CASE NO. 23-6313

# SUPREME COURT OF THE UNITED STATES

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

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
(Your Name)

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Little Falls NJ 07424
(City, State, Zip Code)

646.256.1469
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# (A) Questions Presented

**For Overcoming the 2nd Circuit Objection see Section 2.**

## SECTION 1.

DO APPELLATE COURTS AND DISTRICT COURTS HAVE CARTE BLANCHE TO RAISE AND DECIDE IMPORTANT ISSUES IN A CASE WITHOUT EVER SEEKING THE INPUT OF ANY OF THE PARTIES TO IT AND/OR WITHOUT ALLOWING THE PLAINTIFF TO SERVE THE DEFENDANTS AND BEGIN DISCOVERY?

## SECTION 2.

DOES A *SUA SPONTE* DISMISSAL PRIOR TO SERVICE AND DISCOVERY AS PRACTICED IN THE SOUTHERN DISTRICT AND 2ND CIRCUIT ALLOW THE PLAINTIFF AMPLE OPPORTUNITY TO ADDRESS THE ISSUES, PARTIES TO ARGUE THE CLAIMS AND THUS DENY THE RIGHT OF A PARTY TO DUE PROCESS?

## SECTION 3.

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## SECTION 4.

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## SECTION 5.

RELIEF SOUGHT

# LIST OF PARTIES

[X] 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

BRONX COUNTY NEW YORK 7933-2019

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. 11957 (monetary transactions relating in property relating to unlawful activity)

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*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

[x] For cases from federal courts:

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

[ ] reported at _____ ; or,
[ ] has been designated for publication but is not yet reported; or,
[x] 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,
[x] 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.

**The opinion of the court appears at Appendix _____ to the petition and is**
**[ ] reported at ; or,**
**[ ] has been designated for publication but is not yet reported; or**
**[ ] is unpublished.**

## JURISDICTION

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was_____July 25, 2023_____ .

[ ] 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 October 8, 2023_____ . 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 2nd 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. In this matter, the United States Attorney General Barr , United States Attorney General Merrick Garland, and State Attorney General's office of New York was notified in writing of the breach of constitutionality of Westchester County. These infringements are *sua sponte* dismissal in conjuction with denial of service as well as denial of Due Process. (Rule E). The application is not also pursuant to 29 U.S.C. §1291 because of the dismissal of the United States District Court and the 2nd 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 July 25th 2023 and postmarked mail 3 weeks later. The Southern District court dismissal was filed November 16, 2021 and received December 2nd, 2021. Plaintiff filed the Notice of Appeal on December 14th, 2021 pursuant to Federal Rule of Appellate Procedure 4(a)(4)((B)(i).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

## Amendments

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

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 petition addresses unconstitutional practices and policies of *sua sponte* dismissals that have occurred in the 2nd Circuit, Southern District of New York and New York State Superior Court that violate the Fifth and Fourteenth Amendments respectively. The petition overcomes the 2nd Circuit's objections by establishing that the 2nd Circuit's use of 28 U.S.C. § 1915(e) and *Neitzke v. Williams* is not an appropriate or relevant objection to this case. The Status of poverty is caused and established by the Crimes of Defendants; the case is well supported by evidence, sufficient to support a finding that the fact does exist and facts are not subject to debate: so not frivilous or malicious; the Complaint seeks damages from Defendants who are not immune, the Complaint states claims specifically with associated damages and Defendants.

Both the State Case and Federal Case has been subject to *sua sponte* dismissals since the Plaintiff filed his action five years ago resulting in "legal railroading". While in the New York Court, not one of the Plaintiff's motions would be allowed to be reviewed by Judge Lubell while cooperating with the Defendants. It also intends to address subject matter jurisdiction violations of the County of Westchester Supreme Court (NY). Plaintiff seeks *Writ OF MANDAMUS* as an equitable remedy to (1)direct the 2nd Circuit to assign the said Complaint to another new District or Court such as the Military Court to avoid bias in the 2nd Circuit and Southern District, (2)instruct that Court to begin discovery to allow for analysis of evidence of crimes and argument of claims, (3) instruct the new Court to determine a divorce settlement (4) instruct NEW YORK State Supreme Court and Family Court to publically release a report (redacted of identities) of its use of protection

orders by judge and date and (5) instruct the NEW YORK State Supreme Court to reverse the Divorce Decree/Settlement since it was based on crime and obstruction of justice of Lewis Lubell, lacks the Federal jurisdiction of its orders since it was filed as retaliation after this complaint and lacks subject matter jurisdiction (6) instruct the New York State Supreme Court and Family Court to provide all documents related to the temporary protection order and any other protection orders including the forensic report, all submitted motions, letters requesting motions, violations asserted, affidavits, and transcripts to all parties in writing with tracking numbers postmarked no later than November 1, 2023.

Plaintiff seeks *WRIT OF PROHIBITION* to (1) instruct the Southern District's and 2nd Circuit to cease violation of the Fifth Amendment with *sua esponte* dismissals without asking for a supplemental brief (2) to provide an order to Faith Miller and her firm from practicing in the New York State Supreme Court and the other jurisdictions where her husband was responsible as a judge, (3) instruct NEW YORK State Supreme Court to cease practices that violate the Fourteenth Amendment including *sua esponte* motion rejection as practiced by Lewis Lubell, (4) instruct New York State Supreme Court to ensure that every motion and request for motion is registered with every docket AND (5) remove Lewis Lubell from the bench until a thorough investigation of his cases has been conducted and report has been published of the said crimes has taken place.

Lewis Lubell is a liability to this Country's Constitution and a liability to the State of New York as demonstrated from his repeated actions of UNEQUAL JUSTICE UNDER LAW AND WILLFUL OBSTRUCTION OF JUSTICE. 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". As described in the updated complaint the State of New York practiced policies that violated the Constitution & caused "legal railroading". The District and Court of Appeals refuse to allow the Plaintiff's claims to proceed and imply that more evidence is needed: an arbitrary insurmountable moving threshold that precludes discovery and service. The Plaintiff submitted a second updated Complaint which the Federal Court acknowledged. The crimes described in the updated Complaint has already robbed him of his life, freedom and property. Thus, it should overcome the arbitrary and vapid dismissals of the 2nd Circuit and Southern District of New York. The public impact of not addressing these violations of the Constitution are dire. If this brief is denied by the Supreme Court, the negative decision demonstrates that without any doubt that any State or Federal Court may *sua sponte* deny any or every citizen of the United States his/her Constitutional rights. A denial at the Supreme Court would demonstrate that arbitrary unjustified decisions opposing the Constitution can be used to prosecute and commit crimes against innocent people with impunity.

RELIEF MAY NOT BE OBTAINED ELSEWHERE BECAUSE PREJUDICE HAS BEEN OBVIOUS.

# REASONS FOR GRANTING PETITION

## SECTION 1.

DO APPELLATE COURTS AND DISTRICT COURTS HAVE CARTE BLANCHE TO RAISE AND DECIDE IMPORTANT ISSUES IN A CASE WITHOUT EVER SEEKING THE INPUT OF ANY OF THE PARTIES TO IT AND/OR WITHOUT ALLOWING THE PLAINTIFF TO SERVE THE DEFENDANTS AND BEGIN DISCOVERY?

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The appellate court and district Court and granted relief to the Defendants on their own volition that was not requested and was not based on any arguments. The *sua sponte* decision exercises a power that district and appellate courts should be refrain to use as it practices totalitarism, wherby the Plaintiff has no opportunity to defend his Constitutional rights.

The Plaintiff's Federal Complaint asserts that a state judge predetermined or "illegally railroaded" the entire divorce of the Plaintiff's State Action including a temporary protection order *sua sponte;* Lewis Lubell, under direction from the Defendants, denied the Plaintiff's attempts to submit motions and submit any evidence to file grievances or protect himself. To add fuel to this legal atrocity, Lewis Lubell allowed repeated and frequent legal activity from the Defendants of the state matter to further inflict damage on the Plaintiff with a simple motive: it helped his bosses wife Faith Miller-Scheinkman, which in turn would provide income directly to his own boss. Judge Scheinkman is an equity holder by marriage in his wife's firm. Judge Lubell allowed the Defendants to conduct perjury, obstruction of justice, theft of corporate materials, slander, and many

other crimes with impunity and without investigation. The facts remain that this state judge repeatedly made acts *sua sponte* that decided financial obligations, parental rights, housing rights, patent rights, and corporate asset rights while trying to give the false appearance that a just process was occuring.

Judge Lubell denied Plaintiff's submissions of Affidavits in Opposition, Orders to Show Cause, and denied Plaintiff's motions *sua esponte.* He then poisoned the case with these fabricated determinations with violations of subject matter jurisdiction and passed the State Case to another judge to execute his arbitrary wishes which were based on obstruction of justice and other crimes. Not only are many of these divorce decisions outside of the jurisdiction of the State Court but indicate deprivation of the Plaintiff's rights to procedural due process. "The violation [of the Due Process Clause of the Fourteenth Amendment] is none the less clear when [a] result is accomplished by the state judiciary in the course of construing an otherwise valid state statute. The federal guaranty of due process extends to state action through its judicial . . . branch of government." *Stop the Beach Renourishment, Inc. v. Florida Dept. of Envtl. Prot.,* **Thus it is a fact that this entire matter State Case and Federal Case has been subject to repeated *sua sponte* since the Plaintiff filed his action five years ago.** A failure to investigate this Complaint is a crime and flagrant violation of the Constitution.

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## SECTION 2.

**DOES A *SUA SPONTE* DISMISSAL PRIOR TO SERVICE AND DISCOVERY AS PRACTICED IN THE SOUTHERN DISTRICT AND 2ND CIRCUIT ALLOW THE**

## PLAINTIFF AMPLE OPPORTUNITY TO ADDRESS THE ISSUES, PARTIES TO ARGUE THE CLAIMS AND THUS DENY THE RIGHT OF A PARTY TO DUE PROCESS?

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Ample opportunity means that the reasons for objection are specific and well defined by the Court. The fact that the Court did not provide any specific reasoning *sua sponte* further limits the Plaintiff from overcoming the objection as the objection is "not defined". A *sua sponte* dismissal based on "no claims" or "no arguable basis of law or fact" does not allow the Plaintiff ample opportunity to address the issues stated in the claims nor do their dismissals contain specific flaws that allow for specific objections to overcome the dismissals. The 2nd Circuit's use of 28 U.S.C. § 1915(e) is a desperate attempt to dismiss an action that the 2nd District has no other reasons to find fault. The Status of poverty is caused by the Crimes of Court; the case is well supported by evidence so not frivilous, the Complaint seeks damages from Defendants who is not immune, the Complaint states claims specifically with associated damages and Defendants. Juxtaposing *Neitzke v. Williams* to this Complaint does not provide a worthy analogy. The 2nd Circuit is trivializing serious infringements of the Constitution by using *Neitzke v. Williams and 28 U.S.C. § 1915(e).* In this case, the Plaintiff's circumstances are incongruent to that of Williams who was an inmate looking for a new cell within the prison. Williams could not make a logical argument in law or fact with regard to how his transfer violated due process. Williams does not suffer from Constitutional Crimes nor has written a RICO suit *pro se.* Likewise, the *forma pauperis* of this Complaint application is and has been clear with regard to assets. The *forma pauperis* form says "see Complaint" and "unknown" as

the values of the biotechnology business and the real estate is well explained in the Complaint under damages without accounting for write downs or depreciation or a GAAP analysis. Thus, by issuing *sua esponte* dismissal using such an objection, the 2nd Circuit denied the Plaintiff "ample opportunity to address the issue." An appellate court may not raise a new issue *sua sponte* if it is separate and distinct from the questions presented especially when the new "issue" is more like a whole new unpleaded claim depending on factual allegations that were never presented in or proved to the trial court."

Likewise it would appear to many that the 2nd Circuit is acting as a lawyer and jury for the Defendants who are not government workers and who have the ability to be responsible for damages. Judge Swain's November 16, 2021 and subsequent March 3, 2023 dismissal order compounded the issue of Due Process as service was denied and both submitted Complaints were repeatedly denied *sua sponte.* Again, many will view Judge Swain as acting as a lawyer and jury for the Defendants. Likewise it is not for the 2nd Circuit or Southern District to make opinions on facts especially before discovery but to ensure that the judicial process is executed to allow for appropriate investigation.

**Both 2nd Circuit and Southern District has shown to have prejudice in this matter; thus, the Plaintiff asks the Supreme Court to direct a neutral Court to handle this matter either as a military Court or a neutral Court no affiliated with the 2nd Circuit.**

The RICO complaint calls for a jury and thus a *sua sponte* dismissal while ordering prevention of service denies the Plaintiff of service, discovery, argument and a jury. The 2nd Circuit and Southern District are wasting resources by issuing such a terse and amorphous response as part of their *sua sponte* dismissals that have prevented service and discovery.

Likewise, the State, its agencies or officials, bear responsibility for conduct for which they can fairly be blamed; evidence and facts support Plaintiff's submissions using Rule E process of motion requests. These are adjudicative facts that are simply not negotiable. On one such occasion, the Plaintiff filed a request for a motion to access the property with the local gas company to investigate a gas leak the company had reported; the motion was not even answered by Judge Lubell but discarded by him due to Rule E. In fact, acknowledgement of Rule E is stated in a letter on September 27th 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." In this circumstance, the Plaintiff's home was where his children lived but the NY Court order for the unheard temporary protection order was being renewed by Judge Lubell and forbade the Plaintiff from accessing his home (only titled to Plaintiff) so the Plaintiff could not allow gas company technicians to enter the home. In furtherance, the NY Court dismissed motions and his right to a hearing for a temporary protection order that was renewed by Judge Lubell and lasted for years. Defendants with Judge Lubell's willful acknowledgement were able to violate the Fourth Amendment by denying Plaintiff's 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)* Incidentally, all legal attempts to file for a hearing or challenge the temporary protection order (which showed no danger to the petitioner) were dismissed *sua sponte*. These examples show *sua sponte* actions by the State Judge who had violated the Plaintiff's constitutional rights.

The facts and evidence demonstrate a major consequence when *sua sponte* is abused and used to deprive Due Process. The Supreme Court must require the courts to respect the limits of their own power and place constraints on its use such as asking for a supplemental brief before considering *sua sponte* dismissal.

A *sua sponte* dismissal should only be given in this case if an "injustice might otherwise result" or "beyond any doubt ". *Singleton* Instead, an appellate court abuses its judicial discretion when it not only raises an issue *sua sponte* but decides that issue without giving the parties an opportunity to address nor gives them a specific objection. In this case it denied service and discovery of the aforementioned Federal Complaint while not claiming that "injustice might otherwise result" and "beyond any doubt".

**Procedural due process requires that "deprivation of life,liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case**." *Mullane v. Cent. Hanover Bank & Trust Co.,; Lachance v. Erickson,* "The core of due process is the right to notice and a meaningful opportunity to be heard." *Mathews v. Eldridge,*("This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest.".

*Mullane v. Cent. Hanover Bank & Trust Co.,*; *Mathews v. Eldridge,*

*Brinkerhoff-Faris Trust & Savings Co. v. Hill,*

At a minimum, and demonstrated by *Trest*, the Court often requests supplemental briefs and additional oral argument when it raises an issue *sua sponte. Trest v. Cain.* Recent examples can be found in *Kiobel v. Royal Dutch Petroleum Co., and National Federation of Independent Business v. Sebelius,*in which the Court raised a jurisdictional issue *sua*

*sponte*, directed the parties to brief and argue it,_and appointed an amicus to advance it when none of the parties indicated support.

The Supreme Court has also held that, "a meaningful opportunity to be heard requires that the hearing occur before the decision is made." *United States v. James Daniel Good Real Prop.*. Appellate court actions are"governmental actions that are subject to these due process guarantees." The Court has in fact "put the judicial thumb firmly on the side of predeprivation court hearings before a seizure." *Brinkerhoff-Faris Trust & SavingsCo. v. Hill,* . Appellate court *sua sponte* decisions are inconsistent with fundamental tenets of due process as decisions of 'new'issues that are not briefed and fully argued is inconsistent with guaranteeing fundamental due process and fairness to litigants and interested parties. litigants have not been given an opportunity to consider the matter and urge arguments in support of and against the position adopted by the reviewing cour. *Mathews v. Eldridge; United States v. James Daniel Good Real Property* Instead a threshold prerequisite when a reviewing court issues a dismissal *sua sponte* is that "the parties are given an opportunity to be heard on the issue" *Turner v. Flournoy,* Otherwise, "[T]he parties are blind-sided when an appellate court reaches an issue on its own motion. They have no inkling that the court even thought about such an issue until they receive and read the court's opinion. That is not fair." *Curry, Perez v. Ortiz,* Dismissed claims *sua sponte* "without giving plaintiffs notice and an opportunity to be heard" as in *Stewart Title Guar. Co. v. Cadle Co.,* deprive the affected party of the opportunity to present arguments against dismissal and by tending to transform the court into a proponent rather than an independent entity. *Brinkerhoff-Faris Trust & Savings Co. v. Hill* may be the case that "most closely addresses" this issue, and it "did

not hold that *sua sponte* decisions by appellate courts generally violate due process." but then again service was not denied in addition to the *sua sponte* dismissal as in the present case.

In *Mathews v. Eldridge*, the Court established a three-point test for determining the amount of due process required in a particular situation. The points are (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

Applying the Mathews test to *sua sponte* appellate court decisions compels the conclusion that they have violated due process. Parties have a strong private interest in the result of litigation, and a *sua sponte* decision denies them the opportunity to pursue this interest. A court acting *sua sponte* has a higher probability of reaching an erroneous result because it must make a decision without the benefit of the litigants' views. *Turner*, "[W]hen we decide an issue *sua sponte*, we invite error because the issue has not been fleshed out fully; it has not been researched, briefed and argued by the parties." *424 U.S. 319 (1976).* Ordering supplementary briefing—would not substantially increase the fiscal and administrative burden on the court.

It should be noted that Judge Swain issued an order preventing service which conveniently gave the Defendants more time to prepare for a Notice of Settlement on October 8, 2021, six months after the Plaintiff filed his Federal Complaint regarding the unconstitutional conduct that produced this Settlement. Judge Swain's actions are

curiously convenient and dubious in this matter but further suggest that the State was allowed to prepare and take further action against the Plaintiff as reliation in a Divorce Settlement. The State Court in this matter superceded the Federal governments authority and lack subject matter jurisdiction.

Appellate courts' *sua sponte* decisions are analogous to the district court's amended judgment in *Nelson* and therefore also violate due process. Just like the defendant in Nelson, the losing party in that appeal decided *sua sponte* only learns of the legal reasoning of the Court when judgment is entered and never has an opportunity to respond to the court's reasoning. Also apposite is Nelson v. Adams USA, inc_in which the Court held that a district court violated due process when it "added a defendant and entered judgment without giving the defendant an opportunity to file a responsive pleading." The Court further stated that the Nelson should have an "opportunity to respond" in *Nelson v. Adams USA, inc*

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## SECTION 3.

**THESE CLAIMS CAN ONLY BE REVIEWED BY FEDERAL JURISDICTION DUE TO THE SUBJECT MATTER:**

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Due to the Nature of the Crimes and lack of subject matter jurisdiction by the state, the Federal Court is the only only channel available to file these claims. The Supreme Court is empowered to overrule any action executive, judicial or legislative if it deems such to be unconstitutional. The Supreme Court is being asked to direct the 2nd Circuit and New

York Southern District to enforce the Constitution and to direct **NEW YORK State Supreme Court to adhere to the 14th Amendment.** The Supremacy Clause states all jurisdictions must follow federal mandate. Under the Supremacy Clause found in Article VI section 2 of the Constitution, the Constitution and federal law supercede state laws. In fact the Divorce Settlement filed December 08, 2021 was six months after the Plaintiff filed on July 8, 2021 the said Federal Complaint. The Federal complaint has subject matter jurisdiction over the case due to this complaint and due to lack of jurisdiction of the orders in the settlement. The said Settlement violates Federal Law and its orders are products of crime. This justifies reversing the Notice of Settlement of Judgment of Divorce. Divorce Decree Moreover, prior to filing his Federal Complaint, the Plaintiff has made every effort to inform the state of the Constitutional violations: 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. The Plaintiff even heard from the State's Attorney's office not to send any more information regarding the violations. Thus, the claims could not have been raised in any other matter in the state court. Importantly, had he appealed in the State Court, the Plaintiff's Appeal would have been forwarded to Defendant's husband: Judge Scheinkman's Court. The Plaintiff is accusing the Defendants of having undue influence over the Court due to Faith Miller's marriage to Judge Scheinkman. In his Federal Proceedings, Plaintiff demonstrates that his Constitutional Rights have been violated and that similar attrocities have occurred in an analogous fashion to other unrelated parties by similar State Actors: 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". The Plaintiff made attempts to transfer the case to another jurisdiction (Bronx- see Complaint) and was denied due to the undue influence of Faith Miller and Judge Scheinkman. The timing of the case involved children who were suffering and as such an appeal of the final matter would have taken years. All submissions by the Plaintiff were rejected for submission and never reviewed by the State Court and as such this impeded his own ability to Appeal. The State Practiced *sua sponte* dismissals which resulted in a Settlement of the Plaintiff's motions thereby violating his fourteenth amendment: Moreover, the "state action" doctrine specifically addresses state and the Federal Government inclusion. *CBS v. Democratic Nat'l Comm.,*. *Ex parte Virginia*. "A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State." *Ex parte Virginia*

To speak of Lewis Lubell and others that participated with these government officials. their inclusion into the enterprise of this Complaint is undeniable, especially under RICO. Financial incentives existed for the Defendants; these members of the government

are directly financially incentivized by the outcome of the case as they are part equity holders in the Defendant's business. Moreover, these employees of the U.S. Government and New York State are responsible for allowing the Defendants to commit Federal Crimes. Thus the financial motive is there, the judge's boss gets compensated (Defendant's husband: Enterprise), the wife of the judge gains income (Defendant) and Judge Lubell (Enterprise) gains favor with his boss and gains against his peers in upwards mobility. But the crime by Judge Lubell remains independent of his position within the Government. For example, the acts of a state governor are state actions, *Cooper v. Aaron*; *Sterling v. Constantin*, the acts of prosecuting attorneys, *Mooney v. Holohan,* , state and local election officials, U*nited States v. Classic,* and law enforcement officials. *Griffin v. Maryland*, ; *Monroe v. Pape*, ; *Screws v. United States*, . Moreover, a persons who works with the government but participates with the government in the aforementioned acts commits crimes acts "under color of" state law; mere participation in these crimes with state officers suffices. *United States v. Price,* Thus Defendants Joanne Cambareri and Irene Ratner are considered part of the state actors. *118 U.S. 356 (1886). United States v. Classic, Screws v. United States, ; Williams v. United States, United States v. Price, United States v. Raines,*

**Justice Louis Brandeis also stated in** *Iowa-Des Moines Nat'l Bank v. Bennett*, "acts done 'by virtue of public position under a State government . . . and . . . in the name and for the State' . . . are not to be treated as if they were the acts of private individuals, although in doing them the official acted contrary to an express command of the state law." In Federal Court, immunity of the states does not shield state officers such as Lewis Lubell who are alleged to be engaging in illegal or unconstitutional actions. *Ex parte Young,*

*Screws v. United States, Adickes v. S.H. Kress & Co., Lombard v. Louisiana.* Thus no immunity is bestowed on the Defendants or the judge since they are being accused of Constitutional violations.

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." *United States v. Classic.*

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## SECTION 4.

### ARE THERE ARGUABLE CLAIMS THAT ARE BASED ON LAW AND FACT THAT ARE INDISPUTABLE TO OVERCOME THE DISTRICT COURTS "NO CLAIMS" AND 2ND CIRCUIT COURT OF APPEALS "NO ARGUABLE BASIS OF LAW OR FACT"?

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The Federal Complaint asserts that the Defendants committed crimes and caused numerous Constitutional violations with the help of the Enterprise members. The dismissal on grounds of either "failure to state a claim" "no arguable basis of law or fact" means that the District and Appellate Courts are stating that violations of the Constitution are frivolous as they have prevented discovery and investigation of the evidence.

Under the federal rule, a motion to dismiss for failure to state a claim upon which relief may be granted attacks the merits of the claim; whereas, a motion to dismiss for lack of subject matter jurisdiction challenges the court's power to hear the case. *Ramming v. United States*, Under Rule 12(b)(6), "a complaint should not be dismissed for failure to

state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson. Conley v. Gibson* states that a complaint should only be dismissed if it can prove none of the facts in support of the claim whereas the Plaintiff offers video evidence, audio evidence, law of the case, documents, emails, admission from the Defendants and actions taken from the State Judge. It appears that either the 2nd Circuit is defying *Conley v. Gibson* or there might be a hidden issue.

For that exercise, we will briefly overcome a possibility that that the Federal Court may be silently imbuing immunity without explicitly stating so. Either way it is clear and undeniable bias and a set of Federal judicial responses that are highly irregular.

The Federal Court, by issuing *sua esponte* dismissal prior to service, is violating the Plaintiff's Fourteenth Amendment and further issuing a bias that was initiated by the State Court; it is a furtherance of castrophic failures of the State to and the Federal to provide Due Process. Plaintiff (pro se) provided an updated 128 page complaint on December 14th, 2021 to overcome the "conclusory" claim. Judge Swain previously stated that the 75 page original complaint would be beyond repair. Southern District's Judge Swain provided a second dismissal despite an updated Complaint while the Second Circuit also provided a dismissal sua sponte demonstrating that they will not allow a *pro se* case to proceed against a well known judge's wife and the other Defendants.

The Supreme Court also has the ability to allow the case to proceed in another jurisdiction to avoid the bias that existed in the Southern District and 2nd Circuit.

The Complaint specifies actions taken by the state that are illegal and violate the Fourteenth Amendment. These State Actions were done under the responsibility of NY

State and under the direction of the Defendants. Violation of the the Equal Protection Clause to the states occurred with Obstruction of Justice and other crimes whereby Judge's Lubell's actions constituted state actions. Likewise, his appointees (forensic accountant, forensic psychologist, mediator, children's attorney) are also actors of the state: "the inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." *Jackson v. Metropolitan Edison Co.,*

The State Court broke the law and violated the Plaintiff's

(1) **life** to be under a never ending temporary protection order based on falsehoods and remove him from his children's life without a hearingt that could have been proven with evidence that was willfully prevented from submission,

(2) **liberty** (his ability to continue with his business and lose all of his belongings without recourse) and to access his property (his assets) to see his children

(3)**property** (his financial accounts were illegally tampered, his

To justapose against the facts. Rule 12(b)(6), "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." To that matter, the Plaintiff calls Rule 201. Judicial Notice of Adjudicative Facts whereby the Court may judicially notice a fact because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. These include submitted police reports, proceedural dates of filing, dockets, letters from judges, as well as availability of evidence as offered to support Claims. For a complaint to survive dismissal,

"the complaint must containt sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facil plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." It seems highlasuspicious of a Federal Judge to question the plausiblity of a Complaint given the overwhelming evidence presented and offered.

As part of the Plaintiff's Updated Complaint, submitted to the Federal Court, the Plaintiff submitted a 9 page section in the Appendix which listed per predicate act, the party, the act commited, the date, the other parties involved, the crime enabled, as well as the source of evidence. This section from the updated Complaint is being added again to the Appendix of this Supreme Court filing.

**A sample of Undeniable Claims showing "legal railroading" originating from the Updated Federal Complaint with facts and evidence to show the State knowingly and willfully allowed Constitutional crime to occur against Plaintiff :**

**Obstruction of Justice and due process violations: The presence and offering of the Complaint to offer evidence of a**udio recordings, pictures, documents, video recordings witnesses, Court proceedings were offered as evidence to support the obstruction of justice claims.

**Obstruction of Justice and due process violations:** Judge Marks and Judge Lewis Lubell indicates that motions filed by the Plaintiff were obscured to outsiders; thus, giving the appearance he defaulted.Quotes were included from Judge Marks letter. Judge Marks letter indicates that the Plaintiff never tried to file a motion contrary to Judge Lubell knowning that the Plaintiff had already filed motions and order to show causes which

Judge Lubell threw out. As evidence of this fraudulent practice and its use, on September 27th 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) (28USC1651) (Rule20.1) Judge Marks' letter indicates that he was unable to see the approximate ten letters for motions to the Court from Plaintiff, incorrectly stated it was e-file by Plaintiff when he was not, 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."

**Obstruction of Justice and due process violations:** temporary protection order issued on June 14, 2018 and that lack of a trial, hearing or the ability to submit evidence to show perjury. Letters sent to the Court, transcripts, forms, affidavit in opposition, order to show cause were all filed and they were blocked from submission and not reviewed. 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) 28USC1651 Rule20.1 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."

These letters were in the Appendix of updated Federal Complaint.

the temporary protection order became functionally permanent. *(United States v. Lange)* because the Plaintiff would not get a hearing for 3.5 years but the temporary protection order would be renewed on a monthly basis. Judge Lubell would purposely and willfully damage the Plaintiff as a father and then try to call a "trial" whereby he has had no access to his home, his children or business and then make a judgment that the children felt better at a home they had never left which was the Plaintiff's home. 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.* Judge Lubell would actively deny any motion from the Plaintiff that had evidence that would damage the Defendants.

**Acknowledgment of mechanism that was abused to violate the Equal Protection Clause-** In a letter on September 27th 2019 from Judge Lawrence K. Marks to Plaintiff, the Chief Administrative 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."

**Police Reports submitted to the State Court and included within updated Federal Complaint acknowledging Court Ordered violations by the Defendant and the unequal application of the law by the State:** included in motions to Lubell that Lubell would pretend he never saw.

**False dates provided by the Bronx County Clerk's Office for an Order to show Cause:** Pictures (Source: last Supreme Court filing Appendix XIX)

**Recordings offered in the motions to protect myself:** Presented to State and Federal Cases.

**Perjury by the Defendant:** Sworn statements by the Defendant that Plaintiff violated a temporary protection order by entering the house in Rye NY when the Plaintiff was actually in Germany. Motions and affidavits had been filed to provide the information to the Court of which Judge Lubell refused to allow to enter the .

**Acknowledgment of the violation of the Equal Protection Clause**:

**Conversion of business documents**-pictures and witnesses confirm that Business Documents were in Faith Miller's Office. Admission by the Defendants occurred and is on the record. Affidavit claiming the opposite statement is also on the State Record. June 14, 2018. Shows that Enterprise (Lubell) knew of the initial theft, yet would not address for over a year and prevented the Plaintiff from addressing in motions by not allowing them into the Court. "On July 19th, 2019 the Defendants produced an affidavit to the Court signed by Defendant that conflicted with their own statements regarding possession of C corporation documents made in open Court" 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)* **Source: Updated Federal Complaint.**

Acknowledgement of violation of Equal Protection Clause: Defendant violated a Court Ordered Stay for healthcare coverage. Facts were reported by Court, motions were filed by Plaintiff's lawyer, Court had private meeting with lawyer. Lawyer abandoned case.

**Acknowledgment of violation of the Equal Protection Clause:**

Plaintiff attempted to file Protection order August 2019 but was denied.

**Custody of Children (unnamed) December 08, 2021- Character Judge Lubell made statements that were not contained in the sealed forensic report and used his own false narrative to act as justification to further separate him from his children.**

**Perjury by Defendants in front of Lubell-** Submitted motions that were illegally rejected by Judge Lubell. Jennifer Jackman and Faith Miller conducted perjury when they

contradicted eachother with regard to possession of Mico Bio Inc. business documents. Defendants Affidavit further support Perjury.

**Divorce Decree vs jurisdiction to include ac**

Divorce Settlement December 8 2021: financial calculations of payments are based on obstruction of justice and directly contradict Plaintiff's income as reported to the Court and as reflective in Plaintiff's IRS reporting. Lubell's precluded Defendant from financial discovery to hide Defendant Lighter's assets which violates Equal Protection Clause.

**Obstruction of Justice and Violation of the Equal Protection Clause:**

Beginning April 27, 2018: denial of all submissions of Plaintiff's motions and prevention of motions from being submitted; reflected in docket and Divorce Decree

- docket and Court records to look at motions versus request for motions as well as judgments

**Obstruction of Justice and denial of Due Process by Lubell**: Motions 4, 5, 6 against the Plaintiff in NY State Court relied on the false statements of a temporary protection order that the Court would not allow a hearing for. The evidence is overwhelming that the Temporary protection order was based on false statements violating *NY Penal Law Section 210.45.*

**Financial Obligations based on only Defendants requests and information:** Irrespective of submitted documentation. October 18, 2019, Lubell issued an order to pay pendente lite defendant $5,975 per week based on child support and 55% of all expense of the children. The order was made despite the fact that the Defendants and Court knew that

the Plaintiff had zero income for 2.5years prior to him filing the divorce. Secondly, imputation was allowed for the Plaintiff's income by a State Actor who falsely calculated cash flows (income) of Defendant Lighter at zero.

The Court also ordered the Defendant within ten days of service to pay $51,627.58 for April 27, 2018 thru July 31, 2109 and $50,000 for an award for counsel fees to be payable to wife of Judge Scheinkman. Appendix XX Judgement from Judge Lubell from first Supreme Court Filing.

The Court further ignored premarital assets of the Plaintiff of approximately $300,000 arbitrarily defying the Equal Protection Clause and Obstruction of Justice.

**Obstruction of Justice and Violation of the Equal Protection Clause** Defendant **Violation of Equal Protection Clause:** Defendant's Violation of Court Orders including without investigation- Police Reports provided to Lubell, Motions and request for motions by Plaintiff,

**Violation of Equal Protection Clause:** Violation by Defendant of the New York Stay to illegally cancel Plaintiff's healthcare insurance, Violation of Plaintiff's rights (New York State Parental Laws) regarding multiple isolated medical decisions regarding his children.

**Violation of Equal Protection Clause:** 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 his unconstitutional use of Rule E prevented the motion. (*Bennett v Jeffereys),*

**Violation of Equal Protection Clause to bias third parties:** Judge Lubell repeatedly made negative comments about the Plaintiff's character which violated section 100.2 of the New York Rules of the Chief Administrative Judge which states that " a judge shall not testify voluntarily as a character witness"

**Obstruction of Justice and Violation of Equal Protection Clause:** Motions against Plaintiff even remained despite violating CPLR statutes that call for immediate dismissal of that motion. Judge Lubell would allow these motions to remain against the Plaintiff.

**Obstruction of Justice:** Complete denial of review of Plaintiff's Order to Show Causes by Judge Lubell

**Obstruction of Justice**: On December 19th, 2020, Six witnesses who were supervisors to the children and were scheduled to openly testify against Defendant Lighter for violating Court Orders in a hearing scheduled by Lubell. The supervisors were kicked out of a hearing by Lubell. Pictures show Faith Miller and Irene Ratner (Court Mediator) having an exparte meeting prior to the hearing whereby she is overheard asking how Lubell could get rid of the witnesses. When the hearing was called minutes later, Lubell kicked out the children's supervisors who included a Priest and Pastor and 70 year old woman and former police officer. Shortly thereafter, Judge Lubell announced that the volunteers would no longer be suitable to be supervisors for the children.

**Obstruction of Justice:** Denying the Plaintiff the right to gain financial discovery of the Defendant despite the fact that Plaintiff provided financial discovery to Defendant

**The defendants acted deliberately and the Enterprise (Lubell) had the knowledge that the representations made by Defendants were false yet chose to disallow the submissions by Plaintiff to prevent incrimination of the Defendants. *United States v. Hopkins***

**The NY State judgments (including custody, payments, division of assets), procedures and decree are impermissible under federal law as they occurred only as a product of Federal Crimes that violated the Constitution and lack subject matter jurisdiction as the settlement occurred 6 months after the initiation of the Federal Complaint citing these crimes.**

The Complaint itself mandates an investigation into the State governmental involvement so to be sufficient to give rise to a constitutional remedy. The Complaint against the private party and Enterprise states that the Defendant's involvement with the government (Enterprise) caused constitutional restraints and every action involving the Judge towards the Plaintiff shows either bias in favor of the Defendants or attempts to silence the Plaintiff. Thus repeated attempts for *sua sponte* by the State Judge are outliers in of themselves to warrant investigation by the Federal Courts. Again the sua sponte by the Southern District is again just an extension of the same argument from the State.

The treatment of this matter draws from an analysis by *Edmonson v. Leesville Concrete Co.,* "whether the claimed constitutional deprivation resulted from the exercise of a right or privilege having its source in state authority," . To that matter, the Defendant is the wife of Judge Lubell's boss who showed a complete disregard for the Constitution and exercised sua sponte repeatedly and willfully to legally silence and coerce the Plaintiff. In addition the Plaintiff did:

- list all of the elements of proof for the violations
- estimated measurable injury has been indicated in the complaint

The Fifth Amendment prescribes against this exact circumstances of circumventing the rights of due process: be deprived of life, liberty, and property, without due process of law". The 2nd Circuit & Southern District *sua esponte* dismissal & denial of service violates Fifth Amendment. The Government and Federal Courts must act in accordance with legal rules to ensure fairness and lawfullness of their own decision making.

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**The Supreme Court of the U.S. now has an opportunity to address these crimes to uphold our democracy or choose to look the other way and fail our founding fathers.**

I, the Plaintiff, an American, am worried for this country's future given that bad principles and evil people are making decisions to destroy our Constitution in front of our very eyes. As an educated person who has worked spent years building a business and a family, I have witnessed a group of people commit crimes against me and silence me. I have been illegally "railroaded" stripped of my children, my home and my business. The Defendants, Mr. Lewis Lubell and the people protecting and influencing him should be investigated and made accountable for their crimes against the Constitution. Lewis Lubell should be tried for criminal counts as violating the Constitution is treason. I, the *pro se* Plaintiff have provided opportunities to produce facts, accounts, witnesses and evidence to protect myself and the Public but thusfar the Federal Court has shirked on its role to collect information and investigate the claims set forth by a *pro se* litigant. While immunity or political favor may be the actual crutch for Lewis Lubell and the Defendants alone, the Federal Court has had an ample chance to do something right to protect our Constitution and respond. This responsibility to protect and enforce our Constitution supercedes politics as it is a higher good to allow for prosperity. I fear for

our Country due to the nefarious criminal actions of the Defendants and Enterprise that has happened with the permission of the Court. Protecting our rights should not be this hard.

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# SECTION 5.

## RELIEF SOUGHT

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

***Writ OF MANDAMUS*** **as an equitable remedy to**

**(1) the Supreme Court of the United States should designate a more appropriate Court to avoid bias in the 2nd Circuit and Southern District such as a military Court or another Court at their discretion.**

**(2)instruct that designated Court to begin discovery to allow for analysis of evidence of crimes and argument of claims,**

**(3) instruct that designated Court to determine a divorce settlement**

**(4) instruct NEW YORK State Supreme Court and Family Court to publically release a report (redacted of identities) of its use of protection orders by judge and**

**(5) instruct the NEW YORK State Supreme Court to reverse the divorce decree since it was based on crime and obstruction of justice of Lewis Lubell, lacks the Federal jurisdiction of its orders SINCE IT WAS FILED AFTER THIS COMPLAINT and lacks subject matter jurisdiction.**

**Plaintiff seeks** ***WRIT OF PROHIBITION*** **to**

**(1) instruct the Southern District and 2nd Circuit to cease violation of the Fifth Amendment with *sua esponte* dismissals without asking for a supplemental brief**

**(2) to provide an order to Faith Miller and her firm from practicing in the New York State Supreme Court and the other jurisdictions where her husband was responsible as a judge until an investigation can be had,**

**(3) instruct NEW YORK State Supreme Court** (Westchester County)**to cease practices that violate the Fourteenth Amendment including *sua esponte* motion rejection as practiced by Lewis Lubell,**

**(4) instruct New York State Supreme Court** (Westchester County)**to ensure that every motion and request for motion is registered with every docket AND**

**(5)** (Supreme Court Westchester County)**remove Lewis Lubell from the bench until a thorough investigation of his cases has been conducted and until a report has been published researching the events described in this complaint.**

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

Jason D. Fishman
Name

(Signature)

10/12/2023
Date