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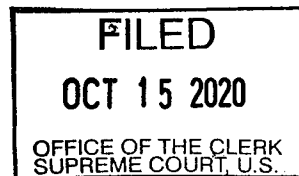
IN THE SUPREME COURT OF THE UNITED STATES

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“IN RE [THERESA S. ROMAIN] “ PETITIONER

ORIGINAL

ON PETITION FOR WRIT OF PROHIBITION TO THE  
APPEALS COURT FOR THE STATE OF NEW YORK



ON PETITION FOR WRIT OF PROHIBITION

---

Theresa S. Romain  
P.O. Box 392  
Marlboro NY 12542  
deball@mail.com

### QUESTION PRESENTED:

1. Can a State encourages discrimination on the basis of the race theory?
2. Does the petition clause (1<sup>st</sup> Amendment) authomatically disqualifies a petitioner from equal protection under the 14<sup>th</sup> Amendment?
3. Can full Faith and Credit Clause be superior to Fraud Upon the Court by resolving dispute?

## **PARIES TO THE PROCEEDING:**

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

William P. Barr (Attorney General United States)

Andrew M. Cuomo ( Governor State of New York)

Letitia James (Attorney General New York)

Hon. Thomas A. Breslin,(Chief Administrative Judge NY State)

Hon. Michael V. Coccoma(Former Deputy Chief Admin. Judge NY)

Hon. Karen K. Peters, (Former Justice Appellate 3<sup>rd</sup> Dept. NY)

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- Hon. Lisa M. Fisher Ulster County Supreme Court NY)
- Hon. Henry F. Zwack (Former Supreme Court Justice NY)
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- Hon. Christopher E. Cahill (Ulster County Supreme Court)
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- Wells Fargo Bank
- Wilmington Savings fund Society(Bank Wilmington Del
- Christina Trust/ BCAT 2015-13BTT( Sub of Wilmington Bank)
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- Mark R. Knuckles Esq.( Law Firm)

- Jean Strickland Esq. (Solicitor General NY)
- John G. Rusk Esq.(Law Firm Rusk, Martuscello et al)
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John Doe and Jane Doe et al

**COURT JUDGMENT TO BE REVIEWED DEEMED PARTY:**

- Hon. Henry F. Zwack (Supreme Court Justice)
- Hon. Christopher E. Cahill (Supreme Court)
- Hon. Lisa M. Fisher (Ulster County Court Foeclosure)
- Hon. Michael Gazer (Justice Court, Marlboro NY) (No. 18020063)

**CASES IN OTHER COURTS THAT ARE RELATED:**

- Romain v. Department Social Service(**Article 78**)(1997)
- Romain v. Catherine Charuk Esq. Index No. 05-944 (2006)
- Romain v. Catherine Charuk Esq.(2007)
- Department of Social Service v. Romain Index No 08-5612 (08 & 2009)
- Romain v. Department of Social Service(by Michael Iapocee  
/Commissioner)(2008 & 2009)
- Federal Bankruptcy Court(Poughkeepsie NY) Romain (13-367860) 2013
- Wells fargo v. Romain Index No.(09-1675) (2009, 2010 & 2015)



- Wilmington Saving Fund Society v. Romain NO. 2015-1301 (15 & 2017)
- Key Bank v. Romain (2009 & 2017)

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**IN THE SUPREME COURT OF THE UNITED STATES**

---

**"IN RE [THERESA S. ROMAIN]" PETITIONER**

**PETITION FOR A WRIT OF MANDAMUS  
COURT OF APPEALS FOR THE STATE OF NEW YORK**

---

Theresa Romain on behalf of her self respectfully petitions for a writ of Mandamus to the Supreme Court of the United States to review the decision made by the highest court of New York the Court of Appeals. The Writ of Certiorari was post marked as untimely due to the seizure, interception and destruction by the defendants. However in the alternative Petitioner respectfully pray that the Court treat this petition as a petition for a writ of Certiorari to review the judgment of the Appeals Court utilizing the doctrine of the Constitution, the First and Fourteen Amendment etc.

**OPINION BELOW:**

The Appeals Court the highest Court in State rejected a discretionary review documenting that the orders appealed from does not finally determine the action within the meaning of the Constitution, and it is further ordered, that the motion for leave to appeal is dismissed upon the ground that the orders sought t be appealed from do not finally determine the action within the meaning of the Constitution.

## **ANALYSIS OF OPINION BELOW:**

The opinion from the highest Court of the State located on

Appendix     A    

Reported at New York State Law Reporting Bureau

The opinion of the Appellate Division 3<sup>rd</sup> Department Court

Appears at Appendix     B    

Reported the New York State Law Reporting Bureau.

The opinion of the State Supreme Court appears at Appendix     C    

The date in which the highest Court decided the case is

November 16, 2017. The ruling was based on their rules “no  
petition for hearing is allowed on absent of finality.

A timely filed petition for stay and judgment was denied by  
the Appellate Division 3<sup>rd</sup> Department on January 18, 2018.

Petitioner filed Writ of Certiorari within 90 days after the  
denial of the Court of Appeals denial and it was seized by  
United Parcel Services (UPS) et al. Enroute to U. S. Supreme  
Court.

## **JURISDICTIONAL STATEMENT:**

- An Issuance of the Courts criteria, an Extraordinary Writ authorized by 28 U.S. C. 1651, 2241, 2242 and 2254 of Rule 20.
- The Supreme Court of the United States Shall have Appellate Jurisdiction reviewing State Court decision, judgments or orders in which the Constitutionality of the United States Constitution is in
- issue.
-

- 28 U.S.C. § 1651 (2000) provides in pertinent part: "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
- 4 Stat. 634-35 (1833). Section 7 of the Act of March 2, 1833, ch.52, more fully reads, "And be it further enacted, That either of the justices of the Supreme Court, or a judge of any district court of the United States, in addition to the
- authority already conferred by law, shall have power to grant
- writs of habeas corpus in all cases of a prisoner or prisoners, in jail or confinement, where he or they shall be committed or confined on, or by any authority or law, for any act done, or omitted to be done, in pursuance of a law of the United States, or any order, process, or decree, of any judge or court thereof, anything in any act of Congress to the contrary notwithstanding.
- "[I]t results that under the [federal habeas] sections cited a prisoner in custody pursuant to the final judgment of a state court of criminal jurisdiction may have a judicial inquiry in a court of the United States into the very truth and substance
- 
- 
- of the causes of his detention, although it may become necessary
- to look behind and beyond the record of his conviction to a sufficient extent to test the jurisdiction of the state court to proceed to judgment against him," 237 U.S. at 331. See Moore v. Dempsey, 261 U.S. 86 (1923), Mooney v. Holohan, 294 U.S. 103 (1935), Johnson v. Zerbst, 304 U.S. 458 (1938), Waley v. Johnson, 316 U.S. 101 (1942).

## STATEMENT OF THE CASE:

### **Beaches of Fiduciary Duties Causing Irreparable Harm:(Racial Discrimination)**

Adequate remedy alone is not a qualifying factor for the breach, specific performances is required when the defendants are not acting within the best interest of the business. Acting with prejudice to any rights and **remedies requires prohibition.**

- Theresa is a person who has been discriminated upon by a State based on color, genetic composition and national origin. Discrimination in public accomaditation is a crime needs prohibiting (7<sup>th</sup> Amendment of the Constitution). (Theresa was prohibited from continuance of owning a business).
- Breaches of certain terms of agreement such as agreeing to a remedy set up in a contract for (Section 1983, Civil Rights) actions pre/post deprivational remedy already staged then renagging on such promises needs to be **estopped.**
- Prohibition of the exercise of Constitutional right is fundamentally wrong. Federal laws superseed state law making it inferior to the higher authority.

The cooperation of “big tech” to further erode petitioner`s chance of petitioning the Government for redress of grivenences is (State action).

Failure of State to prevent the racial exclusion are acts implicating the 1<sup>st</sup> Amendment needs **estoppa.** “Permitting private organizations to

practice racial discrimination. Constitutional rights would be of little value if they could be thus indirectly denied” 321 U.S. At 664.

- **Congressional** definition of the 14<sup>th</sup> Amendment right supra “State Action” under the 14<sup>th</sup> Amendment, supra “the State ... must mean not private citizens but those clothed with the authority and influence which official position affords.

Damages could have been mitigated if the defendants had adequately

- retracted or corrected the objectionable matter in controversy but race played an important factor. See *Prystash v. Best Medium Publishing Co.* 157 Conn. 507 (Conn. 1967)

**Failing To Take Reasonable and Appropriate Measures To Protect Theresa.**

- Pursuant to full faith and credit statute (28 U.S.C. § 1738) requires Federal Court to give State Court judgment the same preclusive effect. This amounts to constructive fraud if it was carefully planned to have gained an unfair advantage by unjust means over Theresa a pro se litigant. Defendants owed a duty to Petitioner to “throw open the court doors.” In *Mitchum v. Foster* 407 U.S. 225, 240 (1972) proclaimed “throws open the doors of the United States courts to those whose rights under the Constitution are denied or impaired” Theresa is such a person. State should not be allowed to benefit from 28 U.S.C. § 1738 statute.

H.R. 4115 (111<sup>th</sup>) Open Court Access Act of 2009 meant what it said.



- Another fraud cannot be instituted when a plaintiff like Theresa was never given a platform in court to defend herself which is in total conflict to the 5<sup>th</sup> 6<sup>th</sup>, 7<sup>th</sup> and 14<sup>th</sup> Amendments of the U.S. Constitution. It is repugnant to Federal laws and State Constitution as well. It amount to fraud upon the court, all orders are nullified granting triple judgment. Double jeopardy should never be afforded against this petitioner. Court has a higher standard when faced with a motion to dismiss a pro se litigant complaint. See Jenkins v. McKeithen 395 U.S. 411, 421 (1969).
- In White v. Bloom 621 F. 2D 276 (1980) makes this point clear and states: A court faced with a motion to dismiss a pro se complaint must read the complaint's allegations expansively. See Haines v. Kerner 404 U.S. 519, 520-21, 92 S. Ct (1972) and take them as true for purposes for deciding whether they state a claim. See Cruz v. Beto, 405 U.S. 319, 322, 92 S. Ct. (1972).
- "Pro se litigants' court submission are to be construed liberally and held to a less stringent standards than submission of lawyers. If court can reasonably read the submission, it should do so despite failure to cite proper legal authority, confusion, of legal theories, poor syntax and sentence construction or litigant's unfamiliarity with rule requirements. See Boag v. MacDougall 454 U.S. 364, 102 S. Ct. 700 L.Ed (1982), United States v. Day 969 F. 2D 39, 42 (3<sup>rd</sup> Cir. 1992)

(holding pro se petition cannot be held to same standards pleadings drafted by Attorneys), Then v. I.N.S., 58 F. Supp. 2D 422, 429 (D. N. J. 1999).

- “When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudices. [386 U.S.547,568]”.
- **Accessing a Protective Computer Without Authorization:  
(Prohibition)**

Computer fraud and abuse act (CFAA) 18 U.S.C. 1030, CFAA imposes criminal penalties on whosoever “knowingly and with intent to defraud, access a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value id 1030 (a) (4) emphasis added. It would be discriminatory and prejudicial to Theresa to have the Government state that an indigent litigant computer is not supported by the act, but is unprotected.

This is the message that state and its officials conveyed.

Theresa is a person of interest under the petition clause has petition the Government for redress of grievance, her documentation and equipments worth protection from illegal and unauthorized intrusion. Microsoft authorization into Theresa’s computer was revoked six

months ago. Microsoft continues to access every computer that Theresa owns, knowingly, without authorization and with intent to defraud a “protective activity” which is authorized by the Constitution, Congress, Federal and State laws.

The Government computer at the public library is no exception the “hacking” crimes in which Microsoft circumvented technological barriers to access a computer must be **estopped**. In the case of *United States v. Nosal* 930 F. Supp. 2D 1051, 1060 (N.D. Cal 2013). The Court held that “the indictment sufficiently allege[d] such circumvention id at 1061.

The District Court sentenced Nosal to one year and one day in prison, three years of supervised release, a \$60,000 fine, a \$600.00 special assessment and approximately \$828,000 in restitution to the person to whom suffrage befell. It not important to the composition or preferences of the State actors who authorized the illegal wrong, the revocation of computer access closes both the front door and the back door to Theresa’s computer. State and its actors “exceed[ed] authorization with intent to defraud and prevent the due process of law. See *Pinkerton v. United States*, 328 U.S. 640, 647 (1946) (Conspiracy liability) *United States v. Short* 493 F.1170, 1172 (9<sup>th</sup> Cir. 1974) (Aiding and abetting liability). In violation of 1030 (a) (4) of the CFAA. Microsoft, Google, UPS, Straight Talk, Wells fargo, Wilmington and State Actors have formulated a scheme in which they have Theresa under the “finger print” authentication

which is reserved to law enforcement, this is very troubling and needs to be **stopped**.

Theresa is not a criminal on parole. State action including the exercise of power of one “possessed by virtue of state law and made possible only because the wrongdoers are clothed with the authority of state law”.

See United States v. Classic 313, U.S. 299, 61 S. Ct. L.Ed 1368 (1941).

The wrongdoer`s employment by the government may indicate state action. The defendants acted pursuant to a state statute pursuant to a “custom or usage” that had the force of law in the state. See Adickes v. S. H. Kress & Co. 398 U.S. 144, 90 S. Ct. 1598 Ed 2d 142 (1970).

- The defendants have committed an unfair and deceptive trade practice, they disregard the Antitrust complaint made by Petitioner in direct response to their unauthorized conduct. And in so doing has caused injury and mental anguish to petitioner in the spoliation of documents and equipments desiring tribble damages.
- In Smith v. Superior court 198 Cal Rptr 829 (2d Dist 1984) The court recognized a new tort holding that a party who deliberately destroys or negligently fails to preserve evidence that will be needed for litigation may be sued for “spoliation of evidence” See County of Solano v. Delancy 264 Cal Rptr 721 (Cal App 1<sup>st</sup> Dist 1989)
- Elements of new tort of spoliation the defendants knows about the pending threatened or probable litigation. The defendants intentionally

- spoil evidence to disrupt the plaintiff's case and the spoilation of evidence proximately causes damages to the plaintiff. The defendants owed a duty to Theresa to protect those records and equipments.

### **Unclean Hands:**

- The relationship established by State and those Corporation are contractual in nature rather prescriptive by the State. The charting of a Corporation by the state makes the Corporation and its structures and internal affairs, instruments of State policy "**Light touch regulation**" provided to "big Tech" to harass, intimidate with surveillance of law abiding citizen should be abolish. It amount to a breach of trust and gross negligence to put one at risk of injury. It should only be in cases of insurrection. Life, liberty and property without the due process of law is criminal in nature. The defendants owed Theresa a duty to exercise reasonable care in securing Theresa's safety, defendants breached that duty and as a result of the breach Theresa suffered injury from behavior which is "wanton". (Excessive Force)

### **Persons To Be Prohibited:**

Andrew M. Cuomo (Governor N.Y. State), Letitia James (Attorney General N. Y.) (Individual and incapacity all et al), Eric Schneiderman (Former Attorney General N.Y.) Hon. Thomas A. Breslin (Chief Administrative Judge), Hon. Michael V. Cocco (Former Deputy Administrative Judge), Justice Randall T. Eng, (Former Justice of 2<sup>nd</sup> Dept.), Hon. Karen K. Peters (Former Presiding Justice 3<sup>rd</sup> Dept.), Hon. Maria G. Rosa (Supreme Court Justice 9<sup>th</sup> District Dutchess County), Clinton G. Johnson Esq (Ulster County Attorney), Hon. Kimberly O' Connor et al, Wells Fargo et al, Wilmington Saving Fund Society et al, Rusk walden & Martuscello et al, United Parcel Services (UPS) et al, Microsoft Corporation et al, Google LLC et al. John Doe and Jane Doe et al.

### **The right to Issuance of the writ is “Clear and Indisputible”**

- Prohibition only resorted in extreme cases of abuse when the rights are clearly establish. Petitioner has no other adequate means of obtaining the relief she desire

Theresa satisfied the burden of showing that [her] right to issuance of the writ is clear and indisputable. The application of the law is objectively unreasonable 28, U.S.C. 2254 (d). Federal court issue the writ when state court applied the law that “application must” be objectively unreasonable. See *Lockyer v. Andrade* 538 U.S. 63, 75-76 (2003), quoting *Williams v. Taylor* 529 U.S. 362, 411 (2000).

In restraint of a wrong it is not necessary to have exhausted state remedy where there is none and when the abuse is sanction by state actors. 28 U.S. C. 2254 (b) (1) (A) The requirement is subject to exception when it appears that (1) There is an absence of available state corrective process. (2) Circumstances exist that renders such process ineffective to protect the rights of applicant. 28 U.S.C. 2254 (b) (1) (b) *Banks v. Dretka* 540 U.S. 668, 690 (2004). State litigation conduct waves exhaustion and procedure default.

See *Granberry v. Greer* 481 U.S. 129, 135 (1987). Never the less the exhaustion theory was met, state and its actors have not decline to refrain from unconstitutional conduct. A waiver of suit in Federal Court is unquestionable, waived by prominent state officials. See Justice

Christopher E. Cahill memo dated July 23, 2015 informing

Hon. Thomas A Breslin AJ that this time he has to recuse himself.

In 2009 Judge Cahill documented that law enforcement was given the order to protect DSS from Theresa this order has destroyed Theresa's career as a professional Nurse....

- Exceptional circumstances warranting the exercise of the courts discretionary powers relief cannot be obtained in any other form or from any other court.

**In Conclusion:**

Theresa is a person to whom a promise had been made has suffered unconscionable injury or has prejudicially changed (40 Misc 3d at 558), her reliance on the promise 57 NY Jur 2d, estopped, Ratification and waiver 50 (2000 edj).



By Theresa S. Romain(Petitioner)

Date: 10/14/20

No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
“IN RE [Theresa S. Romain]” Petitioner  
dba Alternative Homecare Co.

**PROOF OF SERVICE**

I Theresa S. Romain, do swear or declare that on this date, October 15<sup>th</sup> 2020 as required by Supreme Court Rule 29. I have served the petition Writ of Mandamus, Prohibition, Habeas Corpus and Injunctive Relief on each party to the above proceeding or that party counsel and every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first -class postage prepaid, or by delivery to a third - party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

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**Wells Fargo Home Mortgage**

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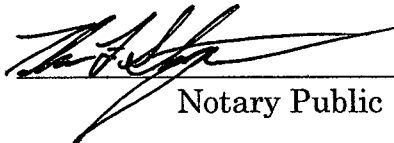
Michael V. Coccoma (Former Admin. Judge)  
Supreme Court Chambers  
Ostego County Office Bld.  
197 Main Street, Cooperstown  
NY. 13326 607-322-3165

I declare under penalty of perjury that the foregoing is true and correct

Date October 15<sup>th</sup> 2020

Signature: 

Date: September 10/15 2020

  
Notary Public

