

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MARC FISHMAN,

Petitioner,

VS.

NEW YORK,

Respondent.

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*


The Petitioner asks leave to file the attached application for extension of time to file petition for a writ or certiorari and the writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Petitioner has been granted leave to proceed *in forma pauperis* in the following courts in past litigation:

1. United States Supreme Court;
2. United States Court of Appeals for the Second Circuit; and
3. United States District Court for the Southern District of New York.

Petitioner's declaration in support of this motion is attached hereto.

Dated: September 25, 2023



Caner Demirayak, Esq.
Law Office of Caner Demirayak, Esq., P.C.
Attorneys for Petitioner
300 Cadman Plaza West, 12th Floor

Brooklyn, New York 11201

718-344-6048

caner@canerlawoffice.com

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Marc Fishman, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Self-employment	\$ <u>2500</u>	\$ <u>0</u>	\$ <u>2500</u>	\$ <u>N/A</u>
Income from real property (such as rental income)	\$ <u>1100</u>	\$ <u>N/A</u>	\$ <u>1100</u>	\$ <u>N/A</u>
Interest and dividends	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Gifts	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Alimony	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Child Support	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Disability (such as social security, insurance payments)	\$ <u>200</u>	\$ <u>N/A</u>	\$ <u>400</u>	\$ <u>N/A</u>
Unemployment payments	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Public-assistance (such as welfare)	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Other (specify): <u>No Fyuk</u> <u>Acct</u>	\$ <u>500</u>	\$ <u>N/A</u>	\$ <u>500</u>	\$ <u>N/A</u>
Total monthly income:	\$ <u>4,300</u>	\$ <u>0</u>	\$ <u>4500</u>	\$ <u>0</u>

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Mac Fishman	3200 Northside	1/1/22 to 12/31/22	\$ 2500/month
Licensed Rec	Ave Apt G	1/1/22 to 12/31/22	\$ 2500/month
Essex Bank	Beverly, MA 01963	1/1/23 to Present	\$ 2500/month

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A No Spouse			
		N/A	\$ N/A

4. How much cash do you and your spouse have? \$ 5,000.00
 Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Bank	\$ 5,000	\$ N/A
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

- Home Value 0 (rent)
- Other real estate Value \$170,000 (Apt I rent)
- Motor Vehicle #1 Year, make & model None Value _____
- Motor Vehicle #2 Year, make & model None Value _____
- Other assets Description 10,000 personal property Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ N/A	\$ N/A
N/A	\$ N/A	\$ N/A
N/A	\$ N/A	\$ N/A

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
None	No	Spouse

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 1200.00	\$ N/A
Are real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 200.00	\$ N/A
Home maintenance (repairs and upkeep)	\$ N/A	\$ N/A
Food	\$ 700	\$ N/A
Clothing	\$ 400	\$ N/A
Laundry and dry-cleaning	\$ 200	\$ N/A
Medical and dental expenses	\$ 2000	\$ N/A

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 800	\$ N/A
Recreation, entertainment, newspapers, magazines, etc.	\$ 100	\$ N/A
Insurance (not deducted from wages or included in mortgage payments)		
Homeworker's or renter's	\$ 0	\$ N/A
Life	\$ 150	\$ N/A
Health	\$ 1200	\$ N/A
Motor Vehicle	\$ 0	\$ N/A
Other: _____	\$ 0	\$ N/A
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ 250	\$ N/A
Installment payments		
Motor Vehicle	\$ 0	\$ N/A
Credit card(s)	\$ 1250	\$ N/A
Department store(s)	\$ 0	\$ N/A
Other: _____	\$ 0	\$ N/A
Alimony, maintenance, and support paid to others	\$ 0	\$ N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 350	\$ N/A
Other (specify): <u>child suppt</u>	\$ 3300	\$ N/A
Total monthly expenses: * *	\$ 10,200	\$ N/A

* * * Cannot Afford. Pending Proceeding to Lower Spmt
 * * * Medical Bills Before Reimbursement

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

None Expected

10. Have you paid - or will you be paying - an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? N/A

If yes, state the attorney's name, address, and telephone number:

None

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? N/A

If yes, state the person's name, address, and telephone number:

N/A

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Disabled from CAR Accident. Have Post Concussion Syndrome, Traumatic Brain Injury, Occipital Nerve Pain, Severe Obstructive Sleep Apnea. Cannot work due to recent Cancer and Surgery/Rehabilitation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 9/25, 2023



(Signature)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MARC FISHMAN,

Petitioner,

VS.

NEW YORK,

Respondent.

On Petition for a Writ of Certiorari
to the Court of Appeals of the State of New York

**PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF NEW YORK**

Law Office of Caner Demirayak, Esq., P.C.
Attorneys for Petitioner
300 Cadman Plaza West, 12th Floor
Brooklyn, New York 11201
718-344-6048
caner@canerlawoffice.com

September 25, 2023

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States as Circuit Justice for the Second Circuit:

Petitioner, Marc Fishman, respectfully applies to this Court for an order extending the time in which to file his petition for writ of certiorari from October 23, 2023 until December 22, 2023, a period of sixty (60) days. This Court's jurisdiction is based upon 28 U.S.C. §§ 1254(1) and 1257(a). The Office of the Attorney General of the State of New York was notified of this Application pursuant to this Court's Rule 29(4)(c) and 28 U.S.C. § 2403(b). In support of this Application, Mr. Fishman sets forth the following:

1. Mr. Fishman was convicted at a jury trial of criminal contempt in the second degree and attempted criminal contempt in the second degree on January 28, 2020. Three and a half years have passed, and Mr. Fishman has not been sentenced on the jury's verdict. In response to an October 15, 2021 post-trial verdict motion to set aside the verdict, the prosecutor conceded in its November 12, 2021 response to the motion that the verdict was legally defective due to the inconsistent findings as to a completed and inchoate offense. On December 1, 2021 the trial judge denied the motion. The trial judge then went further and barred any further motions by Mr. Fishman without his permission.

2. On June 9, 2022 without notifying Mr. Fishman or his defense attorney, the trial judge issued a final order of protection, which among other things prohibited any and all communication with his children, at least one of whom is an adult and who were not involved in the underlying criminal allegations and revoked Mr. Fishman's right to bear arms.

3. The trial court did not hold a hearing on the issuance of the order of protection. The trial court falsely stated that Mr. Fishman and his attorney were present in court and served with the order of protection. However, neither Mr. Fishman nor his defense attorney received a copy of the order of protection.

4. Around a month later when Mr. Fishman sought to participate in one of his disabled children's section 504 meetings at his school, Mr. Fishman was first made aware of the June 9, 2022, order of protection by an attorney for the school.

5. In light of the prior order barring any motions without permission, on July 5, 2022, Mr. Fishman's attorney wrote to the trial judge requesting leave to file a motion to modify the incorrectly issued final order of protection. The request was not responded to and permission to file a motion was not granted.

6. On or about July 9, 2022, Mr. Fishman filed a timely notice of appeal to the Second Department of New York. Mr. Fishman also filed a motion to stay enforcement of the order of protection.

7. On December 1, 2022 the Clerk of the trial court sent correspondence to Mr. Fishman and his counsel confirming that no court proceeding was held on June 9, 2022.

8. On February 17, 2023 the Second Department *sua sponte* dismissed the appeal and denied the motion to stay as academic.

9. On April 28, 2023 the trial court reissued the same unconstitutional order of protection and crossed-out some language and the date from the prior

order. It again falsely stated the defendant was in court and personally served with the order of protection. No prior notice or an opportunity to be heard was provided.

10. Mr. Fishman's application for leave to appeal to the Court of Appeals of the State of New York was denied on May 10, 2023.

11. On July 25, 2023 Mr. Fishman's request for reconsideration by the Court of Appeals of the State of New York was denied. A letter from Disability Rights New York as amicus support was rejected by the Court of Appeals.

12. Mr. Fishman's case raises exceedingly important questions regarding the minimum due process guarantees afforded under the Fourteenth Amendment when denied substantial property and liberty interests, i.e., the right to a parental relationship. See *Matthews v. Eldridge*, 424 U.S. 319, 331-332 (U.S. 1976); *Fuentes v. Shevin*, 407 U.S. 67, 81 (U.S. 1972); *Santosky v. Kramer*, 455 U.S. 745, 753 (U.S. 1982); *Quillon v. Walvott*, 434 U.S. 246, 255 (U.S. 1978). New York Criminal Procedure Law § 530.12 relating to orders of protection violates the minimum due process requirements under the United States Constitution as it does not provide for an adequate pre-deprivation hearing nor any post-deprivation remedy.

13. As this specific case demonstrates, under New York's statutory scheme an individual can be denied minimum due process and be left without any post-deprivation remedy. In fact, the statute does not provide for such relief and there is no right or ability to obtain permission to seek judicial review of the issuance of an order of protection under that statute. This due process violation exacerbated Mr. Fishman's inability to meaningfully participate in the defense of his case due to his

hearing and cognitive disabilities which were not accommodated. *See Ake v. Oklahoma*, 470 U.S. 68, 76 (U.S. 1985) (explaining that a criminal defendant must be able to meaningfully participate in his defense to avoid deprivation of due process).

14. Considering the due process violation, in 2021 an intermediate appellate court of New York set forth the requirement for an immediate hearing on a temporary order of protection in *Matter of Crawford v. Ally*, 197 A.D.3d 27 (1st Dep't. 2021). This decision displays the repugnancy of the statute to the due process guarantee under the United States Constitution. On its face, the statute does not provide for notice, an opportunity to be heard or a post-deprivation remedy. The statute even states that a violation of its requirement to set forth the reasons for the issuance of an order of protection does not impact the validity of such order.

15. Here, the trial court did not notify Mr. Fishman of the intent to issue the order of protection, did not provide for a hearing, and barred any motions to seek a post-deprivation remedy. The trial court went further and did not serve the order of protection on Mr. Fishman or his attorney, despite falsely claiming to have done so. Mr. Fishman would then be notified of the order when attempting to exercise his fundamental right of parenting. Mr. Fishman's appeals would then be dismissed as New York law does not allow for appellate review of these orders of protection.

16. Mr. Fishman now seeks a writ of certiorari for the Court of Appeals of the State of New York with respect to its denial of the motion for reconsideration of

its dismissal of the application for leave to appeal. This Court's jurisdiction to grant a writ of certiorari arises pursuant to 28 U.S.C. 1257(a) as New York's Criminal Procedure Law § 530.12 is being challenged as constitutionally repugnant.

17. As per this Court's Rule 13.3, a petition for writ of certiorari is due in this case on or before October 23, 2023, or 90 days after the denial of reconsideration by the Court of Appeals of New York. This time is insufficient to allow Petitioner's attorney to adequately prepare the petition and address these exceptionally important issues. As such, petitioner's counsel requires additional time to carefully and properly prepare the petition.

18. Petitioner's counsel is also faced with numerous other obligations in other cases which prevents counsel from being able to devote the adequate time and attention that a petition for a writ of certiorari requires. The other obligations are as follows:


- a. An Opposition and Cross-Motion on September 29, 2023 in the Supreme Court of the State of New York, Kings County in *Balaban v Orlovskiy*;
- b. Significant Discovery on October 5, 2023 in the United States District Court for the Southern District of New York in *Chabrier v Correctional Officer Martinez, et al.*;
- c. An Opposition and Cross-Motion on October 11, 2023 in the Court of Claims of the State of New York in *Mallet v State of New York*;

- d. An Opposition and Cross-Motion on October 11, 2023 in the Court of Claims of the State of New York in *Mondon v State of New York*;
- e. Court Ordered Mediation on October 12, 2023 in the United States District Court for the Eastern District of New York in *Salters v New York City Transit Authority, et al.*;
- f. Amended Complaint on October 16, 2023 in the United States District Court for the Southern District of New York in *Chabrier v Correctional Officer Martinez, et al.*;
- g. Summons and Complaint on October 16, 2023 in the Supreme Court of the State of New York, Kings County in *Wahab v City of New York*;
- h. Amended Complaint on October 24, 2023 in the United States District Court for the Eastern District of New York in *Hall v PO Todd Jackson*;
- i. An Opposition on November 6, 2023 in Supreme Court of the State of New York, Nassau County in *Reichenbach v Garden City Schools, et al.*;
- j. Factual Discovery Deadline on December 8, 2023 in the United States District Court for the Eastern District of New York in *Dettori v Government Employees Insurance Company*; and
- k. Counsel of Record also handles a caseload of approximately 110 litigations with conferences, hearings and trials on a weekly basis in matters pending in federal and state civil and criminal courts in New York.

19. I have spoken with counsel for the Westchester County District Attorney's Office who does not oppose this request for an extension of time.

Wherefore, in the interest of justice and for good cause shown, counsel for Mr. Fishman respectfully requests that this Court extend the current October 23, 2023 deadline until December 22, 2023.

Respectfully submitted,



Caner Demirayak, Esq.
Attorneys for Petitioner
Law Office of Caner Demirayak, Esq., P.C.
300 Cadman Plaza West 12th Floor
Brooklyn, New York 11201
Phone: 718-344-6048
Caner@canerlawoffice.com