No. 21-5716

IN THE

SUPREME COURT OF THE UNITED STATES

Causar — PETITIONER
(Your Name)

vs.

New York Presbyterian Queens — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Pecola Lee Causar-El
(Your Name)

Unrecorded Quiet E
(Address)

Bronx, N Y 10470
(City, State, Zip Code)

516-805-720
(Phone Number)

QUESTIONS PRESENTED

1. Whether the district court error and/or abused its discretion by not affording the Petitioner leave to amend her complaint and instead granted the Respondent summary judgment without any consideration or regards to Petitioner's substantive rights under 281 U.S.C. § 2072 (b)?

2. Whether the district court error and/or abused its discretion by omitting the Petitioner's former Counsel of Record, James D. Hartt, Esq., who initiated the Title VII civil action on April 13, 2016 in the U.S. District Court on behalf of the Petitioner who was not even Pro Se at the time, all of which was not mentioned in the memorandum & Order [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 104].

3. Whether the district court error and/or abused its discretion by stating in its memorandum & order [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 104] "Plaintiff ... [was] proceeding prose..." commenced the above-caption action on April 13, 2016, when Petitioner's former Counsel of Record, commenced the action on behalf of the Petitioner?

4. Whether the district court error and/or abused its discretion by not permitting Petitioner liberal discovery.

5. Whether the district court error and/or abused its discretion by ignoring the Petitioner's Affidavit of Request for Summary Judgment [USDC/EDNY- Doc. No. 59].

LISTED OF PARTIES

All parties appear in the caption of the case on the cover page.

NEW YORK-PRESBYTERIAN QUEENS

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES **PAGE NUMBER**

CONSTITUTION, STATUTES AND RULES:

CONSTITUTION, STATUTES AND RULES (CONTINUED):

CODE OF LAW:

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

No opinion were entered in the United States Court of Appeals.

The opinion (and Order) of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was February 18, 2021, Appendix "A".

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III § 2 (actual cases and controversies)

Article VI (Supremacy Clause)

28 U.S.C. § 1331 (Federal questions)

28 U.S.C. § 1343 ("Civil Rights...", but not limited thereto)

28 U.S.C. § 1391 (b) (Venue)

28 U.S.C. § 2072 (Rules of procedure and evidence; power to prescribe) substantive rights

42 U.S.C. § 1981 (Equal rights under the law as enjoyed by white citizens) discrimination

Title VII of the Civil Rights act of 1964, as amended (42 U.S.C. § 2000e) discrimination

STATEMENT OF THE CASE

Petitioner brings this Petition for Writ of Certiorari to the United States Supreme Court in presenting an issue of great public concern and interest which warrants that this High Court provide the necessary guidance to the district and circuit court that has deviated away from the established precedent and principle of justice that would have otherwise, if followed, granted the pro se Petitioner leave to amend her complaint and for which the use of summary judgment to foreclose on Petitioner's efforts to receive Justice under 28 U.S.C. § 2072(b) would have rendered summary judgment moot, and thus its necessary for this High Court to uphold clearly established precedent amongst the circuit courts, otherwise gross judicial abuse, arbitrary and capricious decisions will undoubtedly undermine substantive due process and the integrity of the judicial process, all of which will negatively impact this republic from within, and thus the accountability falls in the hands of this legendary and illustrious High Court pursuant to Article 3 and 6 of the United States Constitution to bring back into balance, the fair and equal justice in Petitioner's case before this High Court.

Following the exchange of briefs in The Second Circuit Court of Appeal with the Petitioner's Appellant's Brief and opposing Appellees reply brief [USCA 2nd Cir., 19-3092 / Doc. No. 55 (2891110) and Doc. No. 92 (3017286), respectively], the appellate court issued its Summary Order, dated February 18, 2021 [Appendix A, 1a through 6a] affirming the district court's denial of Petitioner's leave to file her amend complaint, granting Appellee's summary judgment and denied Petitioner's cross motion for summary judgment [USCA 2nd. Cir., 19-3092 / Doc. No. 101 (3038478)], [see Appendix A, 1a through 6a]. Subsequently the Appellate court issued its Judgment mandate on March 11, 2021 [USCA 2nd. Cir., 19-3092 / Doc. No. 104 (3053894)]. Petitioner, then filed her Petition for Rehearing En Banc, but due to the untimely filing of said Petition, Petitioner filed her motion to recall mandate and permission to file Petition for rehearing En Banc out of time [USCA 2nd Cir., 19-3092 / Doc. No. 106 (3074388)], which the Appellee opposed by their opposition motion [USCA 2nd Cir., 19-3092 / Doc. No. 110 (3082043)]. By Motion Order, dated April 27, 2021 [USCA 2nd Cir., 19-3092 / Doc. No. 114 (3087185)], the appellate court denied Petitioner's motion to recall mandate and permission to file Petition for Rehearing En Banc out of time.

The Appellant, Pecola Cousar-El, a Moorish American and a Moslem, a law abiding American Citizen, appeals from a final Memorandum & Order, dated and entered August 26, 2019 from the Hon. Margo K. Brodie, a U.S. District Court Judge [Appendix C, a8 through a54] and final Judgment, dated and entered August 27, 2019 from Douglas C. Palmer, Clerk of Court, by Jalitza Poveda, Deputy Clerk; Appendix B at a7.

The appeal was timely pursuant to Rule 4(a)(l) of the Federal Rules of Appellate Procedure because the Notice of Appeal was filed 30 days of the district court's Memorandum & Order and Judgment [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 104; 105]. The circuit court had jurisdiction pursuant to 28 U.S.C. § 1291 because the August 26, 2019 memorandum & Order [[USDC/EDNY - 16-cv-1784 (MLK)(LB) – Doc. No. 104] (Appendix C, a8 through a54), and August 27, 2019 Judgment [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 105] (Appendix B, at a7) is the final order and judgment that disposed of the Petitioner's claims in Pecola Cousar v. New York-Presbyterian/Queen, 16-1784 (MKB)(LB).

In the eastern district court, the Petitioner, by and through her former counsel of record, Attorney James D. Hartt, Esq., Bar Registry# 4150181 brought her initial action by an EEOC Right to Sue fetter [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 1; 4/16/2016]. The district court judge allowed Mr. James Hartt' to appear in the case without any Notice of Appearance, though being acknowledge as an Attorney of Record [USDC/EDNY - 16-cv-1784 (MLK)(LB) -Doc. No. 1 through 19].

However, Mr. James Hartt's representation of the Petitioner ended on February 7, 2017 [by Order, dated and entered 02/07/2017; USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 19]. This in part is due to Mr. Hartt's failure to follow through on discovery, which negatively impacted and was fatal to the Petitioner's ability to move forward in discovery. The Petitioner was placed in a precarious situation that left her to fend for herself with no legal training. The Appellee took full advantage of this critical point in which Petitioner was not allowed to pursue discovery.

In the memorandum & order [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 104] which a judgment [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 105] has been entered failed to make any reference to or mentioned of Petitioner's inadequate representation which ultimately sabotage the Petitioner's case.

The district court's judgment denying Petitioner's leave to amend her complaint in which to include indispensable parties as defendants which Petitioner's former counsel failed to include, with 42 U.S.C. § 1981 that falls well within the statutory time frame of said statute, should have been granted in every respect pursuant to: Booth v. Churner, 206 F.3d 289 (3rd Cir. 2000); Herron v. Harrison, 203 F,3d 410 (6th Cir. 2000); Boag v. MacDougall, 454 U.S. 364, 70 LEd2d 551 , 102 SCt. 700 (1982); and Haines v. Kerner, 404 U.S. 519, 30 LEd2d 652, 92 SCt 594 (1972). Instead, the district court granted summary judgment without regards to 28 U.S.C. § 2072 (b), which ignored the Petitioner's substantive Rights and right to due process, which give rise to the following issues:

1. Whether the district court error and/or abused its discretion by not affording the Petitioner leave to amend her complaint and instead granted the Appellee summary judgment without any consideration or regards to Petitioner's substantive rights under 281 U.S.C. § 2072 (b)?

2. Whether the district court error and/or abused its discretion by omitting the Petitioner's former Counsel of Record, James D. Hartt, Esq., who initiated the Title VII civil action on April 13, 2016 in the U.S. District Court on behalf of the Petitioner who was not even Pro Se at the time, all of which was not mentioned in the memorandum & Order [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 104].

3. Whether the district court error and/or abused its discretion by stating in its memorandum & order [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 104] "Plaintiff ... [was] proceeding prose..." commenced the above-caption action on April 13, 2016, when Petitioner's former Counsel of Record, commenced the action on behalf of the Petitioner?

4. Whether the district court error and/or abused its discretion by not permitting Petitioner liberal discovery.

5. Whether the district court error and/or abused its discretion by ignoring the Petitioner's Affidavit of Request for Summary Judgment [USDC/EDNY- Doc. No. 59].

Petitioner's initial action commenced on April 13, 2016 which began by representation by counsel, James Hart, Esq., who filed Petitioner's Title VII claim, relating to race discrimination, disability and retaliation [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 1]. The Appellant did not commence this action Pro Se, as mentioned in the first paragraph of the U.S. district court's memorandum & order, [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 104] as the Petitioner was being represented by said counsel. See Appendix C at a8 through a54.

During the course of Petitioner's representation by counsel, Mr. James Hartt, Esq., had submitted a request for extension of time to complete discovery in the district court [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 15]. However, Petitioner learned that her counsel was not acting in her best interest as he failed to follow through on discovery to the detriment of the Petitioner.

The Petitioner sought to have her counsel removed from the case for ineffective assistance of counsel, and inadequate representation wherein the damage has already occurred or been done in the discovery phase [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 18, 19]. Following the termination of Counsel from the Appellant's case [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 19], Appellant realized that her former counsel did nothing for her case, as there was no adequate discovery and more importantly, those "parties" referenced in Appellant's claims were not listed as defendants.

Though Petitioner was proceeding pro se following the withdrawal of her former counsel, Petitioner continued to seek out new counsel, but was unsuccessful.

In the Petitioner's efforts to pursue discovery as the Plaintiff Pro Se, following Petitioner's Counsel's withdrawal from the Petitioner's case by the district court order [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 19], the district court would not allow Appellant further discovery [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 58] in the form of granting the Defendant motion to quash. It was clear from that point on that the district court was bias, prejudice and acted unfavorably to the Petitioner and always to the benefit and advantage of the defendant.

The district court was completely bias and prejudice throughout the entire proceeding, even when the Appellant submitted an affidavit entitled "Affidavit Request for Summary Judgment: Affidavits Left Unrebutted, Evasive/Incomplete Disclosure, Failure to Comply Court Order filed by Pecola Cousar ... " [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 59]. Clearly, after Petitioner's Counsel had been withdrawn from the district court case, the district court would not permit Petitioner further discovery, which only went to benefit the Appellee.

When Petitioner submitted another affidavit entitled "Affidavit Supplemental pleading" with respect to retaliation [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 42], the district court deemed such filing as the Appellant's first Amended Complaint. The district court is clearly aware that Petitioner is not an attorney, yet held to such standard, and has no legal training. Though Petitioner has first-hand knowledge of the facts of the case, the Petitioner, nevertheless lacked familiarity with district court procedure and formats in which Petitioner is essentially handicapped

and is no match to go toe-to-toe with an Attorneys at law, who is a functional equivalent of a 10th degree black belt in their profession, whereas the Appellant is even a white belt in comparison.

When Petitioner realized that her former counsel of record, James D. Hartt, Esq., failed to include critical indispensable parties to the suit, such as Donna M. Arzberger, Lorraine S. Orlando, Kristin L.(Ernst) Friedl, Steve Ritchie, Megan Seditas; the Petitioner sought to correct this negligent act of her former counsel of record, James D. Hartt, Esq., by filing her 'motion for leave to file a second amended complaint with the attached 'proposed second' amended' complaint which incorporated 42 U.S.C. § 1981, as an additional cause of action and which Petitioner intended to issue interrogatories to individuals who otherwise were not listed as parties in the beginning due to the incompetence and negligence of the Appellant's former said counsel of record [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 77].

Petitioner was well within the four (4) year statute of limitation to include 42 U.S.C. § 1981 [date of adverse disciplinary action of discharge from employment on August 20, 2015 to the time of filing "Notice of motion for leave to file Second Amended Complaint" on January 23, 2019 [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 77] which does not require the exhaustion of administrative remedy as would Title VII of the civil rights act statute. Hence, the Appellant timely filed her motion for leave to file a Second Amended Complaint [USDC/EDNY - 16-cv-1784 (MLK)(LB) -Doc. No. 77], yet Petitioner's motion was denied [Appendix B and C].

Respondent knew that the Petitioner is a disabled military veteran upon hire who had signed an agreement to be able to perform all the duties, task and responsibilities of a Surgical Technologist Team Member. This information was mention at the depositions to include the "acute onset of triggered episodes" brought on by situations dealing with the discriminatory treatment and punishment by one of the main indispensable parties omitted from the initial suit prepared by Petitioner's former Attorney James Hartt, Esq. who was grossly negligent and incompetent in his representation of the Petitioner in the district court, particularly at the first deposition.

The district court ignored the fact that the Petitioner produced as evidence to the Respondent the two different Medical Doctor notes which directed 'immediate accommodation' in the form of 'time off from that [specific] stressful environment concerning Petitioner's medical health condition [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 1, attached to the initial complaint].

The district court's rendition on page 46 and 47 of its memorandum and order [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 104] with respect to Appellant's testimony is being skewed and misrepresented as to the omitted facts not mentioned therein. The record should reflect the clear dishonesty of the district court's effort to dispose of the Petitioner's Case for the benefit of the Respondent with no consideration whatsoever pursuant to 28 U.S.C. § 2072 (b). See Appendix D for circuit court document history a55 through a59, and Appendix E for USDC/EDNY document history a60 through a75.

REASON FOR GRANTING THE PETITION

1. The district court error and abused its discretion by failing to grant Petitioner's motion for leave to file a second amended complaint to add Indispensable parties with the addition of 42 U.S.C. § 1981.

The district court's failure to afford the Petitioner's liberal amendment in which to include the indispensable parties under 42 U.S.C. § 1981, who should have been listed as defendants in the initial action by former counsel who has since been removed from the case, was an error or an abuse of discretion that contributed to Petitioner's being unable to obtain discovery which the Petitioner's former counsel failed to do. The district court allowed the respondent to take full advantage of Petitioner to the detriment of the Petitioner.

Out of the same circuit, pursuant to Shapiro v. Cantor, 123 F3d 717 (2nd Cir. 1997) "District court should freely give leave to amend complaint." And in the 8th circuit court in Baptist Health v. Smith, 477 F3dl 540 (8th Cir. 2007) it provides in relevant part that "Amendments to pleadings should be allowed with liberality.", and in Hall v. City of Los Angeles, 697 F3d 1059 (9th Cir. 2012) "when a party request to amend a pleading, the court should freely give leave when justice so requires." And justice in this case did so require Petitioner more than ever, to the equal opportunity to amend her complaint in order to invoke 42 U.S.C. § 1981 with the addition of the indispensable parties to this action, among other things, and thus in Small v. Lehman, 98 F3d 762 (3rd Cir. 1996) "Court should allow liberal amendment of pro se plaintiff's civil rights complaint.", together with Angellino v. Royal Family Al-Saud, 681 F3d 463 (D.C. Cir. 2012) in which "Pro se litigants are allowed more latitude than litigants represented by counsel to correct defects in ... pleadings.". In this case, Petitioner's former counsel left the Petitioner's pleading in a very deficient state which warranted further amendment.

Clearly, the circuit court overlooked the fact that the district court abused its discretion and is in error by denying the pro se Petitioner ' leave to amend her complaint as the second amended complaint in complete disregard of 28 U.S,C, § 2072 (b) and the controlling law in the second circuit court, but instead granted summary judgment to the Respondent, which the district court should not have done in light of the gross negligence of Appellant's former counsel Mr. James Hartt, Esq., mishandling of the Petitioner's civil case by failing to do what the Petitioner was attempting to do, through intense study research, as to naming all indispensable parties to the action and to pursue discovery, which Petitioner has no prior training, as would an Attorney. The district court was brutally merciless and unmoved in total disregard to 28 U.S.C. § 2072(b).

2. **Equal Rights under the Law as enjoyed by white citizens**:

Petitioner, with respect to employment discrimination under Title VII of the Civil Rights Act of 1964, as amended and equal rights violations pursuant to 42 U.S.C. § 1981 and New York State Constitution, the opportunity to provide evidence that was otherwise undermined by Petitioner's former counsel of record, Mr. James Hartt, Esq., should have been revisited by the district court as presented by the Petitioner to allow the Petitioner to do what Petitioner's former counsel of record failed to do; To get at discoverable evidence to support the facts in the pleadings. In Humphries v. CBOCS West, Inc., 474 F3d 387 (7th Circ. 2007) "Section 1981 applies to private actors.", as to Arzberger's actions and conduct, to include, Ms. Orlando, were complicit with other staff as referenced in the proposed second amended complaint that is attached to the motion for leave to file a second amended complaint [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 77]., that should have, in all respect, been granted by the district court pursuant to 28 U.S.C. § 2072 and established precedent, but was flagrantly ignored to the benefit and advantage of the Appellee.

In Jacobs, Visoni & Jacobs Co. v. City of Lawrence, KS, 927 F2d 1111 (10th Cir. 1991); City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 87 LEd2d 313, 105 SCt. 3249 (1985)

which provides in pertinent part "The equal protection clause essentially requires that all persons similarly situated be treated alike.", which was not the case and the individual actors who were not listed as defendants, through skullduggery and chicanery fraudulently altered weekly or monthly time schedules in order to give favors to their white subordinates, among other things.

The forged employment contract referenced in the district court with respect to scheduled hours of work is an altered document to which the Appellant did not endorse. It was this forged document used to impose disciplinary actions against the Petitioner, [USDC/EDNY - 16-cv-1784 (MLK)(LB) – 16-cv-1784 (MLK)(LB) - Doc. No. 57: Notice of Criminal Complaint], which was ultimately used to terminate the Petitioner's employment as pretext. At no time was this submission provided any response. The district court and the individuals of the Respondent were silent on this issue. The fraudulently imposed time scheduled which Petitioner did not agree in the contract was used to impose disciplinary sanctions and to conceal the real reason for their adverse actions against the Petitioner. In Brown v. City of Oneonta, NY, 195 F3d 111 (2nd Cir. 1999) "The Equal Protection Clause is essentially a direction that all persons similarly situated should be treated alike." Also, in Hilton v. City of Wheeling, 209 F3d 1005 (7th Cir. 2000) "A person does not have to be a member of a protected group to invoke the equal protection clause." In this case the same rights as enjoyed by white citizens pursuant to U.S.C. § 1981. There were no Caucasian white citizen treated in this manner. Other than the Petitioner.

3. **District court abused its discretion by denying Petitioner's need for discovery**:

The Petitioner had relied upon her previous counsel of record, Mr. James Hartt, Esq., in the district court to obtain discovery. However, it turned out that Petitioner's former counsel failed due to counsel's gross negligence, to obtain pertinent discovery documents as well as failed to list the referenced individuals in the action as defendants. Petitioner's former counsel, following his application to the court to extend the time for discovery [USDC/EDNY - 16-cv-1784 (MLK)(LB) – Doc. No. 15], had withdrawn from the case after the Petitioner had filed a motion to disqualify said counsel due to negligence and incompetence [USDC/EDNY – 16-cv-1784 (MLK)(LB) - Doc. No. 16, 17 and 18]. The damage which Petitioner's former counsel had caused to Petitioner's case is irreparable, as the district court and the defendant took full advantage in which the Petitioner could not obtain discovery as it was quashed by the Respondent in the district court [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 58 & 59].

Had the district court judge been fair and impartial, the Petitioner would have been granted leave to amend her complaint for a second time and had the opportunity to pursue discovery in light of the damaged done by the Petitioner's former counsel for failing to provide assistance of counsel and proper representation. The necessary addition of the indispensable parties, which should have been previously added by the Petitioner's former counsel, the proposed amended complaint would have been fairly acted upon and the Petitioner would have proceeded with discovery pursuant to Federal Rules of Civil Procedure 26, 33, 36, 34, as to interrogatories, request for admissions and production of documents, respectively, can be pursued, if the court allows, to include depositions without cost to Plaintiff. In Farnsworth v. Proctor & Gamble Co., 758 F2d 1545 (11th Cir. 1985) "federal Rules of Civil Procedure strongly favor full discovery whenever possible.", and further in Pacitti v. Macy's 193 F3d 766 (3rd Cir. 1999) "The federal rules allow broad and liberal discovery.

This clearly shows that the district court is in error and abused its discretion in denying the Petitioner's leave to amend her complaint and not allowing liberal discovery, and that the second

circuit seem to have deviated from its own standard set forth in Shapiro v. Cantor, 123 F3d 717 (2nd Cir. 1997) and to the far left in ignoring its own precedent ["District court should freely give leave to amend complaint" Shapiro] and that of the other circuit courts, as to the 3rd, 8th and 9th Circuit court of appeals. The appellate court has made this selective, and thus arbitrary and capricious.

Besides the Appellant Title VII claims, there is clearly an Equal Rights and Equal Protection issue pursuant to 42 U.S.C. § 1981 that should have been addressed via the Petitioner's proposed Second amended verified Civil Complaint that was attached to the Petitioner's Motion for leave to file her second amended complaint [USDC/EDNY - 16-cv-1784 (MLK)(LB) - Doc. No. 77].

4. **The Petitioner's Summary Judgment was ignored by the District Court:**

During the course of the district court proceeding when the Petitioner was proceeding pro se, the Respondent had defaulted twice with respect to failing to provide the forged contract, the details of which is particularized in the Petitioner's Affidavit [USDC/EDNY – 16-cv-1784 (MLK)(LB) - Doc. No. 49]. As a consequence of the Respondent's failure to provide the requested forged documents in a timely manner, causing a default [USDC/EDNY – 16-cv-1784 (MLK)(LB) - Doc. No. 56], Order re - "Plaintiff letter regarding discovery related issues. Defendant is directed to file a response to Plaintiffs letter on or before May 8, 2018". In the Respondent's response was a motion for summary judgment and quash for !additional discovery; defying the district court's Order, dated May 1, 2018 which turns out to be a phantom Order as it does not bear an associated entry docket number but, can be found on the civil docket summary report between Document number 57 and 58. See Appendix E, at a69.

5. **The district and circuit court ignored Petitioner's substantive rights:**

The Petitioner, in pro se status following the mishandling of her case by former counsel of record, James Hart, Esq., left Petitioner vulnerable and Petitioner's case in disarray, as said counsel failed to list the indispensable parties as defendants in the district court and failed to do adequate discovery, in which case Petitioner was left holding the case on her own without any experience or legal training and understanding of the procedures of the courts.

The district and circuit court is brutally merciless as it does not concern itself with the shortcomings and failings of the pro se litigant in total disregard to 28 U.S.C. § 2072 (a), which provides in pertinent part that "The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals. [b] Such rules shall not abridge, enlarge or modify any substantive rights". Yet the district court, by its treatment of the Petitioner, held the Petitioner to the same level of an Attorney.

Petitioner should have been granted leave to file an amended complaint for a second time pursuant to 28 U.S.C. § 2072 and Booth v. Churner, 206 F.3 289 (3rd Cir. 2000); Herron v. Harrison, 203 F.3d 410 (6th Cir. 2000); Boag v. MacDougall, 454 U.S. 364, 70 LEd2d 551, 102 SCt., 7000 (1982); and Hains v. Kerner, 404 U.S. 519, 30 LEd2d 652, 92 SCt. 594 (1972), together with vacating Appellees summary judgment as moot and granted Petitioner's partial summary judgment as to an Affidavit left unrebutted [USDC/EDNY – 16-cv-1784 (MLK)(LB) - Doc. No. 59].

Consequently, the Appellant submitted an "Affidavit Request for Summary Judgment: Affidavits left Unrebutted/Evasive Incomplete Disclosure, Failure to Comply with Court Order filed by Pecola Cousar .. " [USDC/EDNY – 16-cv-1784 (MLK)(LB) - Doc. No. 59].

Most prevalent and glaringly ignored is Petitioner's National status as a consanguineous Indigenous Moorish American (Moslem) with claims to ancestor ties to the land of the "Moors" (superior signatory) in Treaty of Peace and Friendship of 1787/1836, compared to the "Christians" (subordinate signatory). Petitioner informed the district court, as a pro se litigant by a) judicial challenges with 16-cv-1784 (MKB)(LB), Doc. No. 30, dated September 26, 2017 re: Letter from Petitioner requesting information on the district court's jurisdiction on the case, and Doc. No. 31, dated November 2, 2017 re: same as Doc. No. 30; b) Doc. No. 41, (Affidavit) entered January 17, 2017 re: Affidavit withdrawal for question of Article III Judge and common law court; c) No document entry number –minute entry- near Doc. 41, "status conference" dated and scheduled for 01/17/2018, whereas Judge Brodie identified herself as a constitutional Article III Judge capable of handling Treaty matters; and d) Most, if not all case correspondence & appearances were self-identified with Petitioner's Noble Title "El", as stated "I am Pecola Lee Cousar El". To date, there has never been any acknowledgment nor discussions of 'diversity of citizenship' or consul representation concerning treaty consideration, as once recorded for Moorish Americans in book for Consular Relations: under Title 22, Chapter 2 § 141 and Truth A-1 AA222141, as such Plaintiff had already proclaim to be A CITIZEN OF THE U.S.A. (law abiding American Citizen) to which the district court or the Appellees had not made any challenges or objections.

Additionally, USDC/EDNY – 16-cv-1784, Doc. No. 108 "Affidavit of Corum Novus and Writ of Error was flagrantly ignored by the district court. Article 6 of the U.S. Constitution states a consideration of nation-nation diplomacy in that 'treaties made' established prior to this constitution are to be 'supreme law of the land' as it is understood for all states/estates. Martin v. Hunter's Lessee, 14 U.S. 304 (1816)

CONCLUSION

Based upon the foregoing, this court should grant certiorari and remand this case to the district court with instructions directing the district court to grant Petitioner's leave to amend her complaint and to vacate Appellee's summary judgment as moot [USDC/EDNY – 16-cv-1784 (MLK)(LB) - Doc. No. 59], and to reopen discovery and reassignment to another U.S. District Court Judge, and as to such other and further relief deem just and reasonable under the circumstances.

Dated: September 10, 2021
New York, New York

Respectfully submitted,

Pecola Cousar El, Petitioner, Pro Se
Care of [676 Nereid Avenue # 17
Bronx, New York [10470]]