

CASE NO. **22-6285**

Supreme Court, U.S.  
FILED

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OFFICE OF THE CLERK

# SUPREME COURT OF THE UNITED STATES

In re JASON D. FISHER *pro se* - (Plaintiff-Appellant)

- VERSUS -

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TIFFANY GALLO, JENNIFER JACKMAN, GUTTRIDGE & CAMBARERI, PC  
(Defendant-Appellees)

ON PETITION FOR A *WRIT OF PROHIBITION AND MANDAMUS*, TO

2nd Circuit of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR *WRIT OF PROHIBITION AND MANDAMUS*

Jason D. Fisher

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**ORIGINAL**

10

## (A) Questions Presented

1. Is “permission based motion practice” legal or “negative gatekeeping” legal **whereby a citizen must ask for permission to file a motion** as practiced in NEW YORK State Supreme Court, Westchester County?
2. If a citizen is denied the ability to gain a hearing within a reasonable time or if judgments are decided prior to a hearing that adversely affect the citizen due to the order, are *ex parte* Temporary Protection Orders unconstitutional, what risks occur to the Public and how can they be fixed?
3. Should an unincarcerated person’s *in forma pauperis* (IFP) status or a person’s financial status cause them to be subject to a loss of constitutional rights especially when the IFP status is due to crimes that are the subject of the complaint?
4. Are Plaintiff’s Constitutional rights being violated and do these violations warrant the Complaint to be heard by a jury outside of the 2<sup>nd</sup> Circuit?

## LIST OF PARTIES

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

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

2ND CIRCUIT OF APPEALS No. 21-3049 , Fisher v. Miller, et al.,

SOUTHERN DISTRICT OF NY 21-CV-7784

EASTERN DISTRICT OF MICHIGAN NO 21-CV-11600

STATE OF NEW YORK SUPREME COURT, WESTCHESTER COUNTY 58301-2018

WESTCHESTER NEW YORK FAMILY COURT O-06555-18

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18 U.S.C. §1341, 1343, 1344 (bank, mail and wire fraud)

18. U.S.C. §1510, (obstruction), 1511, 1512 (witness retaliation), 1513

18 U.S.C. 471, 472, 473 (converting property through counterfeiting)

18 U.S.C 1831-1839 (Misuse trade secrets)

42 U.S.C.A. §1983 (civil action for deprivation of rights)

§ 1965(b)

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§1964(c)

28 U.S.C. §1915 (a)(1),

28 U.S.C. §1915 (e)(2)(B)(ii).

28 U.S.C. §1915 (a)(3)

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Defend Trade Secrets Act of 2016, Economic Espionage Act of 1996

18 U.S.C. §1001 (judicial member knowingly and willfully falsifies conceals or covers up material information)

*NY Penal Law Section 210.45*

*§1961 (5)*

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*Federal Rule of Appellate Procedure 4(a)(4)((B)(i),*

*Westchester Court Rule E written by Alan Sheinkman (Defendant Miller's husband)*

*§4.1 Truthfulness in Statements to Others of the Rules of Professional Conduct (22 NY Supreme Court Joint Rules Appellate Division NYCRR Part 1200)*

*NY CPLR*

Rules of the Supreme Court of the United States including *Rule 20 (3)a*

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF PROHIBITION & MANDAMUS

Petitioner respectfully prays that a writ *of prohibition and mandamus* issue to review  
the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix VIII to  
the petition and is

☐ reported at \_\_\_\_\_ ; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix II to  
the petition and is

☐ reported at \_\_\_\_\_ ; or,  
☒ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix  
\_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_ ; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

**X** The opinion of the court appears at Appendix XX to the petition and is

☒ reported at \_\_\_\_\_ ; or,  
☐ has been designated for publication but is not yet reported; or  
☐ is unpublished.

## JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 3<sup>rd</sup> 2022.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of prohibition and mandamus was granted to and \_\_\_\_\_ including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was \_\_\_\_\_ . A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of prohibition and mandamus was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## JURISDICTIONAL STATEMENT

### A. U.S. Supreme Court's Jurisdiction

Plaintiff's suit against the defendants was based upon 42 U.S.C.A. §1983. United States law requires that those who deprive any person of rights and privileges protected by the Constitution of the United States provided by state law be liable in action at law, suit in equity, or other appropriate measure. 42 U.S.C.A. §1983. A private party or Defendants in this case may be liable under 42 U.S.C.A. §1983 for conspiring with New York state actors to



deprive a citizen of their civil rights. *Keko v. Hingle*, 318 F.3d 639 C.A.5 (La.) 2003; *Dennis v. Sparks*, 449 U.S. 24 (U.S., 1980.)

§1965(b) of RICO provides that process may be served in “any judicial district of the United States” when required by the “ends of justice.” Courts have held that such “nationwide service of process” provisions also confer personal jurisdiction over a defendant in any judicial district as long as the defendant has minimum contacts with the United States.

This Supreme Court petition originated from a Federal Action in Michigan in July 2021, transfer to New York Southern District in September and a subsequent Appeal (21-3049 2<sup>nd</sup> Circuit Court of Appeals).

## B. U.S. Supreme Court’s Jurisdiction

This Court has jurisdiction over this appeal as *Writ of prohibition and mandamus*. Facts contained herein and the original complaint require the highest judicial authority as adequate relief can not be obtained from any other Court. Relief requires assessment of civil rights infringements that are being abused to deprive the Public of their basic Constitutional rights. These infringements are “permission based motion practice” (Rule E), the illegitimate use of temporary protection orders such as unlimited extensions without a hearing, and the denial of service due to financial status. The application is not also pursuant to 29 U.S.C. §1291 because of the dismissal of the United States District Court and the 2<sup>nd</sup> Circuit committed errors in law and errors in fact. 28 U.S.C. 2403 is cited wherein the constitutionality of actions of NY State affects public interest and whereby the the Court shall certify such fact to the attorney general of the State and shall permit the State to intervene for presentation of evidence.

## C. Timeliness of Appeal

The *writ of prohibition and mandamus* is filed with timeliness as it is within the 90 days of the Second Circuit dismissal. The Second Circuit filed a dismissal on August 3<sup>rd</sup> 2022. The Southern District court dismissal was filed November 16, 2021 and received December 2<sup>nd</sup>, 2021. Plaintiff filed the Notice of Appeal on December 14<sup>th</sup>, 2021 pursuant to Federal Rule of Appellate Procedure 4(a)(4)((B)(i).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments

Constitutional Amendments 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup>, 14<sup>th</sup>.

FEDERAL RULES OF CIVIL PROCEDURE  
RULES OF THE SUPREME COURT OF THE UNITED STATES PROHIBITION AND  
MANDAMUS MAY BE COMBINED  
NY Civil Practice Law and Rules including 3211, SECTION 321

NYC RR 202.5D

## STATEMENT OF THE CASE

THIS APPLICATION BENEFITS THE PUBLIC BY DRAWING ATTENTION TO **UNEQUAL JUSTICE UNDER LAW** AND REMEDIATING “CORRUPT PRACTICES” AND POLICIES OF THE **NEW YORK STATE SUPREME COURT, WESTCHESTER COUNTY**. THE PRACTICES HAVE DEPARTED FROM ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS A SHOW UNEQUAL APPLICATION OF THE LAW WHEREBY “PERMISSION BASED MOTION PRACTICE” (RULE E) AND “*EXPARTE* TEMPORARY ORDERS OF PROTECTION WITHOUT A HEARING” ARE BEING USED TO DEFY CONSTITUTIONAL AMENDMENTS. THE PETITION RECOMMENDS FIXES TO THESE SYSTEMS FOR PUBLIC BENEFIT via a WRIT of PROHIBITION. PLAINTIFF PETITIONS THIS COURT FOR AN *WRIT OF MANDAMUS* TO ADDRESS “CORRUPT PRACTICES” AND UNCONSTITUTIONAL POLICIES EMPLOYED BY THE NEW YORK STATE SUPREME COURT. JUDGMENTS, FINES & RESTRICTIONS PLACED ON PLAINTIFF BY THE NY STATE COURT SHOULD BE MADE INVALID AS THEY ARE ALL BASED ON OBSTRUCTION OF JUSTICE & CRIME. TO HE ASKS FOR JUDICIAL REVIEW OF THE SOUTHERN DISTRICT’S DISMISSAL WITH ITS USE OF HIS FINANCIAL STATUS TO DENY THE PETITIONOR THE ABILITY TO SERVE HIS COMPLAINT. PLAINTIFF PETITIONS TO REVIEW AN ORDER SEALING WHICH ONLY SERVES TO PROTECT DEFENDANTS FROM PROSECUTION OF THEIR CRIMES AND WAS APPLIED FOR UNDER FALSE STATEMENTS. TO OVERCOME BIAS, PLAINTIFF DESERVES A REASSIGNMENT OF JURISDICTION TO A JURISDICTION OUTSIDE OF THE 2<sup>ND</sup> CIRCUIT TO ALLOW PLAINTIFF TO PURSUE DEFENDANTS IN LEGAL ACTION BECAUSE ENTERPRISE MEMBERS & DEFENDANTS ARE “ABOVE THE LAW” & TOO FAMILIAR TO SOUTHERN DISTRICT AND 2<sup>ND</sup> CIRCUIT COURT MEMBERS. A CRIMINAL INVESTIGATION IS WARRANTED TO INVESTIGATE THE CRIMES. RELIEF MAY NOT BE OBTAINED ELSEWHERE.

## REASONS FOR GRANTING PETITION

This petition addresses unconstitutional practices and policies allowed and originated in Westchester, New York to cause “unequal justice under law” (Appendix-III) and is derived from a complaint where Plaintiff exhausted all legal options of six Courts since he filed his original action. (Appendix-Legalexhaustion) Plaintiff seeks *Writ OF MANDAMUS* to address “corrupt practices” in the **NEW YORK State Supreme Court, Westchester County (NYWCOURT)** that violate numerous Constitutional Amendments and secondly highlight the Southern District’s **errors in law**. Plaintiff seeks *WRIT OF PROHIBITION* to prevent these unconstitutional practices from occurring again and affecting the Public. From the public’s perspective, corrupt practices in NYCOURT likely occurred since 2013 with implementation of a policy that violates due process and other Constitutional amendments; similar unconstitutional activity by Enterprise member has also been identified in unrelated matters previously: People of N.Y. and N.Y. Unified Common Law Jury (Index#14-0384 NY Greene County and Columbia County) cite “conspiracy against rights, deprivation of rights under color of law, and conspiracy to interfere with civil rights”. (APPENDIX-NYSTATEWRITPROHIBITION & APPENDIX-FRAUDONCOURT). From Plaintiff’s perspective, unconstitutional practices occurred in 2018 until present and directly contradict Supreme Court Decisions & case law (Appendix-CONFLICTCONSTITUTION).

Unconstitutional NYCOURT practices allowed Defendants to execute crimes against Plaintiff and cause him to suffer from crimes such as **obstruction of justice, conversion of business documents of a C corp** (*Carpenter; United States v Lemire*)(18U.S.C1831-1839), **wire fraud, perjury, wire tapping, and coercion while Plaintiff was denied an opportunity**

**for a hearing or the right to file motions for approximately three years.** (Appendix-Complaint; 28USC1651Rule20.1) Actions speak louder than words and Defendants with the Enterprise performed every means to deprive Plaintiff and potentially other citizens of their Constitutional Rights.

These crimes have been allowed to continue and remain uninvestigated due to “partisan protectionism”, crime, and “bias”. (Appendix-V) Judges have stepped down and the policy has been updated to remove any appearance of wrong doing but the crimes occurred and could occur again as the policy is still in place.

Every step to cover up the crimes and policies was done. No State agency responded to written pleas to address the crimes (including communications with New York Attorney General’s Office, Office of Court Administration, Grievance Committee), despite attempts to present witnesses or offer evidence. Some have stated that they are intimidated to challenge Defendants’ network. A call for help for Public benefit will have “immediate importance far beyond the particular facts and parties involved” (*Chief Justice Fred Vinson*). The New York State Defendants’ are “**above the law**” due to their link to the Enterprise, were allowed to employ unconstitutional practices due to a marital and financial relationship with the Enterprise; Defendants are all civilians and not employed by the government but directed an Enterprise to allow these crimes to occur and to defy Constitutional Amendments. Others have suffered from Defendants’ crimes but none have not had the endurance to wage a legal battle in a jurisdiction that shows absolutely no ability to recognize the crimes where Enterprise and Defendants are devoid of checks and balances.

Plaintiff's Complaint has been met with peculiar actions by the Federal Courts. The Case was transferred Districts in direct conflict with RICO statutes (18U.S.C.1961), allowed a Seal, was denied the right to service in the Southern District and suffered a *sua sponte* dismissal based on incorrect statements or errors in law by the presiding Federal Judge in her Order. Errors in law remained unaddressed by 2<sup>nd</sup> Circuit.

The venue of the Supreme Court of the United States is the only jurisdiction that can address these problems and is well warranted due to four Sections (Reasons).

First and foremost, Section 1, the public benefit of this application addresses and attempts to resolve areas and policies that undermine U.S. Constitutional Rights that have been practiced actively over years in a State Court. Only the Supreme Court can affect these changes. This application primarily focuses on the unconstitutional policies and practices of "permission based motion practice" (Rule E), the illegitimate use of temporary protection orders such as unlimited extensions without a hearing, and the denial of service due to financial status; thus an writ of prohibition and mandamus is warranted.

Section 2, the 2<sup>nd</sup> Circuit's cited one case as a justification to dismiss and this reasoning is not on point with Plaintiff's complaint or Appellate Briefs and this 2<sup>nd</sup> Circuit decision along with the Appellate Briefs deserves review. A future appeal is warranted.

Section 3, errors in law were not addressed by the 2<sup>nd</sup> Circuit despite Plaintiff's attempts (Appendix-AppellateBriefs); these errors in law have perpetuated and further substantiate the right to a writ of mandamus due to the proceedings within the 2<sup>nd</sup> District. These errors in law originated in the Southern District whereby the Southern

District incorrectly summarized the complaint by providing incorrect statements that directly contradicted statements made in Plaintiff's complaint. These incorrect statements were used to justify a dismissal and demonstrate multiple errors in law, errors in fact and/or bias to allow for an immediate appeal to the Second Circuit. 28USC1651Rule20.1

Section 4, an order of a Federal District Court denying a motion for leave to proceed in forma pauperis is appealable and likewise it is appealable from the 2<sup>nd</sup> Circuit. The forma pauperis applications were overlooked by lower Courts and provide a means to further substantiate an appeal to the U.S. Supreme Court. Plaintiff is forma pauperis solely due to Defendant's crimes against Plaintiff contained in the complaint that caused him financial hardship.

## SECTION 1

This section addresses practices of judicial law and policies that adversely affect the Public's pursuit of justice and deny civil rights. Recommendations to fix these practices are included in Appendix. **From a public perspective, three areas provide for a loss of civil rights whereby the Public is not able to exercise their constitutional rights:**

A. **"Permission based motion practice" known as Rule E** limits a party's ability to file a grievance/motion and violates the Fourteenth Amendment, the Due Process Clause. The **NEW YORK State Supreme Court, Westchester County** is employing a "permission based system" to make their justices look more efficient and to allow for "friends of the Court" to file motions while silencing parties contrary to the Constitution.

B. An illegitimate issuance and use of *ex parte* Temporary Protection Orders (TPO) exists whereby the accused never gets a hearing for ex parte allegations but is subject to

mandatory excessive financial costs, unlimited renewal of the unheard temporary protection order, months or years of separation from home/business and alienation from his own children. Defendants and Enterprise used the consequences of the unheard *ex parte* temporary protection order as evidence to obtain a judgment against Plaintiff.

1. A "temporary" protection order becomes functionally a Permanent Protection Order without an ability to get a hearing or allowing one to defend oneself. The ability to extend the duration of a temporary protection order without hearing is anti constitutional. Without a trial or evaluation of evidence within a couple weeks, the protection order violates the First Amendment and Fourteenth Amendment if the temporary order remains unheard.

2. The statements contained in an TPO application for protection are false and intended to manipulate or deceive the judicial system, the recipient of a TPO suffers immensely. Plaintiff's complaint is a situation which an accused person can prove statements made in a TPO are false with abundant evidence but Rule E prevented submission.

3. The mandate of a forensic report to supposedly clear the temporary protection order instead of using a hearing. The forensic report, which takes months of interviews and is paid for by the accused and based solely on unsubstantiated allegations. The report however, is not available to the accused as it is sealed by the State. Excessive force and fines are imposed on the accused for an *ex parte* order without a hearing as the only means of seeing his own children.

**Simple overview of the damage of an unheard temporary protection order:** Man files for divorce. A woman subsequently files an *ex parte* TPO with allegations of being verbally



harrassed by husband. Woman claims man violated order at a certain location and time in U.S. but man was actually not in the U.S. Evidence shows that the claims contained in the original TPO and violation were false. Due to false statements of TPO, man seperated from children, his home and his business. Man files motions, Court discards motions and does not allow evidence to protect Defendant and her lawyer. Man forced to go to Court monthly over years with counsel but never gets hearing. Man forced to spend months going to appointments and pay for a forensic psychologist. Forensic report shows man should be with children without restrictions. Man never gets hearing. Due to Defendants' crimes, Man robbed of home, children, business assets and income. Man files federal suit for *in forma pauperis*. Man is Plaintiff in **New York State Supreme Court, Westchester County**.

C. A loss of rights due to *in forma pauperis* which prevents service of a civil complaint to Defendants which contravenes the First Amendment to file grievances . Within the Southern District, Judge Swain issued an order preventing service; according to FRCP, any attempt to conduct service by Plaintiff on his own, who was IFP at the time, would lead to an automatic dismissal of the complaint. Judge Swain then dismissed the complaint before allowing service thereby denying Plaintiff's right to a jury.

### Questions

**A. Is "permission based motion practice", "negative gatekeeping" legal whereby a citizen must ask for permission to file a motion?**

This application intends to seek the power of the Supreme Court to cancel a practice that is unconstitutional, show that this practice has already adversely affected the Public, and that the practice significantly damaged Plaintiff's proceedings. Rule E actively requires the a party seek the permission of the **New York State Supreme Court, Westchester**

**County (NYWCOURT)** to file a motion in the Matrimonial Court. In this instance, Rule E adversely affected Plaintiff but important to the nature of this application, Rule E clearly detrimentally affected the Public. The practice of Rule E will be referred to as either “negative gatekeeping” or “permission based motion practice”. The main intent here is to address the “Rule E” implications to the Public and secondarily serves a means to show that Defendants (who are not employed by the government) gained unjust advantage with the abuse of Rule E.

**NYWCOURT's** use of “permission based motion practice” is well-documented and its practice is well acknowledged by State Court. As further proof of the Rule's enforcement and initial use, NYWCOURT still utilizes a Rule E Compliance Sheet (adopted October 2011 & revised January 2012). According to previous descriptions from NYWCOURT website and documents, Westchester Court's Rule E was written by Judge Alan Sheinkman. Judge Sheinkman's wife is Defendant Miller. Defendant Miller is named among Defendants in Plaintiff's Federal Action (21cv7784) for a litany of crimes that occurred after Plaintiff filed New York State Action in April 2018 and occurred over years. Although superficial changes to Rule E have occurred via the website, these changes serve as mere posture and “damage control” as “permission based motion practice” still exists in the district and already has been practiced for a decade. The most recent version of the Operational Rules of **New York State Supreme Court, Westchester County** were revised by Order of Honorable Kathie Davidson, Administrative Judge, Ninth Judicial District on January 1, 2020. However, recently, it appears that the Operational Rules that described Rule E were revised to remove evidence of the authorship of Judge Sheinkman who is the husband of one of the Defendants. As

evidence of duplicity, these rules when compared to the earlier revision of the Matrimonial Rules have conveniently redacted mention of Scheinkman despite the explicit mention of Scheinkman as the author in earlier revisions of Rule E. The Court removed his name and revised Rule E to include a wider set of contributors including Chief Judge Janet DiFiore (involved in the appointment of Judge Scheinkman). The revised Rule E gives a new false appearance intended to falsely depict Scheinkman's lack of involvement; however, previous descriptions of Rule E are clearly inconsistent with the new description. Defendant Miller's use of Rule E, Alan Scheinkman's financial relationship with Defendant Miller and Lubell's unconstitutional behavior due to Miller and Scheinkman's influence can not be denied.

Plaintiff and others suffered due to an inability to file motions within **NYWCOURT** due to Rule E. The effect of Rule E was so great on the Public that historical numbers and performance metrics for motions for this district were significantly lower than the metrics of other districts within the State. These numbers alone substantiate that "permission based motion practice" denied the ability of a significant percentage of the Public to file a motion.

Fourteenth Amendment: "No State shall make privileges or immunities of citizens of the United States nor shall any State deprive person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

First Amendment: "the right of people .... to petition the Government for a redress of grievances."

This local policy of "Rule E" is a tool to deny the Due Process Clause, the First Amendment and the Fourteenth Amendment and its threat to the Constitution can best be described by the both Public Impact; Plaintiff's hardships that are well documented and supported with evidence in his Federal Action. Plaintiff was approached to hear stories of unconstitutional behavior by others that is similar in dysfunction due to Rule E in the same district. Plaintiff initially filed his Action in the New York State Supreme Court (58301/2018) and Defendants retaliated with a temporary *ex parte* protection order of #o-06555-18 in the Westchester Family Court ~six weeks later. The temporary protection order was *ex parte*, the hearing would never occur despite endless attempts by Plaintiff to gain a hearing; unfortunately, due to Rule E, Plaintiff was never able to submit proof to show that Defendant Lighter's statements contained in the temporary protection order were false. Plaintiff even tried to submit legally obtained recordings of Defendant to show statements contained in the protection order were false but Rule E prevented any submissions and countless letters to the Court to file a motion were disregarded by the State Court. (*United States v. Hopkins*) What is more troubling is that a State Appeal on Plaintiff's matter during this decade would only be resolved by the author (Scheinkman) of Rule E, an Appellate Division Second Department member; thus with Rule E unassailable, the temporary protection order became functionally permanent. (*United States v. Lange*) Even the New York State Grievance Committee, of which Plaintiff corresponded with, was under Scheinkman's hierarchy. Plaintiff even made attempts to seek another adjacent jurisdiction (BronxCountyNew York 7933/2019) to escape "Rule E" as permitted by New York CPLR. (APPENDIX-XIX, XVI)

28USC1651Rule20.1 The Bronx judge cited a reason for dismissal that was not even true

after being contacted by Defendant's firm (Scheinkman's wife's firm) but again the Appeal of that decision would go to Judge Sheinkman's peers and take years.

Authors of "permission based motion practice" will state that it was used to avoid conflict, it is designed to seek resolution, to reduce burden on the legal system, and designed to allow for emergency motions. However, Plaintiff was never allowed to file a motion regarding any emergency situations. Rule E forbade Plaintiff from filing motions related to emergencies as it was the arbitrary decision of the State Court to determine what qualifies as an emergency or simply ignore Plaintiff's requests; "Rule E" or negative gatekeeping to file grievances is against the Constitution. NYWCOURT ignored Plaintiff's written attempts to file motions to artificially give appearance of default. Judge Lubell even intimidated Plaintiff's counsel in private meetings where Plaintiff was not allowed to attend; his counsel would subsequently quit. Plaintiff's emergencies over four years included gas leaks, theft of corporate documents by Defendants (*Economic Espionage Act 1996*), medical situations of children including broken bones, New York Stay violations by Defendants to eliminate Plaintiff's medical insurance when he was scheduled for surgeries and procedures, misrepresentations of Court Orders by Defendants to third parties to separate him from his children, violations of State Court Orders of Defendants, other health issues of his children, and financial deadlines. In addition Rule E problems, Plaintiff's State case further suffered from bias as the State Court discarded any motion Plaintiff filed as it was not in the interests of lawyer (Miller) of Defendant Lighter.

Rule E's, negative gatekeeping practice, is well acknowledged in the District. One such acknowledgement is stated in a letter on September 27<sup>th</sup> 2019 from Judge Lawrence K.

Marks, the Chief Administrative Judge which was a response to Plaintiff's complaint. Judge Marks stated "court rules provide that prior to making a non-emergency application, the person seeking relief must request a conference with the court so the court can attempt to resolve the matter in the first instance." Judge Marks stepped down in approximately 2020. With regard to the authors of Rule E, Judge DiFiore prematurely stepped down from the bench in 2022, and Judge Scheinkman left the bench in 2021. It is unclear whether Judge Lubell who directly handled Plaintiff's State Action is practicing currently. Based on Plaintiff's research of Rule E in other Districts, **it is unlikely that any other jurisdiction in the country adheres to a "permission-based" or "negative gatekeeping" motion system as designed and published by the Enterprise member Judge Scheinkman.**

Rule E regulated the number of Motions within New York State Supreme Court, and obscured attempts to file motions by outside parties. The Westchester jurisdiction used Rule E to appear more efficient than its district peers due to the lower number of active motions. Thus, **New York State Supreme Court, Westchester County** and its judges would appear more effective in terms of means of conflict resolution and would naturally lead to more recognition and advancement of the district's members of NYWCOURT or Enterprise within the State.

The "permission based motion practice" of obscuring and hiding these communications are being used to benefit and protect, under false pretenses, Defendants Miller Scheinkman, the law firm, Defendant Jackman as well as the Enterprise. During Plaintiff's State action, Defendants were allowed to file countless motions against Plaintiff no matter how frivolous or absurd and Plaintiff was not granted permission to

file any motion or submit opposition despite ten letters to request a motion, a step required by NYWCOURT.

Attempts by Plaintiff to protect himself whether by his lawyer or *pro se* under the "permission based motion practice" were not only obstructed but hidden. Plaintiff was not allowed to file grievances with the Court as the Court simply would not respond to Plaintiff's. These requests to file motions occurred and were not permitted to be seen by outside parties within the Court system which gives a false appearance of Plaintiff's actions to challenge areas of contention. It falsely appears to others that Plaintiff is acquiescing to issues. The Enterprise ensured that Plaintiff's filings to request a motion as required by the Westchester Court System were only accessible to **NYWCOURT** and not to external Court System personnel.

The Enterprise also hid Plaintiff's efforts as a means to silence Plaintiff; legal silence is a rejection of all of Plaintiff's attempts to file motions and/or other Court proceedings as well as the failure by the Enterprise to record these rejections. This allowed Defendants and the Enterprise to hide legal activity from the State Administrative Judge, from other government entities, or from other members of government. The existence of multiple filings and letters requesting motions from Plaintiff and his lawyers were not disclosed to or made available to the Administrative Judge, or others. Thus the Administrative Judge could not investigate the known crimes of Defendants or the refusals to file by the Enterprise. The Enterprise concealed all of Plaintiff's attempts to file a motion under this system. Rule E creates a Star Chambers environment.

As evidence of this fraudulent practice and its use, on September 27<sup>th</sup> 2019, a letter from Judge Marks, the Chief Administrative Judge stated, as a response to Plaintiff's letter,

that there was no evidence that Plaintiff had attempted to file any motions, which is untrue. Plaintiff's letter requested intervention from the State Administrative Judge due to Plaintiff's inability to gain a response from NYWCourt to make motions (as per Westchester Court Rules as defined by Judge Scheinkman) and for the Court's failure to address an unaddressed temporary protection order, the theft of corporate documents, and the said documents' illegal dissemination by Defendant. (18U.S.C1831-1839) 28USC1651Rule20.1 Judge Marks' letter indicates that he was unable to see the approximate ten letters to the Court from Plaintiff, incorrectly stated it was e-file by Plaintiff, and that these attempts were hidden from him by his conversation with Judge Lubell in chambers. In his letter, Judge Marks stated that he:

“reviewed the Court record in this e-filed case and discussed this matter with Judge Lubell's chambers.” Judge Marks states “Based on the file of this action, I also do not (sic) any evidence that you have been denied the right to make motions.” “I see no e-filed letter or request for a rule E conference by you or either of your prior attorneys requesting a pre-motion conference and your letter to Judge Marks fails to identify any such request that was denied at a pre motion conference.”

By using her husband's “permission based” motion system under the cooperation of the Enterprise, Faith Miller Scheinkman dominated and controlled Plaintiff's legal voice via her firm while the Enterprise continued to uphold “negative gatekeeping” practices in her favor to result in simply unconstitutional acts. Thus, the initial violation of the First Amendment occurred to deny Plaintiff of his right to petition the government for redress



of grievances due to the implementation of Rule E. But the sequelae of Rule E led to other violations of Constitutional Rights.

Defendants were able to violate the Fourth Amendment by denying his right to be secure in persons, houses, papers and effects against unreasonable searches when Rule E was combined with an unheard *ex parte* protection order. (*Katz v United States*) Defendants were able to violate the Fourteenth Amendment to allow for unequal protection of laws as the facts of the matter and crimes were not allowed to be presented to the Court. Judge Lubell repeatedly violated NY Civil Practice Law and Rules to unilaterally benefit Defendants. Even violation of parental rights occurred to plaintiff due to a non parent but Rule E prevented the motion. (*Bennett v Jeffereys*) Assemblymen and other lawyers openly speak about the toxic legal system of unequal protection of laws of Westchester due to Rule E and Faith Miller's spousal link to the Court.

While Plaintiff's case is combined with an additional element of criminal activity, the nature of Rule E allowed these crimes to go unnoticed. Thus, Rule E allowed for a scheme whereby the enterprise itself protected the lying and thieving Defendants from criminal prosecution and civil liability, allowed Defendants to maintain and increase ongoing income, unlawfully granted Defendants ability to control assets of Plaintiff and C corporation, and allowed Defendants to avoid public scandal within the State Court, and these Defendants controlling or directing the affairs of the Enterprises intentionally and fraudulently engaged in routine practices of denying due process and obscuring Plaintiff's written attempts to gain justice. (18U.S.C. §1001)

Plaintiff's communications were further hidden regarding the theft of corporate documents, a State and Federal Crime, as contained in these letters to the State Court.

According to Judge Marks, Judge Lubell allegedly stated that the Court availed Plaintiff's Court documents to Plaintiff many times but Judge Marks fails to acknowledge that the first offering was more than a year after the theft thereby depriving Plaintiff of the intellectual property of the C corporation nor did he state what proportion of those pending patents and corporate secrets would be returned. Moreover, Judge Lubell nor Judge Marks still does not address the theft of, deprivation of, or the wrongful and unlawful dissemination of the stolen corporate property by Defendant's attorneys despite Plaintiff's attempts. (*Defend Trade Secrets Act 2016*) Judge Lubell nor Judge Marks did not address the unheard temporary protection order that was denied a hearing dozens times over years or the fact that Defendant Lighter had stolen intellectual property from Plaintiff and employed a patent lawyer with the same specialty as the C corporation. Thus Rule E allowed that the crimes to occur even though the Judges in the matter knew that the property of the C corporation was stolen, involved in conversion (*State of New York v. Seventh Regiment Fund*), and that depriving the intellectual property would cause Plaintiff and company substantial hardships. Rule E prevented simple facts from being presented to the State Court that would have negated a temporary protection order and would have reduced Court burden; one of these facts included the fact that Plaintiff was not even in the Country when he was falsely accused of being in New York State by Defendants. (*United States v. Lichenstein*) Thus, the purpose of Rule E to reduce burden or increase resolution instead allows for injustice as a means for preventing submission of facts to the State Court. Rule E allowed for complete legal immunity of Defendants who are all non-government employees. (*Malley v. Briggs*)

Defendants were able to violate the Eighth Amendment to allow for "excessive fines" and property seizure. The time and fines against Plaintiff were only based on allegations that could be proven false but Plaintiff was deprived of the ability to provide evidence and gain a hearing. Plaintiff was forcibly separated from his children, his titled home, and business for more than four years without a hearing. These actions are "unusual" and "unprecedented" and provide for a "forfeiture" as the partially intended punishment.

*Austin v United States* ruled that the application of Excessive Fines Clause establishes that "forfeiture" could be seen as a punishment. Important to recognize, Plaintiff did not deserve to be punished as the evidence is overwhelming that the TPO was based on false statements violating *NY Penal Law Section 210.45*. In addition, New York Case Law states that false statements, as done by Defendant Lighter, used to illegitimately block a parent's access to his/her children are punishable by a loss of custody but NYWCOURT never would allow submission of the evidence. The State Court sentenced Plaintiff with forfeiture and "fines" (APPENDIX-XV-JUDGMENT) as he was forcibly removed from his titled home, stripped of all possessions/corporate assets and prohibited from seeing his children as an undeserved punishment. These fines serve as punishment for the underlying crime as in *United States v Bajakajian*; however, Plaintiff was never convicted of a crime nor had a hearing. Even his witnesses were kicked out of the Court Room. The actions with represent a loss of autonomy of the NYCOURT at this level.

**These crimes constitute the claims of a Racketeering (§1961(5)) in Corrupt Organization civil complaint involving a lawyer (Defendant Miller) who used her husband's political stature (Enterprise member Scheinkman) to manipulate court systems (Enterprise) to breach civil laws openly and repeatedly over years. The focus highlights the practices**

**and policies employed to limit civil rights caused in part by their relationship in conjunction with Rule E and *ex parte* TPOs.** A husband-wife home relationship presented as a judge-lawyer work relationship within a Court bears responsibility and potential conflicts within a Court system. This husband-wife/work-home relationship requires additional responsibility of a Court system to ensure that justice is not compromised. **In this case, the husband (judge) is an equity holder of the wife's law firm and directly benefits from her income and success within his own district.** In summary, Rule E was used to allow Defendants to remain "above the law" and allow for "excessive fines". Thus far, this legal experience shows that any one person in the United States could lose years of access to their children, lose their years of work, lose their possessions, lose bank accounts and lose access to their own titled property to an *ex parte* application that is false, provides no evidence and yet offers no paths to resolve the matter legally due to Rule E. The Fifth Amendment prescribes against this exact circumstance: "be deprived of life, liberty, or property, without due process of law". The "above the law" status is predictable given key attributes of Defendants juxtaposed with that of Plaintiffs. Defendants collectively have a defendant who was married to the second most powerful judge in New York State, have private associations with Court personnel, and have remained untouched despite evidence of their crimes presented to local NY State authorities. Constrastingly, *pro se* Plaintiff is a well-educated father of two boys who has never been incarcerated, coached his sons' teams, plays classical piano and guitar, has no marital links to Court, sole owner of his own home purchased with premarital assets, founder of a biotech C corp with investors, and an author of a patent in 36 countries who raised capital and worked with the NIH to further develop his ideas. Plaintiff, a minority,

was made to feel as an outsider collectively by the Enterprise and Defendants. Plaintiff filed this suit *pro se* so he may be reunited with his children in the future. **Recommended Remediation for Public benefit: Revoke Rule E and all permission based motion systems.**

**B. What are the Constitutional infringements of Temporary Protection Orders to the Public as demonstrated by actions of a New York Court and how can they be fixed?**

While protection orders have a place to protect from violence, the applications for *ex parte* protection orders with false statements is embittering divorces, burdening Courts, separating families and adversely affected the perception of marriage in the United States. (Appendix-VI). If handled incorrectly, *ex parte* temporary protection orders have the potential to become full denial of constitutional rights and only serve the Public when they are handled deliberately and with limitations. To an undeserving recipient of a Temporary Protection Order (TPO), false statements used to initiate TPO can have devastating consequences. In this aspect, the real victim is actually the recipient of the *ex parte* TPO. The TPO victim is forced with a sudden departure from the Constitution in way of losing access to his home, assets, and potentially children. A departure from the Constitution should be, at most, temporary until evidence is provided and a hearing held by the Court. Even for short durations, damage to the party and the party's children is devastating to young children as they lose a parent. Every care is needed in a burdened Court system to filter out falsehoods and place short time duration before a hearing can be heard. The experience by Plaintiff of a TPO exemplifies the problems and suggest potential fixes. These problems were echoed by other TPO recipients in NYWCOURT house.

### Low bar of entry to file and maintain a TPO

Plaintiff's case presents many opportunities to look at a diseased system of TPOs that has too many abuses. In Plaintiff's case, Plaintiff was subjected to the negative repercussions of *ex parte* claims that offered no evidence. Moreover, the temporary protection order application by Defendant Lighter showed no "imminent" danger and no domestic violence has ever been occurred. Defendant falsely cited allegations of verbal harassment as the only offense yet Plaintiff could refute the claim as the conversations were recorded. The temporary protection application by Defendant Lighter also claimed Plaintiff was committing a violation in New York at the same time when he was in Germany as verified by U.S. Passport Control and likewise evidence was provided to the State Court that Defendant Lighter provided other false statements in her original Temporary Protection Order Application.

Despite the fact that Enterprise was given evidence in writing dozens of times of the exact recorded conversation that refuted statements from Defendant Lighter's temporary protection order, the NY State Court allowed for the *ex parte* temporary protection order to continue and renew for years. NYWCourt actively prevented a hearing or prohibited Plaintiff from submitting additional evidence that proved that the statements used to get the TPO were false or presenting witnesses that showed Defendant was violating Court Orders and conducted criminal behavior.

### Length of time:

When there is no hearing to evaluate a TPO's veracity within a timely fashion, the accused suffer. Defendants ("who are married to the Court") delayed hearings to cause an unwarranted loss of rights to the accused. More than four years have gone by without

a hearing for the temporary protection order. (APPENDIX XVII, XVIII)

Plaintiff's own attempts to protect himself from these palpable threats were denied by the Enterprise under the direction of Defendants Faith Miller and Jennifer Lighter, as exhibited by Court records. Judge Lubell and Court Official Ratner even threatened Plaintiff in off-record meetings. Plaintiff and his counsel attended meetings, filed two Orders to Show Cause that went "missing", requested consolidation, was denied consolidation, was then allowed consolidation after complaint, was denied countless hearings, and was even penalized for not resolving the temporary protection order. Even Defendant's latest request to Seal the case to the 2<sup>nd</sup> Circuit falsely implies Plaintiff abandoned his own children when he was prohibited and restricted from seeing them due to the *ex parte* temporary protection order that never had a hearing. Judge Nathan (2<sup>nd</sup> Circuit) did not read Plaintiff's submissions to surmise that Defendant Lighter had again lied in her motion (Appendix-IX) 28USC2242, 28USC2254

Plaintiff exhausted all attempts to gain a hearing; his efforts to resolve the matter and seek a hearing started in June 2018 and continued with ongoing efforts for years.

(28USC2254) The U.S. Supreme Court specifically addressed rights of a defendant to a speedy trial in *Barker v Wingo*. The Court made determinations and set forth four factors to be considered to whether the right to a speedy trial was violated. The (A) length of delay, (B) the reason for delay, (C) the time and manner in which the accused has asserted his right and (D) the degree of prejudice to the accused which the delay has caused.

Plaintiff's TPO (2018):

(A) Plaintiff's delay was at least three years for a "temporary" protection order without a

hearing;

(B) the reason for the delay was never given despite the fact that Plaintiff made every effort to follow Court instructions including separation from his children and despite that Plaintiff made objections to continuances. Plaintiff made custodial and financial arguments to the Court repeatedly to present the risks of delaying a hearing to himself, the C corporation and his children.

(C) the accused asserted his right to a trial in writing via motions, requests for motions, 2 Order to Show Causes, verbal requests on transcript and requests to external governance groups (OCA and Judicial Conduct) to oversee the matter for more almost 3 years.

(D) the degree of prejudice to the accused which the delay has caused. The delay caused prejudice as one of Plaintiff's witnesses has already passed away, the Court openly took away rights of parental access to his children, prevented submission of evidence, and knowingly made judgements that were based on numerous counts of obstruction of justice. (Appendix-XV-MoneyJudgment)

The Court should note that Barker caused the U.S. Supreme Court to establish that a period of time of five years was "extraordinary" between initial arrest (allegations) to Trial. Herein, Plaintiff suffered for 4.5 years without a trial based on baseless allegations due to an unheard and unresolved "Temporary" protection order but was separated from his home, his possessions, his children and his business. The unresolved temporary protection order subjected Plaintiff to crimes such as obstruction, coercion and extortion as mentioned the Racketeering Complaint as represented in the Motions against Plaintiff and the countless rejected submissions by Plaintiff to the State Court.

Guilty during the time prior to a TPO hearing:



TPOs during the time when they are not heard destroy the "presumption of innocence" because someone innocent of a crime would certainly be able to speak to defend themselves in a Court and a guilty person certainly would not. (*Rock v Arkansas*) The TPO victim is "guilty before innocent" and the onus is incorrectly placed on the recipient of the TPO when it is false. While Plaintiff never had a hearing, Defendants and Enterprise continuously threatened and treated Plaintiff as if he were guilty. TPOs ruin a parent's parenting schedule and access with children which is then falsely used against accused in financial and custody determinations. (APPENDIX-XV-JUDGMENT)

Excessive force due to TPO and Rule E:

Excessive force claim is well-defined in Plaintiff's complaint and the Enterprise acted with "Objective unreasonableness". (*Graham v. Connor*), a United States Supreme Court case determined that an objective reasonableness standard should apply to a civilian's claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other "seizure" of her or his person. Objective reasonableness standard did not apply to Plaintiff, a free citizen who filed for a peaceful divorce but instead suffered from excessive force under the direction of Defendants. Plaintiff found out that Defendant committed a NY Class E Felony which was reported to Court with no action. Defendants instructed Enterprise to actively exert excessive force over years while Plaintiff was still under an unheard *ex parte* temporary protective order. The result led to "seizure" of his children, home, corporate documents, premarital assets, belongings, and his home (titled only to him), while further subjecting him to threats of incarceration (by Judge and Defendants). Defendants denied Plaintiff access to his entire life: kids, home and business.

Given the facts known at the time, the Enterprise willfully and knowingly acted in a way under the influence of a judge's wife and it did not "respond in a similar fashion" as that would have occurred in another district conducted by similarly trained and experienced individuals. Temporary protection orders have hearings and the Enterprise knowingly prevented a hearing yet had the power to order a hearing. The temporary protection order should have lasted weeks at most before a hearing and it is an anomaly that the temporary protection order was handled in such a fashion. Those skilled in the art of law and justice would agree.

The Motive to abuse Rule E:

The proof not only contradicted the allegations and Defendants' claims but further provided criminal evidence against Defendant Miller, Miller's firm and Defendant Lighter. The evidence was ignored actively by the Enterprise to protect the judge's wife from criminal prosecution; thus, the motive for obviating the "objective reasonableness" standard becomes undeniable. As a result, Plaintiff was subjected to excessive force and the Enterprise became "objectively unreasonable" to protect Judge Lubell's boss's wife, Faith Miller, and allowed the TOP to continue while allowing for seizure, search and/or distribution of his house, papers and effects.\_

The Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct that was otherwise allowed by the Enterprise in Plaintiff's case.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing

the place to be searched, and the persons or things to be seized."

The Fourth Amendment is violated by the three tests of severity, immediate threat to others, and evasion. First, with regard to "severity of the crime at issue", the mild allegations against Plaintiff did not warrant the years of pain, threats, and suffering by Plaintiff. Second, the allegations also did not justify any claim that Plaintiff was "an immediate threat to the safety " of others as evidenced by the *ex parte* application by Defendant, written words by Defendant or audio recordings of Defendant. Third, Plaintiff actively provided active means and endless efforts to resolve the temporary order of protection and was never permitted a hearing to contest it. Plaintiff followed the directions of the Court to overcome the Fourth Amendment test of evasion. These events took place before Covid-19.

The issuance and use of the temporary protection order was an excessive use of deliberate force by Defendants with the cooperation of the Enterprise against Plaintiff.

Plaintiff suffered when he attempted to present acts of perjury and obstruction of a judge's wife that caused Plaintiff needless financial and emotional hardship. Acts of perjury prevented Plaintiff from protecting himself from years of unneeded litigation and threats.

Plaintiff is actually the victim of harrassment:

In Plaintiff's case, he is actually the victim of harrassment by Defendant. Defendant Lighter swore to false statements in a temporary protection order application that never had a hearing to cause Plaintiff to leave his own titled home in 2018 and separate him from his children and business. The TPO was used to remove him from being the primary care taker of the children under false pretenses. If the Court changed any status

of the temporary protection order, it would be without the knowledge of Plaintiff and again was based solely on unchallenged allegations and no evidence.

Plaintiff is still without his children since 2018 and never received a hearing despite countless tries; Plaintiff lives in fear of false allegations as NY Court motions have already made false allegations. Subsequently, Plaintiff had no contact with his own children whereby Defendant blocked communications with his own children and Plaintiff was forced to live a significant distance away from his own home without any access to his belongings or corporate assets. During these years, Defendant Lighter continued to harrass Plaintiff via text/email, misportrayed Plaintiff to third parties, stole and damaged his assets, illegally cancelled his health insurance, illegally wiretapped him, illegally manipulated his medical records, physically stalked Plaintiff, violated Court orders to separate him from his children, stole intellectual property owned by a C corp, illegally manipulated financial records and illegally tried to gain access to his email accounts. The Complaint produces facts against Defendants to support this statement. Yet it appears that no action will be taken towards this citizen despite Plaintiff's efforts to protect himself or to present evidence to stop these actions.

Recommended Remediation of TPOs for Public benefit (Appendix-X)

**C. Federal Level: Should an unincarcerated person's *in forma pauperis* (IFP) status or a person's financial status cause them to be subject to a loss of Constitutional rights especially when the IFP status is due to crimes that are the subject of the complaint?**

**Plaintiff's complaint was dismissed *sua sponte* by District Court Judge Swain without the ability to provide service; an action that suggests bias.** The case was denied service

using an aspect of Federal Rules of Civil Procedure (**FRCP**) as it applies for recipients of ***in forma pauperis* (IFP)**. On November 16, 2021, the Judge filed a dismissal while Plaintiff was still waiting for service by U.S. Marshals. 28USC2254 IFP status appears to be used by the Federal Court in this case as a means to prevent Plaintiff from doing service in his own manner. IFP candidates suffer from potential dismissal if they do service on their own as it could convey they have financial means not reported or are not being truthful or in good faith...as referred to in FRCP Rule 24. Thus, IFP candidates are forced to use the Federal Court for service and may be precluded from service as compared to their non-IFP counterparts. Thus, IFP is a penalty not a privilege to citizens who don't have the means to pay when it is used in this manner to prevent Plaintiff from delivering service to file grievances; this is analogous to the issue that I have stated in my complaint whereby the denial of due process occurs as a means to focus on trivial technicalities instead of enforcing justice. "[A]n 'evidentiary hearing' does not automatically involve or require live testimony but requires only that the District Court afford the parties a fair opportunity to present both the relevant jurisdictional evidence and their legal arguments." *Hutton*, 213 F. Supp. 3d at 749. There was no "fair" opportunity for Plaintiff or Defendants to argue the legal merits of complaint. (*Twombly*; *Rich v U.S.*)

**In December 2021, Plaintiff submitted a response to Judge Swain's (Southern District of New York) premature dismissal [APPENDIX-II] which stated: ' "IFP rules as dictated in FRCP and employed in this context are un-American and unconstitutional as it creates a means to prevent my ability to file grievances; this is analogous to the issue that I have**

stated in my complaint.” Service of a complaint and due process is not a privilege, it is a right.’

The Southern District Court erred when it denied *pro se* Plaintiff an opportunity to serve Complaint and the 2<sup>nd</sup> Circuit did not address this fact.

**Plaintiff’s complaint was dismissed by Judge Swain unilaterally without the opportunity to argue despite the offering of substantial evidence that shows racketeering and Enterprise involvement.** The Complaint provides substantial pre-discovery evidence of those facts above and beyond that which is required by allegations contained in a well pleaded RICO Complaint. Plaintiff can meet the burden of proof by clear and convincing evidence as suggested by audio recording transcriptions, affidavits, notes from State Court sessions, excerpts from correspondence from Defendants as directly stated in the complaint; as such, he demonstrated this burden of proof. (*United States v. Biggins*) Transcripts of recorded conversations are admissible (*United States v. Onori*) recorded without defendant’s knowledge or consent but with the consent of the other party are admissible and do not violate defendant’s Fourth and Fifth Amendment rights. (*United States v. White; Lopez v. United States; United States v. Caracci*). Thus the complaint is well-pleaded and overcomes any objections that it is conclusory, speculative or implausible as proof is available.

Federal Rule of Civil Procedure 9(b) requires a plaintiff making an allegation of fraud to “state with particularity the circumstances constituting fraud.” This heightened pleading standard requires Plaintiff to specifically allege “the time, place, and contents of the false representations, and the identity of the person making the misrepresentation and what he obtained thereby. (*Harrison v. Westinghouse Savannah River Co. ; Cozzarelli v.*

*Inspire Pharm. Inc.)* Judge Swain overlooks the availability of audio recordings, emails from Defendants, State Court transcripts, affidavits, acts of perjury provided by written accounts from Defendants that support the pleading standard for "fraud". Likewise, Fraud is easily demonstrated by Net Worth statements provided by Defendant to the State Court, Affidavits from Defendants, Statements on Record from Defendants, and Emailed statements from Defendants. Likewise, State Court records and activities all provide for "time, place and contents of false representations". Inundating a complaint with activities that all parties have access to, when it is fact, is wasteful and places unjust burden on the complaint.

**In Forma Pauperis was established from September until January 7<sup>th</sup> call and thus Plaintiff was not capable of doing service but was waiting for Judge Swain's orders.**

Plaintiff reminded the Court in writing that he is waiting for service as directed by Judge Swain while under *in forma pauperis* status and submitted U.S. Marshall forms to indicate that he was taking all steps to begin service until Judge Swain so ordered service. On November 10<sup>th</sup>, 2021 Plaintiff writes: "*I am writing you to implore you to order my case for service. Based on the Michigan ruling, it is law of the case that I can proceed in forma pauperis. That is why I am dependent on the Court to get these papers served.*"

(Appendix-VII)

Recommended Remediation for the Public benefit forma pauperis (Appendix-XI)

**Repercussions of Departing from the Constitution:**

**From Plaintiff's perspective, the practices of Rule E, deliberate mismanagement of a TPO, denial of service, a seal (Appendix-IV), and sua sponte dismissal have allowed**

Defendants to conduct Federal crimes to include Racketeering to deny Plaintiff his Constitutional rights for four and a half years while Plaintiff is in legal silence.

Defendants' crimes still remained uninvestigated. Plaintiff was denied the ability to defend himself and to provide evidence to government officials so that they may investigate/prosecute these crimes. These crimes were orchestrated and performed by non-government civilians with the knowledge of New York State Officials. These practices caused obstruction of justice and should negate any NY Court judgments and fines. Despite ample evidence and submissions as provided in the 128 page Complaint, the evidence related to the crimes is being suppressed to provide "legal immunity" to Defendants named. The nature of these crimes occurred by abusing unconstitutional "policies" while the judge's wife was benefitting from judgments and fines to be paid by Plaintiff to her law firm. (18U.S.C.§1962)

These three areas have caused Plaintiff to suffer yet Plaintiff has never been charged with a crime. This situation could happen to any American. Yet Plaintiff:

- was denied the ability to pursue crimes of non-government citizens including the wife of a judge who practiced law in her husband's district;
- was illegally denied access to his children, his company's work, and his own assets for >4.5 years and lives in fear of future false accusations;
- was denied right to file motions and actions over years with or without counsel, denied of Plaintiff's ability to serve his Complaint which contravenes rules dictated by FRCP, New York CPLR, Constitutional Amendments and case law;
- was continually threatened by restrictions and motions including fines and incarceration due to allegations of an unheard *ex parte* temporary protection order.



- Suffered from judgments due to said crimes.

## SECTION 2

The 2<sup>nd</sup> Circuit's use of *Slayton v American Express* , the only cited case, as a **justification to dismiss the Appellate Briefs is not on point with Plaintiff's complaint.**

In August 2022, the 2<sup>nd</sup> Circuit indicated that a final order has not been issued by the Southern District as 28USC1291 with a justification solely based on *Slayton v American Express*. According to the 2<sup>nd</sup> Circuit's incorrect dismissal to the Southern District, "a final order has not been issued by the Southern District" with a reference cited based on *Slayton v American Express*; however, the 2<sup>nd</sup> Circuit itself made mistakes with such a decision.

Slayton is not an appropriate reference as the mechanics of the dismissal of *Slayton v American Express* were not analogous to Plaintiff's dismissal in the Southern District.

As a summary of *Slayton v American Express*, American Express misrepresented the facts, financial figures and risks associated with their business in their original complaint. In *Slayton v American Express*, the District Court entered an order dismissing the complaint with leave to replead but American Express chose not to replead and thus a dismissal occurred.

## SECTION 3

The Southern District's incorrect statements were used to justify their dismissal; thus Error in Law occurred and caused a dismissal. Error in law occurred to warrant an appeal despite the fact that Judge Swain issued a non final judgment. Plaintiff chose to replead in the form of an appeal based on the errors of law committed by the Southern District.; in *Slayton v American Express*, the party was not resubmitting the complaint

due to his own errors as occurred. In Plaintiff's case and in the Southern District's dismissal, Judge Swain made incorrect summarizations of fact that directly contradicted statements made in Plaintiff's complaint.

The Southern District Court's false statements to justify their own dismissal did not occur in *Slayton v American Express* and ignores the Error in Law, Judge Swain misstated facts of the case that contributed significantly to her dismissal as cited by Plaintiff in his unaddressed Appellate Brief. The 2<sup>nd</sup> Circuit Court should not have relied on *Slayton v American Express* as the case completely ignored "error in law" of Judge Swain's dismissal. 28USC2254

The 2<sup>nd</sup> Circuit did not evaluate the facts and reasons provided by Plaintiff to overcome a 28USC1291 focused dismissal; Plaintiff provided these arguments to overcome a 1291 based objection in his two Appellate Briefs. The 2<sup>nd</sup> Circuit overlooked the reasoning that a final order is not needed for the Appeal to the 2<sup>nd</sup> Circuit. The complaint was updated only to address the "conclusory" objections and to provide additional facts to already established allegations. A failure to recognize any legal arguments presented in two attached Appellate Briefs that justify 2<sup>nd</sup> Circuit Review and which address the Southern District's Errors in Law is an Error in Law within itself and again appealable to the U.S. Supreme Court. 28USC2254

## SECTION 4

"An order of a Federal District Court denying a motion for leave to proceed in forma pauperis is appealable to the Court of Appeals under 28 U.S.C. §1291. U.S. §845." (*Roberts v. District Court*) A motion for leave to proceed *in forma pauperis* was made. (*Adkins v. E. I. Dupont de Nemours & Co., Inc.*) The Court of Appeals did not respond to Plaintiff's

appeal to reinstate his *in forma pauperis* status despite filing the appropriate application and enclosing the argument in the brief.

I, Plaintiff, seek the Supreme Court of the United States for:

Public Benefit Relief *writ of prohibition*: (Section 1)

- NYWCOURT(Supreme Court Westchester County): Judge Lubell
  - Abolish/prohibit Rule E or permission-based motion systems
- CPLR and FRCP additions with explicit orders to NYWCOURT: Judge Lubell
  - Prevent renewal of temporary protection orders without a hearing adjust CPLR
  - Prevent any judgements via CPLR prior to a hearing of those affected by temporary protection orders
- SOUTHERN DISTRICT Federal Court Judge Swain: Change FRCP Rule 24 to allow *forma pauperis* parties to conduct service on their own as alternative to U.S. Marshall Service without penalty of dismissal.


Plaintiff Relief: (Sections 1-4) *writ of mandamus*

- NYWCOURT : Judge Lubell
  - Vacate NY State Orders of Protection against Plaintiff
  - Vacate the NY State Orders/ Reverse Judgements
- 2<sup>nd</sup> Circuit Federal Court: Judge Nathan
  - Vacate 2<sup>nd</sup> Circuit Seal 2<sup>nd</sup> Circuit Federal Court: Judge Nathan
- Justice Department:
  - Transfer Complaint to another Federal District outside of the 2<sup>nd</sup> Circuit.
  - Instruct Federal District to begin discovery for evaluation of complaint by jury.
  - Initiate criminal investigation into Federal Complaint and Enterprise

CONCLUSION

The petition for a *writ of prohibition and mandamus* should be granted.  
Respectfully submitted,

Jason D. Fisher  
Name

  
(Signature)

12/6/2022  
Date