No. 20-739

In The Supreme Court of the United States

ISAAC LEVIN,

Petitioner,

v.

KENNETH J. FRANK, BRIAN SEACHRIST, THE CITY OF BINGHAMTON

Respondents.

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

PETITION FOR REHEARING

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PREAMBLE

Pursuant to Rule 44.1 of this Court, Petitioner Isaac Levin ("Petitioner"), respectfully petitions for a rehearing of the denial of a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

On or about January 25, 2021, this Court denied certiorari on unknown grounds. *See "Exhibit A page 1A."* Petitioner subsequently had mailed correspondence to the Chief Justice and all other Justices of the Court, dated January 27, 2021. *See "Exhibit B page 2B."* In said correspondence, Petitioner begged this Court for mercy on the grounds of discrimination and unlawful taking and fear that his life is now in danger. Absent that, Petitioner will end up in jail.

Petitioner respectfully submits that this Court overlooked key factual and legal grounds which would provide Petitioner with the relief requested. Petitioner has demonstrated that this is a case of unlawful taking and discrimination on the part of a governmental entity and certain employees to unjustly gain control over certain pieces of property in the City of Binghamton and destroy Petitioner financially and physically. The lower courts chose to overlook vital and undisputed evidence in favor of Petitioner.

Petitioner moves this Court to grant this petition for rehearing and consider his case with merits briefing and oral argument. Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed within 25 days of this Court's decision in this case.

PETITION FOR REHEARING

The original certiorari petition asked this Court to find that the District Court and the United States Court of Appeals for the Second Circuit misconstrued the issues of abandonment in the State of New York and grandfathering, which is defined as the "continuation of land uses that are made nonconforming by a change in zoning." Petitioner argued in the original petition that certiorari should be granted "to once and for all settle the conflicts which exist as to the definition and application of abandonment to municipality Zoning Codes." *See Petition for Cert., Pg. 8.* For Petitioner it amounts to a lifesaving mechanism because Respondents are currently seeking to incarcerate Petitioner.

Since the time that certiorari was denied, intervening circumstances have arisen which create a situation in which Petitioner is now due to go to jail for crimes he did not commit against humanity, and more specifically against the Respondents City of Binghamton ("Respondent" or the "City"). As Your Justices may be aware based on Petitioner's January 27, 2021 correspondence, Petitioner seeks mercy. This court may ask why Petitioner is requesting mercy, what are the crimes he committed and whether this court, the Supreme Court of the United States, should intervene, or just let him die out there.

Petitioner respectfully submits that rehearing is warranted because of crucial facts and applicable legal standards which were overlooked in the Court's original review of the petition for writ of certiorari. Specifically:

- The Court overlooked that this action was made pursuant to 42 U.S.C. §1983, and discrimination against a Jewish American. The City is actively

discriminating against other classes of minorities, including African Americans.

- The Court overlooked the fact that the case of *Toys R Us v. Silva*, 89 N.Y.2d 411, 421, 654 NYS2d 100, 105, was a 1996 case decided by the New York Court of Appeals, the highest court in the state of New York.
- The Court overlooked the fact that Petitioner demonstrated by new evidence that the property in question was grandfathered. Specifically, Petitioner's constitutional claims were dismissed on the ground of res judicata. In this case, res judicata was not applicable to Petitioner's claims because it is abundantly clear that the 'Prior Action' referenced by the District Court was all about 'change of use', 'conversion', 'modification' of the first floor. In the current action, Petitioner established that there was no change of use, no modification and no conversion because the abandonment of the first floor restored itself to residential, or in conformity with the district, R-3, more than two units. Therefore, the summary judgment decision in the Prior Action lacked merit and should not be construed as a decision on the merits for the purpose of res judicata or collateral estoppel. The District Court ruled, and Second Circuit affirmed erroneously in the prior action and thus the order of summary judgment cannot stand as an adjudication on the merits. Further, Petitioner could not have discovered the new evidence submitted to the lower courts, and thus the claims based on this newly discovered evidence could not

have been brought within the prior action. Accordingly, any theory under res judicata or collateral estoppel was not applicable.

- The Court overlooked the fact that the grandfathering principles in the arena of residential zoning can be a federally contemplated issue.
- The Court overlooked the deposition testimony of Mr. Chadwick, which clearly was solely in favor of Petitioner. While the deposition testimony was not part of the exhibits provided it was part of the exhibits in the lower court. The deposition testimony is available for review in order to extract the truth.
- The Court overlooked the fact that the issue of abandonment is one crucial for the Supreme Court's review as it is apparent that a split exists in existing state and federal law which requires clarification from the highest Court. Here, Petitioner submits that due to the length of time of abandonment of the subject property, Respondents could not have reestablished the subject property's non-conforming use as to the first floor being commercial. The evidence clearly showed that the 1st floor commercial non-conforming use was discontinued. As a result, Respondents could not have required the reviews and procedures against the clear stipulations of the ordinance. Erroneously the Second Circuit found that Petitioner's argument regarding abandonment was without merit, in spite the fact that Respondents claims that the issue was never reached.
- The Court overlooked the overwhelming evidence in the record which demonstrates that all of the evidence (deposition testimony, Zoning Code, and grandfathering principles) all favor Petitioner, and not Respondents.

History of Petitioner's Involvement in the City of Binghamton.

In 2001, Petitioner's first daughter attended Binghamton University. Subsequently she graduated from Hofstra Law School. Petitioner noticed that her living condition in off-campus housing, was dangerous. In 2003, Petitioner's second daughter entered Binghamton University. She alerted Petitioner to the fact that Binghamton's off-campus housing was a "dangerous place," with old and unsafe housing.

Petitioner embarked on the first run down property, 98 Chapin Street, in March 2016. In August 2016, students moved in to a totally renewed and renovated house. The neighbors and the city employees took notice. In fact, Respondents told a local judge that Petitioner entered the city with $16m.

Seeing how fast Petitioner rented the house, Petitioner took on the next project, 128 Main Street, a 5-family house, which was on the brink of collapse. Petitioner was stopped by the City many times but eventually completed the project.

Petitioner ran out of money many times. A hard money lender and a private lender intervened and provided funding to complete 128 Main Street and purchase 26 Seminary. Locals started to recommend old houses with a desire to sell. An opportunity came up to purchase 33 Seminary, a property in probate, and 31 Seminary, a property whose owner fell off the roof and lived in New Hampshire.

In March 2009, the City introduced a new ordinance and then disaster struck. Prior to the introduction of the new ordinance, the permits were eliminated to 26 Seminary and 31 Seminary, and Petitioner was requested to go in front of the boards

to receive new permits. Despite months in front of the boards all applications were denied. From inception, the locals noticed a strange object on Petitioner's head. An artifact called Kippa in Hebrew and Yarmulka in English. *See "Exhibit C page 12C."* It is not different from the Kippa worn by the Pope. One can see the Pope in his motorcade holding the Kippa from blowing away. Before the tragic events of September 11, locals did not know the difference between a Kippa representing a Jew, a skullcap representing Muslims, and a turban representing Sikhs. Therefore, post-9/11, Sikhs were being beaten up for wearing a Turbine, mistakenly identified as Muslims.

In a most recent article, Mr. David Schoen, impeachment attorney for Mr. Donald J. Trump explained "I just wasn't sure if it was appropriate, frankly," Schoen said after the hearing to a CNN reporter who asked him why did he not wear a kippa. "I didn't want to offend anyone...It's just an awkward thing and people stare at it." He did not want to awaken the anti-Semites. The article further explained that, "While it's true that most Orthodox men regularly wear a hat or a kippa (also called a yarmulke) at all times, some elect not to wear a head covering at work or in situations where being identified as a religious Jew could cause harm. [anti-Semitism] The article continues, "In public courtrooms in particular, some observant Jews fear that wearing a kippa could bring extra scrutiny from anti-Semitic jury members, judges, or in this case, members of the public."

Binghamton has no shortage of anti-Semites. In fact, Binghamton was the headquarters to the KKK from its inception in the 1920s. At relevant times,

Petitioner did not know that. Petitioner wore a Kippa everywhere. When Petitioner would go into a window store, Billy said to John, "the man with the small hat is here," even though Billy knew the full name of Petitioner.

Petitioner has had to fight Respondents' deception and lies for several years through numerous Court proceedings. It appears that when hatred and bigotry prevails, the truth is lost. This was the case in ***Dreyfus*** who was accused of treason. Hatred and bigotry, years in jail, multiple court activities until he was vindicated.

Discrimination was at the heart of Respondents' Actions.

To see how the City has discriminated against Jews and minorities, Petitioner must start at the beginning.

Petitioner is a 69-year-old male, just four years older than the Chief Justice. In 2006, Petitioner was only 56 years old. Today, he suffers from three forms of cancer, among them malignant bone cancer, which has no cure but can be delayed, prostate cancer, and a cancer which required the removal of a tumor in 2014. ***See "Exhibit B page 8B."***

Respondents simultaneously attached both properties Petitioner was working on. There could not be another explanation. They sought to destroy Petitioner financially and mentally. Petitioner was not going to allow bank and private investment to go to waste. It was unacceptable. It was an act of cruelty to take an individual who did good for the City and seek to destroy him and those who stood behind him.

Respondents engaged in a discriminatory 2-stage unconstitutional taking of the property at the heart of this action ("26 Seminary" or the "subject property"). The first stage involved the revocation of the necessary permits and refusal to restore them. The second stage was when Respondents took actual possession of and subsequently demolished the subject property.

Petitioner was the controlling member in 26 Seminary LLC, a limited liability company that he created to purchase the subject property in a multifamily residential zoning district. When the LLC purchased the Property in 2007, it contained a building with empty and abandoned commercial space on the ground floor, two apartments on the second floor, and one apartment on the third floor, all vacant. Additionally, the subject property did not have any off-street parking. Petitioner applied and obtained various permits for a three-family house. [emphasis added] Respondent elect not to mention it. Respondents' story is false and a lie. According to the Respondents it was just sitting there for two years when Petitioner elected to "convert." It. Work was done. Each floor was typical, meaning residential three-bedroom house. Therefore, there was nothing to convert or modify. Days prior to the adoption of the new zoning law, the building permits were cancelled or revoked. In March of 2009, the City of Binghamton adopted Ordinance 009-009, which increased the amount of off- street parking that certain residential buildings are required to have. The new parking requirements are triggered "when a building owner sought to **modify** the use of an existing structure on the property." (emphasis added). After the permits were revoked and the new ordinance was introduced, the LLC was required

to apply for new permits and variances from Ordinance 009-009's parking requirements, which the town arbitrarily and unlawfully denied. Respondents were fully aware that petitioner had no parking. It is no different when an extortionist, at gun point, demands money knowing that the victim does not have any. On August 25, 2018, Respondents demolished the building on the subject property after it partially collapsed. Respondents intentionally demolished the building on the Sabbath, so that Petitioner would not discover that the building had been demolished until 9:50 p.m. It has been a practice of the anti-Semites to hurt the Jewish population on Saturday knowing that they could not be found or could only be found for various degrees of abuse.

Petitioner was targeted by employees of Respondents with an ordinance because he was recognized as Jewish by, among other things, his clothing, his slight accent, his name and the Kippa he wore in public. Petitioner has been circling around the courts for 11 years, unable to find equitable justice. Now he is required to do Jail time.

A prime example of the discriminatory practices by City officials includes a Binghamton police lieutenant's lawsuit against the City and the department's top brass, which brings to light a series of racial discrimination accusations, including that he was passed over for a promotion based on his ethnicity. The lawsuit by Lt. Alan Quinones was filed in federal court, under Case No. 3:19-CV-1460, and it argues that he's been "consistently and systematically the victim of discriminatory treatment based on his natural origin" since joining the Binghamton Police Department in

March 2008 as a patrolman. Quinones is of Hispanic heritage. The lawsuit says another Binghamton police officer, Christopher Hamlett, approached Quinones in 2018 to seek advice about applying for a detective position. Hamlett, who is black, was turned down for the job, according to the lawsuit. Further, The city of Binghamton which in its past housed many generals who liberated in the civil war african slave, does not have a single american-african working for it. The only African American working for the City, Mr. Keith Heron, was fired prior to retirement. After a court battle he was restored and eventually retired just recently.

Here, Petitioner had permits for 31 Seminary and 26 Seminary in his possession. Respondent elected not to mention it. The permits for both properties were taken away by the City in early March 2009. Subsequently, a new and more restrictive zoning ordinance went into effect specifically against Petitioner. Petitioner was required to comply with the zoning ordinance even though it could not. A similar case, *U.S. v. the Village of Airmont*, highlights similar discrimination, specifically targeting Orthodox Jews. ***See "Exhibit B page 10B."*** On December 2, 2020, the United States filed for the third time a complaint in *United States v. Village of Airmont, New York* (S.D.N.Y.), alleging that the Village of Airmont violated the substantial burden, nondiscrimination, and unreasonable limitation provisions of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). The complaint in *Airmont* alleges that the Village adopted a zoning code that, in violation of the terms of a prior federal court judgment, eliminated residential places of worship as by-right uses and applied its code in a manner that made it impossible for members of the

Orthodox Jewish community to obtain approval for religious schools and home synagogues. The complaint also alleges that Village implemented an 18-month moratorium used to prevent the Orthodox Jewish community from advancing religious zoning applications and interpreted and enforced its zoning code to prevent Orthodox Jews from using their property to construct Sukkahs, ritual huts to memorize the miracle of departure from Egypt post 400 years of slavery, required specifically by the Old Testament and under Orthodox Jewish beliefs, and mikvahs, ritual baths used for the purpose of ritual immersion to achieve ritual purity. The complaint seeks injunctive and declaratory relief. ***See Case No. 7:20-CV-10121, United States District Court for the Southern District of New York.***

It clearly appears now that the creation of new zoning code is a practice by municipalities to eliminate Jews from being able to build and exercise their religious belief. Much like the injured parties in *Airmont*, Petitioner here has been injured as the result of nothing short of Religious animus. Respondents have unconstitutionally attempted to apply the new zoning ordinance to Petitioner and ultimately ended up demolishing the property and subjecting Petitioner to jail time and fines.

This Court has the power, by granting rehearing and deciding this case on the merits, to put an end to Petitioner's 11-year battle against this injustice. The Court will also send a clear message that the United States will not tolerate religious discrimination, prejudice and hatred against any minority and specifically against Jews.

Petitioner is Entitled to Full Hearing on his Section 1983 Claims.

Petitioner initiated his legal action against Respondents via the filing of an article 78 petition with Cortland County Supreme Court. The Supreme Court Judge read the pleadings and filings for 11 months and concluded that, "In determining whether persons are similarly situated, "[t]he test is whether a prudent person, looking objectively at the incident would think them roughly equivalent. Exact correlation is neither likely nor necessary." The Court further stated: "The person must be singled out for an impermissible motive not related to legitimate governmental objectives, which include personal or political gains, or retaliation for the exercise of constitutional rights." Additionally, the Cortland Supreme Court found that "Here the proposed second amended petition contains sufficient allegations to plea a prima facie claim of selective enforcement. It contains facts which, if proven, would allow a conclusion that the properties located at 46 Seminary Avenue and 63 Front Street are, at least "roughly equivalent" to petitioner's properties at 26 Seminary and 31 Seminary Avenue and that their owners received permits or variances denied to petitioners. In addition, petitioners allege that they were treated differently than others similarly situated because they exercised their constitutional rights [allegation that Planning commission member Young retaliated against petitioner for personal reasons]. The court has jurisdiction over the claim for damages brought pursuant to 42 USC §1983." *See "Exhibit D page 17-18D."* However, the federal courts who heard this case then proceeded to immediately dismiss the claims. Rehearing is thus warranted to provide Petitioner a full Court

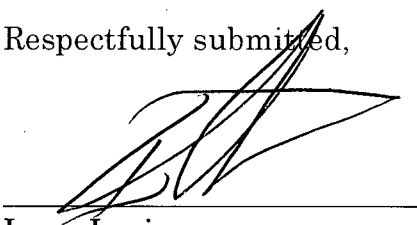
review on the merits and to send a message to all others that religious discrimination in America based on color, race, religion, national origin would not be tolerated. This is the pledge of the United States of America.

CONCLUSION

For the reasons set forth in this Petition, Isaac Levin respectfully requests this Honorable Court grant rehearing and his Petition for a Writ of Certiorari.

Dated: February 18, 2021.

Respectfully submitted,



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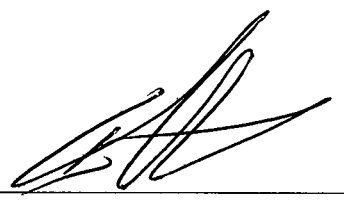
CERTIFICATION

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.



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Additional material from this filing is available in the Clerk's Office.