No. 23-659

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

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

The Second Circuit District Court did not err in granting the Respondent permission to file an Appellee's brief pursuant to Rule 12.3(a), because the Court acted within its sound discretion. Respondent properly and timely requested an extension to file its Appellee brief, which was granted by the Second Circuit District Court as routine procedure. Additionally, a Writ of Certiorari is typically granted when there is a conflict among lower Courts on a particular issue, or when a case has special urgency, for example when it pertains to a matter of significant national importance. Petitioner's within Writ of Certiorari is frivolous in nature and does not represent a conflict between the lower Court's and certainly does not raise an issue of national importance and therefore should not be considered by the Court.

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INTRODUCTION

The Respondent Westside Donut Huntington Ventures LLC ("Westside Donut" or "Respondent"), by and through undersigned counsel, Brooks & Berne PLLC, respectfully submits this Brief for the Respondent Westside Donut, in the above-captioned matter. Westside Donut respectfully requests that this Honorable Court affirm the United States Court of Appeals for the Second Circuit's dismissal of the underlying case filed by Petitioner Harold Jean-Baptiste ("Jean-Baptiste" or "Petitioner").

STATEMENT OF THE CASE

Respondent disagrees with Petitioner's description of the factual background in this matter, and we provide a more accurate recitation herein.

Pro Se Petitioner Jean-Baptiste appeals the decision of the United States Court of Appeals for The Second Circuit District Court ("Second Circuit District Court"), which affirmed the District Court for the Eastern District of New York's ("Eastern District"), April 27, 2023, Memorandum and Order, dismissing Petitioner's Amended Complaint on its own initiative as frivolous. Jean-Baptiste filed an Amended Complaint on April 17, 2023, in which he alleged violations of the U.S. Constitution, federal laws, and tort laws, largely by non-parties, and the Respondent. (Eastern District Docket Entry No. 6). The Petitioner challenges the Second Circuit District Court's November 20, 2023 Summary Order affirming the Eastern District's *sua sponte* dismis-

sal of his Amended Complaint, on the belief that the Second Circuit District Court "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)." (Petitioner's Writ of Certiorari pg. 11). The crux of Petitioner's Writ of Certiorari is the Eastern District's dismissal of his Amended Complaint and the Second Circuit District Court's affirmation of such decision.

In its Memorandum and Order dated April 27, 2023, the Eastern District certified that any appeal would not be taken in good faith pursuant to 28 U.S.C. 1915(a)(3), by Final Judgment entered on May 19, 2023. (Eastern District Docket Entry No. 12). Upon Petitioner's representation in response to an Order to Show Cause that he would never file another case in the Eastern District, the Court declined to issue an injunction against future filings. (Eastern District Docket Entry No. 12). On May 23, 2023, Petitioner filed a Notice of Appeal of the Eastern District's Final Judgment entered on May 19, 2023. (Eastern District Docket Entry No. 13). Due to the frivolity of Petitioner's appeal, Respondent did not appear in the underlying case prior to the Eastern District's Orders, which were entered on April 27, 2023, and May 19, 2023.

Respondent wholly objects to Petitioner's "Statement of The Case", specifically, wherein he alleges that Respondent provided Petitioner with "a food

with a toxic substance" in violation of the Human Rights and Civil Rights laws. (Petitioner's Writ of Certiorari pg. 13). Respondent agrees with the Eastern District and Second Circuit District Court's respective decisions dismissing Petitioner's Amended Complaint as frivolous in nature. Respondent emphasizes that Petitioner presently has six pending Writs of Certiorari before the United States Supreme Court, citing nearly identical facts and legal arguments as the within Writ of Certiorari. Of note, this Honorable Court denied Petitioner's Writ of Certiorari on October 2, 2023, despite the Respondent's waiver of appearance. Petitioner's additional Writs of Certiorari serve as proof that he has a history of filing frivolous appeals before various Courts, including the United States Supreme Court, despite the lower Court's consensus on all prior decisions and dismissals. In his Writ of Certiorari, the Petitioner cites inapplicable case law followed by zero factual or procedural analysis making it difficult to ascertain such baseless arguments.

REASONS FOR DENYING CERTIORARI

i. THE SECOND CIRCUIT DISTRICT COURT APPLIED THE LAW CORRECTLY IN DENYING PETITIONER'S CLAIMS

Petitioner incorrectly argues in his Writ of Certiorari that the Second Circuit District Court applied the law incorrectly when it denied his appeal on jurisdictional grounds. (Petitioner's Writ of Certiorari

pg. 16). Despite such arguments, according to the Second Circuit District Court's November 20, 2023, Summary Order, Petitioner's appeal and Amended Complaint were dismissed due to his frivolous and meritless allegations, not merely on jurisdictional grounds. Petitioner incorrectly argues that the Second Circuit District Court should have granted default judgment with respect to the Respondent "since the respondent did not appear before the U.S. Court of Appeals". (Petitioner's Writ of Certiorari pg. 15).

Despite such allegations, Respondent timely filed a Notice of Appearance on September 15, 2023, and timely filed Appellee brief on its behalf on October 18, 2023, pursuant to the Court's extension. (Second Circuit Docket Entry No. 42-1; 69-1). The Second Circuit District Court considered the Appellant's appeal from a judgment of the Eastern District based on the Appellant's initial moving papers and the Respondent/Appellee's Principal and Response Brief. Respondent fully appeared in the Second Circuit District Court proceeding, therefore any arguments that default judgment should have been granted are wholly misplaced. The Second Circuit District Court denied Petitioner's appeal without hearing oral argument, within its sound discretion because like the Eastern District and the lower appellate Court's, the Second Circuit District Court held that Petitioner's underlying claims are frivolous.

Additionally, Petitioner's jurisdictional argument cited in his first argument point, is once again mis-

placed and irrelevant. While Respondent argued in its Appellee brief that the Second Circuit District Court lacked jurisdiction, the Court's November 20, 2023 Summary Order does not address the jurisdictional arguments and instead affirms the Eastern District's decision dismissing the Petitioner's Amended Complaint. Similarly, prior to issuing its November 20, 2023 Summary Order, the Second Circuit District Court affirmed the *sua sponte* dismissal of another lawsuit filed by the Petitioner, in which he alleged that a grocery store colluded with the FBI, as factually frivolous. *See Jean-Baptiste v. Almonte Stream Food Corp.*, No. 23-438, 2023 WL 7293777, at 1.

ii. THE SECOND CIRCUIT DISTRICT COURT HAD THE INHERENT AUTHORITY TO DISMISS PETITIONER'S AMENDED COMPLAINT ON THE GROUNDS OF FRIVOLITY

A District Court has the inherent authority to dismiss a complaint *sua sponte*, even when the plaintiff has paid the filing fee, when it is clear that the claims are frivolous. *See Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 364 (2d Cir. 2000) (per curiam); *Pillay v. INS*, 45 F.3d 14, 16-17 (2d Cir. 1995) (per curiam). Neither an indigent defendant nor one possessing the necessary means to pay filing fees . . . has any right to require the Court to entertain a frivolous case or claim. *Pillay*, 45 F.3d at 16 (quoting *United States v. Fay*, 247 F.2d 662 (2d Cir. 1957)). This inherent authori-

ty is "wholly aside" from any statutory warrant to dismiss an appeal or petition as frivolous, when the petition presents no arguably meritorious issue for the Court's consideration. *Id.* at 17. In deciding whether a case is frivolous, a court will utilize the same standards it reviews when deciding a case under the federal in forma pauperis statute, 28 U.S.C. § 1915(e). *Pillay*, 45 F.3d at 17. A complaint may be frivolous when the factual contentions are clearly baseless. *Livingston v. Adirondack Beverage Co.*, 141 F.3d at 437. The term "frivolous, when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." *Neitzke v. Williams*, 490 U.S. at 325.

Examples of frivolous and baseless petitions are those that describe fantastic or delusional scenarios. *Id.* Respondent offers an analogous case which presents a similar "delusional scenario" for this Honorable Court's interpretation and consideration. In *Johnson v. Guiliani*, No. 97-Civ-9528, 1998 WL 30274 (S.D.N.Y. 1998), the plaintiff alleged that the Central Intelligence Agency was attempting to murder him "through clandestine means." *Id.* at 1. He specifically claimed the CIA "microwaved him in his sleep and poisoned his city water supply and his food with a toxic precipitate." *Id.* The District Court dismissed the plaintiff's complaint for failure to state a claim because the plaintiff did not allege facts showing a denial of equal protection, and because it included "clearly frivolous and delusional claims." *Id.* at 2. (*citing Pillay v. INS*, 45 F.3d 14, 16-17 (2d Cir. 1995)).

In the underlying case, Petitioner alleges that he suffered personal injuries due to intentional and discriminatory "food poisoning" when he consumed food from a Dunkin Donuts, on October 10, 2022. Petitioner cites a host of conspiracy theories as to why he was "poisoned", including claims that the FBI was involved in the "intentional poising". Petitioner grounds his claims under various Constitutional provisions including but not limited to 42 U.S.C. § 1981 (equal rights under the law), and 42 U.S.C. § 1986 (action for neglect to prevent), 21 U.S.C. § 342(a) (adulterated foods), 21 U.S.C. § 343 (misbranded food), 21 U.S.C. § 350g (hazard analysis and risk-based preventative controls), and 21 U.S.C. § 346 (tolerances for poisonous or deleterious substances in foods).

In accordance with the Court's rules and procedures, Petitioner was able to take his baseless and improper Federal Court claims all the way up the United States Supreme Court, despite countless denials, proving that his First Amendment right to petition was not denied simply because his appeals were denied as frivolous.

iii. THE SECOND CIRCUIT DISTRICT COURT DID NOT ERR, MAKE MISTAKES OR COMMIT ANY FORM OF NEGLECT BY EXERCISING ITS DISCRETION IN AFFIRMING THE EASTERN DISTRICT'S DECISION DISMISSING THE PETITIONER'S FRIVOLOUS AMENDED COMPLAINT

Rather than committing an act or error or neglect as Petitioner suggests, the dismissal by the Eastern District was proper because Jean-Baptiste's claims were barred by the doctrines of res judicata and collateral estoppel. *See Thistlethwaite v. City of New York*, 362 F.Supp. 88, 91 (S.D.N.Y. 1973), *aff'd*, 497 F.2d 339 (2d Cir. 1974). The Court may take judicial notice of public records, such as prior judicial proceedings. *Blue Tree Hotels Inv. (Canada), Ltd. v. Starwood Hotels & Resorts Worldwide, Inc.*, 369 F.3d 212, 217 (2d Cir. 2004) (affirming dismissal of complaint); *Antoine v. City Mortgage, Inc.*, 2017 WL 1133354, *2 (E.D.N.Y. Mar. 24, 2017) (granting dismissal of claim).

The decisions of the Eastern District and the Second Circuit District Court, both cite to lawsuits involving the Petitioner which were previously dismissed as frivolous. (Eastern District Docket Entry No. 9) First, in *Jean-Baptiste v. U.S. Dep't of Justice*, No. 22-CV-8937 (LTS), 2022 WL 17540544 (S.D.N.Y. Oct. 27, 2022), the district court dismissed a case in which Jean-Baptiste complained of food poisoning at the Dunkin Donuts location in Huntington Station, New York, on October 10, 2022.

Second, in *Jean-Baptiste v. U.S. Dep't of Justice*, 22-CV-6718 (PKC) (LB) (E.D.N.Y. Dec. 8, 2022), the district court dismissed a case in which Jean-Baptiste claimed that the FBI ordered an employee at the Dunkin Donuts location in Huntington Station, New York, on October 10, 2022. The Eastern District mentioned several other cases filed in New York by Jean-Baptiste against other parties alleging government conspiracy theories to poison or harm him. *See Jean-Baptiste v. Almonte Stream Food Corp.*, No. 23-CV-1384 (PKC)(LB), 2023 WL 2587668, at 1 (E.D.N.Y. Mar. 21, 2023) (alleging that Key Food Supermarket in Valley Stream, New York conspired with an FBI Special Agent and placed a toxic substance in his food causing him to go to an emergency room); *Jean-Baptiste v. U.S. Dep't of Justice*, No. 22-CV-1861, 2022 WL 3027010, at *1 (D.D.C. June 24, 2022) (dismissing claims that FBI agents tried to kidnap him while out on a walk); *Jean-Baptiste v. U.S. Dept. of Justice*, No. 22-CV-8318 (LTS) (S.D.N.Y. Sept. 28, 2022). Jean-Baptiste has also filed lawsuits alleging government conspiracy outside of New York. *See Jean-Baptiste v. U.S. Dept. of Justice*, No. 22-CV-1420 (D.D.C. May 18, 2022); *Jean-Baptiste v. U.S. Dept. of Justice*, No. 22-CV-897 (D.D.C. Mar. 29, 2022); *Jean-Baptiste v. U.S. Dept. of Justice*, 21-CV-2221 (D.D.C. Aug. 17, 2021). (D.C. Docket Entry No. 9) These cases filed by Jean-Baptiste have uniformly been dismissed as frivolous. (Eastern District Docket Entry No. 9). Simply because the Second Circuit Court strongly considered and evaluated the prior decisions and denials, does not

mean that it committed any errors or neglect by denying the Petitioner's frivolous and litigious claim.

iv. IT IS NOT IN THE PUBLIC'S INTEREST FOR THE UNITED STATES SUPREME COURT TO WASTE VALUABLE TIME AND RESOURCES ON PETITIONER'S FRIVOLOUS CLAIMS

There is no argument that this high and mighty Court should consider a frivolous and delusional claim, which has previously been adjudicated by the lower Appellate Courts, as a matter of public interest. Respondent goes as far as arguing that it is against public interest for the United States Supreme Court to entertain a personal injury food poisoning conspiracy matter which has been quashed by all lower Courts. Granting Petitioner's Writ of Certiorari is a waste of judicial resources on all fronts. Respondent has already had to expend significant time and resources defending Petitioner's frivolous claims.

CONCLUSION

For all the aforementioned reasons, the petition for writ of certiorari should be denied.

Dated: March 14, 2024

Respectfully submitted,

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