

20-5756

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Chen Xu

(Your Name)

— PETITIONER

vs.

City of New York et al

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For the Second Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Chen Xu

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QUESTIONS PRESENTED

After a diagnosis and an assigned test in Weill Cornell hospital, petitioner Chen Xu's eight years old son urinate blood for two weeks. The hospital then false imprisonment Chen Xu's family in the hospital room along with New York City Administration for Children's Service ("ACS New York") for three days and reported to Family Court New York, the hospital found "an abandoned child, nationality unknown, parent unknown".

With a blank court order, ACS New York took away HX with only a text to Chen Xu "I have your son". HX being false imprisonment in foster care since then, to avoid Chen Xu found him, the agency changed his name in the system.

To punish Chen Xu's lawsuit in Federal Court, the agency injected HX repeatedly vaccines and extracted three of HX's well molar teeth. The agency written threatened Chen Xu to be "very careful from being arrested to miss your son's court date". Chen Xu got arrested for three times with no reason and evidence. The lawsuits in state courts harass Chen Xu to prevent the suing rights being fulfilled and prevent the family reunion.

The District Court for the Southern District of New York dismissed the case pursuant *Younger v. Harris*, 401 U.S. 37 (1971), the Second Circuit affirmed the dismissal pursuant *Pillay v. INS*, 45 F.3d 14,17(2d Cir.1995), and denied mandamus petition pursuant *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380-81(2004).

The questions presented are:

1. On Feb 27, 2020, when ACS New York's agency extracted HX's molar teeth as punishment, the Second Circuit dismissed the case without evaluate the case and without finish the arranged court proceeding. When the new child abuse issue happened, should Court of Appeals for the Second Circuit finished certain assigned court proceedings to protect the due process rights and substantive rights of the petitioner and the public interest?

2. The New York City Administration Children's Service (ACS New York), hold petitioner's child as hostage, abuse Family Court and criminal court proceeding as method to prevent petitioner fulfill Constitutional rights, whether *Younger v. Harris*, 401 U.S. 37 (1971) should be revisited?

3. When the child's custody was temporary moved to state and the child being mistreated in foster care, no governmental remedy available, can birth parent sue on behalf of the child to help the child get remedy?

4. Whether Chen Xu should get remedy pursuant 42 U.S.C. § 1983?

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner Chen Xu

Respondents are City of New York, New York City Administration for Children's Services ("ACS New York"), Family Court New York

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Feb 27, 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 27th day of April, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in relevant part, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourth Amendment to the United States Constitution provides, in relevant part, "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."

The Fourteenth Amendment to the United States Constitution provides, in relevant part, "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 provides, in relevant part "Every person who, under color of any statute, ordinance, regulation, custom, or usage, ***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 ***"

STATEMENT OF THE CASE

I.HX's medical treatment and the false imprisonment in hospital

My name is Chen Xu, after got my doctor's degree in law, I work as a legal professional for years. My son HX was born in the U.S. when I worked for Yale as a researcher in 2012.

HX got hurt in China in 2018 and there after the infection caused Infective Endocarditis(IE) and Nephrosis. For his better medical treatment, Chen Xu made the appointment with his former primary in Yale, took him back to the United States in 2019.

On Feb 5,2019, HX was diagnosis UTI in CityMD and on Feb 7,2019, Weill Cornell Hospital diagnosis he has Hydronephrosis. We then rent live in New York waiting for the Urologist's further evaluation. On March 1,2019, the Urologist in Weill Cornell Hospital assigned HX a test named VCUG.I agreed and paid about 10000 dollars for the tests and visits. Right after the test, HX urinated blood in the doctor's office and urinate cloudy for two weeks. The hospital requested me took him back for tests for four times and charged 2000 dollars extra, but the situation didn't get better.

On March 15,2019, both New Jersey and New York child protective agency received the hospital's report for HX's educational neglect.

On March 15,2019 Friday night 8:20 pm, ACS New York case worker came directly to my apartment, intend to tear up HX's passport and medical records, use ambulance forced my parents, HX and I to Weill Cornell Hospital, locked us together in a small hospital room with securities changed every eight hours from March 15,2019 to March 18,2019 8:00PM. My attorney came tried to save my family out of the false imprisonment and requested the court order they used to keep my family, almost got hit and got the response "nobody cares about court order, ACS will take care".

II. The bad faith of the Family Court Proceeding

According to Family Court Transcript, on March 18,2019 while my family were still locked together in the hospital, the hospital reported to ACS New York and Family Court New York "an abandoned child was found in hospital, nationality unknown, parent unknown."

Because of lack of evidence and conflicts with their own reports, ACS New York's petition to family court doesn't even fit the Family Court Act requirement.

According to the New York State Court system, since March 18,2019, ACS New York use a blank court order to continue false imprisonment HX in Weill Cornell Hospital room. On March 22,2019, HX was taken away

from the hospital with only a text to me by the ACS case worker Tramara Cheeseboro "I have your son".

The case worker Tramara Cheeseboro changed HX's name in ACS' system to avoid me contact my son. According to Tramara Cheeseboro's report, "Chen XU doesn't speak English nor Chinese", "she speaks an unknown language that ACS cannot understand or find translator to her", and intend to spread in the ACS system and translator system, "Chen XU has Mechosen and has so many people in and out their apartment", leading people doubt my position.

Therefore, ACS' staffs were not allowed to talk to me, I cannot get evidence, legal support, not allowed to speak or hand in evidence. Not able to visit my son. An assigned attorney tried to take away the original medical records to ACS, I finally manage to get the documents back with the court staff's help.

III. The Federal Court Proceedings

On April 19,2020, through the New York Court system, I finally got the blank court order ACS used to keep HX. My visitation to my son then being terminated by the foster care agency Forestdale.¹

On April 26,2020, after two weeks suspend of visitation, I filed the lawsuit against ACS New York in the District Court for the Southern District of New York.

On April 29,2019, three days after I filed the lawsuit, without medical authorization from me, HX was injected repeatedly vaccines Chicken Pox as revenge to my lawsuit. The United States kids have this vaccine two times in lifetime, while HX was injected two times in three months. This injection directed to HX's previous medical condition, according to ACS's medical records, HX's heart beats raise up to 127 and got rashes for three days, then finally got a chance to survive.

On May 17,2019, as ACS New York is the agency of City of New York, District Court for the Southern District of New York ordered City of New York as respondent.

On May 17,2019, I filed the amended complaint requested jury trail, alleges nine causes of action against City of New York pursuant First Amendment to the United States Constitution, the Fourth Amendment to the United States Constitution, the Fourteenth Amendment to the United States Constitution (i) false imprisonment (along with Weill Cornell Hospital), (ii)defamation, (iii) damage to substantive rights, (iv) damage to due process rights, (v) abuse child, (vi) hurt of parental rights, (vii) the right to get equal treatment, (viii) abridge the freedom of speech to deprive

¹ App.15a

the right to sue, (ix) unreasonable searches and seizures.

On June 14, 2019, during the conference proceeding, ACS New York handed to court a hand writing version blank court order. With three months adjust, the reason why HX should be moved to foster care still cannot fit Family Court Act and Social Service Law requirement, also has conflict with ACS' own report.

On June 28, 2019, I filed the preliminary injunction to the District Court of the Southern New York. Moved the court release HX from the false imprisonment so that the child can be well protected by family members. The preliminary injunction didn't being reviewed.

On August 27, 2019, the case worker Osbourne in Foster care requested my consent for HX's medical treatment. Since I heard she talked about extracted HX's teeth with her colleague, I refused to sign blank medical treatment consent documents. Meanwhile reported to district court the agency intent to extracted my son's molar teeth. Move the court grant the preliminary injunction.

On September 9, 2019, the agency of Forestdale extracted one of HX's well molar tooth as punishment. And adjusted the medical records. I filed the motion to federal court move the court grant an order of protection to avoid Dr. Tarrab, David, Dr. Merrra Rathi to treated or approach any child before the NYU dentistry handed in the full original medical records to the court for further evaluation.

On September, I kept receiving written threaten from Forestdale to be "very careful from being arrested to miss your son's court date".

On October 10, 2019, my visitation to HX being terminated by Family Court New York. I then filed the writ of Mandamus in Court of Appeals for the Second Circuit. As the agency trying to extracted HX's molar teeth, I respectfully move the second circuit grant the Mandamus requested the district court to release HX and review the case. Docket Number 19-3275.

On Oct 17, 2019¹, City of New York filed letter to reply the motion, promise "nobody wants to extract the boy's teeth." ²

On Nov 8, 2019 without fact finding trail proceeding, district court entered a summary judgement. Grant the final order to dismiss the case deems the federal court lack the Jurisdiction from exercising state court proceeding pursuant Younger v. Harris, 401 U.S. 37(1971). My false imprisonment issues pursuant 42 U.S.C. § 1983 also being dismissed pursuant Monell v. Department of Social Services, 436 U.S. 658 (1978), since "Plaintiff fails to allege what specific policies and procedures ACS allegedly violated, and how those alleged violations amounted to a

² App.26a

violation of her federal rights”.³

The key fact shows the bad faith of the proceeding in State Court is the hospital and ACS New York fake reported to Family Court New York on March 18,2019 on purpose to cover their mistake, while they still false imprisonment my family in their hospital. Apparently, ACS New York knows I am innocent.

The exception of Younger abstention is the prosecution is in bad faith, or the prosecution is part of some pattern of harassment against an individual. The transcript of Family Court New York and the evidence listed in Preliminary Injunction can clearly confirmed the court proceeding in Family Court New York is created to cover the false imprisonment issues in hospital. And HX lost one of the molar tooth, the irreparable harm listed in preliminary injunction has already occurred.

On Nov 19,2019, I filed a notice of appeal to the Court of Appeals for the Second Circuit re the final order of the district court. Docket Number 19-3864.

On Nov 20, 2019, I filed the motion to consolidate review the case 19-3275,19-3864, move the court grant the interim relief to release HX from false imprisonment to prevent further hurt.

On Dec 3,2019, Court of Appeals for the Second Circuit issued the order to consolidated review 19-3275 with 19-3864.

On Jan 2,2020, the respondent arranged the reply brief date to be April 2,2020.

On Feb 14,2020, the agency Forestdale extracted two of HX's molar teeth as punishment. Then arrested my mom and I in prison for four days, force us to do the finger print admitted I broke the agency's glass. Even though the video and the police officer's cap said my mom and I didn't do anything. The criminal lawsuit was brought in Queens Criminal Court to trap me since then.

On Feb 27,2020, I managed to being released from criminal court, filed the motion to Court of Appeals for the Second Circuit move the court release HX, as HX lost two more molar teeth in foster care the irreparable hurt occurred again.

On Feb 27,2020, the court of appeals for the Second Circuit denied the mandamus petition as Appellant has not met the standard for mandamus relief, and further ordered dismissed the consolidated appeal because Appellant's challenge to the district court's dismissal of her amended complaint present “no arguably meritorious issue for our consideration”.

³ App.12a

See Pillay v.INS,45 F.3d 14,17(2d Cir.1995) In light of the court's disposition of the mandamus proceedings and appeal, the court ordered that Appellant's motions are denied as moot.⁴

On March 11,2020, I filed the motion to reconsideration En Banc since the arranged court proceeding haven't finished, respectfully moved the court's reconsideration to let the defendant file the reply brief to protect my due process rights and substantive rights. Meanwhile, as the state court proceeding were set to prevent me fulfill constitutional rights, moved the second circuit review my case to get me a chance for remedy pursuant Lozman v City of Riviera Beach,__U.S.__,138 S. Ct. 1945(2018)⁵

The Second Circuit denied the motion on April 27,2020. I get the notice on May 5,2020 with the District Court ECF.

IV. The criminal case set to Chen Xu

On June 5,2020, 6AM, my landlord along with a woman came to my apartment requested for 15000 dollars extra for June's rent, after being rejected, the woman robbed my passport and run away. Ten minutes later, several police officers came to my apartment said they received a report, I pushed their colleague. I then being arrested again with no reason. The case still pending in Criminal Court in Manhattan.

On July 22,2020, Family Court New York denied my motion to dismiss the case, although all the court proceeding has already been finished, the doctor's testimony and all the medical records, doctors' note and prescription can prove the accuse to me doesn't exist.

Petitioner's eight years old boy lost three well molar teeth in foster care, and as punishment to petitioner's lawsuit, the agency didn't allow Chen Xu contact her son for over seven months. The innocent people being tortured like this, but the petitioner never get a chance to let the case being fully evaluated.

Without due process and legal justice system's protection, this case can happen to any family in the United States. Behind the issues is us, the hurt direct to our children and family, pray for the review from the Supreme Court of the United States.

⁴ App.2a

⁵ App.18a

REASONS FOR GRANTING THE PETITION

1.The issue of the case related to federal court jurisdiction. The federal court abstained its jurisdiction with constitutional issues in a well prepared bad faith state court proceeding.

In the *Younger v. Harris*, 401 U.S. 37(1971), the Supreme Court of the United States hold that the federal court can hear the case pending in the state court when "the defendant will suffer an irreparable injury that is both great and immediate."

Three exceptions were summarized to *Younger* abstention, the prosecution is in bad faith, the prosecution is part of some pattern of harassment against an individual, the law being enforced is utterly and irredeemably unconstitutional.

The evidence listed in the case fits all three exceptions of the *Younger* abstention. The City of New York's only argument is the federal court lack the jurisdiction with the pending state court proceeding, the District Court of Southern New York affirmed it with a summary judgement.

The agency of City of New York Forestdale then dare to written lie to Court of Appeals for the Second Circuit they "will not do anything to the child's teeth", then extracted two of my boys' molar teeth as punishment under Court of Appeals' jurisdiction.

The contempt directed to the justice system, call for the review of the Supreme Court of the United States.

2.The case related to United States kids' medical treatment rights and safety. HX first got hurt in China, after the treatment, got back to the U.S. for further evaluation.

The doctor in the U.S. has already made the diagnosis. After the child urinate blood, to cover the hospital's mistake, only with an unknown hospital staff's false report and an ACS New York case worker's false report, Chen Xu and HX being false imprisonment in the hospital, HX being taken away to foster care without any procedure, unreasonable arrests and written threaten were send to Chen XU to "very careful from being arrested to miss your son's court date".

With the court proceeding going on, ACS New York handed in two different versions of HX's medical records to court, Chen Xu's attorney being threatened, the child's well molar teeth being extracted as punishment to Chen Xu's lawsuit.

The issue of the case directed to the trust system between doctors and patients, related to the U.S. children's well medical treatment rights and U.S. family's equal rights for reasonable medical second opinion being protected by the Fourteenth Amendment of the United States Constitution. Call for the Supreme Court's review.

3.ACS New York use Family Court New York's blank court order to false imprisonment HX, after the lawsuit in federal court, ACS New York hand writing the court order with the reason has conflict with their own reports. The first time I showed the blank court order in a non-profile organization,

all the attorneys being shocked. I saw one of the attorneys hold the court order, hand shaking. They asked me since when ACS began chasing legal professionals?

I don't know how to answer. Maybe on March 15, 2019, when one of the ACS case worker said to her colleague in my apartment "She has medical records and she paid the rent on her own", got the answer "never mind, let's try", maybe on March 18, 2019, my attorney in the hospital tried to save my family from the false imprisonment and requested the hospital to show the court order why they locked people in their hospital room, get the response "who cares court order, ACS will take care".

The justice system is being threatened. All the legal professionals, well trained doctors, parents who know the case, are watching and expecting the Supreme Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Chen Xn

Date: September 15, 2020