No. 24-128

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In The
Supreme Court of the United States

CAF DOWLAH,
Petitioner,
vs.
AMERICAN ARBITRATION ASSOCIATION (AAA), et al.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

A. Does a conflict exist between the Federal Arbitration Act (9 U.S.C. §§ 1-16) and the Supreme Court decision in *Butz v. Economou*, 438 U.S. 478 (1978), regarding arbitral immunity, and does granting absolute immunity to arbitrators and arbitration agencies, when they are allegedly involved in fraud, violate the Fourteenth Amendment?

B. Are the doctrines of res judicata and collateral estoppel subject to the broad discretion of presiding judges, and can they be applied when only one of four defendants was a party in a prior action, with the subject matter and relief sought in the subsequent case being entirely different?

C. Is a judgment valid if a court issues a pre-written decision following a sham hearing, and do appellate courts violate constitutional rights by failing to overturn or remand judgments allegedly tainted by procedural flaws, judicial errors, and misconduct?

List of Parties and Related Cases

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Related Cases

1. *Dowlah v City Univ. of N.Y.* 2019 NY Slip Op 32694(U). New York County Supreme Court, Index No.: 653103/2019.

2. *Dowlah v. City Univ. of N.Y.*189 A.D.3d 533, 138 N.Y.S.3d 27, 2020 N.Y. Slip Op. 7491 (N.Y. App. Div. 2020).

3. *Dowlah v. American Arbitration Association (AAA) et al.* New York State Supreme Court Index No. 653197/2022.

4. *Dowlah v. American Arbitration Association (AAA) et al.* 2023 N.Y. Slip Op. 71806 (N.Y. App. Div. 2023).

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Caf Dowlah, *pro se* Petitioner, a citizen of the United States and the State of New York, residing at 66-36 Yellowstone Blvd. #4C, Forest Hills, New York 11375, respectfully petitions this court for a writ of certiorari to review the judgment of the New York State Court of Appeals.

V. OPINIONS BELOW

The decision by the New York Court of Appeals denying the Petitioner's direct appeal is reported as *Caf Dowlah v. American Arbitration Association (AAA), et al.* The New York State Court of Appeals decided and entered the decision on June 20, 2024. The Order and the entry of the judgment with New York State County Supreme Court are attached at **Appendix A.**

VI. JURISDICTION

The Petitioner's Appeal for hearing to the New York State Court of Appeals was denied on June 20, 2024. The Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1257, having timely filed this petition for a writ of certiorari within ninety days of the decision of the New York State Court of Appeals.

VII. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution:

> Due process. Citizens cannot be subject to criminal prosecution or punishment without due process. This can include procedural due process, which requires the government to provide notice and a hearing before taking away a person's life, liberty, or property. It can also include substantive due process, which protects certain constitutional rights from government interference in areas like marriage, privacy, or liberty of contract.

The Sixth Amendment to the United States Constitution:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The Fourteenth Amendment to the United States Constitution:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutes

Federal Arbitration Act (FAA) (9 U.S.C. §§ 1-16).
New York CPLR 3211(a)(4)
New York CPLR 7511 (b)

VIII. STATEMENT OF THE CASE

A. Background of the matter

The Petitioner served as a professor of economics at the City University of New York (hereinafter "CUNY") from 2003 to 2019. During his tenure at CUNY, he held the position of assistant professor from 2003 to 2008 and as associate professor with tenure from 2009 to 2019. In 2014, CUNY denied his application for promotion to full professor, allegedly in retaliation for his outspoken character.

Following this denial, a Select Committee was appointed in 2016, under the CUNY-PSC collective bargaining agreement (hereafter "CBA"). Four years after the denial of promotion, on May 23, 2018, the Select Committee rejected his petition without providing any explanation. The Petitioner, experiencing significant emotional distress, sent a harsh email to the committee members. Within a week, CUNY initiated disciplinary proceedings to terminate his employment.

Per CBA provisions, the matter was then placed before an arbitration hearing scheduled for February 28, 2019. Prior to the hearing, CUNY proposed a one-semester suspension to resolve the matter, but the Petitioner's counsel pleaded for a one-month suspension as a more proportionate penalty for the alleged offense.[1]

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[1] See New York State Courts Electronic Filing (henceforth NYSCEF) Doc. No. 28, Index No. 653197/2022 (*Dowlah v. AAA et al.*,), p. 10.

But arbitrator Deborah Gaines, appointed by American Arbitration Association (henceforth AAA) in association with Professional Staff Congress (henceforth "PSC") and CUNY without any input from the Petitioner, issued her Award on March 7, 2019, recommending the Petitioner's termination.[2]

The arbitration proceedings have no records other than the Arbitration Award, which was evidently tainted by numerous procedural irregularities, arbitral misconduct, and factual inaccuracies. Gaines also had at least two of her previous awards overturned by courts for baseless determinations, but she failed to disclose her dubious background to the AAA, PSC, or the Petitioner.[3]

B. Procedural background

The Petitioner, through a law firm, sought to vacate the arbitration award in New York County Supreme Court (*Dowlah v. City Univ. of N.Y.*, 2019 NY Slip Op 32694(U), under New York CPLR §7511, arguing that the award was irrational, exceeded the arbitrator's authority, and violated public policy.[4]

But the petition was dismissed by a judge, believed to be a friend of Gaines (see **Appendix B**),

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2 *Ibid.*, *Dowlah v. AAA et al.*, Exhibit A.

3 *Ibid.*, *Dowlah v. AAA et al.*, pp. 19-32.

4 See NYSCEF Doc. No. 10, *Dowlah v. CUNY*, Index # 653103-2019.

who found the award neither shocking nor unsupported, despite the arbitrator's decision being a verbatim reproduction of CUNY's exaggerated charges, and the Award perpetrated numerous falsehoods and misinterpretation of facts.[5]

The Petitioner appealed to the New York State Appellate Court, but the appeal was rejected (*Dowlah v. City Univ. of N.Y.*, 189 A.D.3d 533, 138 N.Y.S.3d 27, 2020 N.Y. Slip Op. 7491 (N.Y. App. Div. 2020)) (see **Appendix C**). In its decision, Appellate Court also made a baseless claim that Petitioner had "received numerous prior warnings before 2015 about disrespectful and intemperate writings to staff and coworkers" (*ibid.*, p. 1, ¶2). In reality, the Petitioner received no warnings before 2015 and only one warning, in the form of a Letter of Reprimand, in 2016 during his 16-year tenure at CUNY.[6]

This current matter arises from the Petitioner's second filing with the New York County Supreme Court (*Dowlah v. AAA et al.*, Index No. 653197/2022). The Petitioner alleged that AAA had engaged in fraud, deceit, and willful concealment of critical information to induce a business contract; Gaines had engaged in deceitful conduct and moral culpability; and CUNY and PSC willfully aided and abetted the fraudulent schemes of AAA and Gaines

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[5] See NYSCEF Doc. No. 2, New York County Supreme Court, *Dowlah v. AAA et al.*, Index # 653197/2022, pp. 19-27.

[6] See NYSCEF Doc. No. 8, Appellate Brief, *Dowlah v. AAA et al.*, Index #2023-00150.

during the 2019 disciplinary action which resulted in the Petitioner losing his job, career, and reputation. [7]

The Court dismissed the complaint on the grounds of *res judicata* and *collateral estoppel*, referring to the first action, although three of the four parties in this matter were not parties to the first action, and the subject matter as well as outcome sought was totally different (see **Appendix D**). This judgment also exhibited traits of classic Cowboy Justice. In an online hearing held in December 21, 2022, the judge admitted to not even seeing crucial pleadings of the Plaintiff. Then the judge read out a pre-written judgment after allowing parties to present their arguments in a conspicuously disorganized and chaotic hearing.[8]

The Petitioner appealed the decision to Appellate Division of New York State Supreme Court, Docket No. 2023-00150, seeking to overturn this fraudulent judgment as well as the judgments rendered in his initial case (in New York County Supreme Court, Index No. 653103/2019 and the First Department in Docket No. 2019-04388). The Petitioner contended that these judgments were also tainted by judicial misconduct and constituted a miscarriage of justice, necessitating intervention and

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[7] See NYSCEF Doc. No. 1, New York County Supreme Court, *Dowlah v. AAA et al.*, Index # 653197/2022.

[8] See NYSCEF Doc. No. 49 and Transcripts of Hearing in Appellate Brief, *Dowlah v. AAA et al.*, Index #2023-00150, pp. 315-228.

reversal by the appellate court.[9] The Appellate Court however rejected the appeal (see **Appendix E**).

Upon rejection of the appeal, Petitioner filed a Motion with the New York State Court of Appeals (Mo. No. 2024-145). In this Motion (see **Appendix F**), Petitioner argued that the Appellate Court erroneously dismissed his request to set aside the judgment in *Dowlah v. AAA et al.* by misapplying the doctrines of res judicata and collateral estoppel. The Petitioner contended that the lower court improperly applied res judicata to a case that was neither identical to nor decisive for the second action. Specifically, while the first action concerned the rationality of an arbitral award, the second action was based on allegations of fraud and deceit, with only one of the four defendants being a party to the first action. Additionally, Petitioner argued that the judgment in the second action was unjust, alleging that the judge conducted a sham hearing while holding a pre-written judgment.

The Petitioner also argued that the lower courts misinterpreted and misapplied the doctrine of arbitral immunity by granting absolute immunity to the Defendants. He contended that the Federal Arbitration Act (FAA) grants courts the authority to vacate, modify, and review fraudulent arbitration awards to protect victims from irrational decisions, due process violations, and arbitrator misconduct. Furthermore, the Petitioner argued that it was improper for the lower courts to grant blanket

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[9] See Appellate Division-First Department, New York State Supreme Court, *Dowlah v. AAA et al.,* Docket No. 2023-00150, NYSCEF Doc. 10, pp.315-338.

immunity to Defendant AAA, which knowingly hired an arbitrator with a history of being repeatedly condemned by courts for baseless decisions. This hiring decision contradicted the AAA's claims on its website that it hires only the most qualified arbitrators with impeccable integrity.[10]

The Petitioner also appealed to overturn the judgments rendered in his initial case and the subsequent appellate review by the First Department on the grounds of judicial misconduct and miscarriage of justice. He asserted that his constitutional rights to fair and impartial justice were violated, and that the Court of Appeals has an obligation to correct judicial errors, address miscarriages of justice by lower courts, and hold judges accountable for judicial misconduct and fraudulent adjudications.

The New York State Court of Appeals however denied the petition on June 20, 2024 without giving any reason (see **Appendix A**).

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[10] See NYSCEF Doc. No. 2, Index No. 653197/2022 (*Dowlah v. AAA et al.*,), Exhibit B.

IX. REASONS FOR GRANTING THE WRIT

A. To avert erroneous grants of absolute immunity to rogue arbitrators and arbitration agencies, this Court should clarify the apparent conflict between the provisions of the Federal Arbitration Act (FAA) and the *Butz v. Economou*, 438 U.S. 478 (1978).

The central issue in this matter concerns the apparent contradiction between the Federal Arbitration Act (FAA) and the Supreme Court's decision in *Butz v. Economou*. The FAA grants courts the authority to expedite judicial review to confirm, vacate, or modify questionable arbitration awards. In contrast,[11] *Butz v. Economou* provides "absolute immunity" to arbitrators. This contradiction is stark: while the FAA offers remedies for fraudulent arbitration awards, *Butz v. Economou* holds that arbitral awards are sacrosanct and that arbitrators are immune from liability, even when the awards contain legal or factual errors.

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[11] The Federal Arbitration Act (FAA), 9 U. S. C. §§9–11, provides expedited judicial review to confirm, vacate, or modify arbitration awards. Under §9, a court "must" confirm an award "unless" it is vacated, modified, or corrected "as prescribed" in §§10 and 11. Section 10 lists grounds for vacating an award, including where the award was procured by "corruption," "fraud," or "undue means," and where the arbitrators were "guilty of misconduct," or "exceeded their powers." Under §11, the grounds for modifying or correcting an award include "evident material miscalculation," "evident material mistake," and "imperfect[ions] in [a] matter of form not affecting the merits." *Hall Street Associates, L. L. C. v. Mattel, Inc.*, 552 U.S. 576 (2008).

This contradiction provides a safe haven for biased judges, allowing them to selectively decide which side to support. If they wish to uphold an arbitration award, they can invoke the *Butz v. Economou*'s doctrine of absolute immunity for arbitrators, arguing that parties voluntarily chose arbitration and thus lack standing to object to any unfair or unjust proceedings. Conversely, if they decide to favor the victims of a fraudulent arbitration award, they can cite the provisions of the FAA (9 U.S.C. §§ 9–11), which provide for judicial review of arbitration awards.

The doctrine of absolute immunity for arbitrators in the United States dates back to *Jones v. Brown*, 54 Iowa 74 (1880), which shielded arbitrators against claims of liability, even in instances of extreme negligence or intentional misconduct. The Supreme Court reaffirmed this essentially erroneous doctrine in *Butz v. Economou by* asserting that this immunity remains intact even when arbitrators violate constitutional rights of parties involved, regardless of whether such violations are intentional and knowing.

This unrestrained legal shield allows rogue arbitrators to act without fear of liability, even in cases of willful or knowing constitutional rights violations (see *Barr v. Matteo*, 360 U.S. 564 (1959), and *Spalding v. Vilas*, 161 U.S. 483 (1986). Such aberrant immunity to arbitrators, unique to the United States among civil law countries, is based on the erroneous assumption that an arbitrator is equivalent to a judge or judicial officer, which they

are not.[12] This approach categorically fails to recognize the contractual nature of an arbitrator's role and disregards the fact that professionals in similar fields can be held civilly liable for breaching contractual obligations.[13]

Worse still, Collective Bargaining Agreements (CBAs) often mandate "compulsory arbitration" in labor disputes, compelling employees to accept arbitration outcomes even when their consent to the process has not been explicitly sought or obtained. Such a mandated arbitration process further undermines the foundational principles of justice and fairness inherent in the arbitration system.

The Supreme Court however never explicitly addressed the issue of absolute immunity for arbitrators since *Butz v. Economou.* In *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496 (5th Cir. 2000), however, the Court introduced the concept of "procedural unconscionability" and suggesting that courts could review excessively one-sided agreements and scrutinize arbitration agencies that design unfair agreements.

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12 *See* Martinez-Fraga, Pedro J., "The Transformative Role of Precedent in International Arbitration." Available at https://www.nyujilp.org/wp-content/uploads/2024/05/Martinez-Fraga_56-1-291-310.pdf.

13 See Hilj-Hialsa. "The Civil Liability of Arbitrators: A Transition from Absolute to Qualified Immunity in the United States." https://journals.law.harvard.edu/ilj/2024/04/the-civil-liability-of-arbitrators-a-transition-from-absolute-to-qualified-immunity-in-the-united-states/.

In *Forrester v. White*, 484 U.S. 219 (1988), the Court, while not directly challenging immunity, underscored that arbitrators must act within their jurisdiction, suggesting immunity may not extend to actions beyond their authority. The Court asserted that officials seeking exemption from personal liability must justify such exemption based on overriding public policy considerations. It thus recognizes "qualified" immunity as an alternative to absolute immunity principles aligning with prior decisions in *Scheuer v. Rhodes*, 416 U.S. 232 (1974) and *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).[14]

But a significant deviation from the erroneous doctrine of absolute immunity to arbitrators occurred in *Baar v. Tigerman*, 140 Cal.App.3d 979 (Cal. Ct. App. 1983). Here the court declined to extend absolute immunity to an arbitrator who failed to deliver a timely award, stating, "...we hold that arbitral immunity does not extend to a private arbitration association for its administrative actions" (*ibid.*, at 981). The court overturned the trial court's ruling emphasizing that "arbitral immunity does not protect the sponsoring organization when the arbitrator is not immune from liability" (*ibid.*, at 986).

Baar v. Tigerman, thus, serves as a pivotal precedent, clearly distinguishing that arbitrators do not function as judges and arbitration does not

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[14] Notably, *Imbler v. Pachtman*, 424 U.S. 409, 428-429 (1976) also emphasized that the immunity of prosecutors from liability under § 1983 does not leave the public powerless to deter misconduct.

equate to a judicial proceeding, prompting the need for transitioning from absolute to qualified immunity for arbitrators. Such a shift would acknowledge the potential tension between absolute immunity and accountability, ensuring that arbitrators engaging in egregious misconduct could be subject to the forfeiture of their immunity.

In the instant matter, the arbitral award was challenged at New York County Supreme Court (*Dowlah v. CUNY*. Index No. 653103/2019) pursuant to CPLR §7511 on the grounds that the Award was irrational, shocks the conscience, the arbitrator clearly exceeded a specifically enumerated limitation on her authority, and the award violates a strong public policy. But the trial court dismissed the petition asserting that the award does not shock conscience and arbitrator's awards are sacrosanct (see *supra*, fn.2).

The provision under CPLR §7511, which allows for the vacatur or modification of arbitration awards on the grounds of "shocks the conscience," is inherently problematic in a racially and culturally diverse country like the United States. What "shocks the conscience" can obviously vary significantly across different racial and cultural backgrounds. This issue is further pronounced in a diverse society like New York City, where judges are often perceived as ill-qualified and politically motivated. Allowing such subjective judgments to be made by these judges is inherently and fundamentally unjust and unfair.

In the instant case, the same arbitrator's awards were set aside/remanded in at least two previous instances involving more egregious employee conduct.[15] However, the court refused to vacate the award in relation to this Petitioner, whose only infraction was sending an abrasive email to colleagues at distant campuses with whom he had no other contact. Furthermore, his email communication did not imply any tacit or explicit threat and did not break any laws or constitute any recognizable legal offense. Surprisingly, the verdict did not shock the conscience of appellate court judges as well.

The Court should reconsider *Butz v. Economou*, which has enabled dishonest judges to harm victims of fraudulent arbitration by denying them the protections granted by the FAA, under the guise of adhering to the Supreme Court's doctrine of absolute immunity for arbitrators and arbitration agencies. Instead, the Court should extend only qualified immunity to arbitrators and arbitration agencies, thereby accommodating the mandates of the FAA.

Furthermore, the Court should invalidate the "rationality" and "shocks the conscience" provisions of New York CPLR §7511 and overturn *Dowlah v. City Univ. of N.Y.*, 2019 NY Slip Op 32694(U), which relied on such highly subjective interpretations of these imprecise and irrational legal concepts.

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[15] *See Matter of Wright v. New York City Tr. Auth.* (2018); and *Matter of Gabriel v. New York City Dept. of Educ.*, (2009).

B. The Court should revisit the judicial doctrines of res judicata and collateral estoppel to protect ordinary citizens from the adverse consequences that can arise when these doctrines are incorrectly applied by lower courts.

In the matter of *Dowlah v. AAA et al.*, the trial court dismissed the complaint based on the doctrines of res judicata and collateral estoppel (see **Appendix E**). The court noted, "It appears that this complaint is just a new version of the complaints that have gone before against these defendants. Words have been removed, words have been added, but it's basically the same transaction" (see **Appendix F**, p.16, ¶2). The New York Appellate Court readily affirmed the judgment (see **Appendix G**).

However, this judgment sharply contradicted the underlying facts. The cause of action in this matter was fraud and deceit, and no such case had ever been filed by this petitioner against any of these defendants. Moreover, only one of the four defendants in this action was a party to the previous action.

The judgment is also clearly baseless as, for res judicata to apply, "it must be established that the issue in the prior action is identical to, and thus decisive of, the issues to be determined in the current action" (*Kossover v. Trattler*, 82 A.D.2d 610; *Doherty v. Cuomo*, 76 A.D.2d 14, 15). The application of collateral estoppel was also erroneous. For collateral estoppel to apply, a) the issues must be

identical in both actions (*Kaufman v Lilly & Co.*, 65 NY2d 449, 455); b) the identity of the issues must be such that "a different judgment in the second [action] would destroy or impair rights or interests established by the first" (*Schuykill Fuel Corp. v Nieberg Realty Corp.*, 250 NY 304, 307); and c) there must be a final judgment on the merits of the claim (*Bannon v. Bannon*, 270 N.Y. 484, 1 N.E.2d 975 (N.Y. 1936)). None of these elements applied to this matter.

Moreover, two lawsuits arising from a common transaction or occurrence are not necessarily sufficient to warrant dismissal on the grounds of res judicata or collateral estoppel under New York law. New York CPLR 3211(a)(4) is not satisfied unless the "relief sought" in the two actions is "the same or substantially the same" (*White Light Productions*, 231 AD2d at 94). Two actions differ for the purposes of CPLR 3211(a)(4) when their respective claims arise out of different facts and seek relief to redress different wrongs (*Sprecher v Thibodeau*, 148 AD3d 654, 656 [1st Dept 2017]). This applies where the claims have been brought in different capacities or for different purposes (*Alpert v 28 Williams St. Corp.*, 63 NY2d 557, 568 n 4 [1984]), or when the relief sought in each action is different and the resolution of the former action may not necessarily resolve the instant claim (*Sprecher v Thibodeau*, supra; *Parker v Rich*, 140 AD2d 177, 178; *Corporate Inv. Co. v Mount Vernon Metal Prods. Co., Inc.*, 206 App Div. 273, 276).

Supreme Court precedents also imply that two lawsuits arising from a common transaction or

occurrence are not necessarily sufficient to warrant dismissal on the grounds of res judicata or collateral estoppel. In *Lucky Brand Dungarees Inc. v. Marcel Fashions Group Inc.*, 590 U.S._(2020), the Supreme Court ruled that because the trademark action at issue challenged different conduct and raised different claims from an earlier action between the parties, Marcel could not preclude Lucky Brand from raising new defenses. The ruling was clear: because the two actions challenged different conduct and raised different claims, the first litigation does not preclude a party from raising its defenses in the second litigation.

Similarly, in *Lance v. Dennis*, 546 U.S. 459 (2006), the Supreme Court ruled that the Rooker-Feldman doctrine does not bar federal court suits by plaintiffs who are in privity with a party that lost in state court. The Court reversed the District Court's ruling, stating that actions by nonparties to the state-court judgment are not prevented merely because they might be in privity with a party to the judgment.

In *Dupree v. Younger*, 598 U.S._(2023), the Supreme Court held that a party is not required to reassert a purely legal issue in a post-trial motion to preserve it for appeal. This reversed the Fourth Circuit's ruling that Neil Dupree was barred from challenging a district court's decision because he only raised the claim in a pretrial motion for summary judgment.

In *Taylor v. Sturgell*, 553 U.S. 880 (2008), the Supreme Court unanimously held that the dismissal

of a claim under the Freedom of Information Act (FOIA) by one individual does not preclude a second individual from pursuing a similar claim, even if they are represented by the same attorney and the claims involve the same project. The Court found that "nonparty preclusion" should be applied only in rare circumstances, vacated the D.C. Circuit's decision, and remanded the case for a new trial.

It is therefore unequivocal that the New York State Courts have fundamentally misconstrued and misapplied the doctrines of res judicata and collateral estoppel in the case of *Dowlah v. AAA et al.* This Court must vacate those erroneous judgments and establish clear, definitive standards for the application of these doctrines. This is imperative to protect innocent parties from the detrimental effects of incorrect and erroneous applications by lower courts across the nation.

C. The Court should revamp its guidance of lower courts to prevent the concealment of judicial errors and miscarriage of justice, which infringe upon citizens' constitutional right to a fair and impartial trial as guaranteed by the Constitutional Amendments.

The Fifth, Sixth, Seventh, and Fourteenth Amendments of US Constitution collectively safeguard various aspects of the court system, including procedural justice, the rights of the accused, the right to a speedy and fair trial, and the requirement of substantial evidence for conviction. Disregarding due process or concealing judicial

errors and misconduct thus fundamentally undermines the U.S. Constitution. In *Dowlah v. AAA et al.,* the New York State Court system has clearly violated the Petitioner's fundamental constitutional rights by flagrantly neglecting these essential constitutional principles.

In the matter of *Dowlah v. AAA et al.* (New York County Supreme Court, Index No. 653197/2022), the presiding judge exhibited a blatant disregard for the principles of due process and orchestrated a grave miscarriage of justice akin to "Cowboy Justice." The judge had a pre-written judgment prepared prior to the commencement of what can only be described as a sham hearing. He admitted that he had neither reviewed nor familiarized himself with the key pleadings of the Petitioner before the hearing (see **Appendix F**, p. 7, ¶¶ 1-3).

Moreover, the online hearing in the matter was characterized by chaotic procedural irregularities, leaving all parties confused about the nature of the proceedings and undermining the integrity of the judicial process.[16] The Appellate Court, however, readily validated this "Cowboy Justice" without any reservation whatsoever (see **Appendix G.**)

The Petitioner also sought annulment of the adjudications in *Dowlah v. CUNY* (New York County Index # 653103/2019 and First Department Docket #

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[16] Even an attorney, named "Boon," who was not involved this matter, took part in the hearing proceedings. See Appendix F, p. 23, ¶3.

2019-04388) on the grounds of judicial misconduct and a serious miscarriage of justice. The case involved arbitration to determine whether the penalty for the alleged infraction should be a one-month or one-semester suspension. However, an arbitrator of questionable qualifications and integrity capriciously recommended the dismissal of a tenured faculty member based solely on a contentious email, thus violating the principle of arbitration that aims for progressive discipline and compromise.

Despite clearly irrational nature of the arbitral decision, the trial court judge, who was later revealed to be a friend of the arbitrator, adjudicated that the decision did not offend his "conscious" and the award was somehow "well-reasoned" and "supported by the record" (**Appendix B**, p.4, ¶2). On appeal, the judges of the First Department (Docket # 2019-04388) not only validated this fraudulent judgment but also inserted their own false facts, claiming that Petitioner had received numerous warnings before 2015 for "disrespectful and intemperate writings" (**Appendix C**, p.1, ¶2). In reality, however, the Petitioner received only one Letter of Reprimand in 2016 during his 16-year tenure with CUNY. Both the trial and appellate court judges thus violated the Judicial Code of Conduct, unlawfully denying the Petitioner his constitutional right to fair and impartial justice from a court of law.

Notably, none of the Respondents, including Gaines, contested the Petitioner's assertion that the trial court judge had an ulterior motive to salvage

Gaines's arbitration career, which had been repeatedly condemned by the courts for baseless and irrational determinations. Furthermore, none of the Respondents disputed the Petitioner's claim that the judges of the New York State Appellate Court-First Department fabricated facts in their judgment in Case No. 2019-04388.

Still, the Appellate Court dismissed the case in its entirety betraying the judicial principle that "An appellate court has inherent and plenary authority to exercise its discretion to review a previous order obtained by means of misconduct by a party toward the court" (*Cohoes Realty Assocs. v. Lexington Ins.* 250 A.D.2d 420 (N.Y. App. Div. 1998)) and "the semblance of impropriety merits equal condemnation to the impropriety itself" (*Matter of Spector v State Commn. on Jud. Conduct, 47 NY2d 462, 466, 392 N.E.2d 552, 418 N.Y.S.2d 565 [1979]; Matter of Putorti (New York State Commn. on Jud. Conduct), 2023 N.Y. LEXIS 1756, *10).*

Unfortunately, the New York State Court of Appeals, which had a duty to correct judicial errors and miscarriage of justice of lower courts, also denied the Petitioner's appeal without giving any explanation (M 2024-145; **Appendix A**), defying its own precedents.

For instance, in landmark case, *People v. Crimmins* (36 N.Y.2d 230, 367 N.Y.S.2d 213, 326 N.E.2d 787 (N.Y. 1975)), the same Court established the principle that it has a duty to review factual determinations made by lower courts, even though its review power is generally limited to questions of

law. This precedent even implied that to ensure basic justice, the court could overturn lower court's decisions based on insufficient or deficient evidence, even if there were no legal errors during the trial.

In *People v. Huertas*, 75 N.Y.2d 487, 554 N.Y.S.2d 444, 553 N.E.2d 992 (N.Y. 1990), the same Court of Appeals reaffirmed its authority to correct errors even in the absence of an objection at trial. The court held that it could take corrective action if it identified a "fundamental error" that resulted in a miscarriage of justice.

Similarly, in *People v. Robinson*, 97 N.Y.2d 341, 741 N.Y.S.2d 147, 767 N.E.2d 638 (N.Y. 2001), the Court of Appeals affirmed its power to reverse lower court decisions on the grounds of legal error. It underscored its duty to ensure the correct application of the law, even if this involves overturning a verdict that may superficially appear just, relying on the precedent set by the Supreme Court in *Whren v. United States*, 517 U.S. 806 (1996).

Furthermore, in *People v. Glover*, 80 N.Y.2d 244, 439 N.E.2d 376, 57 N.Y.2d 61, 453 N.Y.S.2d 660 (1992), the Court of Appeals reiterated its role as a safeguard against injustice. The court determined that a procedural error at trial had substantially prejudiced the defendant's right to a fair trial. It emphasized the court's authority to rectify errors, even if not formally preserved for appeal, to prevent a miscarriage of justice. The court held that the procedural error had significantly impaired the

defendant's ability to present a defense, amounting to a miscarriage of justice.

New York State Court system has thus committed egregious errors at various levels and in multiple ways in respect to adjudication of the matters involving this Petitioner. In the case of *Dowlah v. CUNY* (New York County Index # 653103/2019), the judge's integrity was indisputably compromised. It was uncontested by Defendant Gaines that the judge was a good friend of hers. Despite this clear conflict of interest, the judge failed to recuse himself from the case, and moved ahead to deliver a fraudulent judgment.

In re Murchison, 349 U.S. 133, 136 (1955), the Supreme Court held that "no man is permitted to try cases where he has an interest in the outcome," ruling that a prior relationship requires recusal. The Court emphasized that due process standards do not require proof of actual bias but must prevent practices that pose a high risk of actual bias or prejudgment to adequately implement the Due Process Clause (*Withrow v. Larkin*, 421 U.S. 35, 47(1975).

Similarly, in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (1923), the Supreme Court ruled that the Due Process Clause requires recusal when a judge has a direct, personal, substantial, pecuniary interest in a case. The Court emphasized that due process requires recusal where the probability of actual bias is too high to be constitutionally tolerable (*Withrow v. Larkin*, 421 U.S. 35 (1975); *Tumey v. Ohio*, 273 U.S. 510 (1927).

In *Hurtado v. California*, 110 U.S. 516 (1884), the Court emphasized that the Fourteenth Amendment's Due Process Clause incorporates many protections found in the Bill of Rights, including the right to a fair trial. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), asserted that the Fourteenth Amendment's protections extend to all persons within U.S. jurisdiction, regardless of race, color, or nationality.

In respect to the Appellate Court's dismissal of pleadings for overturning lower court's judgments based on judicial errors and judicial misconduct, *Chapman v. California*, 386 U.S. 18 (1967) emphasizes that appellate courts have a critical role in reviewing lower court decisions and reversing them if there's a significant error that substantially affected the outcome.

It is evident that New York State Court system has deliberately disregarded its constitutional duty to correct judicial errors and misconduct in the lower courts, thereby gravely infringing upon the Petitioner's constitutional rights to a fair, impartial, and equitable adjudication. The Supreme Court, as the ultimate guardian of the U.S. Constitution, should overturn these judgments in accordance with the Fourteenth Amendment, which guarantees equal protection to all persons within U.S. jurisdiction. Issuing such an order will benefit all persons within the United States, irrespective of race, religion or color, ensuring that equal protection under the law is upheld.

X. CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment of New York Court of Appeals.

Dated: August 1, 2024.

Respectfully Submitted,

/s/ Caf Dowlah

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