

SUPREME COURT OF THE UNITED STATES

22-5594

Case No.

MAYLOIS CONERLY PRICE, (A/K/A MAYLOIS CONERLY, MAYLOIS PRICE,
MAYLOIS BACOT, MAYLOIS CONERLY BACOT)

Petitioner

VERSUS

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR AMERIQUEST
MORTGAGE SECURITIES, INC., ASSET-BACKED PASS-THROUGH CERTIFICATES,
SERIES 2005-R4

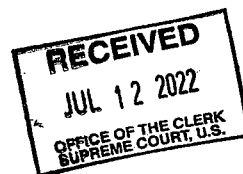
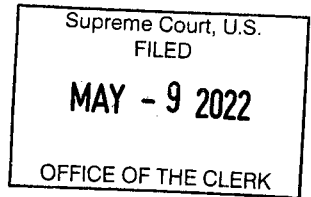
Respondents

APPLICATION FOR WRIT OF CERTIORARI

Respectfully Submitted

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ORIGINAL



A.

QUESTION PRESENTED

1. Whether the trial court properly granted preliminary injunction in prohibition / restraining Deutsche Bank National Trust Company, As Trustee for Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2005-R4 and Ocwen Loan Servicing, LLC for unlawful practices and prevention of irreparable harm?
2. Whether the Fourth Circuit Court of Appeals erred granting reversal of preliminary injunction contrary to rules of law and contravened Maylois Bacot procedural and substantive due process rights?
3. Whether Louisiana Supreme Court abused its discretion denying Maylois Bacot writ of certiorari in violation of her protected rights under the Constitution of the United States and Louisiana?

B.

PARTIES INVOLVED

The parties involved in this process are completely cited in the caption of this writ.

TABLE OF CONTENTS

Document	Page
A. QUESTIONS PRESENTED FOR REVIEW.....	2
B. PARTIES INVOLVED.....	2
C. TABLE OF CITED AUTHORITIES.....	4
D. PETITION FOR WRIT.....	5
E. OPINIONS BELOW.....	5
F. JURISDICTION.....	5
G. MEMORANDUM IN SUPPORT.....	6
H. LAW AND ARGUMENT.....	8
I. REASONS FOR GRANTING THE WRIT.....	14
1. The Fourth Circuit Court of Appeals has entered a decision that conflicts with decisions of this Court, and the United States Supreme Court, departure from the controlling principles of the judicial proceedings.	
2. The Louisiana Supreme Court and Fourth Circuit Court of Appeals have rendered judicial decisions that deprived and denied Petitioner's secured and protected property rights and interest under Louisiana and United States Constitution.	
3. To prevent lawyer fraud and fraud on the court to obtain an unfair and unlawful judgment.	
J. CONCLUSION.....	15
K. APPENDIX.....	16

C.

TABLE OF CITED AUTHORITIES

Cases	Page
1. Ackerman v. United States, 340 U.S. 193, 202 (1950).....	13
2. City of New Orleans v. Scramuzza, 507 So.2d 215, 217 (La. 1987).....	10
3. Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958).....	13
4. Duncan v. Louisiana, 391 U.S. 145 (1968) holding the Fourteenth Amendment “incorporates” specific provisions of the Bill of Rights.....	12
5. Jurisich v. Jenkins, 749 So.2d 597, (La. 10/19/99),.....	11
6. Kruger v. Garden District Association, 779 So.2d 986 (La. App. 4 Cir. 2001), rehearing denied, writ denied 791 So.2d 658.....	11
7. La. Smoked Products v. Savoies’s Sausage, 97-1128 (La.6/30/97), 696 So.2d 1373, 1378, reh’g denied.....	10
8. Levine v. United States, 362 U.S. 610, 80 S. Ct. 1038 (1960).....	13
9. Miranda v. Arizona, 384 U.S. 436.....	13
10. Owen v. Independence, 100 S. Ct. 1398, 445 U.S. 622.....	13
11. Pierson v. Ray, 386 U.S. 547, 559 (1968) (Douglass J. dissenting) (1871 Act passed in response to Southern Lawlessness).....	11

CONSTITUTION AND STATUTES

Louisiana Constitution Article I § 2.....	10
U.S. Constitution 14 th Amendment.....	11
La. C.C. art. 1953.....	12
La. Rev. Stat: 14:72.....	12
La. Rev. Stat: 14:123.....	12
La. Rev. Stat: 14:133.....	13

RULES

La. C.C.P. art. 531.....	7
La. C.C.P. art. 925.....	7
La. C.C.P. art. 2751.....	7, 8
La. C.C.P. art. 3061.....	7, 9
FRCP Rule 60(b)(3).....	13

D.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Maylois Bacot files this writ of certiorari seeking judicial review of the decision of the Fourth Circuit Court of Appeals reversal of the Civil District Court Parish of Orleans granting preliminary injunction in favor of enjoined to prevent manifest injustice. An application for Stay has been timely filed with Louisiana Supreme Court denial of writ of certiorari. This Court intervention is indispensable for enforcement and protection guaranteed in the Constitution of Louisiana and United States to protect and prevent Maylois Bacot from lawyers unethical and unlawful practices and judgment procured by fraud and fraud on the court in violation of secured rights enshrined in Louisiana and United States Constitution.

E.

OPINIONS BELOW

On December 15, 2021, the Fourth Circuit Court of Appeal reversed and remanded preliminary injunction granted by the Civil District Court.

On May 21, 2021 Civil District Court for the Parish of Orleans conducted a hearing on petition for executory process filed by appellant and after hearing argument of counsel, considering the law and evidence the court granted preliminary injunction in favor of Maylois Bacot.

F.

JURISDICTION

The Supreme Court has jurisdiction under Louisiana Constitution Art. V §

10.

G.

MEMORANDUM IN SUPPORT

The trial court issued a preliminary injunction to Petition against respondent to avoid irreparable harm pending proof of evidence breach of contract, payment of required promissory notes, and alleged failure to pay mortgage note. The trial court made a judicial determination that Petitioner met the criteria for receiving a preliminary injunction. The Fourth Circuit Court in review of the same evidence reached a different conclusion and reversed the trial court.

On May 24, 2005, Mrs. Maylois Bacot entered into and executed a mortgage agreement with Ameriquet to purchase immovable property located at 5696 Stillwater Drive, New Orleans, Louisiana 70128. Mrs. Bacot paid the mortgage note for nine years in the amount of \$1,233 up until December 31, 2014, until she suffered injuries causing permanent disability from a car accident. Mrs. Bacot reported her health condition and income reduction as a recipient of Social Security Benefits in the amount of \$1,400.00 per month to Ameriquet and Ocwen Loan Servicing, LLC (hereinafter referred to as Ocwen), who was acting as the loan service provider.

On December 31, 2014, Mrs. Bacot entered into a three-years forbearance agreement with Ocwen to pay her mortgage commencing on January 1, 2015 in which she was required to continue to pay \$1,233.11 over the term of the forbearance agreement to qualify for eligibility for a modification. The first payment made was through ACH in the amount of \$1,233.11, and remaining payments were successful made through various methods in which Ocwen informed Mrs. Bacot of the completion of the modification agreement in February 2015. Ocwen claims the payments received from Mrs. Bacot was returned to Regions Bank due to incorrect information of the bank account and insufficient amount to pay the executed agreement amount. For several years Mrs. Bacot paid the promissory note through Moneygram electronic payment services forward and accepted by Ocwen.

The forbearance agreement purporting to be a loan modification agreement was ascertained and discovered to be a Shared Appreciation Modification agreement that Ocwen failed to explain the concept and provisions of the agreement to Ms. Bacot. Under the circumstances aforementioned that adversely affected her income, Mrs. Bacot consistently communicated and corresponded to Ocwen representatives via phone and letter to no avail. There was no one person source assigned to handle the account of Mrs. Bacot creating complication to obtain assistance through Ocwen.

Ocwen falsely advertises and holds itself publicly as “Helping Homeowners Is What We Do!” However, on February 6, 2016, Ocwen forged Maylois Bacot name to a second loan modification agreement which was reported and investigated by Louisiana Department of Justice consumer fraud division.

After fulfilling obligations under the terms of the forbearance agreement on December 31, 2018, Mrs. Bacot communicated with Ocwen for a loan modification because under the terms of the original promissory note her disability income created an economic hardship that necessitated a reduction in the monthly note. Ocwen reorganized and merged with PHH Mortgage Service, New Rez but remained servicing the mortgage loan.

Counsel for Deutsch Bank National intentionally made fraudulent misrepresentation to the trial court and appellate court that, Ocwen returned payments made by Ms. Bacot to Regional Bank. During trial proceedings counsel for Mrs. Bacot filed subpoenas and conducted discovery to ascertain the information from Deutsch Bank attorneys, who concealed, spoliated and failed to disclose discoverable and relevant admissible evidence of the business transactions between Mrs. Bacot and Ocwen on behalf of Ameriquest or Deutsch Bank. Ocwen failed to record and report monthly promissory notes paid by Maylois Bacot as required by law and foreclosed on the primary residential home.

On January 14, 2020, Deutsche Bank instituted a petition for executory process of a mortgage loan against Maylois Bacot alleging default. In accordance with La. C.C.P. art. 1061, Ms. Bacot filed a reconventional demand, motion for preliminary injunction and to arrest seizure and sale. La. C.C.P. art. 2751 and 3061.

Mrs. Bacot disputed the issues of the amount paid and owed establishing the requirement for issuance of a preliminary injunction.

The trial court after hearing counsel’s argument, law and evidence of the case granted preliminary injunction to prevent any irreparable harm, but per the request of counsel for Deutsch Bank bifurcated Mrs. Bacot **Reconventional Demand** to be tried separately.

H.

LAW AND ARGUMENT

A preliminary injunction is an injunction that may be granted before or during trial, with the goal of preserving the status quo before final judgment. La. C.C.P. arts. 2751 and 3601. Petitioner demonstrated without the issuance of an injunction she would suffer irreparable harm, and probability of substantive likelihood that she would prevail at trial on the merits of the case presented in the trial court. The injunction should be maintained to allow adjudication of a pending reconventional demand in the trial court alleging breach of contract, fraud and fraud on the court, defamation, unfair trade and deceptive practices, forgery, inter alia.

I.

JUDICIAL PROCEDURES

Under La. C.C.P. art. 531. Suits pending in Louisiana court or courts:

When two or more suits are pending in a Louisiana court or courts on the same transaction or occurrence, between the same parties in the same capacities, the defendant may have all but the first dismissed by excepting thereto as provided in Article 925. When the defendant does not so except, the plaintiff may continue the prosecution of any of the suits, but the first final judgment rendered shall be conclusive of all.

Petitioner's reconventional demand is pending in the Civil District Court for the Parish of Orleans.

In the case sub-judice seeking writ of certiorari, petitioner avers that, predicated on motion for preliminary injunction and reconventional demand tantamount to *Lis Pendens* in accordance with art. 925(3) which was properly adjudicated and decreed preliminarily in favor Mrs. Bacot and erroneously reversed and remand by the Fourth Circuit Court of Appeals.

The Fourth Circuit Court of Appeals reversal of Civil District Court preliminary injunction adversely affects Mrs. Bacot property rights and interest under Louisiana and United States Constitution and statutory rights.

The trial court properly applied La. C.C.P. arts. 2751 and 3061 which reads as follows:

La. C.C.P. art. 2751 provides that a defendant may enjoin an executory process proceeding when "the debt secured by the security interest, mortgage or privilege" is legally unenforceable.

Petitioner clearly demonstrated in trial proceedings the note was not enforceable in her Motion for Preliminary Injunction and Reconvotional Demand due to Ocwen Loan Servicing, LLC's mishandling, manipulations and maneuvers in handling Mrs. Bacot account on behalf of Ameriquest and Deutsch Bank. Mrs. Bacot and Ocwen Loan Servicing, LLC negotiated and executed an agreement under the terms and conditions that was fulfilled by petitioner and breached by appellants on appeal. Neither Deutsch Bank nor their attorney of record has produced a scintilla of evidence to support their affirmative defenses warranting reversal of the trial court's judgment.

In accordance with La. C.C.P. art. 3061 which reads: A. An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law; provided, however, that no court shall have jurisdiction to issue, or cause to be issued, any temporary restraining order, preliminary or permanent injunction against any state department, board, or agency, or ny officer administrator, or head thereof, or any officer of the state of Louisiana in any suit involving the funds when the director of such department, board, or agency or the governor shall certify that the expenditure of such funds would have the effect of creating a deficit in the funds of said agency or be in violation of the requirements placed upon the expenditure of such funds by the legislature.

A preliminary injunction is an injunction that may be granted before or during trial, with the goal of preserving the status quo before the final judgment. To obtain a preliminary injunction, a party must show that they will suffer irreparable harm unless the injunction is issued. When determining whether to grant preliminary injunctions, judges consider the extent of the irreparable harm, each party's likelihood of prevailing at trial, and any other public or private interests implicated by the injunction.

In *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, (2008), the Supreme Court described the balancing test for whether a preliminary injunction is appropriate. A court needs to examine whether the plaintiff is likely to succeed on the merits, whether the plaintiff is likely to suffer irreparable harm without the injunction, whether the balance of equities and hardships is in the plaintiff's favor, and whether an injunction is in the public interest.

The trial judge conducted a preliminary injunction hearing and based on arguments of counsel, law and evidence granted Petitioner's preliminary injunction enjoining executory process.

Preliminary injunctive relief requires establishing: (i) the likelihood of irreparable harm and the unavailability of an adequate remedy at law, unless the action is to enforce real property covenants; (ii) substantial likelihood of success on the merits; (iii) that the threatened injury outweighs any possible harm/ and (iv) that granting a preliminary injunction will not disserve the public interest.

Petitioner prevailed at trial meeting the standard requirement for preliminary injunction which was erroneously reversed by Louisiana Fourth Circuit Court of Appeals in violation of United States and Louisiana constitution procedural and substantive due process rights. Deutsche Bank's counsel of record failed to produce a scintilla of evidence in support of establishing a right to executory process because of breach of agreement to modify the loan subsequent fulfillment of a forbearance by Mrs. Bacot.

Petitioner asserts that the Fourth Circuit Court of Appeals ruling reversing preliminary injunction infringed statutory and procedural law.

Mrs. Bacot is a permanently disabled individual, who has suffered and will continue to suffer irreparable harm if the preliminary injunction fails to issue. Louisiana Supreme Court had an affirmative duty to ensure the enforce of Louisiana and United States Constitution and laws but refused to review Petitioner's application for writ of certiorari.

Plaintiff in trial court failed to carry its burden for executory process and was appropriately enjoined after preliminary injunction hearing.

When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. *La. Smoked Products v. Savoie's Sausage*, 97-1128 (La. 6/30/97); 696 So. 2d 1373, 1378, reh'g denied. La. C.C. art. 9. When a constitutional provision contains clear, unambiguous language, we must rely on the finished product, which is the expression of the voters who adopted the constitution. *Chamberlain v. State through DOTD*, 624 So.2d 874 886 (La. 1993(citations omitted)). Constitutional provisions which are plain and unambiguous must be given effect. *City of New Orleans v. Scramuzza*, 507 So.2d 215, 217 (La. 1987).

The Fourth Circuit Court of Appeals statutory interpretation and application of law creates state action causing deprivation and denial of due process of law. The appellate court

relied on parole evidence fraudulently misrepresented by counsel for Deutsch Bank in reaching its judicial determination to reverse the trial court's decree.

II.

CONSTITUTION PROVISIONAL INVOLVED

The Louisiana Constitution Article I § 2, No person shall be deprived of life, liberty or property, except by due process of law.

The Fourteenth Amendment of the U.S. Constitution, in pertinent part, no government shall deprive a person of life, liberty or property without due process of law.

The trial court granted preliminary injunction in favor of Maylois Bacot against Deutsch Bank National to prevent irreparable harm because counsel for appellant's failed to produce a sintilla of evidence proving the monthly promissory notes were not paid.

Jurisich v. Jenkins, 749 So.2d 597, (La. 10/19/99), Petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, that is, when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right. Once a plaintiff has made a prima facie case showing that the conduct to be enjoined is reprobated by law, the petitioner is entitled to injunctive relief without the necessity of showing that no other adequate remedy exists.

Kruger v. Garden District Association, 779 So.2d 986 (La. App. 4 Cir. 2001), rehearing denied, writ denied 791 So.2d 658. An injunction is a harsh, drastic, and extraordinary remedy which should only issue where the petitioner is threatened with irreparable harm and has no adequate remedy at law. The court should resort to a "duty-risk" analysis, weighing whether the potential for harm in erroneously providing injunctive relief is substantially greater than that created by refraining from providing it, and as part of that analysis, the court must consider the extent to which the relative harms are compensable in money damages. An exception to the requirement of showing irreparable injury as an element for the issuance of preliminary injunction may exist in cases where the deprivation of a constitutional right is at issue.

Petitioner was deprived of procedural and substantive due process right when Deutsch Bank or their attorney of record concealed, failed to disclose discoverable information in its possession, custody and control in which a duty to preserve and disclose exists. Even after being instructed by the trial judge to produce the information that Deutsch Bank failed to produce the

amortization schedule, account receivable and payable ledgers, credit reporting schedule or payment history, modification agreements, etc. in which they are required to preserve and disclose to petitioner.

The Fourteenth Amendment was enacted soon after the Civil War as a reaction to abuses by Southern officials. *Pierson v. Ray*, 386 U.S. 547, 559 (1967) (Douglass, J., dissenting) (1871 Act passed in response to Southern lawlessness). Supreme Court held that the amendment's due process clause obligated state courts to obey virtually every provision of the Bill of Rights. Under this evolving concept, due process embodied at least the specific liberties guaranteed by the Constitution. *Duncan v. Louisiana*, 391 U.S. 145 (1968), holding the Fourteenth Amendment "incorporates" specific provisions of the Bill of Rights.

To affirm the Fourth Circuit Court of Appeals decision would abrogate / infringe on petitioner due process considering the conduct of Deutsch Bank National and counsel of record refusal to produce relevant information in their possession, custody and control.

III.

FRAUD AND FRAUD ON THE COURT

Under Louisiana law, fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other." La. C.C. art. 1953.

The tactics and practices of counsel for Deutsch Bank / Ocwen is unethical under the rules prescribed in Louisiana Professional Code of Conduct, constitutes abuse of process and malicious prosecution in order to defraud Maylois Bacot of her property rights and interest. The opposing counsel on behalf of her client has failed to produce scintilla of evidence to support their allegations of mortgage default. Without evidence of non-payment, it would be unconscionable and inequitable to affirm the judicial decision of the Fourth Circuit Court of Appeals.

IV.

OTHER CONTRAVENTIONS

La. Rev. Stat: 14:72, A. It shall be unlawful to forge, with intent to defraud, any signature to, or any part of, any writing purporting to have legal efficacy.

Ocwen fabricated and forged Maylois Bacot name on a loan modification application in February 2016 which was reported to Louisiana Department of Justice.

La. Rev. Stat: 14:123, A. Perjury is the intentional making of false written or oral statement in or for use in a judicial proceeding, any proceeding before a board or official, wherein such board or official is authorized to take testimony, or before any committee or subcommittee of either house or joint committee or subcommittee of both houses of the legislature. In order to constitute perjury the false statement must be made under sanction of an oath or an equivalent affirmation and must relate to matter material to the issue or question in controversy;

B. It is a necessary element of the offense that the accused knew the statement to be false, but an unqualified statement of that which one does not know or definitely believe to be true is equivalent to a statement of that which he knows to be false; and C. Whoever commits the crime of perjury shall be punished.

Petitioner avers that, in order to establish the veracity of the dispute of this controversy, Deutsch Bank or Ocwen should be made to produce the record evidence multiple checks allegedly returned to Regions Bank and concealed from Maylois Bacot. The attorney of record should be held liable as well for making false statements which no evidence has been filed in the record in support of alleged facts.

La. Rev. Stat: 14:133. A. Filing false public records in the filing or depositing for record in any public office or with any public official, or the maintaining as require by law, regulation, or rule, with knowledge of its falsity, of any of the following.

- (1) Any forged document.
- (2) Any wrongfully altered document.
- (3) Any document containing a false statement or false representation of a material fact.

Maylois Bacot under the constitution of Louisiana and United States is entitled to protection from the practice of adversary counsel for Deutsch Bank and Ocwen under Consumer Protection Law and should be protected from such tactics and practices in these proceedings.

FRCP Rule 60(b) offers relief from a judgment on motion when it is "inequitable to permit a judgment to stand. *Ackerman v. United States*, 340 U.S. 193, 202 (1950).

"Officers of the court have no immunity, when violating a Constitutional right, from liability. For they are deemed to know the law." *Owen v. Independence*, 100 S. Ct. 1398, 445 U.S. 622. The court is to protect against any encroachment of Constitutionally secured liberties." *Bovd v. U.S.*, 116 U.S. 616. "Where rights secured by the Constitution are involved, there can be

no rule making or legislation, which would abrogate them.” *Miranda v. Arizona*, 384 U.S. 436. “No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it.” *Cooper v. Aaron*, 358 U.S. 1, 78 S. Ct. 1401 (1958). The Supreme Court has ruled and has reaffirmed the principle that “justice must satisfy the appearance of justice”, *Levine v. United States*, 362 U.S. 610, 80 S. Ct. 1038 (1960).

The judicial decision of the Fourth Circuit Court of Appeals should be judicially review and reversed.

I.

REASONS FOR GRANTING WRIT

- 1.) The Fourth Circuit Court of Appeals has rendered a decision that conflict with precedent of the United States Supreme Court.

In the matter of *Wheaton v. Burwell*, 134 S. Ct. 2806, 2810-11 (2014) states, under our precedents, an injunction is appropriate only if (1) it is necessary or appropriate in aid of our jurisdiction, and (2) the legal rights at issue are indisputably clear.” (internal quotation marks and brackets omitted); *Lux v. Rodrigues*, 561 U.S. 1306, 1308 (2010). Injunctive relief has long ben recognized as the proper means for preventing entities from acting unconstitutionally, *Niken v. Holder*, 556 U.S. 418, 428 (2009). The requirements for a preliminary injunction tend to be the same as for a permanent injunction, with the additional requirement that the party asking for the injunction is likely to succeed on the merits. *Winter v. Natural Resources Defense Council, Inc.* 555 U.S. 7 (2008).

Petitioner met the standard for injunction. The debt collector or representative for respondents failed to meet their burden of showing entitlement for executory process during hearing of foreclosure and was enjoined with injunction by trial court. The decision of the Fourth Circuit Court of Appeals reversal of the injunction infringes on Petitioner’s substantive rights under Louisiana and United States Constitution as well as civil rights entitling injunctive relief on review by the U.S. Supreme Court.

- 2.) The Louisiana Supreme Court and Fourth Circuit Court of Appeals have rendered judicial decisions that deprived and denied Petitioner’s secured and protected property rights and interest under Louisiana and United States Constitution.

A writ should issue to avoid abuse of discretion of Louisiana Supreme Court's failure to prevent and protect Petitioner's constitutional rights from infringement by the Fourth Circuit Court of Appeals.

3.) The prevent Deutsche Bank and Ocwen Loan Servicing, LLC and lawyers from committing fraud and fraud on the court.

The trial court issued a preliminary injunction enjoining respondents from foreclosing against mortgaged property owned and occupied by Petitioner as unenforceable pending outcome of bifurcated case involving reconventional demands. The Fourth Circuit Court of Appeals review of an interlocutory appeal of respondents violated substantial rights of Petitioner, abused its discretion arbitrarily and capriciously perpetuating irreparable harm by reversing the trial court's order.

J.

CONCLUSION

For the foregoing reasons, arguments, laws of Louisiana and United States, and evidence in the record Louisiana Supreme Court warrants injunctive relief and issuance of Writ of Certiorari.

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