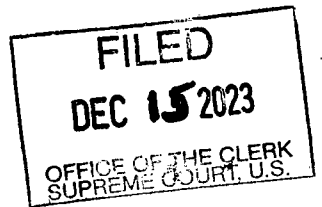


23-659

ORIGINAL

In the
Supreme Court of the United States



HAROLD JEAN-BAPTISTE,
Petitioner,

v.

WESTSIDE DONUT HUNTINGTON VENTURES LLC,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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December 15, 2023

SUPREME COURT PRESS

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QUESTION PRESENTED

Whether inexcusable error or neglect by U.S. Court of Appeals for the Second Circuit Clerk granting the defendant permission file an Appellee's brief after the defendant did not appear according to Circuit Rules of the U.S. Court of Appeals for the Second Circuit, Circuit Rule 12.3(a).

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Second Circuit

No. 23-826

Harold Jean-Baptiste, *Plaintiff-Appellant*, v. Westside
Donut Huntington Ventures LLC, *Defendant-Appellee*

Date of Final Order: November 20, 2023

U.S. District Court for the
Eastern District of New York

No. 23-CV-2308

Harold Jean-Baptiste, *Plaintiff*, v. Westside Donut
Huntington Ventures LLC, *Defendant*

Date of Memorandum and Order: April 27, 2023

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OPINIONS BELOW

The Summary Order of the U.S. District Court for the Eastern District of New York, dated April 27, 2023, is included in the Appendix (“App.”) at 5a. The Opinion of the U.S. Court of Appeals for the Second Circuit, dated November 20, 2023, affirming the district court is included at App.1a.



JURISDICTION

The judgement of the Second Circuit was entered on November 20, 2023. This petition is filed within 90 days of that judgment. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) .



JUDICIAL RULES INVOLVED

Second Cir. L.R. 12.3

(a) Acknowledgment and Notice of Appearance Form. Within 14 days after receiving a docketing notice from the circuit clerk assigning a docket number and enclosing a copy of the appellate docket sheet, all parties must file the Acknowledgment and Notice of Appearance Form. Counsel of record listed on the form must be admitted in this court, or have pending an application for admission under LR 46.1(a) or (d). This form satisfies the requirement of FRAP 12(b).

(b) Notice of Appearance Form for Substitute, Additional, or Amicus Counsel. An attorney, other than the initial counsel of record, who appears in a case in any capacity on behalf of a party or an amicus curiae must file the Notice of Appearance Form for Substitute, Additional, or Amicus Counsel at the time the attorney enters the case.

(c) Failure to Comply. The appellant's failure to take any of the above actions may result in dismissal of the appeal. The appellee's failure to take any of the above actions may bar the appellee from being heard on the appeal.

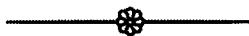


INTRODUCTION

The U.S. Court of Appeals for the Second Circuit should have followed the rules of the Court for default Judgment, when a party does not appear before the Court according to the rules of the Court. The Order by U.S. Court of Appeals for the Second Circuit is an inexcusable judicial error because the never responded on time. The U.S. Court of Appeals made an error and applied the law incorrectly by ignoring the fact the U.S. District Court dismiss the case without merit base on judicial bias and inexcusable neglect. The U.S. Court of Appeals should have issued an order of default judgment since the respondent failed to respond after the application for enforcement was filed and no notice of appearance according to Cir Rules U.S. Court of Appeals for the Second Circuit, rule 12.3(a) and 12.3(c).

The U.S. Court of Appeals accepted the error of the U.S. District Court for the Second Circuit when it should of overturn the U.S. District Court error in judgment. The U.S. Court of Appeals denied petitioner's right to petition and due process because the case has jurisdiction for appeal, the inexcusable neglect of the U.S. Court of Appeals diminishing the guiding foundation for the Judicial System, that the rule of law matters and to obstruct the rule of law would derail the guiding principles of foundation the Judicial System was built on.

This petition is submitted to the Supreme Court as a result of the U.S. Court of Appeals for the District Court of Columbia applied the law incorrectly, denial of First Amendment Right to Petition, error, mistake, inexcusable neglect, and public interest for U.S. Court of Appeals hold anyone accountable for violation of Human Rights, Constitutional and Federal Laws. The right to due process and fair judicial review should not be congested or disregarded by the U.S. Court of Appeals for the Second Circuit and pray the Supreme Court reinstate the importance of the integrity of the Judicial System.



STATEMENT OF THE CASE

On March 29, 2023, the petitioner filed a complaint in U.S. District Court for Eastern District of New York on behalf of himself against Westside Donut Huntington Ventures LLC, who discriminated against the petitioner, subjected to a Human Rights, Civil Rights violation and served a food with a toxic substance that of harm the life of the plaintiff. The U.S. District Court of the Eastern District of New York dismiss the lawsuit without merit and denied the defendant opportunity to appear. The petitioner appealed the ruling to U.S. Court of Appeals for the Second Circuit, to overturn the errors of the U.S. District Court but the errors was ignored by the U.S. Court of Appeals for the Second Circuit and affirmed the U.S. District Court improper ruling, when jurisdiction was proper under 28 U.S. Code § 1291, 28 U.S. Code § 1292 and 28 U.S. Code § 1295 to Order Default Judgment. The petitioner prays the Supreme Court overturn the errors of U.S. Court of Appeals for the Second Circuit and reinstate the petitioner's due process and apply the law correctly. Most importantly to maintain the integrity of the Judicial System and set a precedence to ensure that rule of law matters and to make sure this never ever happens to someone else in the future. The Writ of Certiorari is before the Supreme Court on the merit of U.S. Court of Appeals for the Second Circuit applied the law incorrectly, denied due process, First Amendment Right to Petition, unfair judicial review, error, mistake, inexcusable neglect, and public interest. The rules that govern the Courts matter, one set of rules for everyone before the U.S. Court of Appeals and no one or entity is above the law.



REASONS FOR GRANTING THE PETITION

Petitioner contends that the Supreme Court should grant Writ of Certiorari to review this case base on the inexcusable error of the U.S. Court of Appeals for the Second Circuit. The U.S. Court of Appeals applied the law incorrectly, unfair judicial review, denial of First Amendment Right to Petition, error, mistake, and inexcusable neglect. The U.S. Court of Appeals decision on this case was flawed based on judicial error and failed to adhere to laws that govern the Court. The petitioner filed the lawsuit to seek justice and fair judicial review, based on the oath of service taken by every Judge in the United States in all U.S. Districts. The U.S. Court of Appeals denying the petitioner's due process when proper jurisdiction exist is grave injustice by U.S. Court of Appeals for the Second Circuit. Regardless, if the petitioner is "Pro Se", the First Amendment Right to Petition and fair judicial review should not be obstructed the U.S. Court of Appeals and prays the Supreme Court grant a review and correct the improper application of the law and set a precedence even a "Pro Se" has the right to a fair judicial review.

I. U.S. DISTRICT COURT APPLIED THE LAW INCORRECTLY

The U.S. Court of Appeals for the Second Circuit applied the law incorrectly by not ruling for default judgment, when the case was appeal under jurisdiction of 28 U.S. Code § 1291, 28 U.S. Code § 1292 and 28 U.S. Code § 1295. Even early in the Judicial System the Supreme Court stated, "one system of law in one portion of its territory and another system in another,

provided it did not encroach upon the proper jurisdiction of the United States, nor abridge the privileges or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws in the same district, nor deprive him of his rights without due process of law", see *Maxwell v. Dow*, 176 U.S. 581, 598 (1900). The U.S. Court of Appeals should apply one system of law for every case present before the Court, U.S. Court of Appeals failure to Order default judgment, was an error of judgment and applied the law incorrectly to not issue default judgment since the respondent did not appear before the U.S. Court of Appeals. "The Court has no authority to enact rules that "abridge, enlarge or modify any substantive right." *Ibid.*

Pursuant to this authority, the Court promulgated the Federal Rules of Civil Procedure to "govern the procedure in the United States district courts in all suits of a civil nature", see *Cooter Gell v. Hartmarx Corp.*, 496 U.S. 384, 391 (1990). The U.S. Court of Appeals applied the law incorrectly; the proper ruling of the case is within the U.S. Court of Appeals jurisdiction and to obstruct the Court jurisdiction is applying the law incorrectly and judicial error. The Supreme Court stated, "cases must be acknowledged to have diluted the absolute purity of the rule that Article III jurisdiction is always an antecedent question, none of them even approaches approval of a doctrine of "hypothetical jurisdiction" that enables a court to resolve contested questions of law", see *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 101 (1998).

The Supreme Court stated when "the District Court has jurisdiction of this cause. It was error to dismiss the complaint for lack of jurisdiction, see *Doud*

v. Hodge, 350 U.S. 485, 487 (1956). The Supreme Court stated, “acting within its proper jurisdiction, has given the parties a full and fair opportunity to litigate federal claims, and thereby has shown itself willing and able to protect federal rights”, see *Allen v. McCurry*, 449 U.S. 90, 104 (1980).

The U.S. Court of Appeals error in ruling of lack of jurisdiction was not only a mistake but violated the petitioner’s federal rights for due process and a fair judicial review. The Supreme Court stated, “traditional purpose of confining a district court to a lawful exercise of its jurisdiction or to compel it to exercise its proper jurisdiction”, see *Will v. United States*, 389 U.S. 90, 95 n.2 (1967). The Supreme Court stated, even if such difficulties may not be insuperable, vexing problems of courts with proper jurisdiction of the law must be applied correctly, see *Foley Bros. v. Filardo*, 336 U.S. 281, 299 (1949). The Supreme Court stated, “That judicial power, as we have seen, is the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction”, see *Liberty Warehouse Co. v. Grannis*, 273 U.S. 70, 75 (1927). The U.S. Court of Appeals had proper jurisdiction failed to apply the law accordingly when proper jurisdiction existed, that failure to apply the law correctly was judicial an error.

II. DENIED FIRST AMENDMENT RIGHT TO PETITION

The freedom of petition clause guarantees that Americans can petition the government, entity or individual to redress their grievances without fear of retribution or punishment. This was an important principle valued by the Founding Fathers, in orchestrating the laws that govern the Court. The freedom of petition clause played an important role in the Civil

Rights petition for every person in America. At the earliest occurrence the Judicial System, the Court stated,

“It is a right which the party can claim; and if he shows himself entitled to it on the facts in the record, there is no discretion in the Court to withhold it. A refusal is error—judicial error—which this Court is bound to correct when the matter, as in this instance, is fairly before it. That the order asked for by petitioner should have been granted, seems to us very clear”

See Railroad Company v. Soutter, 69 U.S. 510, 522 (1864).

Past precedence of the Court stated, “We hold that such claims are properly analyzed under the Fourth Amendment’s “objective reasonableness” standard, rather than under a substantive due process standard”, *see Graham v. Connor*, 490 U.S. 386, 388 (1989). Have the Right to Petition and due process is guiding foundation for the Judicial System, to obstruct that would derail the guiding principles of foundation the Judicial System is built on. Past Courts stated, “we recognized that the right of access to the Courts is an aspect of the First Amendment Right to Petition”, *see Bill Johnson’s Restaurants, Inc. v. Nat’l Labor Relations Bd.*, 461 U.S. 731, 741 (1983). The obstruct of the Right to Petition by past Court stated, “The Right to Petition the Courts cannot be so handicapped”, *see Railroad Trainmen v. Virginia Bar*, 377 U.S. 1, 7 (1964). “It must be underscored that this Court has recognized the “Right to Petition as one of the most precious of the liberties safeguarded by the Bill of

Rights”, see *Lozman v. City of Riviera Beach*, 138 S.Ct. 1945, 1954 (2018).

The U.S. Court of Appeals ruling for dismissal hindered the petitioner’s right to due process before the Court, therefore depriving the petitioner’s First Amendment Right to Petition. Past Court stated, “to any original party or intervenor of right seeking relief from extraordinarily prejudicial interlocutory orders, including the right to appeal from a final judgment and the Right to Petition”, see *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 385 (1987). The U.S. Court of Appeals impeded the petitioner’s Right to Petition is an abuse of the Judicial System guidelines for providing a fair judicial review for a petitioner, therefore the Supreme Court should not allow this abuse of the Judicial System and set a precedence to correct it. According to past Court, “the right of access to the Courts, the Right to Petition is substantive rather than procedural and therefore “cannot be obstructed, regardless of the procedural means applied”, see *Franco v. Kelly*, 854 F.2d 584, 589 (2d Cir. 1988).

Most importantly past Court stated, “The right of individuals to pursue legal redress for claims that have a reasonable basis in law or fact is protected by the First Amendment Right to Petition and the Fourteenth Amendment right to substantive due process”, see *Snyder v. Nolen*, 380 F.3d 279, 291 (7th Cir. 2004). Nothing in the First Amendment itself suggests that the First Amendment Right to Petition for redress of grievances only attaches when the petitioning takes a specific form, see *Pearson v. Welborn*, 471 F.3d 732, 741 (7th Cir. 2006). It is by now well established that access to the Courts is protected by the First Amendment Right to Petition for redress of grievances, see

Wilson v. Thompson, 593 F.2d 1375, 1387 (5th Cir. 1979). "Meaningful access to the Courts is a fundamental Constitutional Right, grounded in the First Amendment Right to Petition and the Fifth and Fourteenth Amendment due process clauses", see *Johnson v. Atkins*, 999 F.2d 99, 100 (5th Cir. 1993).

The United States Supreme Court has recognized "the Right to Petition as one of the most precious of the liberties safeguarded by the Bill of Rights", see *Lozman v. City of Riviera Beach*, 138 S.Ct. 1945 (1994). The Supreme Court should look at the gravity of allegations and to deny a "Pro Se" petitioner from having due process before the Court and the severity of the allegations by the respondent and denying the petitioner's right to due process and implies the respondent is above the law in noiseless way. The Supreme Court stated, "At its core, the right to due process reflects a fundamental value in our American constitutional system. Our understanding of that value is the basis upon which we have resolved", see *Boddie v. Connecticut*, 401 U.S. 371, 374 (1971).

The Supreme Court should examine more precisely the weight of First Amendment Right to Petition by the Constitution, the calamity of the Federal Laws violations presented by the petitioner who is filing "Pro Se" the opportunity to present the case before the Court to grant the petitioner's due process. First, the risk of an erroneous deprivation of the law since the respondent never responded or gave notice of appearance to the U.S. Court of Appeals, therefore the U.S. Court of Appeals should have issued an order of default judgment since the respondent failed to respond in 14 days after the application for enforcement was filed and no notice of appearance according to *Cir*

Rules U.S. Court of Appeals for the Second Circuit, rules 12.3(a) and 12.3(c). According to *Circuit Rules U.S. Court of Appeals for the Second Circuit rule 12.3(c)* the U.S. Court of Appeals failed to enter judgment for the relief requested based on default judgment. The petitioner's due process was denied, and the concept of the Judicial System is to provide a fair judicial review, the U.S. Court of Appeals ruling based on error to deny the petitioner's right to due process in applying the law correctly and First Amendment Right to Petition.

III. ERRORS, MISTAKES, AND INEXCUSABLE NEGLECT

The U.S. Court of Appeals ignored the rules of the Court and made an error in discernment to dismiss the case, which was inexcusable neglect. The U.S. Court of Appeals clearly had jurisdiction to correct the U.S. District Court for the District of Columbia, not doing so was inexcusable error and neglect. The errors, mistakes and inexcusable neglect by the U.S. Court of Appeals denied the petitioner a fair judicial review.

In *United States v. Olano*, 507 U.S. 725 (1993), the U.S. Supreme Court established three conditions that must be met before a Court may consider exercising its discretion to correct the error. First, there must be an error that has not been intentionally relinquished or abandoned. Second, the error must be plain—that is to say, clear, or obvious. Third, the error must have affected the petitioner substantial rights. To satisfy this third condition, the petitioner ordinarily must show a reasonable probability that, but for the error, the outcome of the proceeding would have been different, as noted in *Cameron v. Seitz*, 38 F.3d 264 (1994).

The U.S. Court of Appeals actions was a clear error and effected the outcome of the judicial proceeding. Prior Courts stated, "Remedies for judicial error may be cumbersome but the injury flowing from an error generally is not irreparable, and orderly processes are imperative to the operation of the adversary system of justice", see *Maness v. Meyers*, 419 U.S. 449, 460 (1975). Prior Court have stated "the Court must view the evidence in a light most favorable to the party against whom the motion is made and give that party the benefit of all reasonable inferences", see *Cameron v. Seitz*, 38 F.3d 264 (1994). The Supreme Court stated,

"The equitable powers of Courts of law over their own process to prevent abuse, oppression, and injustice are inherent and equally extensive and efficient, as is also their power to protect their own jurisdiction. . . . In whatever form, the remedy is administered, whether according to a procedure in equity or at law, the rights of the parties will be preserved and protected against judicial error, and the final decree or judgment will be reviewable, by appeal or writ of error, according to the nature of the case"

See *Krippendorf v. Hyde*, 110 U.S. 276, (1884).

"U.S. Const. amend. XIV does not, in guaranteeing due process, assure immunity from judicial error. It is only miscarriages of such gravity and magnitude that they cannot be expected to happen in an enlightened system of justice, or be tolerated by it if they do, that cause the Court to intervene to review, in the name of the federal constitution"

See Stein v. New York, 346 U.S. 156 (1953). The Supreme Court stated, “It is a right which the party can claim”; and if he shows himself entitled to it on the facts in the record, there is no discretion in the Court to withhold it.

A refusal is error—judicial error—which this Court is bound to correct when the matter, as in this instance, is fairly before it”, *see Milwaukie & M. R. Co. v. Soutter*, 69 U.S. 510 (1864). The Supreme Court stated,

“That risk of unnecessary deprivation of liberty particularly undermines the fairness, integrity, or public reputation of judicial proceedings in the context of a plain guidelines error because guideline’s miscalculations ultimately result from judicial error, as the District Court is charged in the first instance with ensuring the Guidelines range it considers is correct”

See Rosales-Mireles v. United States, 138 S.Ct. 1897 (2018).

Prior Court stated, “The doctrine of stare decisis allows us to revisit an earlier decision where experience with its application reveals that it is unworkable,” *see Payne v. Tennessee*, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991). The U.S. Court of Appeals errors on the case is unworkable because the ruling on the case was not applied to rules and law that governs the Court. Prior Court ruling on errors stated,

“Experience is all the more instructive when the decision in question rejected a claim of un-constitutional vagueness. Unlike other judicial mistakes that need correction, the error

of having rejected a vagueness challenge manifests itself precisely in subsequent judicial decisions: 'a black hole of confusion and uncertainty' that frustrates any effort to impart "some sense of order and direction",

See United States v. Vann, 660 F.3d 771, 787 (CA4 2011).

The U.S. Court of Appeals did not follow the law correctly, created a sense of confusion the Supreme Court can provide clarity on how the Court should follow the rule of law that govern the judicial system and reverse the U.S. Court of Appeals Order and apply the law correctly. "It is a judge's duty to decide all cases within his jurisdiction that are brought before him. . . . His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation", *see Forrester v. White*, 484 U.S. 219, 227, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988). Prior Court have provided insights on evaluating judicial neglect, "To determine whether any of a judge's actions were taken outside his judicial capacity, the "nature of the act" is examined, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity", *see Cameron v. Seitz*, 38 F.3d 264 (1994). Prior Court stated, "judicial error, is the requirement that judges write opinions providing logical reasons for treating one situation differently from another", *see Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 235 (1987).

The U.S. Court of Appeals never provided any explanation or logical reasons for treating the petitioner differently when apply the rules that govern the Court.

Prior Court stated, “Rule 60(b)(1) “may be invoked for the correction of judicial error, but only to rectify an obvious error of law, apparent on the record”, see *United States v. City of New Orleans*, 947 F.Supp.2d 601, 624 (E.D. La. 2013). Past Court stated, ““facially obvious” judicial error in its decision and finds that the factual and legal conclusions in the court’s order are “arguable.” Therefore, relief is unavailable under Rule 60(b)(1)”, see *Watson v. City of Kansas City, Kansas*, Civil Action No. 99-2106-CM, at *18 (D. Kan. Apr. 12, 2002) The U.S. Court of Appeals applied the law different, made an error and ignore the rules of the Court, therefore inexcusable neglect by the U.S. Court of Appeals. The U.S. Court of Appeals actions on the case were uncharacteristic of sound legal judgment and is inexcusable neglect by the U.S. Court of Appeals and doing so is to deny the petitioner a fair judicial review. The U.S. Court of Appeals made a mistake, error and inexcusable neglect in applying the law correctly, by not issuing default judgment since the respondent did appear before the U.S. Court of Appeals, and the ruling was an error without clear legal merit or respect for the rule of law that govern the U.S. Court of Appeals.

IV. PUBLIC INTEREST

It’s in the public interest that the Supreme Court apply the law correctly as a result of the respondent failure to appear before the U.S. Court of Appeals or gave notice of appearance to the U.S. Court of Appeals therefore the rule of law must be applied accordingly based on the rules of the U.S. Court of Appeals. According to the rules of the Court non-appearance in the U.S. Court of Appeals is subjected to default judgment or provide the petitioner a full fact-finding judi-

cial review. It's in the public interest the Supreme Court maintained the integrity of the Judicial System because the rule of law matters, and law-abiding straightforward rulings must always be considered when applying the law and to ensure that errors of the U.S. Court of Appeals are corrected and maintain judicial equality. It's in the public interest the Supreme Court set a precedence that the confidence in the Court is upheld to protect the public interest strong faith in judicial process, that the Court ruling is based on fact of the law, not judicial errors. The Supreme Court stated, "the balancing exercise in some other case might require us to make a somewhat more precise determination regarding the significance of the public interest and the historical importance of the events in question", see *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 175 (2004). It's in the public interest the Supreme Court intervene in matter that would set a good precedence for the public interest to have faith in the Judicial System that any errors of the lower Courts will be corrected by the Supreme Court and prevent judicial bias or inexcusable neglect. It is not mere avoidance of a trial, but avoidance of a trial that would imperil a substantial public interest, that counts when asking whether an order is "effectively" unreviewable or hinder the public interest to prevent the similar allegations in this case, see *Will v. Hallock*, 546 U.S. 345, 353 (2006). When factors are profoundly serious violation of law by a party it's the Court duty to consider the effect of the public interest, in the public interest and should be construed liberally in furtherance of their purpose and, if possible, so as to avoid incongruous results, see *B. P. Steamboat Co. v. Norton*, 284 U.S. 408 (1932).

In applying any reasonableness standard, including one of constitutional dimension, an argument that the public interest demands a particular rule must receive careful consideration, the effect of obliviousness to factors that would protect the public interest would be a stain to the Court function in the society, see *Camara v. Municipal Court*, 387 U.S. 523, 533 (1967). It's in the public interest that Supreme Court does not let the errors of the U.S. Court of Appeals stand to deteriorate what guiding principles the Judicial System stands for, that the Court is impartial, rulings are base fact of the law and judicial honor to apply the law correctly.



CONCLUSION

The petitioner prays a writ of certiorari is granted to correct the errors of the U.S. Court of Appeals for the Second Circuit. The petitioner prays the Supreme Court correct the judicial error and inexcusable neglect by the U.S. Court of Appeals for the Second Circuit and provide the petitioner due process in applying the law correctly and reinstate the integrity of the Court by Ordering default judgment. Most importantly, set a strong precedence for the future that any abuse of Human Rights, Civil Rights and Federal Laws should never be allowed by any person or entity and hold them accountable for their actions. The rule of law applies to everyone, and no one is above the law.

Respectfully submitted,

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