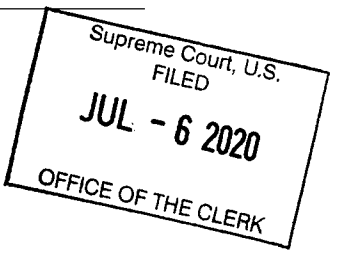
20-218

NYCA No. 2020-179

IN THE
SUPREME COURT OF THE UNITED STATES



ISIDRO ABASCAL-MONTALVO,

Petitioner,

V.

THE CITY OF NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to the New York Court of Appeals

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

WHETHER PETITIONER'S CAUSES OF ACTION RELATING TO ORGANIZED STALKING AND REMOTE ELECTRONIC ASSAULTS ARE NOT INHERENTLY INCREDIBLE AND STATE A CAUSE OF ACTION.

WHETHER CAUSES OF ACTION RELATING TO FALSE ARREST, ASSAULT, AND BATTERY ARISING FROM PETITIONER'S ALLEGED CONFINEMENT ON OCTOBER 24, 2014 IS PRIVILEGED UNDER MENTAL HYGIENE LAW § 9.4.

WHETHER CAUSES OF ACTION PERTAINING TO EVENTS PRIOR TO OCTOBER 23, 2014 ARE NOT TIME-BARRED AS BEYOND THE STATURE [SIC] OF LIMITATIONS.

PARTIES TO THE PROCEEDINGS

The Petitioner below, who is the Petitioner before this Court, is Isidro Abascal-Montalvo.

The Respondent below, who is the Respondent before this Court, is The City of New York.

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Supreme Court, New York County dismissing the complaint, Isidro Abascal-Montalvo v. The City of New York, No. 100112/16 (N.Y. Sup. Ct. Dec. 3, 2018) is unreported and reproduced at (Pet.'s App. A 1-3) and (R. at 1-3). The opinion of the Supreme Court, Appellate Division, First Department affirming the decision of the Supreme Court, New York County is reported at Isidro Abascal-Montalvo v. City of New York, 179 A.D.3d 620 (N.Y. App. Div. 1st Dept. 2020) and reproduced at (Pet.'s App. B 4-5). And the opinion of the New York Court of Appeals denying petitioner's motion for leave to appeal is unreported and is reproduced at (Pet.'s App. C 6) and available at Isidro Abascal-Montalvo v. City of New York, 2020 NY Slip Op 66873 (N.Y. June 9, 2020).

JURISDICTION

The New York Court of Appeals issued its opinion on June 9, 2020 (App. C 6). The jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. §§ 1257(a), 2104 and 2106.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. VIII

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

N.Y. Const. art. I, § 5

Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

18 U.S.C. § 241

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured – They shall be fined under this title or imprisoned not more than ten years, or both; And if death results from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

18 U.S.C. § 242

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnaping or an attempt to kidnap, aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

N.Y. Mental Hyg. Law § 9.41

Any peace officer, when acting pursuant to his or her special duties, or police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department may take into custody any person who appears to be mentally ill and is conducting himself or herself in a manner which is likely to result in serious harm to the person or others. Such officer may direct the removal of such person or remove him or her to any hospital specified in subdivision (a) of section 9.39 or any comprehensive psychiatric emergency program specified in subdivision (a) of section 9.40, or pending his or her examination or admission to any such hospital or program, temporarily detain any such person in another safe and comfortable place, in which event, such officer shall immediately notify the director of community services or, if there be none, the health officer of the city or country of such action.

* NB Effective until July 1, 2020

N.Y. Mental Hyg. Law § 9.41

Any peace officer, when acting pursuant to his special duties, or police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department may take into custody any person who appears to be mentally ill and is conducting himself in a manner which is likely to result in serious harm to himself or others. "Likelihood to result in serious harm" shall mean (1) substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself, or (2) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm. Such officer may direct the removal of such person or remove him to any hospital specified in subdivision (a) of section 9.39 or, pending his examination or admission to any such hospital, temporarily detain any such person in another safe and comfortable place, in which event, such officer shall immediately notify the director of community services or, if there be none, the health officer of the city or country of such action.

* NB Effective July 1, 2020

N.Y. Mental Hyg. Law § 9.58(a)

A physician or qualified mental health professional who is a member of an approved crisis outreach team shall have the power to remove, or pursuant to subdivision (b) of this section, to direct the removal of any person to a hospital approved by the commissioner pursuant to subdivision (a) of section 9.39 or section 31.27 of this chapter for the purpose of evaluation for admission if such person appears to be mentally ill and is conducting himself or herself in a manner which is likely to result in serious harm to the person or others.

Expiration Date: July 1, 2020

N.Y. Mental Hyg. Law § 9.63

In carrying out the transportation of any person to or between a hospital, including a comprehensive psychiatric emergency program, pursuant to the provisions of this article appropriate attempts shall be made to elicit the cooperation of the person to be transported, prior to resorting to compulsory means of transportation.

* NB Effective until June 30, 2022

N.Y. Mental Hyg. Law § 9.63

In carrying out the transportation of any person to or between a hospital, including a comprehensive psychiatric emergency program, pursuant to the provisions of this article appropriate attempts shall be made to elicit the cooperation of the person to be transported,

prior to resorting to compulsory means of transportation.

* NB Effective June 30, 2022

N.Y. C.P.L.R. 3211(a)(5)

(a) A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:
(5) the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds;

N.Y. C.P.L.R. 3211(a)(7)

(a) A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:
7. the pleading fails to state a cause of action;

STATEMENT OF THE CASE

Statement of Facts

On or about October 17, 2014, petitioner went to the Bronx District Attorney's (DA) office to file a complaint against, inter alia, NYPD Police Officers (POs), covert True Justice (TJ) organization, and members of the community where he lived including, but not limited to, tenants of the building where he lived at 2976 Marion Avenue, Apt. 3E, Bronx, NY 10458. The POs in the lobby would not let petitioner go up upstairs and instructed him that if he had problems with POs, the right place to go was the Internal Affairs Bureau (IAB).

On October 24, 2014, petitioner went to the IAB office in lower Manhattan to file the aforementioned complaint (R. at 6-15) (R. at 77 ¶ 7, Ex. 1, with 36 Exs. including 18 pictures (3-16 and 21-24)). Petitioner was interviewed by several POs, where he did not elaborate much. Instead, he told them that everything was written in the complaint and that he was a Targeted Individual (TI) (R. at 77 ¶ 9), and specified that he would talk to them, but not to any psychiatrist or psychologist, and if they did not want to process his complaint, he wanted to leave (R. at 77 ¶

13). Shortly after these events, POs Valle # 298 and Gonzalez # 4726 told petitioner that he had to go to the hospital with them to see a psychiatrist, where he told them, "I do not consent to go to any hospital to speak to any psychiatrist or psychologist." In addition, petitioner told them that if they did not want to process his complaint, he wanted to leave, and to read the last two paragraphs of the complaint where he wrote:

> "I will see any person or medical doctor to check my body for scars, radiation or microchip, but not under any circumstances I will see any psychiatrist, psychologist or any mental health provider that could classify me as mentally ill."
>
> "Whenever all these crimes are reported to local police or medical professionals, the victim TI may be labeled mentally ill." (R. at 78 ¶ 14).

PO Gonzalez # 4726 told petitioner that if he did not consent to go to the hospital voluntarily, he had to handcuff him to take him involuntarily. Petitioner told him again, "I do not consent to go to any hospital to speak to any psychiatrist or psychologist," and stood up where he was handcuffed with his hands in the back (R. at 78 ¶ 15). At about 5:06 p.m., FDNY ESU crew members appeared, where petitioner told them "I do not consent to go to any hospital to speak to any psychiatrist or psychologist," and to read the last two paragraphs of the complaint. Crew member Gabriel Seales told petitioner that he had to go with them (R. at 78 ¶ 16).

At about 5:14 p.m., petitioner was taken by ambulance from the IAB office (R. at 78 ¶ 17) to Beth Israel Medical Center (BIMC), Comprehensive Psychiatric Emergency Program (CPEP), where he was among individuals who were disoriented, crying, troubled and in ragged looks. Also, MD Boris Mekinulov passed several times nearby looking at him with a funny/intimidating/surprised look (R. at 78 ¶ 18). At or about 7:00 p.m., MD Daniel McGovern and RN Donyell Styles called petitioner and asked him about the complaint, where petitioner told them, "I went to the IAB to file a complaint and everything is written in it." Petitioner did not elaborate anything about the complaint and all the questions were answered negatively by

him. Also, he volunteered himself telling them, "I am not a threat to myself, others, or their property." And when they asked petitioner the suicidal question, he told them, "I am pro-life!" (R. at 78-79 ¶ 19). At about 7:24 p.m., petitioner was discharged from BIMC CPEP with a Primary Diagnosis of Delusional disorder (disorder) (R. at 79 ¶ 20, Ex. 2) and (R. at 85-89).

Statement of Proceedings

On November 25, 2014, petitioner filed a Notice of Intention to File a Claim (Personal Injury Claim Form) (R. at 16-22). On March 9, 2015, the city deposed petitioner in a 50-H Hearing (R. at 23-71). On March 31, 2015, petitioner served by mail an Errata Sheet regarding his 50-H Hearing deposition of March 9, 2015 (R. at 72-74). On January 21, 2016, petitioner filed his Summons and Complaint (R. at 75-92). Respondent served by mail an Answer and Combined Demand for Bill of Particulars and Discovery dated May 24, 2016 and verified May 25, 2016 (R. at 93-95). On June 30, 2016, petitioner filed his Combined Demand for Verified Bill of Particulars and Discovery Response (CDVBPDR) (R. at 96-106).

On March 20, 2017, petitioner filed a Request for Production of Documents, and a Request for Interrogatories (R. at 112-121). On July 28, 2017, petitioner filed a Letter of Good Faith Effort regarding his discovery demands (R. at 134-135). On August 9, 2017, petitioner filed a Notice of Motion to Compel Disclosure, Affidavit in Support of Motion with exhibits A-R including 14 pictures, and a Memorandum of Law in Support of Motion (R. at 136-145). On January 17, 2018, petitioner filed a Request for Admissions (R. at 146-176). On January 25, 2018, respondent served petitioner by mail with a Notice of Cross-Motion to Dismiss, Affirmation in Support of Motion and Exhibits (R. at 177-194). On February 26, 2018, petitioner filed an Affidavit in Response to Notice of Cross-Motion (R. at 195-209).

On June 29, 2018, petitioner notarized an Affidavit in Support of Change of Address and mailed it from Leitchfield, Kentucky (R. at 210-211). Due to his targeting petitioner had to move out of NYC to obtain employment in another state (see Aff. ¶ 4). On August 1, 2018, respondent filed an Affirmation in Reply to Petitioner's Opposition to the City's Cross-Motion to Dismiss (R. at 212-219). On August 1, 2018,petitioner notarized a Sur-Reply Affidavit with supporting papers, including, but not limited to, his former girlfriend Tammy Ann Armes' affidavit, and a letter from Mr. Derrick Robinson, President of People Against Covert Torture & Surveillance, International (PACTS), and a SanDisk 16 GB Cruzer Dial, (but in the appeals a PNY 16 GB) (not provided here under Rule 14.5 (electronic devices), but available upon request). Mr. Robinson is one of petitioner's witnesses and expert witness (R. at 98-99 ¶¶ 29, 30), and mailed it from Leitchfield, Kentucky by certified mail with affidavit of service (R. at 220-228). Tammy Ann Armes and Mr. Robinson are willing to testify at trial.

On August 14, 2018, petitioner appeared in court before Hon. Verna L. Saunders for oral argument regarding his Motion to Compel Disclosure, and respondent's Notice of Cross-Motion to Dismiss. On November 26, 2018, Hon. Verna L. Saunders issued an Order granting respondent's Cross-Motion to Dismiss the complaint in its entirety, dismissing the action, and denying petitioner's Motion to Compel Disclosure as moot, which Order was entered in the office of the Clerk of New York County on December 3, 2018 (R. at 1-3) and (App. A 1-3). On December 26, 2018, petitioner through Amy Lindsey (a person not a party to this action) mailed by certified mail from Leitchfield, Kentucky his Notice of Appeal, with supporting papers, and affidavit of service (R. at 4-5). On February, 5, 2019, petitioner mailed by certified mail from Leitchfield, Kentucky a Judicial Subpoena Duces Tecum, copies of his Civil Appeal Pre-Argument Statement, copies of Statement Attorney/ProSe, and copies of County Clerk

Certificate, with supporting papers (R. at 229-233). On May 7, 2019, after 132 days (emphasis added) of petitioner mailing his Notice of Appeal with supporting documents, multiple calls to the NY County Supreme Court, County Clerk and Certifications and Appeals desk, and multiple conversations with clerks Pier and Matthew Corkett because petitioner's legal documents envelope could not be found in the court, petitioner flew to NYC and went to the court and (Saunders, J.) signed his Judicial Subpoena Duces Tecum for the record to be transferred to the Supreme Court, Appellate Division, First Department on May 10, 2019 (R. at 245-259).

On September 23, 2019, petitioner filed his appellate brief in the Supreme Court, Appellate Division, First Department. On January 30, 2020, the Supreme Court, Appellate Division, First Department affirmed the decision of the Supreme Court, New York County (App. B 4-5). On February 21, 2020, petitioner mailed a Notice of Motion for Leave to Appeal and for Assignment of Counsel to the New York Court of Appeals with supporting papers. On February 27, 2020, the New York Court of Appeals on its own motion would consider its subject matter jurisdiction. On March 8, 2020, Petitioner mailed his response to the New York Court of Appeals on the subject matter jurisdiction. On June 9, 2020, the New York Court of Appeals denied petitioner's motion for leave to appeal (App. C 6). And this petition for writ of certiorari ensued.

REASONS FOR GRANTING THE PETITION

1. WHETHER PETITIONER'S CAUSES OF ACTION RELATING TO ORGANIZED STALKING AND REMOTE ELECTRONIC ASSAULTS ARE NOT INHERENTLY INCREDIBLE AND STATE A CAUSE OF ACTION.

This Court should grant certiorari because the New York Court of Appeals have decided an important question of federal law that has not been, but should be, settled by this Court: ("Non-consensual experimentation with electromagnetic weapons designed to target both electronic hardware and the human central nervous system, and the surveillance-organized

stalking); have decided an important question in a way that conflicts with relevant decisions of its own court: Rovello v. Orofino Realty Co., 40 N.Y.2d 633, 634 (1976) and Nonnon v. City of New York, 9 N.Y.3d 825, 827 (2007); and because it is a novel issue of nationwide/worldwide importance not only to petitioner but to hundreds of thousands others similarly situated because there are hundreds of thousands TIs just in the United States.

In Rovello v. Orofino Realty Co., 40 N.Y.2d 633, 634 (1976), (the Court reversed the Appellate Division order, and denied the motion to dismiss). "[A] complaint should not be dismissed on a pleading motion so long as, when the plaintiff is given the benefit of every possible favorable inference, a cause of action exists." "[D]isposition by summary dismissal under CPLR 3211 (subd [a], par 7), is premature." *Id.* at 634. "Modern pleading rules are designed to focus attention on whether the pleader has a cause of action rather than on whether he has properly stated one (6 Carmody-Wait, 2d, NY Prac, § 38:19)" (internal quotation marks omitted). *Id.* at 636. "On a CPLR 3211 motion to dismiss, the court will accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts alleged fit within any cognizable legal theory" (internal quotation marks omitted), Nonnon v. City of New York, 9 N.Y.3d 825, 827 (2007).

The courts below did not apply Rovello and Nonnon to this case because the term "inherently incredible" means more than a contradiction, inconsistency or lack of corroboration. Here, petitioner's complaint does not seem to be "inherently incredible" because the (affidavits/photos/documents/and witnesses) that petitioner submitted demonstrated and corroborated his allegations. See (pictures Exs.) (Rule 32) (R. at 75-92 ¶ 8), including, but not limited to, pictures of his compressed baby size genitalia (Rule 32) (Ex. 1, 3), multicolored burned body (Rule 32) (Ex. 1, 4-16), and apartment windows shot (Rule 32) (Ex. 1, 21-24); combined with multicolored burned body pictures (Rule 32)

(R. at 138-140 ¶ 7, Exs. E-O), infliction of bodily pain (Rule 32) (R. at 138-140 ¶ 7, Ex. P), bodily wounds from two organized stalkers' assault (Rule 32) (R. at 138-140 ¶ 7, Exs. Q and R), and San Disk 16 GB Cruzer Dial (but in the appeals a PNY 16 GB) (not provided here under Rule 14.5 (electronic devices), but available upon request) (R. at 220-228) are not inherently incredible (emphasis added).

Additionally, see (Energy Focusing System for Active Denial Apparatus, U.S. Patent No. 8,453, 551) "This system can burn the flesh of a target from miles away" (emphasis added) (R. at 157-160). And petitioner's affidavits (R. at 138-140), (R. at 195-209) and (R. at 220-228); witness Tammy Ann Armes' affidavit (R. at 220-228 ¶ 4, Ex. 1); affidavits by retired FBI Senior Special Agent-In-Charge, Ted L. Gunderson (confirming gang stalking groups and methods as an ongoing, active, covert nationwide program that is in effect today and at least since the early 1980s) (R. at 235-241); and former FBI Special Agent in Charge Geral W. Sosbee (confirming, *inter alia*, 24/7 surveillance and assaults by DEW and occasional assault and battery by street thugs in the employ of the FBI) (R. at 242-244); and expert witness Derrick Robinson's letter who is President of People Against Covert Torture & Surveillance, International (PACTS) (R. at 220-228 ¶ 5, Ex. 3).

Dr. Robert P. Duncan, a former engineer for the US Department of Defense, CIA, DARPA, US Department of Justice, NASA, US Navy and NATO explains (key components and systems for warfare, a system misuse and abuse which involve citizens being hurt and targeted by torture and murders. Also, interviewed a thousand victims of governmental high-tech directed energy (emphasis added) based no-touch torture and mind control, human experimentation, surveillance, electronic warfare, and covert law enforcement and military operations). (In 2005, Dr. Robert P. Duncan along with the previous head of FBI Los Angeles/Southern California Ted Gunderson gave testimony on these issues to the Senate Intelligence Committee, Judiciary Committee, and twenty-tree

congressional offices). *See* Dr. Robert. P. Duncan A.B., S.M., M.B.A., Ph.D.: Government warfare and surveillance system architect, author, and independent investigator (2016), https://www.drrobertduncan.com/index.html.

And Dr. John Hall's interview in the Alex Jones Show, www.satweapons.com. Dr. John Hall is a Medical Doctor and expert in Satellite Weapons, Gangstalking, Surveillance, and Targeted Individuals. *See* his letter to Ms. Anne-Laurence Lacroix, Deputy Secretary General, OMCT International Secretariat addressing, "[N]on-consensual experimentation with electromagnetic weapons designed to target both electronic hardware and the human central nervous system. While this was typically disregarded as mental illness in the past, the total global population voicing these identical complaints has exponentially grown to number that can no longer be attributed to delusional disorder, schizophrenia or any other described mental illness" (emphasis added), at 2nd ¶. Letter to OMCT from Dr. John Hall, peacepink.ning.com/.../letter-to-mock-from-dr-john-hall (2013).

"The Pentagon defines DEW as 'A weapon or system that uses directed energy to incapacitate, damage, or destroy enemy equipment, facilities, and/or personnel' (US DoD, 2007:I-8)" This includes all weapons that use energy for producing a weapons effect, such as laser, masers, high energy radio frequency (HERF) weapons, high-powered microwaves (HPM) and acoustic weapons," Armin Krishnan, Military Neuroscience and the Coming Age of Neurowarfare 117, (Routledge 1st ed.) (2017). "Constant exposure to low energy electromagnetic fields (EMF) is suspected to affect the general health and well-being of people." *Id.* at 126. "The main ethical framework to which all researchers are obligated to adhere is the Nuremburg Code, which was established during the Nuremburg Nazi war crime trials to address the issue of Nazi medical experimentation on concentration camps inmates (Moreno, 2000:79-80)." *Id.* at 196. [C]onsidering that involuntary and secret human experimentation in the name of national security has happened in the past it is not a

stretch to suggest that it may happen again in the future (Welsh, 2012)." *Id.* at 197. "The Presidential Commission for the Study of Bioethical Issues, chaired by Amy Gutmann, heard numerous testimonies of so-called 'targeted individuals' (TIs), many of which were fairly similar (Gutman, [sic], 2011a). People complained about getting attacked with DEW in their homes . . . A medical doctor from Texas, John Hall, testified . . . I personally corresponded with upwards of 1500 victims all complaining. . . from every state in the nation of being exposed to electromagnetic radiation, non-ionizing radiation for the use of cognitive control of behavior," (Gutmann, 2011a). *Id.* at 199.

(Because petitioner has been exposed to radiation from DEWs for decades, his body has developed Post-inflamatory hyperpigmentation and Dyschromia (R. at 170-171, Ex. 10); Dermatographism/Dysethesia (R. at 176, Ex. 13); his Thyroid (TSH) levels are high (R. at 234) (not included in the original record); his brain has suffered a mild volume loss and a small focus of gliosis (R. at 172, Ex. 11); and a mild generalized encephalopathy and bilateral frontal dysfunction (R. at 174, Ex. 12) (emphasis added)).

Likewise, *see* Update: Diplomats in Cuba Attacked by Sonic Weapon. Mainstream reports-not so farfetched now!, www.satweapons.com, available at https://www.aol.com/article/news/2017/08/25mysterious-sonic-weapons-reportedly-caused-brain-injuries-in-us-diplomats-in-cuba-heres-what-we-know/23185948. And fifteen American officials in China suffered unexplained brain trauma soon after. The FBI is now investigating whether these Americans were attacked by a mysterious weapon that leaves no trace, *see* Brain trauma suffered by U.S. diplomats abroad could be work of hostile foreign government: 60 Minutes, by Scott Pelley (CBS television broadcast March 17, 2019), where Mr. Pelley interviewed US State Department security officer Mark Lenzi who worked in the US Consulate in Guangzhou, China, and neighbor Catherine Werner a US Commerce Department trade officer, who lived one floor up who promoted

American business from the Guangzhou Consulate.

In the same manner, see Richmond City Councilmember Jovanka Beckles writing a letter in full support of the City of Richmond, CA TIs, and encouraging other officials at the local, state and national levels to explore methods to help TIs (emphasis added) (R. at 79 ¶ 27, Ex. 10); and the City Council of the City of Richmond, CA passing and adopting Resolution No. 51-15 (R. at 79 ¶ 28, Ex. 11), a legislation safeguarding TIs who claim to be under assault from weaponry outlawed by the Space Preservation Act (SPA) and companion Space Preservation Treaty (SPT), and ensuring that individuals will not be targets of space-based weapons.

The cases interpreting a CPLR 3211 (a)(7) challenge are in agreement, *inter alia*, that "[D]isposition by summary dismissal under CPLR 3211 (subd [a], par 7), is premature." Robello, at 634. And "[T]he court will accept the facts as alleged in the complaint as true, [and] accord plaintiffs the benefit of every possible favorable inference." Nonnon, at 827. As the record before us indicates, that was not done here because the courts below did not follow precedent cases of its own court and a higher court (emphasis added).

In Kyllo v. United States, 533 U.S. 27, 31 (2001), the Court found that, "At the very core of the Fourth Amendment stands the right of a man to retreat into his home and there be free from unreasonable governmental intrusion (internal quotation marks omitted). "[T]hermal-imaging observations of the intimate details of a home are impermissible." *Id.* at 36. "Where, as here, the Government uses a device that is not in general public use, to explore details of the home . . . the surveillance is a search and is presumptively unreasonable without a warrant" (internal quotation marks omitted). *Id.* at 40.

As in Kyllo, petitioner's Fourth Amendment constitutional rights are violated because of his apartment being intruded with a thermal imaging surveillance equipment and "thermal-

imaging observations of the intimate details of his home are impermissible," Kyllo, at 36. *See* "almost every time the same neighbors leave or arrive at the same time as [he does]" (R. at 80 ¶ 33); "these individuals in E4 . . . stomping or dropping heavy objects in their floor, which is [his] ceiling, scurrying all over their apartment, especially when [he goes] to the kitchen or [he is] in bed" (R. at 80 ¶ 34); "a Caucasian skinny man with a ragged look on the 6th floor . . . and a middle aged Latino man on the 6th floor who rides a motorcycle" (R. at 80 ¶ 34) and (R. at 118 ¶¶ 28 and 29) these two men organize stalked appellant since the first days he moved to the building (appellant has videos of these stalkers in his building which he is not producing in this appeal under Rule 14.5 (electronic devices), but available upon request) (R. at 221 ¶ 5, Ex. 4).

In Handschu v. Special Services Division, 349 F.Supp. 766 (S.D.N.Y. 1972), the Court denied the defendants' motion to dismiss the complaint, and found that, "[I]f in fact, there were any such aberrations which amounted to a pattern of unconstitutional conduct, of which the defendants should have been aware, plaintiffs would be entitled to injunctive relief to prevent the continuance thereof" (internal quotation marks omitted). *Id.* at 771.

As in Handschu, at 771, "the NYPD and organized stalkers' aberrations against petitioner amount to a pattern of unconstitutional conduct, of which respondents should have been aware, and petitioner should be entitled to injunctive relief to prevent the continuance thereof" (*see* Neighborhood Watch Manual, USAonWatch-National Neiborghood Watch Program (2005), www.bja.gov/publications/nsa_nw_manual.pdf), "A law enforcement liaison is . . . specifically assigned the responsibility of stablishing and supporting local Neiborghood Watch groups," at 3, and "The officer will train Neighborhood Watch leaders, block captains and members in areas from setting goals to how to report suspicious activities," at 3. *See* also (R. at 139 ¶ 7, Exs. Q and R) (Rule 32) "petitioner's knee and knuckle wounds from an argument and assault in front of his

building with the two worst stalkers in his building (petitioner has an audio recording of the events) SanDisk 16 GB Cruzer Dial (but in the appeals a PNY 16 GB) (not provided here under Rule 14.5 (electronic devices), but available upon request) (R. at 221 ¶ 5, Ex. 4), where the middle aged Latino man on the 6th floor who rides a motorcycle ran after him when he saw petitioner arguing with the other stalker, where petitioner had to defend himself, the stalker took an adjustable wrench out of the trunk of a car to assault petitioner with it (emphasis added).

A principled comparison can be drawn between Handschu and the instant case because the complaint alleges, *inter alia*, "informers (R. at 80-81 ¶¶ 34, 35) . . . overt surveillance (R. at 80 ¶ 33) . . . summary punishment (R. at 77, 80, 81 ¶¶ 8, 32, 42) . . . electronic surveillance (R. at 80 ¶ 33)." Handschu, at 768. Similarly, respondent, including, but not limited to, NYPD officers in the 52nd Precinct (R. at 7-9, Ex. 1 N.Y.P.D. HARASSMENT) and these stalkers are violating appellant's constitutional rights under 18 U.S.C. § 241 "If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State . . . in the free exercise . . . of any right . . . They shall be fined under this title or imprisoned," and 18 U.S.C. § 242 "Whoever, under color of any law . . . willfully subjects any person in any State . . . to the deprivation of any rights . . . or to different punishments, pains . . . on account of such person being an alien . . . or race . . . and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon . . . shall be fined under this title or imprisoned." (R. at 138-139 ¶ 7, Exs. Q and R) (Rule 32) and SanDisk 16 GB Cruzer Dial (but in the appeals a PNY 16 GB) (not provided here under Rule 14.5 (electronic devices), but available upon request) (R. at 221 ¶ 5, Ex. 4), *supra*. Likewise, N.Y. Penal Law §§ 120.60, 120.55, 120.50 and 120.45.

The Eighth Amendment forbids cruel and unusual punishment, and it requires conduct

compatible with the evolving standards that mark the progress of a maturing society. Thus, conditions that amount to unquestioned wanton and unnecessary infliction of pain violate the Eighth Amendment. The Fourth Amendment guarantees the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, and that right shall not be violated. Petitioner has constitutional rights in being free from cruel and unusual punishment, and to be secure in his person against unreasonable searches and seizures (emphasis added).

Thus, it must be presumed that the courts below did not fulfill their duties, did not follow precedents, ignored affidavits, pictures and legal documents, and credited respondent's arguments without merit. Therefore, petitioner's causes of action relating to organized stalking and remote electronic assaults are not inherently incredible and state a cause of action.

2. WHETHER CAUSES OF ACTION RELATING TO FALSE ARREST, ASSAULT, AND BATTERY ARISING FROM PETITIONER'S ALLEGED CONFINEMENT ON OCTOBER 24, 2014 IS PRIVILEGED UNDER MENTAL HYGIENE LAW § 9.4.

In the case at bar, respondent argued this issue erroneously because petitioner did not allege "assault and battery" for transferring him from the IAB to the CPEP on October 24, 2014 (R. at 77 ¶¶ 7, 17), but "false imprisonment" (emphasis added); and on information, belief and research (there is no currently any N.Y. Mental Hyg. Law § 9.4). However, N.Y. Mental Hyg. Law § 9.41 states, *inter alia*:

> "Any peace officer, when acting pursuant to his or her special duties, or police officer . . . may take into custody any person who appears to be mentally ill and is conducting himself or herself in a manner which is likely to result in serious harm to the person or others. . . ."
>
> "Likelihood to result in serious harm" shall mean (1) substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself, or (2) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm."

Here, the requirements are clearly not met neither when petitioner went to the Bronx D.A. Office (Petitioner's Br. ¶ 1) nor when he went to the IAB (R. at 77 ¶ 7) (emphasis added). Petitioner "neither appeared to be mentally ill nor was conducting himself in a manner which was likely to result in serious harm to his person or others," "nor likelihood to result in serious harm, substantial risk of physical harm to himself by threats, attempts at suicide, serious bodily harm, or conduct demonstrating he was dangerous to himself, nor substantial risk of physical harm to other persons by homicidal or violent behavior by which others are placed in reasonable fear of serious physical harm," *see* (R. at 77 ¶¶ 9, 10, 11, 12) and (specifically), "petitioner told him that if they did not want to process his complaint, he wanted to leave" (R. at 77 ¶ 13), "petitioner told them he did not consent to go to any hospital to speak to any psychiatrist or psychologist and that if they did not want to process his complaint, he wanted to leave, and to read the last two paragraphs of the complaint, where he specified that" (R. at 78 ¶ 14), and "he did not consent to go to any hospital to speak to any psychiatrist or psychologist and stood up where he handcuffed petitioner with his hands in the back (R. at 78 ¶ 15) (emphasis added).

N.Y. Mental Hyg. Law § 9.63 states, *inter alia*:

> "In carrying out the transportation of any person to . . . a hospital, including a comprehensive psychiatric emergency program, pursuant to the provisions of this article appropriate attempts shall be made to elicit the cooperation of the person to be transported, prior to resorting to compulsory means of transportation."

In this case, "petitioner did not consent to go to any hospital to speak to any psychiatrist or psychologist, and told them to read the last two paragraphs of the complaint" (R. at 78 ¶ 16). Moreover, the required elements of N.Y. Mental Hyg. Law § 9.58(a) were not followed here because neither the POs nor the FDNY ESU crew members were "physicians or qualified mental health professionals" because they never identified themselves as so (R. at 78 ¶ 17).

"An involuntary civil commitment is a massive curtailment of liberty," Rodriguez v. City of New York, 72 F.3d 1051, 1061 (2d Cir. 1995), Vitek v. Jones, 445 U.S. 480, 491 (1980) (internal quotations marks and citations omitted), and it therefore cannot permissibly be accomplished without due process of law, *see id.* at 492 (internal citations omitted); O'Connor v. Donaldson, 422 U.S. 563, 580 (1975) (Burger, C.J., concurring) (internal citations omitted); Project Release v. Prevost, 722 F.2d 960, 971 (2d Cir. 1983) ("Project Release"). "As a substantive matter, due process does not permit the involuntary hospitalization of a person who is not a danger either to herself or to others (emphasis added) . . . there is still no constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom," O'Connor v. Donaldson, 422 U.S. at 575 (internal citations omitted) (unanimous opinion). "Erroneous commitments, of course, implicate the individual's interest in liberty," Goetz v. Crosson, 967 F.2d 29, 33. *Id.* At 1061-1062. "[O]ur concepts of due process would not tolerate the confinement of an individual thought to need treatment where the sole justification for such deprivation of liberty is the provision of some treatment," Mtr. of Scopes, 59 A.D.2d 203, 205 (3d Dept. 1977), citing O'Connor, 422 U.S. at 589.

A principled comparison can be drawn between Rodriguez, O'Connor, Goetz, Mtr. of Scopes and the case at bar. Even assuming arguendo that petitioner was not committed, "he was civil involuntarily, compulsorily, and impermissibly transported to the CPEP, without being dangerous to no one, implicating his interest in liberty, and where the sole justification was the provision of some treatment" (emphasis added). The insight of a constitutional scholar is not necessary to determine that petitioner was transported from the IAB to CPEP for people who were not "qualified mental health professionals" to build a psychiatric profile on him and discredit his allegations.

IAB officers are POs and petitioner's complaint (R. at 75-92), *inter alia*, is against police officers. The constitutional prohibition against cruel and unusual punishment not only prohibits certain kinds of physical punishment, such as torture, but embodies broad and idealistic concepts of dignity, civilized standards, humanity and decency. Thus, the Eighth Amendment requires that police officers, under the circumstances as I have defined them for you, must not be deliberately indifferent to a person's need for protection against physical assault. A person who is deprived of such protection because of police officers' deliberate indifference to physical assaults has suffered a violation of his constitutional rights as guaranteed by the Eighth Amendment. On October 24, 2014, petitioner went to the IAB office looking for protection, instead, police officers were deliberately indifferent to his allegations, pictures and documents, and involuntarily and compulsorily transported him to the CPEP where "he sat for approximately two hours among individuals who were disoriented, crying, troubled and in ragged look." (R. at 78 ¶ 18).

N.Y Penal Law § 135 and § 135.10 state respectively, *inter alia*:

> "Restrain" means to restrict a person's movements intentionally and unlawfully in such manner as to interfere substantially with his liberty by moving him from one place to another, or by confining him either in the place where the restriction commences or in a place to which he has been moved, without consent and with knowledge that the restriction is unlawful. A person is so moved or confined "without consent" when such is accomplished by (a) . . . deception . . . ."

> "A person is guilty of unlawful imprisonment in the first degree when he restrains another person under circumstances which expose the latter to a risk of serious physical injury."

In this case, "petitioner's movements were restricted intentionally and unlawfully in such a manner as to interfere substantially with his liberty when they confined him in the IAB (R. at 77-78 ¶¶ 12, 13, 14), and moving him from the IAB to the CPEP (R. at 78 ¶¶ 17, 18), without his consent

(R. at 77-78 ¶¶ 13, 14, 15, 16), accomplished by deception (R. at 77 ¶ 12), with knowledge of unlawfulness (R. at 77 ¶¶ 8, 9), and exposing him to a risk of serious physical injury" (R. at 78 ¶ 18) (emphasis added). These are genuine issues of material fact because the credibility of my allegations and the weight of any contradictory evidence may only be evaluated by a finder of fact, that is, a jury. Therefore, petitioner's causes of action relating to false imprisonment, arising from his alleged confinement on October 24, 2014 is not privileged under N.Y. Mental Hyg. Law § 9.41.

3. WHETHER CAUSES OF ACTION PERTAINING TO EVENTS PRIOR TO OCTOBER 23, 2014 ARE NOT TIME-BARRED AS BEYOND THE STATURE [SIC] OF LIMITATIONS.

Cases interpreting "the continuing wrong theory" are in agreement that, "As we have held, however, this time period for filing a charge is subject to equitable doctrines such as tolling or estoppel," National Railroad Passenger Corporation v. Morgan, 536 U.S. 101, 113 (2002). See Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982) ("We hold that filling a timely charge of discrimination . . . is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling") (emphasis added). "Federal courts do recognize a continuing wrong theory . . . . The doctrine applies when defendant's conduct causes plaintiff to sustain damages after the time when the statute of limitations would have expired . . . . Instead, the claim accrues each time the plaintiff sustains damages," Kahn v. Kohlberg, Kravis, Roberts & Co., 970 F.2d 1030, 1039 (2d Cir. 1992). See Taylor v. Meirick, 712 F.2d 1112, 1119 (7th Cir. 1983) "[E]ither of the tolling principles discussed earlier would allow him to collect damages for acts of infringement more than three years in the past" (emphasis added).

"What is alleged is a "continuing wrong," which-for purposes of our statute of limitations (CPLR 203)-is "deemed to have accrued on the date of the last wrongful act," Harvey v.

Metropolitan Life Insurance Company, 34 A.D.3d 364 (1st Dept. 2006), citing Leonhard v. United States, 633 F.2d 599, 613 [2d Cir 1980] *cert denied* 451 US 908 [1981]. *See* also "[T]here is legal precedent in the First Department that supports the application of the "continuing wrong" doctrine to the facts of this case," Ring v. AXA Financial, Inc., 2008 NY Slip Op 30637(U) at 8 (N.Y. Sup. Ct. Feb. 6, 2008), citing Harvey, 34 A.D. at 364. "Where there is a series of continuing wrongs, the continuing wrong doctrine tolls the limitations period until the date of the commission of the last wrongful act," Palmeri v. Willkie Farr & Gallagher LLP, 152 A.D.3d 457, 460 (1st Dept. 2017), citing Harvey, 34 A.D. at 364. "[A] cause of action accrues and the statute begins to run when a defendant commits an act that injures a plaintiff's business." Berkey Photo, Inc. v. Eastman Kodak Co., 603 F.2d 263, 295 (2d Cir. 1979).

In the instant case, as in the cases cited, *supra*, "[the] time period for filing a charge is subject to equitable doctrines such as tolling or estoppel," National Railroad Passenger Corporation, 536 U.S. at 113. Although, many of the events upon which petitioner's action depends occurred before October 23, 2014, they are a part of the same actionable hostile environment. That is the reason he wrote the complaint and went to the IAB to file it. If those events had not occurred, he would have never gone to the IAB with his complaint. Petitioner should not have to be required to file a complaint every time a PO went to his home (R. at 7-9, Ex. 1: N.Y.P.D. HARASSMENT); every time the Bronx-Lebanon Hospital Center Mobile Crisis Team went to his apartment (R. at 9, Ex. 1: MENTAL HEALTH HARASSMENT); when perpetrators shot his windows (R. at 9-10, Ex. 1: APARTMENT WINDOWS SHOT); every time an organized stalker neighbor went in or out of the building at the same time he did (R. at 80-81 ¶¶ 34, 35); every time his penis and testicles are compressed to a baby's size penis (R. at 13, Ex. 1: 3) (Rule 32); every time his body is microwave burned (R. at 13, Ex. 1: 4-16) (Rule 32); every time his car is

vandalized (R. at 84, Ex. 15) (Rule 32). *See* also events that occurred after October 23, 2014: (emphasis added) (R. at 138-139 ¶ 7, Exs. E-R) (Rule 32); and another vandalism to his car on or about September 6, 2017. Petitioner's allegations against respondent are unconstitutional violations of the Eighth Amendment and Article I, Section 5 of the N.Y.S. Constitution, and should not be "[T]ime barred so long as all acts which constitute the claim are part of the same unlawful . . . practice and at least one act falls within the time period" (emphasis added), National Railroad Passenger Corporation, 536 U.S. at 122. "The doctrine applies when the defendant's conduct causes plaintiff to sustain damages after the time when the statute of limitations would have expired . . . . Instead, the claim accrues each time the plaintiff sustains damages" (emphasis added), Kahn, 970 F.2d at 1039. "[E]ither of the tolling principles . . . would allow him to collect damages for acts of infringement more than three years in the past," Taylor, 712 F.2d at 1119. Here, as in Harvey and Palmeri, the (remote electronic assaults and organized stalking) are part of petitioner's everyday life and should "deem to have accrued on the date of the last wrongful act" and "the continuing wrong doctrine (should) toll the limitations period until the date of the commission of the last wrongful act" (emphasis added).

The actions against petitioner were and are being done maliciously and sadistically, constituted and continue to constitute cruel and unusual punishment, deliberate indifference, and contributed and proximately caused the current inhumane civil rights violations which keep accruing because I sustain damages everyday causing me wanton and unnecessary inflictions of pain, disfigurement scars, and extremely horrible experiences prohibited by the Eighth Amendment.

Petitioner has "constitutional rights" in being free from cruel and unusual punishment, and to be secure in his person against unreasonable searches and seizures (emphasis added). The actions

of respondent are done in violations of the cruel and unusual punishment and privacy Clauses of the Eighth and Fourth Amendment to the United States Constitution.

Therefore, the courts below injudiciously dismissed petitioner's action with decisions conflicting with the highest Court of the land decisions, federal appellate division decisions, and with their own decisions on the same important matters, and they have so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power because their arguments are misplaced and should be denied.

CONCLUSION

The petition for a writ of certiorari should be granted because respondent is not entitled to dismiss petitioner's claims pursuant to N.Y. C.P.L.R. 3211(a)(7)(5) because there are constitutional violations and genuine issues of material fact to be resolved by the fact trier, and that preclude judgment for respondent on petitioner's claims. This Court should reverse the orders of the courts below with instructions to direct disclosure in favor of petitioner against respondent, or in the alternative remanding for trial.

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Respectfully submitted,

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