CASE NO. 22-6285

SUPREME COURT OF THE UNITED STATES

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

- VERSUS –

FAITH MILLER (Scheinkman), MILLER ZEIDERMAN & WIEDERKEHR LLP, JOANNE CAMBARERI, JENNIFER LIGHTER, GARY LIGHTER, JESSICA LIGHTER, TIFFANY GALLO, JENNIFER JACKMAN, GUTTRIDGE & CAMBARERI, PC

(Defendant-Appellees)

REPLY TO BRIEF IN OPPOSITION (RUSKIN) ON PETITION FOR WRIT OF PROHIBITION AND MANDAMUS FROM THE 2ND CIRCUIT OF APPEALS

THIS APPLICATION BENEFITS THE PUBLIC BY DRAWING ATTENTION TO

UNEQUAL JUSTICE UNDER LAW

A CIVIL PROCEEDING

1/23/2023
Date

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TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

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

STATUTES AND RULES

28 U.S.C §1651, 2241, 2242, 2254, Rule 2029 U.S.C. §1291

AMENDMENTS

Constitutional Amendments 1st, 4th , 5th, 8th, 14th.

INTRODUCTION:

This reply brief is submitted by the *pro se* Appellant-Plaintiff as a response to the Brief in Opposition prepared by Ruskin Moscou Faltischek. It is the only brief in opposition to date that the Appellant-Plaintiff has received as of January 20th, 2023.

The Appellant's *petition for writ of prohibition and mandamus* should be heard by the Supreme Court and not denied in its entirety as suggested by Defendants' Brief in Opposition. The Brief in Opposition provided very little substantiation of numerous conclusory remarks. The Brief in Opposition merely attempts to remove a focus on public benefit as well as criminal allegations for the Defendants own personal gain and defense. However, as an earnest response, Appellant will address these remarks but Appellant remains focused on the public benefit as cited in the original Petition.

In short summary, the Complaint identifies a lawyer-judge husband-wife relationship that was manipulated to cause flagrant injustices and defiance of the Constitution over years. The *pro se* Appellant filed motions within the State Court to address crimes that occurred after he initiated a divorce motions which remain unheard due in part to obstruction. The *pro se* Appellant uncovered further Federal crimes during the course of his State proceedings whereby one such defendant included a lawyer whose husband was the 2nd most powerful judge in New York; all of the Appellant Plaintiff's attempts to file motions and submit defense papers in the New York State Court were prevented for submission by the Enterprise and Defendants while the Defendants and Enterprise continuously threatened and continued criminal activity.

This RICO complaint is a case without precedence which firmly establishes a financial and marital link between Enterprise members and Defendants and further shows a

willingful acknowledgement by the Enterprise members of the crimes conducted by the Defendants. The Petition addresses policies that allowed these crimes to occur. The *pro se* Appellant is seeking an unbiased Federal Court outside of the 2nd Circuit to present evidence and conduct a trial; the Brief in Opposition has not opposed a jurisdictional reassignment to a district outside of the 2nd Circuit nor has challenged the criminal allegations.

Lastly, Plaintiff Appellant believes that both counterstatement questions regarding 28U.S.C.§1651 and 28USC§1291 are easily overcome. **To remain most efficient, the Plaintiff Appellant asks the reader to focus their initial review of this document of :**

Part I.A to address 28U.S.C.§1651 and

Part II.A and II.B to address 28USC§1291.

Parts III-V clarifies misstatements made in the Brief in Opposition, addresses unchallenged areas and provides a conclusion.

Other Parts such as Part I.B., Part II.C., and Part II.D. are designed to provide further arguments to overcome 1651 and 1291 as well as address cases presented by the Defendants.

Part I. The Plaintiff-Appellant has satisfied conditions of a *writ of prohibition and mandamus* pursuant to 28 U.S.C.§1651.

Part I.A. The writ can not be used as a substitution for an appeal because only the Supreme Court is empowered to make the changes to FRCP to allow for judicial equality for the impoverished (*forma pauperis*), issue guidance on Temporary Protection Orders to allow for due process, and abolish

"permission based motion practice" (such as Rule E) to allow a citizen to file grievances. These are three infringements of the Constitution. Moreover, the Appellant provides evidence in the Complaint that these civil violations are being practiced and provides information that a Grand Jury of NY has already identified conspiracy and constitutional violations for an enterprise member named in the complaint. Thus, as described, the writ is clear and indisputable. *(Cheney v U.S. Dist Ct for DC)*

Part I.B. Other aspects overcoming the 1651 objection were provide for on page 3 of the Petition titled: "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). (Appendix-§1651)

This Court has jurisdiction over this appeal as *Writ of prohibition and mandamus.* Facts contained herein and the original complaint require involvement from the highest judicial authority as adequate relief nor appeals process 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 and have been practiced actively over years. These three 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.

Part II. The Petition easily overcomes 28USC§1291 Objections:

Part II.A. First, the 2nd Circuit established that it had jurisdiction over the Complaint with their own actions; thus, the move of jurisdiction from the Southern District was validated to overcome a 1291 objection by the 2nd Circuit itself. (*2nd Circuit No. 21-3049 , Fisher v. Miller, et al.,*)

Firestone Co v Risjord, Cobbledickv United States, Catlin v United States don't apply since 2nd Circuit accepted jurisdiction and Defendants also filed a motion in 2nd Circuit. By the 2nd Circuit issuing a seal on the Complaint as a response to a Defendant's motion, the Second Circuit had assumed jurisdiction with their own actions and validated the jurisdiction within the Second Circuit. In fact, even the Defendant acknowledged jurisdiction in the Second Circuit by their own submission of their motion for a Seal. A "final decision" requirement by the Southern District is moot as the 2nd Circuit and Defendants were satisfied to assume jurisdiction to handle the Seal. The Second Circuit did dismiss the case subsequently so their actions are considered final and thus an appeal to the Supreme Court is appropriate and overcomes any "non final" 1291 objection.

Part II.B. Second, matters of *forma pauperis* were not addressed by the Second Circuit despite application and as such both *forma pauperis* and the seal are appealable to the Supreme Court after the dismissal. (*2nd Circuit No. 21-3049 , Fisher v. Miller, et al.,*)

Part II.C. Third, a Final Order has already established by the actions of the Southern District Court yet no decision was made on the Merits.

The Southern District has shown by its own actions that crimes executed by these particular Defendants and described by the *pro se* applicant's complaint are going

unnoticed despite the fact that these crimes contravene both State and Federal laws. The Southern District made it clear that by its *sua sponte* dismissal and prevention of service that the petition's status is in essence "finally dismissed". Even highly trained and experienced lawyers would interpret the Court's actions to tacitly mean that it is a final order. Moreover, Judge Swain has had over a year to address this matter yet has left this matter unaddressed. An order to prevent service coupled with a *sua sponte* dismissal leaves Appellant helpless legally.

Flanagan v United States does not account for *sua sponte* dismissals nor does it take into account that the Appellant Plaintiff was denied the ability to service. In addition to come with a "Collateral order" exception (*Cooper & Lybrand v. Livesay*) , the Southern District "conclusively determined the disputed question" and prevented the evaluation of the Merits of the action by denying service of the Complaint and dismissing the Complaint *sua sponte*. The policy of 1291 is further limited to handle cases with ongoing litigation; however, the present Complaint was denied any litigation. Judge Swain's *sua sponte* dismissal combined with no opportunity to to serve the defendants prevented litigation from actually beginning; the Complaint was not even capable of entering litigation (*Cooper & Lybrand v. Livesay)* and no dismissal on the Merits can be claimed.

Lastly, the "collateral order" exception states that the case be "effectively unreviewable on appeal from a final judgment". The *pro se* Applicant-Plaintiff has been trying to gain justice for 4.5 years and has spent 2.5 years *forma pauperis* seeking a jury. It is fair to assume that these years are an outlier for most *pro se* citizen's expenditure when considering time, money and energy. The *pro se* Applicant has no way of communicating this endeavor's personal cost to the Court but it may be assumed that a *sua sponte*

dismissal after these years of hardship combined with no opportunity to serve complaint could exhaust the *pro se* litigant economically, mentally, and financially thereby causing him to drop his Complaint. (Southern District NY 21-CV-7784) According to the "death knell" doctrine (which assumes that without incentive of possible recovery an individual Appellant may find it economically imprudent to pursue his lawsuit to final judgment and then seek appellate review), it is established that the *pro se* Appellant should have an opportunity to appeal. *(Cohen v Beneficial Industrial Loan Corp.)* The Southern District further justified their *sua sponte* dismissal by erroneous statements that were not contained in the Complaint. Judge Swain's errors curiously benefit the Defendants and a NY State judge whose political and legal stature is well known in the Southern District.

Part II.D. Other aspects overcoming the 28U.S.C.§1291 objection were already submitted in original Petition For *Writ Of Prohibition & Mandamus.*

As previously stated in Section 2 of the Appellants Petition (page 30):

The 2nd Circuit's use of *Slayton v American Express* as a justification to dismiss the Appellate Briefs is not on point with Appellant 's complaint. (Appendix-Slaytonv.AmericanExpress)

As previously stated in Section 4 of the Appellants Petition (page 31):

"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 28U.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 Appellant 's appeal to reinstate his *in forma pauperis* status despite filing

the appropriate application and enclosing the argument in the brief.

Part III. Defendants acquiesced to a multitude of allegations since their Brief in Opposition doesn't challenge facts contained in Appellant's Petition:

Referring to The Rules of the Supreme Court Rule 15.Briefs in Opposition:

"Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition."

Part III.A. The Appellant's jurisdictional requests to reassign the Complaint to a jurisdiction outside that of the 2nd Circuit remains unchallenged by the Brief in Opposition and at a minimum should be granted.

Part III.B. The Defendants have conceded on all allegations including conspiracy. Conspiracy has already been established by New York Grand Jury investigations involving an enterprise member as provided in the Appellant's Petition and its appendix. The Appellant for consistency has and will continue to point out coordinated efforts by Defendants. It should be realized that Guttridge and Cambareri are coordinated with Miller and her attorney's even in their briefs which further substantiates conspiracy. These parties have been working against the Appellant in coordinated fashion to deny him his constitutional rights and obstruct proceedings even prior to the filing of Appellant's RICO Complaint. This coordination started years before

the Appellant's Complaint when Miller's husband (Judge Sheinkman) was integral in providing an appointment of a member of Guttridge and Cambareri as a preferred attorney for divorces involving children. The same parties' coordination to pass notes in front of Judge Lubell during active Court sessions as stated in original complaint represents not only a breach of Court behavior but further represents a willful allowance of the conspiracy.

Part IV. The Defendants have repeatedly misportrayed and misrepresented facts throughout State and Federal proceedings. The Defendants in their most recent Brief in Opposition misstated and misrepresented facts as set forth in cross outs below which creates inefficiency for the Justices and Appellant .

Part IV.A. ~~**"Plaintiff never served the complaint upon Appellees"**~~ Plaintiff Appellant was never allowed to conduct service as he applied for forma pauperis with his submission and was forbiden according to FRCP for conducting service on his own. Additionally, Judge Swain issued an order to wait on her decision before service. The Appellant submitted all documentation to allow for service under *forma pauperis.*

Part IV. B. The Michigan District Court transferred the case to the Southern District of New York despite the fact that RICO statutes state that Michigan was an appropriate venue.

Part IV. C. ~~"Appellant did not serve Appellees with a copy of the amended complaint"~~ because Appellant was forbidden by Judge Swain's order from conducting service.

Part IV. D. *Slayton v Am Express* is not an analogous case and this argument has already been addressed.

Part IV. E. The Defendants labelled their actions in the Petition as "business as usual" for a divorce to obscure crimes including Conspiracy to deny constitutional rights. As the petition cites, a New York State Grand Jury has already accused an enterprise member of "conspiracy against rights, deprivation of rights under color of law, and conspiracy to interfere with civil rights". (See Original Petition, *People of N.Y. and N.Y. Unified Common Law Jury* Index#14-0384 NY Greene County and Columbia County) (See Original Petition APPENDIX-NYSTATEWRITPROHIBITION & APPENDIX-FRAUDONCOURT)

Part IV. F. The Defendant's 1291 "non-final" argument is made moot by the Second Circuit's decision to accept jurisdiction with their own decision on a Seal motion and by the Defendant"s application of that same motion to the Second Circuit; however, they are arguing that the Second Circuit has never assumed jurisdiction.

Part V. The Brief in Opposition provides for untrue character assassination of Appellant and conclusory statements instead of focusing on the Merits of the Case which obviously displays an overall weakness to the Defendants' legal argument. Defendants ignore the public benefit of addressing unconstitutional policies and attempt to cause a reviewer to ignore the Appellee-Defendants' own crimes.

Part V. A. Inappropriate and untrue language used in the Brief in Opposition:

~~"unwillingness to comply",~~ ~~"Defects in his complaint"~~,

~~"improper appeals"~~, ~~"attempts to wreak vengeance on all individuals"~~ ~~"drastic and extraordinary",~~ ~~"so-called", "already-dismissed"~~

Part V. B. Every step of the judicial process was a step towards protecting Appellee-Defendants from prosecution of their own crimes despite overwhelming evidence & witnesses.

1. NY State: Numerous Counts of Obstruction, practices of Rule E to unconstitutionally legally silence the Appellant and prevent filing of grievances, deliberate mismanagement of a Temporary Protection Order to deny a hearing in perpetuity while subjecting Appellant to excessive force.

2. Southern District: A *sua sponte* dismissal without any opportunity to serve Defendants. Judge Swain is alerted to crimes of Defendant regarding Appellant 's medical records being illegally tampered but does not take this into account in her dismissal.

3. 2nd Circuit: A Federal Seal protecting knowledge of the public from learning the crimes of the Defendants and Enterprise. Defendants conduct Federal crimes to include Racketeering to deny Appellant his Constitutional rights for four and a half years while Appellant is in legal silence and public media silence. Defendants' crimes still remained uninvestigated.

Part VI. Conclusion

The only way to improve our U.S. legal system and protect our Constitution is by addressing these public issues with the involvement of the Supreme Court. Simply stated, these are issues of national importance whereby these infringements have affected the public including the Appellant and will continue to spread throughout other

jurisdictions if they are not addressed.

This Reply to the Brief in Opposition has proven that the 1291 objection is moot by the Second Circuit's jurisdiction over the Complaint and that the case has satisfied the 28U.S.C.§1651 requirements.

The *pro se* Plaintiff Appellant poses the same questions as in the original petition:

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 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 citizen's financial status cause them to be subject to a loss of constitutional rights (denial of right to serve Defendants on their own)** especially when the IFP status is due to crimes that are the subject of the complaint?

4. Are Appellant 's Constitutional rights being violated and do these violations warrant the Complaint to be heard by a jury outside of the 2nd Circuit?

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

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

- 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.

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

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

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

Respectfully submitted,

Jason D Fisher	1/23/2023	
Name	Date	(Signature)

Appendix-Slayton v. AmericanExpress 28USC1291

Excerpt from original petition:

In August 2022, the 2nd 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 2nd 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*; showever, the 2nd 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 Appellant '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.

As previously stated in Section 3 of the Appellants Petition (page 30):

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. Appellant 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 Appellant 's case and in the Southern District's dismissal, Judge Swain made incorrect summarizations of fact

that directly contradicted statements made in Appellant '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 Appellant in his unaddressed Appellate Brief. The 2nd 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 2nd Circuit did not evaluate the facts and reasons provided by Appellant to overcome a 28USC1291 focused dismissal; Appellant provided these arguments to overcome a 1291 based objection in his two Appellate Briefs. The 2nd Circuit overlooked the reasoning that a final order is not needed for the Appeal to the 2nd 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 2nd 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

Appendix-1651

[please note that Sections refer back to original petition]

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 2nd Circuit's cited one case as a justification to dismiss and this reasoning is not on point with Appellant 's complaint or **Appellate Briefs** and this 2nd Circuit decision along with the Appellate Briefs deserves review.

Section 3, errors in law were not addressed by the 2nd Circuit despite Appellant '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 2nd 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 Appellant '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 2nd 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. **Appellant is *forma pauperis* solely due to Defendant's crimes against Appellant contained in the complaint that caused him financial hardship.**