

22-5486 **ORIGINAL**  
No. 22-\_\_\_\_\_

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

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**Hillary Best, Petitioner,**

Supreme Court, U.S.  
FILED

**AUG 29 2022**

OFFICE OF THE CLERK

**-against-**

**New York City Police Department,  
Sex Offender Unit, Respondent.**

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

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**PETITION FOR A WRIT OF CERTIORARI**

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**Hillary Best                    No Opposing Party  
Post Office Box  
751072  
Forest Hills, NY 11375  
Tel: (718) 807-4205  
Best-Paralegal@hotmail.com  
Counsel, *pro se*, for Petitioner**

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**QUESTIONS PRESENTED FOR REVIEW**

1. Does Section **§100.30(1)(d)** of the New York Criminal Procedure Law violate the **4<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Amendments** to the United States Constitution by allowing for arrest, detention and involuntary servitude upon unsworn criminal complaints?
2. Does Section **§100.30(1)(d)** of the New York Criminal Procedure Law violate the **6<sup>th</sup> Amendment** to the United States Constitution by not requiring that the identity of a subscriber to a criminal complaint be verified by someone authorized by law to administer oaths?
3. Does Section **§100.30(1)(d)** of the New York Criminal Procedure Law violate the **6<sup>th</sup> and 14<sup>th</sup> Amendments** to the United States Constitution by not requiring that the identity of a subscriber to a criminal complaint be verified by Jurat (someone authorized by law to administer oaths) pursuant to **§210.00(7)** of the New York Penal Law?

4. Does deciding an appeal on facts and law extraneous to the facts and law being raised, violate the **14<sup>th</sup> Amendment** to the United States Constitution by allowing Petitioner to be deprived of liberty without due process of law?

**LIST OF PARTIES TO PROCEEDING**

1. New York City Police Department, Sex Offender Unit, Defendant (Not Joined).
2. State of New York, Defendant (Not Joined).
3. Hillary Best, Petitioner.

### **RELATED PROCEEDINGS**

28 U.S.C. §2403(b) may apply with Notice being served upon the Attorney General of the State of New York. The following proceedings are directly related to this case within the meaning of Rule 14. I(b)(iii):

1. **People v. Hillary Best**, Docket Nos. 2006QN038220 and 2006QN038221, New York City Criminal Court, County of Queens, 125-01 Queens Boulevard, Kew Gardens, New York 11415
2. **People v. Hillary Best**, Docket Nos. 2016-1971 and 2016-1972, Appellate Term of the Supreme Court, Second Judicial Department, 141 Livingston Street, Brooklyn, New York 11201
3. **Matter of Best v. New York City Police Department, Sex Offender Unit**, Index No. 100170-2016, Supreme Court of the State of New York, County of New York, 60 Centre Street, New York, New York 10007.

4. Hilary Best v. New York City Police

Department, Sex Offender Unit, Docket No. 20-  
CV-02382, United States District Court for the  
Eastern District of New York, 225 Cadman Plaza  
East, Brooklyn, New York 11201.

5. Hilary Best v. New York City Police

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**OPINIONS BELOW**

1. The opinions of the United States Court of Appeals for the Second Circuit are not known to be published in the U.S. Appellate Court Reporter, but are reprinted and attached as **Appendices A and B**.

2. The opinions of the United States District Court for the Eastern District of New York are not known to be published in the U.S. Court Reporter, but are reprinted and annexed hereto as **Appendix C**.

3. The opinions of the Appellate Term of the New York Supreme Court, Second Department, are not known

to be published in the New York Appellate Term Reporter, but are reprinted and annexed hereto as Appendix D.

4. The opinion of the Criminal Court of the City of New York, County of Queens, is not known to be published in the New York Supplement Reporter, but is reprinted and annexed hereto as Appendix E.

#### **JURISDICTION**

The Opinion of the Court of Appeals for the Second Circuit was entered on May 31, 2022. The deadline for filing this petition is August 29, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

#### **CONSTITUTIONAL PROVISIONS**

The 4<sup>th</sup> Amendment guarantees the right to secure in one's person, house, papers, and effects, against unreasonable searches and seizures, and that no Warrants shall issue, but upon probable cause, supported by Oath or affirmation.

The 6<sup>th</sup> Amendment guarantees the right to know one's accuser(s).

The 13<sup>th</sup> Amendment guarantees the right to be free from involuntary servitude, except as punishment for a crime whereof the party shall have been duly convicted.

The 14<sup>th</sup> Amendment prohibits the states from making or enforcing any law which shall abridge the privileges or immunities of citizens of the United States, and prohibits the states from depriving any person of life, liberty, or property, without due process of law, and from denying to any person within their jurisdiction the equal protection of the laws.

#### STATUTORY PROVISIONS

1. NYCPL §100.15(1) provides that an information, a misdemeanor complaint and a felony complaint must each specify the name of the court with which it is filed and the title of the action, and must be subscribed and verified by a person known as the "complainant." The

complainant may be any person having knowledge, whether personal or upon information and belief, of the commission of the offense or offenses charged. Each instrument must contain an accusatory part and a factual part. The complainant's verification of the instrument is deemed to apply only to the factual part thereof and not to the accusatory part.

2. **NYCPL §100.30(1)(d)** provides that. An information, a misdemeanor complaint, a felony complaint, a supporting deposition, and proof of service of a supporting deposition may be verified in any of the following manners:

- (a) Such instrument may be sworn to before the court with which it is filed.
- (b) Such instrument may be sworn to before a desk officer in charge at a police station or police headquarters or any of his superior officers.

(c) Where such instrument is filed by any public servant following the issuance and service of an appearance ticket, and where by express provision of law another designated public servant is authorized to administer the oath with respect to such instrument, it may be sworn to before such public servant.

(d) Such instrument may bear a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law, and such form notice together with the subscription of the deponent constitute a verification of the instrument.

**NOTE:** Preceding provisions (a), (b) and (c) are provided to show that they include the requirement that the instrument be sworn to before someone of legal authority.

3. NYPL §210.00(7) provides that "Jurat" means a clause wherein an attesting officer certifies, among other matters, that the subscriber has appeared before him and sworn to the truth of the contents thereof.

4. **NYCPLR §3020(a)** provides that, Generally. A verification is a statement under oath that the pleading is true to the knowledge of the deponent, except as to matters alleged on information and belief, and that as to those matters he believes it to be true. Unless otherwise specified by law, where a pleading is verified, each subsequent pleading shall also be verified, except the answer of an infant and except as to matter in the pleading concerning which the party would be privileged from testifying as a witness. Where the complaint is not verified, a counterclaim, cross-claim or third-party claim in the answer may be separately verified in the same manner and with the same effect as if it were a separate pleading.

5. **28 U.S.C. §2403(b)** provides that In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in

question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

6. 28 U.S.C. 1254(1) provides that Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; \* \* \*.

## **INTRODUCTION**

Petitioner, Hilary Best, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case. As explained further below, the Second Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, to call for an exercise of this Court's supervisory power. Further, a state court and the United States Court of Appeals for the Second Circuit in this case have decided an important question of federal law in a way that conflicts with relevant decisions of this Court.

## **STATEMENT OF THE CASE**

### **NON-WAIVABLE JURISDICTIONAL DEFECT**

#### **Deprivation of Liberty Without**

#### **Due Process of Law**

1. On July 17, 2006, Petitioner was subjected to an arrest and detention upon unsworn, hearsay accusatory instruments involving two female complainants. The

arrest was sparked by the complainant under **Queens Criminal Court Docket No. 2006QN038221**, who retaliated against the Petitioner for offering to another female the job position she had been interviewed for.

2. The complainant under **Queens Criminal Court Docket No. 2006QN038220**, while on her way to work with the Petitioner, was intercepted by the arresting officer and compelled to bear false witness against the Petitioner, resulting in charges for forcible touching and sexual abuse by both complainants, in violation of **New York Penal Law (PL) §§130.52 and 130.55.**

3. Being held on unreasonable bail, and thereby forced to serve time for crimes upon which no convictions had been entered, and because of a family emergency requiring Petitioner's immediate release from pretrial detention, a plea deal was entered into providing for Petitioner's immediate release with time served.

4. A Notice of Appeal was filed on Petitioner's behalf but was not perfected.

**Post-Conviction Proceedings**

**to Vacate Judgment**

1. By motion dated December 22, 2015, Petitioner moved to vacate judgments under criminal court Docket Nos. **2006QN038220** and **2006QN038221**, upon the grounds that the criminal complaints had not been verified by jurat (one signature was not even dated, and the other had the date of subscription totally obscured), which rendered the complaints jurisdictionally defective and insufficient to confer jurisdiction upon the court to render any kind of judgment except dismissal of the criminal complaints.

2. Petitioner also challenged the constitutionality of **CPL §100.30(1)(d)**, asserting it to be an unconstitutional deviation from the mode of proceedings prescribed by fundamental due process of law.

3. Rather than vacating the invalid convictions, criminal court engaged in subterfuge, falsey asserting that **CPL §100.30(1)(d)** allows a supporting deposition to

be signed under the penalties of perjury, and addressed sufficiency of the criminal complaints to provide notice of the charges, which was not raised by Petitioner's motion to dismiss. Thus, by Decision and Order dated May 2, 2016, criminal court denied Post Judgment Relief.

#### **Appellate Term**

Motions were made to the Appellate Term of the New York Supreme Court, Second Judicial Department, seeking leave to appeal, but were denied by Decisions & Orders on Applications, dated December 5, 2016.

#### **District Court**

Because Petitioner's SORA hearing was conducted as part of Petitioner's sentencing proceeding, and Petitioner is still subjected thereto, requiring that he report every 90 days as a form of parole, Petitioner petitioned for Federal Habeas Corpus relief pursuant to the United States Court of Appeals for the Third Circuit ruling in Piasecki v. Court of Common Pleas, Bucks County, PA, 917 F.3d 161 (2019).

By Memorandum & Order dated July 15, 2020, District Court for the Eastern District of New York mischaracterized Petitioner's petition as challenging proceedings that occurred in **state supreme court**, whereas Petitioner's habeas corpus petition clearly indicated that it was challenging convictions that occurred in **state criminal court**, and went on to erroneously rule that Petitioner was no longer in custody pursuant to the 2007 conviction or sentence at the time the petition for federal habeas corpus relief was filed on April 23, 2020, thereby dismissing the petition for lack of federal jurisdiction.

**Circuit Court of Appeals**

Application for a Certificate of Appealability, In Forma Pauperis status, and Appointment of Counsel, was denied by decision of the United States Court of Appeals for the Second Circuit, dated October 26, 2021, which mischaracterized Petitioner's legal argument as claiming "that the state indictment was defective." There was **no**

indictment in Petitioner's case, and Petitioner never made any such claim, because Petitioner was prosecuted in state criminal court, not state supreme court. Thus, Petitioner's appeal was decided on facts and law not applicable to the Petitioner's case, as the Second Circuit ruling that whether a New York court erred in accepting the charging documents without an affidavit is a question of New York State law and not the province of a federal habeas court to reexamine state-court determinations on state-law questions, was entirely erroneous, if not deliberately misstated, since Petitioner was not prosecuted by indictment but by criminal court complaint, which, for validity, must be in the form of an affidavit to comply with the **4<sup>th</sup>, 6<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Amendments** to the United States Constitution as argued below.

A motion to recall and vacate the Mandate and Decision fraudulently denying appellate relief was denied by decision of the United States Court of Appeals for the Second Circuit, dated May 31, 2022, from which this

application for Certiorari follows in hopes of dispelling the subterfuge injected into Petitioner's legal proceedings to deprive him of liberty without due process of law.

#### **REASONS FOR GRANTING THE PETITION**

1. This case raises a Constitutional Question concerning the validity of CPL 100.30(1)(d), which allows for a form of verification substandard and contrary to the norms of fundamental procedural due process of law, in that it allows for arrest and detention upon unsworn complaints in violation of the 4<sup>th</sup>, 6<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution. Thus, because Petitioner's sentence from his conviction directly committed the Petitioner to New York's SORA Laws, Petitioner was entitled to federal habeas relief pursuant to the ruling in Piasecki v. Court of Common Pleas, Bucks County, PA, supra.

2. "From all the analogies of the law, both civil and criminal, the information (criminal complaint-not indictment) is intended to be made upon oath. While the

statute does not expressly require it, we think it is necessarily implied, for otherwise an unfounded accusation could be set on foot and an investigation instituted upon unsupported assertion without any proof whatever."

People ex rel. Livingston v. Wyatt, 186 N.Y. 383.

3. The mode of proceedings prescribed by procedural due process of law, under both the New York and United States Constitutions, require that in order for a criminal complaint (accusatory instrument) to be valid, it must be verified. People v. Scott, 3 N.Y.2d 148; Albrecht v. United States, 273 U.S. 1.

4. The question is, what constitutes verification as a matter of law, for a criminal proceeding cannot lawfully commence or proceed without a properly verified criminal complaint (see **CPL 100.15(1)**; People ex rel. Schildhaus v. Dros, 7 Misc.2d, 398, affd. 8 N.Y.2d 33; People v. Ryan, 185 Misc.2d 477).

5. Pursuant to **CPLR 3020(a)**, verification is a statement under oath that the pleading is true to the

knowledge of the deponent, except as to matters alleged on information and belief, and that as to those matters, the deponent believes it to be true.

6. Referencing the word deponent, verification encompasses identity verification, which ensures that there is a real person behind the complaint, and proves, in absence of rebuttal, that they are who they claim to be, which prevents anyone from subscribing on another's behalf without authorization, creating false identities, or committing fraud. As such, verification fulfills the 6<sup>th</sup> Amendment guarantee of knowing the identity of one's accuser(s).

7. Verification also imposes a penalty of felony prosecution for false statements. Such is rooted in the principle that one should not bear false witness against another, and that liberty, being the foundation of American life, should not be compromised by false allegations, thereby requiring stern punishment for false accusations.

8. For the foregoing reasons, the New York Legislature was without authority to enact CPL 100.30(1)(d), because doing so violated the mode of proceedings prescribed by procedural due process of law, whereby judicial proceedings may not be conducted arbitrarily and capriciously.

9. Both the Constitution of the State of New York and the United States guarantee that a person may not, even voluntarily, be prosecuted for a criminal offense without a formal and sufficient accusatory instrument, for a valid and sufficient accusatory instrument is a nonwaivable jurisdictional prerequisite to a criminal prosecution (see People v. Harper, 37 N.Y.2d 96, at 99).

10. To be valid, an accusatory instrument must be verified, which historically has been known to involve appearing before someone with authority to administer oaths, who verifies the identity of the person subscribing to the accusatory instrument, that they are of appropriate age to swear or affirm under oath, administer the oath on

pain of perjury, and authenticate the date of subscription with a Jurat, pursuant to **PL §210.00(7)**.

11. Without an executed Jurat, which CPL §100.30(1)(d) does not require, an accusatory instrument, unless subscribed by a District or Assistant District Attorney not a party to the proceeding, is a nullity, not voidable but void, equivalent to toilet paper, with no judicial force or effect whatsoever (see CPLR §3022(a); People ex rel. Livingston v. Wyatt, *supra*).

12. In conclusion, the legislature had no authority to make up its own version of verification contrary to the mode of judicial proceedings long established and prescribed by law for the fair and impartial administration of justice, violating substantive due process by being arbitrary and capricious to the detriment of the accused contrary to the 4<sup>th</sup>, 6<sup>th</sup>, 13<sup>th</sup> Amendments to the United States Constitution, applied to the states via the 14<sup>th</sup> Amendment.

13. The 4<sup>th</sup> Amendment to the United States Constitution is also violated by CPL 100.30(1)(d), because the latter allows for arrest and detention upon an unsworn complaint. A civil proceeding cannot be commenced except upon an affidavit, or affirmation by an attorney not a party to the proceeding, so how is it that a criminal proceeding, which infringes upon a person's liberty, can be commenced upon anything less?

14. Accordingly, CPL 100.30(1)(d) must and should be declared unconstitutional as a matter law, regardless of the fact that it has remained on the books virtually unchallenged since 1966 when it came into law.

### CONCLUSION

In view of the foregoing, it is clear that the State of New York had been subjecting citizens to arrest and detention upon unsworn criminal complaints, to the detriment of rights prohibiting the deprivation of liberty without due process of law, and that it is imperative for

this Court to intervene to prohibit the unconstitutional practice.

**WHEREFORE**, Petitioner prays for certiorari to be granted, and prays for such other and further relief as the court may deem just and proper.

Dated: August 28, 2022

Respectfully submitted



Hillary Best, Pro se

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