

20-6649
No. 20-_____

IN THE SUPREME COURT OF THE UNITED STATES

NOVEMBER TERM, 2020

EL AEMER EL MUJADDID,

Petitioner,

ANDREW BREWER; JOSH ROWBOTTOM; BRIAN FERGUSON; GREGG
PERR; SUSAN GRAUBART; COREY AHART; MARION KARP; DENNIS P.
MCINERNEY; WESTAMPTON TOWNSHIP COMMITTEE,

Respondent.

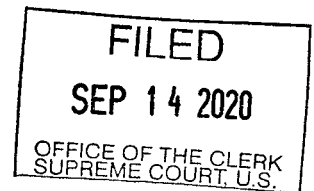
STATE OF NEW JERSEY,

Respondent,

EL AEMER EL MUJADDID,

Petitioner.

ORIGINAL



ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

- I. Does both 42 U. S. C. § 1983 and 18 U.S.C. § 1595 create a damages remedy against state actors for issuing, enforcing, adopting, aiding or abetting the abuse of an invalid subpoena to testify [36 #3] [App.16], served on an accused party, after expiration of a 30-day statute of limitations for service of a motor vehicle summons?
- II. Did the lower Courts err or abuse their discretion in determining that petitioner's complaint [36 #9] and exhibits [36 #3-7] attached failed to state a claim for relief?
- III. Does an individual's Fourth Amendment right to be free from unreasonable search and seizure, Fifth Amendment right to not be compelled to testify against himself, Thirteenth Amendment right to be free from forced labor and Fourteenth Amendment right to procedural and substantive Due Process continue through the legal process of a state municipal-quasi criminal case?
- IV. Whether in an action for abuse of process, the injured person has a remedy against anyone who intentionally procures, participate in, aid, or abet, advises, or consents to, adopts or ratifies the abusive act?
- V. Whether the Federal Rules of Evidence required admission of the invalid Subpoena to Testify [36 #3]?

List of Parties

Other parties to the proceeding in the Third Circuit were:

Victor Bialous

William Golden

Donna Florich

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STATE OF NEW JERSEY,

Respondent,

EL AEMER EL MUJADDID,

Petitioner.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE THIRD CIRCUIT

Plaintiff El Aemer El Mujaddid (hereinafter El Mujaddid) respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in these cases.

Opinion Below

The decision(s) of the Third Circuit in No. 19-3328, 19-3329, 19-3463 are reproduced in the appendix to this petition at Pet. App. A1-A8. Panel Rehearing and rehearing *en banc* were denied on July 02, 2020. (Pet. App. A4-A5). The Third Circuit issued its judgment(s) (Pet. App. A2 and A3) on 04/09/20 and 05/01/20. The decision(s) of the District Court of New Jersey in No. 18-14021 (RBK/AMD) and 19-17596 (RBK/AMD) are reproduced in the appendix to this petition at Pet. App. A9-A15.

Jurisdiction

The Third Circuit Judgments in 19-3328, 19-3329 and 19-3463 are sought to be reviewed on writ of certiorari and involve identical or closely related questions. The appellate jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) and Rule 12.4.

Where, as here, a possible due process violation is apparent on the particular facts of a case, we are empowered to consider the due process issue. Citing Wood v. Georgia 450 U.S. 261 (1981)

CONSTITUTIONAL PROVISIONS INVOLVED

The Full Faith and Credit Clause:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof. Section.

The Privileges and Immunities Clause:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

The National Supremacy, and Oaths of Office Clause:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

The First Amendment right to freedom of speech and right to petition Clause(s):

Congress shall make no law..... abridging the freedom of speech.

Congress shall make no law..... abridging the right of the people to petition the Government for a redress of grievances.

The Fourth Amendment right to be free from Unreasonable Searches and Seizures:

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 Fifth Amendment right to due process and Privilege against self-incrimination Clause(s):

nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law

The Seventh Amendment right to trial in a civil case

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved

The Ninth Amendment unenumerated rights outside those expressly protected by the Bill of Rights Clause

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Thirteenth Amendment prohibition of Slavery and Involuntary Servitude Clause

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.¹

The Fourteenth Amendment Privileges & Immunities Clause:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

The Fourteenth Amendment Due Process Clause provides:

No person shall... be deprived of life, liberty, or property, without due process of law.

The Fourteenth Amendment Equal Protection Clause:

provides nor shall any State...deny to any person within its jurisdiction the equal protection of the laws.

¹ Senator James Harlan of Iowa, elaborating upon the Amendment's purposes, indicated that the incidents of slavery that the Amendment would abolish included the inability to hold property, denial of equal status before the justice system, suppression of freedom of speech,... See tenBroek, *supra* note 29, at 177-78 (citing CONG. GLOBE, 38th Cong., 1st Sess. 1439, 1440 (1864)).

FEDERAL STATUTORY PROVISIONS INVOLVED

8 Stat. 100-105 (1786)

Art. .21. "If a Citizen of the United States should kill or wound a Moor², or on the contrary if a Moor shall kill or wound a Citizen of the United States, the Law of the Country shall take place and equal Justice³ shall be rendered"

8 Stat. 484-487 (1836)⁴

Art. .21. "If a Citizen of the United States should kill or wound a Moor⁵, or on the contrary if a Moor⁶ shall kill or wound a Citizen of the United States, the Law of the Country shall take place and equal Justice⁷ shall

² "Moor" is synonymous with "Maurus", "Aethiop", "Negro". Source: A new English-Latin dictionary (1783) by John Etick's Pgs. 155 and 159. "Moor"...They are of mixed Berber, Arab, and often Negro blood. Source: United States. Immigration Commission Dictionary of Races and Peoples (1907-1910) U.S. Government Printing Office, 1911.)

³ *"It had been a Cushite principle to mete out equal justice to aliens."* Source: Wonderful Ethiopians of the Ancient Cushite Empire Chapter VIII. Arabia And Her Ancient Races, by Drusilla Dunjee Houston [1926, no renewal] Pg.124-125.

⁴ *"The Treaty of 1836 replaced an earlier treaty between the United States and Morocco which was concluded in 1787. The two treaties were substantially identical in terms and Articles 20 and 21 are the same in both. Accordingly, in construing the provisions of Article 20 -and, in particular, the expression "shall have any dispute with each other it is necessary to take in to account the meaning of the word "dispute at the times when the two treaties were concluded. For this purpose it is possible to look at -the way in which the word "dispute" or its French counterpart was used in the different treaties concluded by Morocco e.g., with France in 1631 and 1682, with Great Britain in 1721, 1750, 1751, 1760 and 1801. It is clear that in these instances the word was used to cover both civil and criminal disputes." (citing France v. United States of America Judgment of August 27th, 1952: I.C. J. Reports 1952, p. 176.)*

⁵ *"In Britain it was often used to refer to any Black person (particularly Muslims)...It was spelt in a variety of ways (such as 'more', 'moir', 'moorish' 'moris' 'moryen') and often combined with 'black' or 'blak', as in 'black moor', 'blackamoor' and 'black more'. 'Blackamoor' was also used as a synonym for 'negroe' in the 15th, 16th, and 17th centuries.*

<https://www.nationalarchives.gov.uk/pathways/blackhistory/glossary.htm#moor>

⁶ *(the Moors were to be treated on a footing with other nations.)* Citing MOXON et al. v. The FANNY. [2 Pet. Adm. 309.]1 District Court, D. Pennsylvania 1793. The South Carolina District Court in Ex parte Shahid, 205 F. at 814-16 "thus determined that...Moors" are white.

⁷ The words "equal justice under law" paraphrase an earlier expression coined in 1891 by the Supreme Court. In the case of Caldwell v. Texas, Chief Justice Melville

be rendered”

42 U.S. Code § 1981

(a) Statement of equal rights All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S. Code § 1983

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. (R.S. § 1979; Pub. L. 96–170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104–317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

42 U.S. Code § 1985 (2)(3)

(2) Obstructing justice; intimidating party, witness, or juror If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or

Fuller wrote on behalf of a unanimous Court as follows, regarding the Fourteenth Amendment: *“the powers of the States in dealing with crime within their borders are not limited, but no State can deprive particular persons or classes of persons of equal and impartial justice under the law.”*

testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws; (3) Depriving persons of rights or privileges If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

22 U.S. Code § 7102 – Definitions

In this chapter: (1) Abuse or threatened abuse of law or legal process The term “abuse or threatened abuse of the legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

18 U.S. Code § 1589. Forced labor

- (a) Whenever knowingly provides or obtains the labor or services of a person by any one of, or by any combination of, the following means—
(3) by means of the abuse or threatened abuse of law or legal process;
(b) *In this section: (1) The term “abuse or threatened abuse of law or legal process” means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.*

18 U.S. Code § 1595. Civil remedy

- (a) *An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorney’s fees.*

NEW JERSEY STATUTORY PROVISIONS INVOLVED

N.J. Stat. § 2A:84A-17 Privilege of accused.

- (1) *“Every person has in any criminal action in which he is an accused a right not to be called as a witness and not to testify.”*

N.J. Stat. § 22A:1-4. Fees and mileage of witnesses and others

“Witnesses and others hereinafter mentioned shall be entitled to the following fees: Each witness attending any of the following, in his own county, per day of attendance, \$2.00; a court; a joint committee of the Legislature, a standing committee of either house or any special committee, which shall have been, by resolution, directed to enter upon any investigation or inquiry, the purpose of which shall necessitate sending for persons and papers and the examination of witnesses; a commissioner or commissioners; a master; a referee; an arbitrator; an officer taking a deposition; or any proceeding issuing out of any court. Each witness so attending from a foreign county, at the rate of \$2.00 a day, together with, for each day of attendance, an allowance of \$2.00 for

every 30 miles of travel in going to the place of attendance from his place of residence and in returning. For the Secretary of State, or any clerk attending on subpoena, with records, wills or other written evidence, at the rate of \$2.00 a day, and mileage as aforesaid."

N.J.S.A. 39:5-3 Appearance, arrest process; complaint; venue

39:5-3. a. "When a person has violated a provision of this subtitle, the judge may, within 30 days after the commission of the offense, issue process directed to a constable, police officer, or the chief administrator for the appearance or arrest of the person so charged and for a violation of R.S.39:4-81, issue process within 90 days after the commission of the offense. In the case of a violation enumerated in subsection b. of this section, this period shall commence upon the filing of a complaint."

N.J.S.A. 40A:9-22.5 Code of ethics for local government officers or employees

"Local government officers or employees under the jurisdiction of the Local Finance Board shall comply with the following provisions: a. No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction, or professional activity, which is in substantial conflict with the proper discharge of his duties in the public interest, c. No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others, d. No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in 6 which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment; g. No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated;"

New Jersey Conflicts of Interest Law 52:13D-12

"Legislative findings The Legislature finds and declares: (a) In our representative form of government, it is essential that the conduct of public officials and employees shall hold the respect and confidence of the people. Public officials must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated."

New Jersey Conflicts of Interest Law 52:13D-14

"State officer or employee or member of legislature; acceptance of thing of value to influence public duties No State officer or employee, special State officer or employee, or member of the Legislature shall accept from any person, whether directly or indirectly and whether by himself or through his spouse or any member of his family or through any partner or associate, any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with intent to influence him in the performance of his public duties and responsibilities. This section shall not apply to the acceptance of contributions to the campaign of an announced candidate for elective public office."

N.J. Stat. § 10:6-2

"Section 10:6-2 - Actions Permitted Under The "New Jersey Civil Rights Act" a. If a person, whether or not acting under color of law, subjects or causes to be subjected any other person to the deprivation of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, the Attorney General may bring a civil action for damages and for injunctive or other appropriate relief. The civil action shall be brought in the name of the State and may be brought on behalf of the injured party. If the Attorney General proceeds with and prevails in an action brought pursuant to this subsection, the court shall order the distribution of any award of damages to the injured party and shall award reasonable attorney's fees and costs to the Attorney General. The penalty provided in subsection e. of this section shall be applicable to a violation of this subsection. b. If a person, whether or not acting under color of law, interferes or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any other person of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United

States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, the Attorney General may bring a civil action for damages and for injunctive or other appropriate relief. The civil action shall be brought in the name of the State and may be brought on behalf of the injured party. If the Attorney General proceeds with and prevails in an action brought pursuant to this subsection, the court shall order the distribution of any award of damages to the injured party and shall award reasonable attorney's fees and costs to the Attorney General. The penalty provided in subsection e. of this section shall be applicable to a violation of this subsection. c. Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. The penalty provided in subsection e. of this section shall be applicable to a violation of this subsection. d. An action brought pursuant to this act may be filed in Superior Court. Upon application of any party, a jury trial shall be directed. e. Any person who deprives, interferes or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any other person of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State is liable for a civil penalty for each violation. The court or jury, as the case may be, shall determine the appropriate amount of the penalty. Any money collected by the court in payment of a civil penalty shall be conveyed to the State Treasurer for deposit into the State General Fund. f. In addition to any damages, civil penalty, injunction or other appropriate relief awarded in an action brought pursuant to subsection c. of this section, the court may award the prevailing party reasonable attorney's fees and costs."

N.J.S.A 2C:13-8 Human trafficking

a. A person commits the crime of human trafficking if he: (1) knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, another, to engage in sexual activity as defined in paragraph (2) of subsection a. of N.J.S.2C:34-1 or to provide labor or services: (a) by causing or threatening to cause serious bodily harm or physical restraint against the person or any other person; (b) by means of any scheme, plan, or pattern intended to cause the person to believe that the person or any other person would suffer serious bodily harm or physical restraint; (e) by

means of the abuse or threatened abuse of the law or legal process;

N.J.S.A. 2C:13-8.1 Civil action permitted by injured person

4. a. Any person injured, including injury due to the loss of moneys or property, real or personal, by an actor and all those acting in concert with that actor who committed a human trafficking offense in violation of section 1 of P.L.2005, c.77 (C.2C:13-8) or section 5 of P.L.2013, c.51 (C.2C:13-9) may bring a civil action in any court of competent jurisdiction against the actor and all those acting in concert with that actor. A civil action brought under this section shall not preclude the application of any other civil, administrative, or criminal remedy under any other provision of law. b. (1) The standard of proof in a civil action brought pursuant to this section is a preponderance of the evidence, and the fact that a prosecution against the offending actor is not instituted or, whenever instituted, terminates without a conviction, shall not preclude a civil action. (2) A final judgment rendered in favor of the State in any criminal proceeding shall estop the defendant from denying the same conduct in any civil action brought pursuant to this section. c. In any civil action brought pursuant to this section, the court shall, in addition to any other appropriate legal or equitable relief, including damages for pain and suffering, recovery of reasonable costs for necessary medical, dental, and psychological services and punitive damages, award damages in an amount that is the greater of: (1) the gross income or value to the defendant of the injured party's labor or services; or (2) the value of the injured party's labor or services as determined by the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.), the Seasonal Farm Labor Act, P.L.1945, c.71 (C.34:9A-1 et seq.), the laws concerning the regulation of child labor in chapter 2 of Title 34 of the Revised Statutes, or any other applicable State law, and the "Fair Labor Standards Act of 1938," 29 U.S.C. s.201 et seq., or any other applicable federal law. d. In addition to any damages, penalty, injunction, or other appropriate relief awarded in an action brought pursuant to this section, the court may award to the injured person bringing suit reasonable attorney's fees and costs. L.2013, c.51, s.4.

STATEMENT OF THE CASE

El Mujaddid's petition consist of claims of unfairness offending due process. El Mujaddid submitted a *Fourth Amended Complaint* [36 #9] attached with a copy of an invalid subpoena to testify[36 #3][App.16]. Plaintiff's Fourth Amended complaint [36 #9] has causes of action labeled "*Abuse of Process*" or "*malicious abuse of process*", "*Abuse of the Legal Process*", "*Retaliation and Interference*", *Unlawful Seizure*, etc. The District and Third Circuit Courts were duty-bound to consider those claims and the pleaded facts and attached evidence supporting such claims. El Mujaddid alleged causes of action under 42 U.S.C. §§ 1983, 1985, and 1986 for the deprivation of his constitutional rights" as well as apparent claims that his "procedural and substantive due process rights had been violated, and that his arrest and criminal prosecution violated federal law. Count 1 [36 #9 P.31], specifies common law, should have been treated as a state law tort claim of abuse of process. Count 2 [36 #9 P.34] (Malicious abuse of process) was brought pursuant to N.J.S. 10:6-2 and 42 U.S.C. § 1983. Count 3 [36 #9 P.36] (*Abuse of the Legal Process*) was brought pursuant to N.J.S.A. 2C:13-8.1. Both the District and Third Circuit judgments fail to address these claims in violation of F.R.Civ. Pro. 54(c), the First Amendment due process principle, right of access to the court, the Fifth Amendment (procedural and substantive Due Process) and Thirteenth Amendment (*Right to Sue, Right to Give Evidence, Equal Protection*). The Lower Courts fail to address the invalid Subpoena to Testify [36 #3] [App.16] in

a clear departure from the Federal Rules of Evidence 1005⁸, 1008⁹, 501¹⁰ and the Incorporation By Reference Doctrine. The District Court and Third Circuit failed to take notice of the full contents of the invalid Subpoena to Testify [36 #3] [App.16] referenced in the complaint in direct violation of Rule 201. Judicial Notice of Adjudicative Facts and *Bell Atl. Corp. v Twombly* 550 U.S. 544 (2007).

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari, because a serious question is raised as to the limitations which the Due Process Clause of the Fourteenth Amendment imposes on the conduct of municipal or quasi criminal proceedings by the States. El Mujaddid contends that his Fourth Amended Complaint [36 #9] has straightforward allegations that petitioners abused subpoena power [36 #3][App.16] which led to the suspension of his driver's license and stated a procedural due process violation, widespread and common departure from required procedures, and that the district court's denial of his motion to amend and fourth amended complaint [36 #9] should therefore be

⁸ The proponent may use a copy to prove the content of an official record — or of a document that was recorded or filed in a public office as authorized by law — if these conditions are met: the record or document is otherwise admissible.

⁹ Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines — in accordance with Rule 104(b) — any issue about whether: (a) an asserted writing, recording, or photograph ever existed; (b) another one produced at the trial or hearing is the original; or (c) other evidence of content accurately reflects the content.

¹⁰ Privilege in General Primary tabs The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise: the United States Constitution; a federal statute; or rules prescribed by the Supreme Court. But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.

reversed. For this reason, certiorari should be granted, and the lower Courts judgments reversed.

Procedural due process has not been satisfied, there has been no fair proceedings in the lower Federal Courts, and the Third Circuit and District Court orders are not based upon the evidence, and therefore violated Equal Justice, Substantive and Procedural Due Process rights guaranteed to El Mujaddid and those judgments are on equal footing with the invalid Subpoena to testify [36 #3][App.16] filed by the defendants Bialous, Graubart and Ahart. In fact, both the District Court and Third Circuit opinions omit any reference to the terms found throughout the Fourth Amended Complaint [36 #9] such as “*subpoena to testify*” [36 #3][App.16] , “*abuse of subpoena power*”, “*abuse of process*”, “*malicious abuse of process*” and “*abuse of the legal process*”. Said terms are found throughout the plaintiffs’ “complaints” [1, #A-D][25 #2], [36 #9], generally, starting on page (1) one, with supporting detailed facts and evidence from the defendants themselves.

The District Court unreasonably denied El Mujaddid’s motion to remand [4], motion for injunction [24], motion for counsel [14], [37], motion for leave to file an amended complaint [36], motion for sanctions [32], motion for relief and reconsideration [47]. The Third Circuit unreasonably denied El Mujaddid’s motion for summary relief, motion for counsel, motion for injunction and omitted any reference to the two (2) letter J’s regarding Federal citations on Abuse of Process and Abuse of Subpoena Power. When faced with the facts demonstrating the defendants suspended El Mujaddid’s driver’s license in the commission of enforcing an invalid

subpoena [36 #3][App.16] in direct violation of procedural and substantive due process as set forth in the complaints filed below. El Mujaddid met the burden of showing an abuse of the court's process when he succeeded in the motion to quash proceeding held in the Gloucester City Municipal Court. The motion to quash proceeding [42] was heard more than a year after being filed with the Westampton Municipal Court.

In Zinerman v. Burch, 494 U.S. 113 (1990), the Court made clear that when a state official abuses his or her authority, and as a consequence violates a person's right to procedural due process, that official may be subject to liability under 42 U.S.C. § 1983. The requirements of procedural due process do not become more lax when federal rather than state criminal investigations are involved. And the taxpayer, to the extent that he has such a protectable interest, as, for example, by way of privilege, or to the extent he may claim abuse of process, may always assert that interest or that claim in due course at its proper place in any subsequent trial. Cf. United States v. Blue, 384 U.S. 251 (1966). Donaldson v. United States 400 U.S. 517 (1971)

The lower courts in this matter are confused, partial in favor of the defendants, divergent, and rebellious towards the federal guarantees promised to plaintiffs like El Mujaddid. [See Memorandum of Citations in Support of Abuse of Process Claims [43] Civ. No. 1-18-cv-14021 and two (2) Letter J's [No. 19-3328] [8],[35].

El Mujaddid's *Fourth Amended Complaint* [36 #9] without doubt states a cause of action for abuse of process (state tort law) and malicious abuse of process under 42 U.S.C. 1983, dismissal of his *Motion To Amend* [36] and *Fourth Amended Complaint* [36 #9] was not appropriate and simply unfair. Every reasonable inference was therefore not accorded the plaintiff. The treatment of El Mujaddid's *Fourth Amended*

Complaint [36 #9] was inconsistent with accepted Supreme Court precedents, common sense, or public policy. The Supreme Court Reporter, Volume 27 states:

“As we have seen, this court has held that the 13th Amendment, by its own force, without aid of legislation, not only conferred freedom upon every person not legally held in custody for crime within the jurisdiction of the United States, but the right and privilege of being free from the badges or incidents of slavery.....I have already said that the liberty protected by the 14th Amendment against state action inconsistent with due process of law is neither more nor less than the freedom established by the 13th Amendment. This I think, cannot be doubted. In Allgeyer v. Louisiana, 165 U.S. 578, 589, 41 L. ed.832, 835, 17 Sup. Ct. Rep. 427, 431, we [Supreme Court] said that such liberty “means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them all lawful ways; to live and work when he will; to earn his livelihood or avocation, and for that purpose to enter into all contracts which may proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned. All these rights, as this court adjudged in the Allgeyer Case are embraced in the liberty which the 14th Amendment protects against hostile state action, when such state action is wanting in due process of law. They are rights essential in the freedom conferred by the 13th Amendment. Page 1627 Supreme Court Reporter Oct. Term.

I. The Decision Below Directly Conflicts With The Cudahy Packing Co. Of Louisiana v. Holland Decision On Abuse Of Process

The District Court and the Third Circuit were provided copies of the invalid Subpoena to Testify [36 #3][App.16] issued to El Mujaddid by the Westampton defendants. Defendants Graubart and Ahart permitted defendants Brewer and Bialous its process to be abused. Such abuse took place when the defendant Bialous issued the Subpoena to Testify [36 #3][App.16] for an improper purpose, such as to harass El Mujaddid.

"The Supreme Court has stated that a court's process is abused where the Subpoena is "issued for an improper purpose, such as to harass the [investigations target] or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation." Powell, 379 U.S. at 58, 85 S. Ct. 248. But the subpoena is in form an official command, and even though improvidently issued it has some coercive tendency, either because of ignorance of their rights on the part of those whom it purports to command or their natural respect for [315 U.S. 357, 364] what appears to be an official command, or because of their reluctance to test the subpoena's validity by litigation." Cudahy Packing Co. Of Louisiana V. Holland

- II. The decision below directly conflicts with the Bertuglia v. City of N.Y. decision of the Court of Appeals for the Second Circuit

El Mujaddid's Fourth Amended Complaint [36 #9] provided a conspiracy claim against defendants Brewer, Bialous, Grabuart, Ahart. The facts plead demonstrated that Bialous was Brewer's supervisor, who submitted the original *subpoena to testify* [36 #3][App.16] to the defendants Graubart and Ahart. That Graubart's notes demonstrate her and Ahart's involvement with the invalid subpoena process [36 #3][App.16] in this matter.

*"A malicious abuse of process claim survived against Schaffler and ADAs Ruzow and Scotto because the plaintiffs alleged that the ADAs and Schaffler issued illegal subpoenas to Laro's employees, clients, and other individuals. Id. at 727, 735. A Chalfy claim alleging a violation of due process of law based on a systematic pattern of harassment also survived against Schaffler and ADAs Ruzow and Scotto; the claim was premised on the same allegations of the misuse of subpoenas, harassment, and manipulation, as well as on allegations that the defendants were out to destroy Laro's business and to ruin Bertuglia and his family. Id. at 719, 736 n.11; Chalfy v. Turoff, 804 F.2d 20, 22-23 (2d Cir. 1986) (per curiam). A conspiracy claim against ADA Ruzow and Schaffler survived because the plaintiffs had sufficiently pleaded the existence of an agreement between those two [**31] defendants to serve coercive subpoenas, visit Laro's clients together, and harass witnesses. Bertuglia, 839 F. Supp. at 728,735.*

III. The Decision Below Directly Conflicts With The Gonsouland v. Rosomano Decision Of The Court Of Appeals For The Second Circuit as to Abuse of Process

The Third Circuit and District Courts have effectively made El Mujaddid's right of access to the Courts, right to sue and right of action for abuse of process based on abuse of Subpoena Power [36 #3][App.16] meaningless.

"The right, of action for abuse of process is applicable to all kinds of abuses in the service of lawful process, not only against the officer whose duty it is to act lawfully, but against all who unite with him or direct him to inflict the injury. An action for malicious abuse of process, civil or criminal, will lie though the process was lawfully issued on a valid judgment for a just cause and is valid in form; the gravamen being the malicious abuse of the power conferred by the judgment and writ."
Gonsouland v. Rosomano, 176 F. 481 (1910) March 15, 1910 United States Court of Appeals for the Fifth Circuit No. 1,818 176 F. 481

IV. The Third Circuit And District Court's Application Of Rule 8(A) of The Federal Rules Of Civil Procedure violated Rule 54(C)

The Third Circuit should have remanded with instructions to the trial court to enter a nunc pro tunc order to correct clerical mistakes in the written opinion and judgment that fail to accurately denominate Plaintiff's counts. Once the Third Circuit made initial threshold determination in response to plaintiffs petition for Writ of Mandamus, the District court should not have subsequently used F.R.C.P. 8(a) to dispose of his state tort law and 1983 civil rights claims since doing so treated plaintiff an indigent litigant differently and effectively bypassed procedural protections the Federal Rules of Civil Procedure affords all litigants. The principles of notice pleading, and the liberal discovery rules allow for meritorious claims to proceed even if a plaintiff cannot adduce all the necessary facts at the outset.

El Mujaddid's *Fourth Amended complaint* [36 #9] pled facts which under state tort law and 1983 to entitle him to recover. El Mujaddid's incorporation by reference the invalid Westampton Municipal Court Subpoena to Testify [36 #3][App.16] into his complaint. The District Court and Third Circuit did not treat the invalid Subpoena to Testify [36 #3][App.16] as though it was part of the complaint itself. The District Court and Third Circuit did not incorporate the invalid Subpoena to Testify [36 #3][App.16] by reference where El Mujaddid referred extensively to the service of the invalid Subpoena to Testify [36 #3][App.16] and suspension of his driver's license which formed the basis of his abuse of process, malicious abuse of process, abuse of the legal process and retaliation claims, specified in his Fourth Amended Complaint [36 #9].

V. Collateral Estoppel

El Mujaddid was the successful party during the motion to quash invalid Subpoena to Testify [42] proceedings held in the Gloucester City Municipal Court, and the matter was dismissed in his favor, therefore Collateral Estoppel supports El Mujaddid's abuse of process claims.

"Holding that collateral estoppel applied to § 1983 claims..."
Citing Allen v. McCurry 449 U.S. 90 (1980)

VI. Misstatement of Evidence, Structural Errors, Judicial Bias, Judicial Estoppel, lack of an impartial trial judge; lack of impartial appellate judge; a total deprivation of the right to counsel

El Mujaddid's Fourth Amended Complaint [36 #9] specifically alleged the Westampton defendants failed to serve him with a summons¹¹, along with noting that he filed a motion to dismiss for lack of personal jurisdiction [42] based on defective service.

Under rules of procedure that have been well settled since well before our decision in Theatre Enterprises, a judge ruling on a defendant's motion to dismiss a complaint, "must accept as true all of the factual allegations contained in the complaint." Swierkiewicz v. Sorema N. A., 534 U. S. 506, 508, n. 1 (2002) Holding that "[t]he requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property" Board of Regents v. Roth 408 U.S. 564 (1972) In Zinermon v. Burch, 494 U.S. 113 (1990), the Court made clear that when a state official abuses his or her authority, and as a consequence violates a person's right to procedural due process, that official may be subject to liability under 42 U.S.C. § 1983.

The Third Circuit first review of El Mujaddid's causes of action followed a petition for Writ of Mandamus and Prohibition in response to the District Court's Magistrates unreasonable delay in doing a report and recommendation, and failure to do a report and recommendation after the filing of the motion to remand [4] resulted in the following misstatement(s) of evidence pattern and practice:

¹¹ In Wallace, the court held that N.J.S.A. 39:5-3 bars the issuance of a summons on violations within its purview after thirty days from the date that the violation occurred. State v. Wallace 201 N.J. Super. 608 (N.J. Super. 1985) New Jersey Practice, Motor Vehicle Law and Practice § 7.3, at 624 (3d ed. 2001) (explaining that N.J.S.A. 39:5-3 "encourages police and other municipal officials to issue process on motor vehicle offenses within a reasonable period of time").

a. Lower Courts Misstatements and Manipulation of Evidence

“On July 12, 2018, petitioner El Aemer El Mujaddid filed a complaint in the Superior Court of New Jersey, Law Division, Burlington County, against numerous defendants relating to a traffic citation he had received.” Citing from IN RE: EL AEMER EL MUJADDID, Petitioner Before: MCKEE, SHWARTZ and BIBAS, Circuit Judges OPINION PER CURIAM No. 18-3756 01-29-2019. (Appx. 1)

“As the Third Circuit explained, Plaintiff El Aemer El Mujaddid filed a complaint in the Superior Court of New Jersey, Law Division, Burlington County, against numerous defendants relating to a traffic citation he received.” *Id.* Citing from EL MUJADDID v. BREWER Civil No. 18-14021 (RBK/AMD) 02-27-2019. (Appx. 2)

“After receiving a traffic citation, Appellant El Aemer El Mujaddid filed suit in New Jersey Superior.” (Pg. 1) *“El Mujaddid stated....,that they did not properly serve the citation 3.....”* (Pg. 3) *Citing from EL AEMER EL MUJADDID, Appellant v. ANDREW BREWER; et. al., Before: RESTREPO, PORTER, and SCIRICA, Circuit Judges OPINION PER CURIAM No. 19-3328 04-09-2020 (Appx. 3)*

In fact, the District Court record No. 18-14021 in *El Mujaddid v. Brewer, et. al.*, Civil No. 18-14021 (RBK/AMD) does not possess a copy of a traffic summons (citation) for the Third Circuit to examine and find that El Mujaddid received a traffic summons (citation), which is, as shown by evidence on the District Court record to be “*False*” and also directly contrary to the facts setforth by the Plaintiff in each version of his civil rights complaint.

Darden v. Wainwright, 477 U.S. 168, 181-82 (1986) (improper argument and manipulation or misstatement of evidence violates Due Process). Cf. Mesarosh v. United States, 352 U.S. 1, 14 (1956)

Thus, the Third Circuit in making a partial threshold determination lacking discussion on the defendant’s immunity also structurally changed a significant detail

relevant to the defendant's lack of personal jurisdiction as a result of defective service in effect disregarding the duty and obligation to accept El Mujaddid's allegations as factual and disregarding evidence supporting those factors. The lower courts failed to consider all of the competent evidence and conducted the proceedings in an un-fair and biased manner.

"[S]ervice of summons is the procedure by which a court having venue and jurisdiction of the subject matter of the suit asserts jurisdiction over the person of the party served." Mississippi Publishing Corp. v. Murphree, 326 U.S. 438, 444-445 (1946). Thus, before a court may exercise personal jurisdiction over a defendant, there must be more than notice to the defendant and a constitutionally sufficient relationship between the defendant and the forum. There also must be a basis for the defendant's amenability to service of summons. Absent consent, this means there must be authorization for service of summons on the defendant. Omni Capital Int'l v. Rudolf Wolff Co. 484 U.S. 97 (1987) Holding that once personal jurisdiction is established, exercise of that jurisdiction must still qualify as fair and reasonable under the Due Process Clause of the Fourteenth Amendment Asahi Metal Indus. Co. Ltd. v. Superior Court, 480 U.S. 102 480 U.S. 102 (1987)

The Westampton defendants did not include a traffic summons¹² in support of their "Notice of Removal [1] (Attachments: # 1 Exhibit A – D), or motion to dismiss [22][#5-#10]. El Mujaddid did not possess a copy to submit.

N.J.S.A. 39:5-3a, in terms, expressly establishes a thirty-day deadline "after the commission of [an] offense" for the issuance of process. In State v. Fisher, 180 N.J. 462, 852 A.2d 1074 (2004), the Supreme Court expressed the view, albeit in dictum, that the provisions of N.J.S.A. 39:5-3a require "service of process" within the thirty-day period provided. Id. at 474, 852 A.2d 1074 (emphasis omitted). The Court held, however, that once service of process occurs within the mandated time, i.e., "timely notice of the allegations charged" is received by the defendant, ibid., formal errors or omissions may be corrected within a reasonable time. See R. 7:14-2. See also, e.g., R. 3:3-4; 7:2-6(c). The Supreme Court stated that construing N.J.S.A. 39:5-3a to impose a deadline for service of

¹² The 30-day time period to issue a new summons had expired. N.J.S.A. 39:5-3. State v. Parkins 263 N.J. Super. 423 (N.J. Super. 1993)

process "ensures that a defendant receives timely notice of the allegations charged. . . ." Fisher, supra, 180 N.J. at 474, 852 A.2d 1074 . It protects the accused from the hazards of defending against stale allegations. See State v. Wallace, 201 N.J.Super. 608 , 610-12, 493 A.2d 645 (Law Div. 1985). State v. Buczkowski No. A-4671-05T1.

The District Court record does in fact possess a copy of the Subpoena to testify [36 #3][App.16] signed by defendant Bialous. By means of discovery El Mujaddid obtained a copy of the traffic citation from the Gloucester City Municipal Prosecutor and he filed it with a Notice of Removal No. 19-17596 (RBK/AMD), more than a year after the Westampton defendants Brewer and Bialous initiated municipal process. El Mujaddid's *Fourth Amended Complaint* [36 #9] specifies the Westampton defendants' failure to serve the traffic summons within the 30-Day Statute of Limitations [N.J.S.A. 39:5-3] and he provided supporting exhibits from the Westampton defendants. Furthermore, El Mujaddid obtained a copy of the summons from the Gloucester City Municipal Prosecutor by email in September 2019.

"Holding that structural errors include denial of counsel. U.S. v. Gonzalez-Lopez 548 U.S. 140 (2006) The touchstone of structural error is fundamental unfairness and unreliability. Automatic reversal is strong medicine that should be reserved for constitutional errors that "always" or "necessarily," Neder, supra, at 9 (emphasis in original), produce such unfairness. A "structural" error, we explained in Arizona v. Fulminante, is a "defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself," 499 U.S., at 310. We have found structural errors only in a very limited class of cases: See Gideon v. Wainwright, 372 U.S. 335 (1963) (a total deprivation of the right to counsel); Tumey v. Ohio , 273 U.S. 510 (1927) (lack of an impartial trial judge); Our precedent does not try to parse which structural errors are the truly egregious ones. It simply views all structural errors as "intrinsically harmful" and holds that any structural error warrants "automatic reversal" on direct appeal "without regard to [its] effect on the outcome" of a trial. Neder v. United States, 527 U.S. 1, 7, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999). Describing structural error as "structural defects in the constitution of the trial mechanism" that affect

"[t]he entire conduct of the trial from beginning to end" and identifying as structural error denial of "the right to self-representation at trial" (citing McKaskle, 465 U.S. at 177-78 & n.8, 104 S. Ct. at 950-51 & n.8) Arizona v. Fulminante 499 U.S. 279 (1991) Holding due process requires "a fair trial before an impartial and properly instructed jury" Rivera v. Illinois 556 U.S. 148 (2009)

The Third Circuit's April 2020 per curiam demonstrates the structural error identified above, where the court opined in direct contradiction of its the noted citations from its judgments misrepresenting that El Mujaddid received a traffic citation prior to those judgments:

*"El Mujaddid stated that the officers discriminated against him because of his ethnicity and falsified the reports. **He further claimed** that the officers did not have probable cause to issue the traffic citation, **that they did not properly serve the citation** 3, and that he was forced to appear before a municipal court based on allegedly false charges." (Pg. 3) "For example, as the District Court noted, El Mujaddid claimed that he was "legally subjected to conditions of slavery," and that the defendants "conspired to frame him for careless driving in a conspiracy to deny him equal protection under the law because he is a Moor," engaged in a "Jim Crow revenue scheme to gain a... \$200.00 debt," and "distorted the evenhanded pursuit of justice,"....." (Pg.5) EL AEMER EL MUJADDID, Appellant v. ANDREW BREWER; et. al., On Appeal from the United States District Court for the District of New Jersey (D.C. Civil Action No. 1-18-cv-14021) District Judge: Honorable Robert B. Kugler Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 March 5, 2020 Before: RESTREPO, PORTER, and SCIRICA, Circuit Judges (Opinion filed: April 9, 2020) OPINION* PER CURIA*

El Mujaddid filed three (3) *motions for appointment of counsel* [14],[37],[47], in the District Court and (1) *motion for appointment of counsel* in the Third Circuit No. 19-3328 [37],[41]. Each motion met the *Tabron* factors. The District Court denied those motions without prejudice on a dishonest basis that it could not make a threshold finding and could not appoint counsel during any of those pre-trial periods.

"It appears that Mujaddid claimed his procedural and substantive due process rights had been violated, and that his arrest and criminal prosecution violated federal law". In re Mujaddid, No. 18-cv-3756. "It Appearing To The Court Plaintiff's 285-paragraph single-spaced Complaint alleges various state and constitutional claims arising out of a traffic violation. Plaintiff claims Defendants "treated him differently than non-Moor or non-Muslim American persons accused of a violation." Id. Plaintiff then alleges various violations under the First, Fourth, Thirteenth, and Fourteenth Amendments of the United States Constitution, and various federal and state statutes." El Aemer El MUJADDID, Plaintiff, v. Andrew BREWER, et al. Defendants United States District Court For The District Of New Jersey Camden Vicinage Civil No. 18-14021 (RBK/AMD) 4/1/2019

Two (2) of the motions for appointment of counsel were filed sometime after the Third Circuits 1st-part threshold finding, see In re Mujaddid, No. 18-cv-3756, 2019 WL 360052, at *1 (3d Cir. Jan. 29, 2019) and adopted by the District Court Judge in the opinion [16] and order [17] Civil No. 18-14021 denying El Mujaddid's motion to remand [4] the action back to the Law Division. In deciding El Mujaddid's motions for appointment of counsel [14],[37],[47], the District Court again failed to weight evidence attached to the *Fourth Amended Complaint* [36 #9], *the motions* and to complete the *Threshold determination* by discussing whether or not the defendants had immunity to the causes of action Abuse of Process, Unlawful Seizure, Retaliation, Equal protection, etc. In addition, El Mujaddid argues that the suspension of his driver's license pursuant to the defendant's enforcement of the invalid Subpoena [36 #3][App.16] contempt provision triggered a right to counsel in the civil aspect of this case. El Mujaddid was not provided a hearing before the suspension of his driver's license took place and only found out that his driver's license had been suspended as

a result of commentaries made in a pleading filed by defense counsel in district court proceedings.

El Mujaddid contends that defense Counsel on behalf of the Westampton Municipal parties, removed the initial lawsuit filed in the Superior Court of New Jersey Law Division to the District Court of New Jersey seeking to take advantage of pre-existing -Judicial Bias against Citizens of the United States who have Moor ancestry, evident by the fact that the Westampton defendants reliance on a racist and insulting opinion in Murakush Caliphate of Amexem Inc. v. State Civil Action No. 11-1317 (RBK) 2011-05-13 published by the District Court. The District judge expressed actual personal bias, prejudice, and disdain about the race (Moor) in that 2011 opinion. The obvious intent of the opinion was to group libel Citizens of the United States who belong to the “race” “Moor” under the terms “Sovereign Citizens” or “Redemptionist” to justify deprivations of civil rights by state actors. The Westampton defendants attached a copy of that racially discriminatory opinion to their motion to dismiss [22][#5-#10] and sought to rely on the racist commentary made therein, as a defense to El Mujaddid’s abuse of process lawsuit.

In a United States Supreme Court case, Berger v. United States, a criminal case in which the defendant had German ancestry, the trial judge made several insulting comments about Germans, including “[t]heir hearts are reeking with disloyalty.” Berger v. United States, 255 U.S. 22, 28, 36 (1921). Granting Halprin's argument that judicial bias is "structural error" warranting an automatic retrial, the Fifth Circuit still found that Halprin could not show "by clear and convincing evidence that, absent such bias, no reasonable factfinder would have found Halprin guilty of the underlying offense." Id., at 944-945. Halprin v. Davis No. 19-6156 (U.S. Apr. 6, 2020)

El Mujaddid also contends that since the Westampton defendants relied on the aforementioned racist opinion, the lower Courts and Westampton defendants are judicially estopped from claiming inability to find racial discrimination.

“a reviewing court may properly consider the representations made in the appellate brief to be binding as a form of judicial.” Cf. Scarano v. Central R.R. Co., 203 F.2d 510, 513 (3d Cir. 1953); Fleck v. KDI Sylvan Pools, Inc., 981 F.2d 107, 121 (3d Cir. 1992).

VII. The Lower Courts failed to comply with the Incorporation By Reference Doctrine, Preponderance of the evidence and Construed El Mujaddid's Complaint in Favor of the Defendants

The District Court and Third Circuit did not comply with the doctrine that permits the Courts to take into account the “Subpoena to testify” [36 #3][App.16] issued by the Westampton defendants whose contents are alleged in the *Fourth Amended complaint* [36 #9] and whose authenticity no party questions, and which was physically attached to El Mujaddid's pleadings. Both the District Court and Third Circuit failed to consider El Mujaddid's *Fourth Amended Complaint* [36 #9] in its entirety, as well as other sources courts ordinarily examined when Courts rule on Rule 12(b)(6) motions to dismiss, in particular, the *subpoena to testify* [36 #3][App.16] *exhibits which are* incorporated into the complaint by reference, and are matters of which the Third Circuit and District failed to take judicial notice. The same subpoena exhibits [36 #3][App.16] were filed by the Westampton defendants in support of their frivolous motion to dismiss [22]. The motion was improperly denied by the District Court as “*Moot*” [33] where it should have been denied as frivolous. The District Court

overlooked and did not adjudicate these evidentiary materials. The Third Circuit approved of the District Court's unfair practice.

Confirming that on Rule 12(b) motion court looks only to the complaint and limited "other sources" like "documents incorporated into the complaint by reference, and matters of which a court make take judicial notice" Citing Tellabs v. Makor Issues Rights 551 U.S. 308 (2007) Stating for purposes of motion to dismiss, material allegations of complaint are taken as admitted, and complaint is to be liberally construed in favor of plaintiff. Jenkins v. McKeithen 395 U.S. 411 (1969)

VIII. The District Court Treated El Mujaddid's Abuse Of Process Counts Differently Than It Treated the Evans And Partners Of Mass Plaintiffs

Despite Evans, failure to specify abuse of process torts by name, the District Court of New Jersey stated:

In Evans v. City of Newark Civ. No. 14-00120 (KM) (MAH) (D.N.J. May. 10, 2016) the District Court stated: "Count 1, which does not specify any source of law, will be treated as a state law tort claim of abuse of process. Counts 4 and 5, though nonspecific, are broad enough to encompass parallel claims of abuse of process under the New Jersey Civil Rights Act ("NJCRA") and 42 U.S.C. § 1983." In Partners of Mass., LLC v. Fantasia Civil Action No. 15-7960 (KSH) D.N.J. Feb. 11, 2019, the District Court stated: • "There is a distinction between Count 5 and the malicious use of process claim (Count 6) that Fantasia has voluntarily withdrawn. (Opp. Br. 11.)" "However, we remand with instructions to the trial court to enter a nunc pro tunc order to correct clerical mistakes in the written sentence and judgment that fail to accurately denominate Defendant's counts."

IX. Abuse Of The Legal Process Is Prohibited Under Thirteenth Amendment Legislation At 18 U.S. Code § 1589 And N.J.S.A. 2c:13-8

According to N.J. Stat. § 22A:1-4. Fees and mileage of witnesses and others, El Mujaddid by state law should have received payment for his appearances and statements made in the municipal courts, the several times and miles he had to travel to the Westampton and Gloucester City municipal courts. El Mujaddid did not receive

right to a civil trial by jury. Petitioner respectfully ask the Court to grant the petition for certiorari.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'El Aemer'.

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