

23-6761 ORIGINAL
No. 24-

In the Supreme Court of the United States

Feifei Gu, Petitioner

v.

Sergio Jimenez



ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Feifei Gu

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Pro Se Petitioner

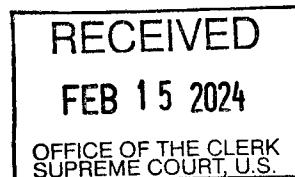


TABLE OF CONTENTS

QUESTIONS PRESENTED.....	3
LIST OF PARTIES.....	4
RELATED PROCEEDINGS	4
BACKGROUND.....	5
JURISDICTION.....	6
TABLE OF AUTHORITIES.....	6
REASONS FOR GRANTING THE PETITION.....	7-10
1. The Second Circuit's Recent Ruling in <i>Carroll v. Trump</i> that Absolute Immunity Is Waivable Contradicted with the Ruling by Judge Eric R. Komitee in this Case.....	7
2. Absolute Immunity Cannot Be Decided Before Reaching the Merits.....	8
3. The Judge and Judicial Power are Indeed Separable	9
4. Petitioner Feifei Gu Should be Given a Chance to Amend Before the Complaint was Sua Sponte Dismissed.....	10
CONCLUSION.....	11
APPENDIX A Court of Appeals for the Second Circuit Decision.....	13
APPENDIX B EDNY Decision by Judge Eric Komitee.....	15-22
APPENDIX C Gu v. Jimenez 23 -CV-4569.....	24-82

Questions Presented

1. CAN THE COURT SUA SPONTE DISMISS THE CASE WHEN THE DEFENDANT AS A BROOKLYN HOUSING COURT JUDGE DID NOT EVEN ANSWER/RAISE IMMUNITY?
2. SHOULD COURT AWARD PETITIONER A CHANCE TO AMEND THE PLEADING BEFORE SUA SPONTE DISMISSING THE CASE?

LIST OF PARTIES

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

RELATED PROCEEDINGS

United States Court of Appeals (2nd Cir) (Appendix A) -

Feifei Gu v. Sergio Jimenez, No.23-1038 (11/22/23)

United States District Court (E.D.NY) (Appendix B) -

Feifei Gu v. Sergio Jimenez, No. 23-CV-4569 (06/22/23)

BACKGROUND

Petitioner started this case with an application for temporary restraining order against Respondent **Sergio Jimenez**. In the Complaint, Petitioner sued Respondent Sergio Jimenez, a Brooklyn Housing Court judge, for FRAUD.

The lower court judge Eric R. Komitee sua sponte dismissed Petitioner's Complaint and denied TRO as moot.

In the Second Circuit, hundreds and thousands of Complaint with Temporary Restraining Order against a judge were sua sponte dismissed reasoning that Judges have absolute immunity when Defendants (Judges) did not ever raise their defense.

This Petition is brought before this Court for review in an effort to correct the status quo of applying such a false standard in the Second Circuit.

JURISDICTION

The Court of Appeals for the Second Circuit entered its Decision on 11/22/23. The Court has jurisdiction under 28 U.S.C. § 1254(1).

TABLE OF AUTHORITIES

CASES

<i>Carroll v. Trump, Court of Appeals, 2nd Circuit 2023.....</i>	7
<i>Nixon v. Fitzgerald, 457 US 731 - Supreme Court 1982.....</i>	7,9
<i>Forrester v. White, 484 U.S. at 228, 108 S.Ct. 538.....</i>	8

STATUTES

28 U.S.C. § 1254(1).....	6
Federal Rule of Civil Procedure 12 (b) (6).....	7

I

The Second Circuit 's Recent Ruling in *Carroll v. Trump* that
Absolute Immunity Is Waivable Contradicted with the Ruling by
Judge Eric R. Komitee in this Case

This Case presents a similarly vexing question of first impression as in *Carroll v. Trump*: whether judicial immunity is waivable.

In *Carroll v. Trump*, the Court of Appeals for the Second Circuit ruled that Presidential Immunity is waivable and that Donald J. Trump waived the defense of presidential immunity by failing to raise it as an affirmative defense.

In *Nixon v. Fitzgerald*, 457 US 731 - Supreme Court 1982, the court had expressly analogized the immunity is recognized to judicial and prosecutorial immunity (both of which are waivable).

Absolute immunity did not erupt *sua sponte* from the separation of powers - absolute immunity for judges is not a constitutionally mandated jurisdictional limit on federal courts, instead, courts may apply immunity within its scope while recognizing it may be waived; Absolute immunity should be a merits defense under Federal Rule of Civil Procedure 12 (b) (6).

Therefore, Judge Eric R. Komitee should not *sua sponte* raise this defense for Respondent, a Brooklyn housing court judge, and dismiss Petitioner's Complaint.

II

Absolute Immunity Cannot Be Decided Before Reaching the Merits

Prior judicial opinions evince a supermajority understanding that judicial immunity goes to the merits, rather than jurisdiction.

Immunity is only for acts within the “outer perimeter” of Respondent Sergio Jimenez’s official functions. On the other hand, a judge’s “[a]dministrative decisions, even though they may be essential to the very functioning of the courts, have not similarly been regarded as judicial acts. *Forrester v. White*, 484 U.S. at 228, 108 S.Ct. 538.

In this situation, a more context-sensitive assessment of the challenged conduct of Respondent Sergio Jimenez is necessary before deciding that Sergio Jimenez had such immunity for his behaviors. Judge Eric R. Komitte apparently erred in failing to follow this.

III

The Judge and Judicial Power are Indeed Separable

Respondent Sergio Jimenez as a Brooklyn housing court judge may choose whether to raise judicial immunity or instead meet personal-capacity civil complaints on the merits.

In *Nixon v. Fitzgerald*, 457 US 731, Nixon sought to protect the president's autonomy, not diminish it by denying the president the ability to choose whether or not to defend himself or herself in a civil lawsuit in federal court.

Further, Separation of powers principle - as articulated by the Supreme Court - supports the view that judges may choose whether to raise judicial immunity or instead meet personal-capacity civil complaints on the merits.

Respondent Sergio Jimenez is amenable to Petitioner's Complaint against him in his private character as a citizen, and in his public character by impeachment. If Respondent Sergio Jimenez prefers that a court not pronounce on the outer limit of his official capacity or if he perceives some advantages to address a civil complaint on the merits, then the courts should not prohibit him from making that choice. Judge Eric R. Komitte apparently erred in failing to recognize this.

IV

Petitioner Feifei Gu Should be Given a Chance to Amend

Before the Complaint was Sua Sponte Dismissed

In this case, the Court sua sponte dismissed the Complaint when there was never any Answer or Motion ever filed by Respondent Sergio Jimenez. Petitioner had been prejudiced by the Court's sua sponte dismissal.

The lower court should award Petitioner a chance to amend the pleading or at least allow a chance for Petitioner to file a motion to amend before dismissing the Complaint, and if such chance is awarded, neither side would be prejudiced.

Conclusion

Judge Eric Komitte and Court of Appeals for the Second Circuit abused their discretion by arbitrarily circumscribing the court's jurisdiction while also forcing a decision on absolute immunity when Respondent **Sergio Jimenez** had never affirmatively asserted, and thus wrongfully dismissed Petitioner's Complaint. The Court also arbitrarily deprived Petitioner a chance to amend the Complaint.

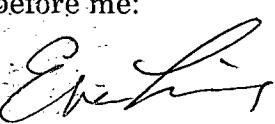
The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

Feifei Gu

02/12/24

Sworn to before me:


Eva Liang 2/12/24
Notary Public, State of New York
Reg. No. 01LI6436872
Qualified in Kings County
Commission Expires July 25, 2026