

NO. 2017-870

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

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Theresa S. Romain dba Alternative Homecare CO.  
AKA Theresa Romain

Petitioner

VS

United States of America (Individual and Incapacity all et al),  
Andrew M. Cuomo (Governor N.Y. State), Letitia James (Attorney General N.  
Y.) Hon. Thomas A. Breslin, Hon. Michael V. Cocco, Hon. Karen K. Peters,  
Justice Randall T. Eng, Hon. Maria G. Rosa, Clinton G. Johnson Esq. 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, Gross Polowy LLC et al,  
Knuckles Komosinski & Manfro et al, Straight Talk et al, John Doe et al, Jane  
Doe et al.

Respondents

**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES SUPREME COURT FROM  
THE APPEAL COURT FOR THE STATE OF NEW YORK**

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<b>PETITION FOR CERTIORARI</b>
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Theresa Romain  
P. O . Box 392  
Marlboro NY 12542

NO. \_\_\_\_\_

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et al, Microsoft Corporation et al, Google LLC et al, Gross Polowy LLC et al,  
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Doe et al.

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
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<b>PETITION FOR REHEARING</b>
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Hon. Thomas A. Breslin, Hon. Michael V. Cocco, Hon. Karen K. Peters, Justice  
Randall T. Eng, Hon. Maria G. Rosa, Clinton G. Johnson Esq. 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, Gross Polowy LLC et al, Knuckles Komosinski  
& Manfro et al, Straight Talk et al, John Doe et al, Jane Doe et al.

Respondents

ON WRIT OF CERTIORARI ON APPEAL  
FROM THE APPEALS COURT FOR  
THE STATE OF NEW YORK

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**PETITION ON REHEARING**

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Theresa Romain  
P.O. Box 392  
Marlboro NY 12542

## **Question Presented**

1. Whether a State Court can foreclose its door to a litigant on the premise of race, color and national origin?
2. Whether an Appellate Court acting as a trial court procedural and evidentiary ruling constituted an abuse of discretion requiring reversal of judgment?
3. Whether State Courts dismissing claim 42 U. S. C. 1983, alleging that State attorney general, court administrative officials, under color of State law sought relief that would deprive rights under Federal and State law?
4. Whether the Fourteenth Amendment under the United State Constitution is an affirmative guarantee or least restrictive promissory warranty with a breach of contract?

## **PARTIES TO THE PROCEEDING:**

All Parties do not appear in the caption of the case on the cover page who are the subject of this petition are as follows:

United State by (Attorney General United States)

Andrew M. Cuomo ( Governor State of New York)

Letitia James (Attorney General New York) NY

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

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

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

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- Wells Fargo Bank
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- Mark R. Knuckles Esq.
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**RESPONDENTS ON STATE COURT CAPTION:**

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### **COURT JUDGMENT TO BE REVIEWED:**

- Hon. Henry F. Zwack (Supreme Court Justice)
- Hon. Christopher E. Cahill
- Hon. Lisa M. Fisher (Ulster County Court Foreclosure)
- Hon. Michael Kraiza (Justice Court Marlboro)

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

- Theresa Romain v. John L. Decker (Commissioner DSS (Article 78) 3/11/98)
- Theresa Romain v. Catherine Charuk Esq. Index No. 05-0944 (2006-2007) RJI 55005-00409
- Theresa Romain v. Catherine Charuk Esq. (2007) Littman Krooks LLP For Romain. File No. 23724
- Department of Social Service v. Theresa Romain Index No. 08-6430 (2009) (RJI No. 55-08-0286)
- Theresa Romain v. Department of Social Service (by Michael Iapoce/Commissioner) Index No. 08-5612 (12/16/2008) RJI 55-08-02160
- Federal Bankruptcy Court RE: Theresa Romain Case No. 13-36786 (2013)
- Wells fargo v. Theresa Romain Index No. 15-1301 (2015) RJI 55-15-01101
- Wells fargo v. Theresa Romain Index No. 1675 (2009)
- Wilmington Saving Fund Society v. Theresa Romain Index No. 1301 (2015)
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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR REHEARING FOR CERTIORARI

Petitioner respectfully prays that a rehearing be issue to review the judgment below:

**OPINIONS BELOW**

☒ For cases from **State Courts:**

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

☒ reported at New York State Reporting Bureau ;

The opinion of the Appellate Division 3<sup>rd</sup> Department court  
Appears at Appendix   B   to the petition and is

☒ reported at 2017 N. Y. Slip OP 92363 ; or

☐ has been designated for publication but is not yet reported; or

☐ is unpublished.

**JURISDICTION:**

The Jurisdiction of this court is invoked under 28 U.S.C 1257( a).

☒ For cases from **State Court:**

The date on which the highest state court, decided my  
Case was November 16<sup>th</sup> 2017

A copy of that decision appears at Appendix

  A  

☒ An extension of time to file the petition for a writ  
of certiorari was granted to and including 2/6/2018  
(date) on 3/29/2018 (date) in application

No. 2017\_\_870\_\_

**CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED:**

- Due Process under the Fourteenth Amendment
- Eight Amendment
- Sixth Amendment
- Fifth Amendment
- Fourth Amendment
- First Amendment

**PETITION FOR REHEARING:**

Pursuant to Rule 44.2, based on controlling case law of a substantial nature not previously presented and the COVID- 19 factor, Theresa Romain (Petitioner) respectfully petition for rehearing on the courts order upholding statute for the above writ and petitions.

## **PETITION FOR REHEARING:**

Pursuant to Rule 44.2, based on controlling case law of a substantial nature not previously presented and the COVID- 19 factor, Theresa Romain (Petitioner) respectfully petition for rehearing on the courts order upholding statute for the above writ and petitions.

## **STATEMENT OF THE CASE:**

Petitioner`s case concerns Congress`s ability to confer delegation to the State Court, the power to interpret section 1983 cases applying pre and post deprivation remedies based upon the rule of law.

The application of the equal protection of the law not to a chosen few but upon application to all. And the Attorney General to decide whether individuals convicted of crimes against humanity, whether they are subject to criminal penalties for violating the law. Petitioner suffers unconstitutional harm some which are irreparable in nature.

In *Monroe v. Pape*, 365 U.S. 167 (1961) (b) one of the purposes of the legislation was to afford a Federal right in Federal courts because by reason of prejudice, passion, neglect, intolerance, or otherwise, state law might not be enforced and the claims of citizen to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth Amendment



might be denied by state agencies. See Pp. 365 U.S. 174-180 (c). The Federal remedy is supplementary of the state remedy, and the state remedy need not be sought and refused before the Federal remedy is invoked. P. 365 U.S. 183 (d) (misuse of power by virtue of state law).

A case in controversy requiring sound interpretation and due diligence from the court to strike proper balance between the conflicting principles, reviewable only upon rehearing.

### **Decision in Matters of Constitutional Law**

The Supreme Court over Ruling in Matters of  
Precedents: 2020- 2021

- (1) In *Uzuegbunam v. Wilkinson* March 4, 2021  
The Supreme Court on the preservation of the First Amendment (free speech law suit) awarded nominal fee although the rehearing was dismissed.
- (2) In a highly publicized case involving gay rights the Supreme Court stands its ground and exercised the protection clause.
- (3) In *Pham, Tony H. et al v. Ragbir Ravidath I. et al*  
No. 19-1046 writ of Certiorari granted
- (4) In *Wilson, Gary W. v. Oklahoma* No. 19-8126

leave to proceed in forma pauperis and writ of  
Certiorari granted in light of *McGirt v. Oklahoma*  
591 U. S. \_\_\_\_ (2020)

(5) In *Ruffin Jermaine v. Louisiana* No. **19-8337**

Leave to proceed in forma pauperis and petition  
for Writ of certiorari granted in light of *Ramos v.*  
*Louisiana* 590 U. S. \_\_\_\_ (2020)

(6) *Lambert, Nathaniel v. Louisiana* No. **19-8149**

Leave to proceed in forma pauperis and petition  
for Writ of certiorari granted.

**REASON FOR GRANTING THE REHEARING:**

1. The court has decided the case based on an issue  
not proposed or briefed by either party.
2. There are fundamental errors analysis and  
procedural default by the court and there is a  
reasonable possibility of a cure by means of  
a rehearing petition.
3. An issue of prejudice and a Federal Constitutional  
aspect of petitioner's argument was ignored.
4. Petitioner's case was not decided on "independent  
and adequate Federal procedural grounds.
5. The case requires state wide issues of law or a  
split of authorities will occur within the court's  
system. The Supreme Court decides issues of  
state wide importance.

The issue is one that would be vexing to the court. One in which the controversy is not frivolous but contrarious.

#### **CASE LAW PRINCIPLES ON REHEARING:**

- Review –worthy issues that are within conflict from state courts are settled by the Supreme court of the United States grounded on Federal Constitution. See Jackson v. Virginia (1979) 443 U. S. 307 and Estelle v. McGuire 112 S. Ct.(1991).
- Willett v. Lockhart 37 F. 3d 1265, 1272 -73 (8<sup>th</sup> Cir. 1994) Sup Ct. R. 44.2 (stating that a petition for rehearing should assert “intervening Circumstances of a substantial or controlling effect ... or other substantial grounds not previously presented.

#### **Other instances of Rehearing/Consideration:**

- Lincolnshire IL ET AL v. INT Union Local 399

#### **Section 1. Equal Protection of the law.**

- In E.G Fla. N. Rodrique 461 U. S. 940 (1983) Granting on May 23 1983 rehearing of a denial of Certiorari dated May 26 1981.
- Place W. Weinberger 426 U. S. 932 (1976) granted on June 14, 1976 rehearing of a denial of Certiorari dated Nov. 25,1974.
- In Foster v. Tex \_U. S. \_ 131 S Ct 1848

(2011), Ohio- Power 353 U. S. 98, Carlisle  
v. U. S. 517 U. S. 416, 451 (1996) Stevens  
& Kennedy JJ dissenting (On rear occasions ...  
we have held that the interest in the even-  
handed administration of justice over weighs  
the interest in finality and granted petition  
for rehearing).

## **HARM SANCTION BY CPLR1602**

Effective October 1, 2005

Legislative History:

“Mc Kinney's Consolidated Laws of  
New York Annotated Civil Practice  
And Rule.

In Morales V. County of Nassau (1999)  
94 2d 218 703 NY S 2d 61 724 N. E.  
2d 756. The Court of Appeals rejected  
the notion that courts may create  
additional non legislative exceptions to  
the operation of Article 16. In the trial  
of Morales a Judge made exception to  
Article 16 in case against Municipalities  
for the negligent enforcement of orders of  
protection . The Judge acknowledge that  
New York State strong public policy  
encouraging the enforcement of orders of  
protection.

The court of Appeals refused to engraft  
another exception onto CPLR 1602 based

on such policy upon reviewing the Legislative history of Article 16. The court concluded that statute represented a "careful balance" of competing interests that took account of all exceptions deems appropriate by the Legislature. The court therefore stood by the standard canon of construction "expressio unis est exclusion alterius" of special exemptions indicates an exclusion of all other. Also where the Legislature has indicated its policy preferences, courts should not superimpose their own See 94 N. Y. 2d at 224-25 70 N. Y. S 2d at 64 724 N. E. 2d at 759, Van Vlack v. Baker 1997 2d 2d Dept) (nothing the absence of any exception for social host liability in CPLR 1602.

The Appellate Division said "it was improper for the court to determine that CPLR 1601 did not apply on the ground that the policies underlying the enactment of general obligation Law 11- 100 outweighed the policies underlying the subsequent enactment of CPLR article 16".

#### **FAILURE TO PROTECT:**

The Legislature had fair warning , was equipped with knowledge that the court were refusing to follow protocol and had not done enough to protect Theresa from harm. The equal protection clause is statuted in the 14<sup>th</sup> Amendment to state to protect. The due process of the law was not afforded to Theresa in state court. See Meyer v. Nebraska, 262 U.S. 390, 399, (1923) that the liberty guaranteed by the Fourteenth Amendment.

Schwartz v. Board of Bar Examiners of N. M., 353 U. S.  
232, 238—239 (1957), for the proposition that a  
State cannot exclude a person from the practice  
of law for reasons that contravene the Due Process clause.

### **PRODUCT LIABILITY:**

Mc Kinneys CPLR 1602 N0 10 states “ not apply to  
any person held in a product liability action where  
the manufacturer of the product is not a party to  
the action and the claimant establishes by a  
preponderance of the evidence that jurisdiction  
over the manufacturer could not with due diligence  
be obtained and that if the manufacturer were a  
party the action , liability, to the extent of the  
equitable share of the manufacturer”.

Ms. Romain has demonstrated on the caption  
the parties involved, the manufacturer, the contractor  
and the end users. The Constitution and Federal laws  
should not be determined as defective product when  
they are used as the manufacturer instruction.

### **EXCEPTIONAL CIRCUMSTANCES WHICH ARE EXTRAORDINARY:**

Rule 36 of the Supreme Court of the United States  
hand book : The custody of prisoners in habeas corpus  
proceeding. The Supreme court document that the  
transferring of custody to another is forbidden unless  
authorized by a Justice or Judge of the court.

Ms. Romain continues to be harmed in custody by  
an unconstitutional policy. State actors and “big tech”  
have set bail that is unconstitutional an 8<sup>th</sup>  
Amendment deprivation.

Inappropriate to ask not to petition the Government for redress of grievances (1<sup>st</sup> Amendment) deprivation. Theresa is a person in custody for no bailable offense. Petitioner respectfully ask that the court consider all petition before it and for good cause shown. And if for any reason that cannot be entertained accept a couple of the writ as discretion may permit for review.

### CONCLUSION:

Ms Romain case is one of extraordinary circumstances requiring a rehearing. Charles Alan Wright et al Federal Practice Guide and Procedure Vol. 16AA 39 86 PP 597-98) 4<sup>th</sup> Ed. West 2008) (explaining that this power exists though only use in extraordinary circumstances), Gordeck 382 U. S. 25, Ohio Power 353 U. S. at 99, Straight v. Wainwright 476 U. S. 1132, 1135 (1986), U. S. v. Johnson 457 U. S. 537 ,555- 56 (1982).

In Weed v. Bilbrey 400 U. S. 982 984 (1970) Douglas & Black JJ Dissenting (The fact of the matter are even more compelling than those in [Gordeck]) All [this Litigant] ask is that the court apply the law in her case that was applied in the other following hers. That's all Theresa Romain ask for that she be treated as others in similar circumstances. Fed RCVP 60 (b) providing for reopening judgment in certain circumstances.

**Wherefore** petitioner pray that the U. S. Supreme Court holds dearly the issues that brought her to the Supreme Court, reconsider review and rehearing, and grant petitioner justice.

Respectfully Submitted,



Theresa Romain (Petitioner)

Date: March 22<sup>th</sup> 2021