Court summarily denied his request for review. "When the highest state court is silent on a federal question before us, we assume that the issue was not properly presented." *Board of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 550, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987). The Petitioners bear the burden of defeating this assumption by showing when and how the state court had the opportunity to address the federal questions presented by the Petitioners. *Webb v. Webb*, 451 U.S. 493, 501, 101 S.Ct. 1889, 68 L.Ed.2d 392 (1981). The Petitioners did not meet this burden. In the application, they failed to state how and when the argument of a due process violation was presented to the state courts. Because the Petitioners have not shown that the issue was presented to the state courts and because the Louisiana Supreme Court did not address this issue in its ruling, this court can only assume that the federal question was not properly presented to the state courts. See also *Adams v. Robertson*, 520 U.S. 83, 117 S.Ct. 1028, 137 L.Ed.2d 203 (1997).

2. Petitioners failed to comply with USCS Rule 14.1(g)(i).

Petitioners also failed to comply with this Court's Rule 14.1(g)(i), which requires a Petitioners seeking

review of a state court judgment to specify, among other things, “when the federal questions sought to be reviewed were raised” in the state court system and “the method or manner of raising them and the way in which they were passed on by those courts, . . . so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari.”

In this writ application, Petitioners did not include any reference to when and how the federal question presented for review was presented to the state courts. The Petitioners did not include any briefs submitted to the courts or any language from the opinions of the state courts to show that the state courts addressed the issue of the alleged due process violation. As stated above, when the state court’s written opinions are silent on the federal issue raised by the writ application, it is assumed that the issue was not properly raised at the state level.

This writ application should be denied due to the Petitioners’ failure to comply with this court’s Rule 14.1(g).

3. The circumstances here do not justify an exception to this well-established rule.

This jurisdictional rule serves the purpose of allowing state court deference to consider any Federal questions presented and to address any alleged violations of the Constitution by its own state officials. See *Adams, supra*. The Louisiana Supreme Court has an

interest in determining whether the trial court violated any due process rights that should have been afforded to the Petitioners in a civil proceeding and the state courts should have been given the opportunity to address the issue. There is no legitimate reason for failing to present this issue to the state courts. All parties were represented by counsel at the trial. The trial court had appointed ad hoc counsel to represent the absent parties and two additional attorneys who had professional relationships with the absent Petitioners were present in the courtroom. Although Kassim Nagi alleged to have been a representative of his father and the two corporations, the original power of attorney was not presented to the court and was not filed into the record. Nor did the ad hoc attorney request to have him remain in the courtroom. There was no objection to Kassim Nagi being removed from the courtroom much less any argument that it was a violation of federal constitutional right to due process. Because the issue was not raised at the trial court level where it could have been fully addressed and possibly corrected, the objection was waived under Louisiana law. This is an independent and adequate state grounds.

When presented with the issue of Kassim Nagi being removed from the courtroom, the state courts rejected the claim of abuse of discretion based on an independent and adequate state procedural rule, i.e., that all issues and arguments must be raised in the trial court before it can be raised on appeal. Failure to object at the time the alleged error is made in the trial court is a waiver of that objection. See cases cited in

the *State v. Kee Food et seq., supra*. This well-established rule of appellate review is necessary to allow the trial court to fix any alleged errors when they occur.

CONCLUSION

Petitioners have failed to show that they have presented the federal question in a timely and concise manner to the state courts. Petitioners have presented no other factors which would justify an exception to the rule of requiring the question presented to have been presented to the state courts in a concise and timely manner. Therefore, the state submits that this application for writ of certiorari should be denied.

Respectfully submitted,

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