24-6278

ORIGINAL

No.

In The

Supreme Court of the United States

IN RE SHERLY CADET,

Petitioner

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

PETITION FOR A WRIT OF MANDAMUS

28 U.S.C. §2403(a) may apply:
To the Solicitor General of the United States, Room 5616, Department of Justice
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Washington, D.C. 20530-0001

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Dated: December 30th, 2024

CIVIL RIGHTS CASE

QUESTIONS PRESENTED

The history of U.S. Supreme Court decisions demonstrate that a Court of Appeals should grant a pro se plaintiff IFP status, pursuant to 28 U.S.C. §1915(a), and should give said pro se litigant the right to be heard, just like a paying litigant, whenever meritorious issues are presented for review on appeal. Although I presented such questions on appeal, including a constitutional challenge to the interpretation of 42 U.S.C. §1981, the United States Court of Appeals for the Second Circuit declined to exercise jurisdiction over my appeal by dismissing it, pursuant to 28 U.S.C. §1915(e), without full briefings from all parties. This was an appeal based on racially motivated violence and intimidation in the workplace that was fully condoned by my former employer Alliance Nursing Staffing of New York, Inc. (Alliance) for years prior to the incidents described in my complaint to the United States District Court for the Southern District of New York.

The following questions are presented:

1. Whether the Second Circuit erred in dismissing my question on appeal that 42 U.S.C. §1981 protects against the deprivation of the security of person and property in the enforcement of contracts, whether or not race is a factor, pursuant to the Ninth, the Thirteenth, and the Fourteenth Amendments to the U.S. Constitution, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court, and is an important federal question decided by the Second Circuit

in a way that conflicts with *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. ___ (2023), *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), along with other relevant decisions by the U.S. Supreme Court.

2. Whether the Second Circuit erred in dismissing my question on appeal that the term "all persons" under 42 U.S.C. §1981, which was adopted from Part I of Section I of the Fourteenth Amendment, makes a claim for violation of civil rights because of one's 'national origin' cognizable under this statute, whether or not race is a factor, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court, and is an important federal question decided by the Second Circuit in a way that conflicts with *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), along with other relevant decisions by the U:S. Supreme Court.

3. If 42 U.S.C. §1981 covers issues other than "color or race", and considering that Section II of the Civil Rights Act of 1866 cites "involuntary servitude" (deprivation of the security of person and property – race not necessary under the Thirteenth Amendment) or "color and race" as impermissible purposes to violate a person's civil rights, whether the "but for race" standard established under *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 206 L. Ed. 2d 356 (2020) is still good law and whether this standard is unconstitutional pursuant to the Thirteenth

and Fourteenth Amendments to the U.S. Constitution as these parent constitutional amendments to §1981 require race neutrality, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court.

4. Whether the term "proceedings" under 42 U.S.C. §1981(a) includes all steps, actions, procedures (investigative and remedial) an employer must follow under both state and federal law in the making, enforcement, and termination of contracts in relation to the security of the person and property of any employee, and whether the deprivation of the equal right to these "proceedings" constitutes a violation of 42 U.S.C. §1981, which are important questions of federal law which have not been, but should be, settled by the U.S. Supreme Court.

5. Whether Section Ten of the Civil Rights Act of 1866 establishes an appeal as of right to the U.S. Supreme Court based on all questions of law raised specifically in relation to the construction of any Section of the Civil Rights Act of 1866, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court.

6. Whether the Second Circuit erred in dismissing my question on appeal that a pro se litigant has the right to be 'heard' prior to a final dismissal Order from a District Court, which is a decision that is in conflict with the decision of other U.S. Court of Appeals on the same important matter, and has so far departed from the accepted and usual course of judicial

proceedings, and which sanctioned such a departure by the District Court, as to call for an exercise of this Court's supervisory power.

7. Pursuant to the supervisory and rule-making powers of the U.S. Supreme Court under 28 U.S.C. § 2072(c), whether the Second Circuit erred in dismissing my question on appeal that the District Court's certification under 28 U.S.C. §1915(a)(3) brings up the whole 'action' (lawsuit) for review on appeal, which is a decision in conflict with the decision of other U.S. Court of Appeals on the same important matter, and which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court.

8. Whether an IFP litigant, proceeding under a 28 U.S.C. §1915(a)(3) certification, demonstrates non-frivolous issues on appeal upon supporting those issues raised with relevant and clear case law from the Circuit Court in question, from another Circuit Court, or from the U.S. Supreme Court, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court.

28 U. S. C. §2403(a) may apply and no Court in this case has certified to the Attorney General the fact that the constitutionality of an Act of Congress (42 U.S.C. §1981) was drawn into question.

PARTIES TO THE PROCEEDINGS

The following are parties to this proceeding in the United States Supreme Court:

1. Sherly Cadet was the Plaintiff in the case in the United States District Court for the Southern District of New York. Sherly Cadet was the appellant in the appeal in the United States Court of Appeals for the Second Circuit. Sherly Cadet is the petitioner for a 'writ of mandamus' in the United States Supreme Court.
2. Alliance Nursing Staffing of New York, Inc. was the defendant in the case in the United States District Court for the Southern District of New York. Alliance Nursing Staffing of New York, Inc. was the appellee in the appeal in the United States Court of Appeals for the Second Circuit.
3. The petition for a 'writ of mandamus' is respectfully directed at the United States Court of Appeals for the Second Circuit.

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II. Whether the Second Circuit erred in dismissing my question on appeal that the term "all persons" under 42 U.S.C. §1981, which was adopted from Part I of Section I of the Fourteenth Amendment, makes a claim for violation of civil rights because of one's 'national origin' cognizable under this statute, whether or not race is a factor, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court, and is an important federal question decided by the Second Circuit in a way that conflicts with *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), along with other relevant decisions by the U.S. Supreme Court. 21

III. If 42 U.S.C. §1981 covers issues other than "color or race", and considering that Section II of the Civil Rights Act of 1866 cites "involuntary servitude" (deprivation of the security of person and property – race not necessary under the Thirteenth Amendment) or "color and race" as impermissible purposes to violate a person's civil rights, whether the "but for race" standard established under *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 206 L. Ed. 2d 356 (2020) is still good law and whether this standard is unconstitutional pursuant to the Thirteenth

and Fourteenth Amendments to the U.S. Constitution as these parent constitutional amendments to §1981 require race neutrality, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court 22

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V. Whether Section Ten of the Civil Rights Act of 1866 establishes an appeal as of right to the U.S. Supreme Court based on all questions of law raised specifically in relation to the construction of any Section of the Civil Rights Act of 1866, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court 22

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VII. Pursuant to the supervisory and rule-making powers of the U.S. Supreme Court under 28 U.S.C. § 2072(c), whether the Second Circuit erred in dismissing my question on appeal that the District Court's certification under 28 U.S.C. §1915(a)(3) brings up the whole 'action' (lawsuit) for review on appeal, which is a decision in conflict with the decision of other U.S. Court of Appeals on the same important matter, and which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court 24

VIII. Whether an IFP litigant, proceeding under a 28 U.S.C. §1915(a)(3) certification, demonstrates non-frivolous issues on appeal upon supporting those issues raised with relevant and clear case law from the Circuit Court in question, from another Circuit Court, or from the U.S. Supreme Court, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court 25

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IN RE SHERLY CADET,

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

---

PETITION FOR A WRIT OF MANDAMUS

I, Sherly Cadet, very respectfully petition the U.S. Supreme Court for a 'writ of mandamus' pursuant to 28 U.S.C. §1651(a), and for IFP status pursuant to 28 U.S.C. §1915(a), to very respectfully direct the United States Court of Appeals for the Second Circuit to hear my appeal in full under IFP status, and under just terms, after the United States Supreme Court answers all questions presented in this petition which will aid in the just and effective adjudication of any remaining issues on appeal in the Second Circuit.

OPINIONS BELOW

The District Court's September 29th, 2022 Order denying Defendant Alliance's 'motion to dismiss' my causes of action for 'hostile work environment', 'disparate treatment', 'retaliation', and 'wrongful termination' pursuant to 42 U.S.C. § 1981, the New York City Human Rights Law (NYCHRL), and the New York State Human Rights Law (NYSHRL) is attached as Appendix 1. The District Court's January 8th, 2024 Order dismissing my lawsuit under Rule 37(b)(2)(A) of the

Federal Rules of Civil Procedure, with a certification under 28 U.S.C. Section 1915(a)(3), is attached as Appendix 2. The Second Circuit's June 18th, 2024 published opinion denying my motion for 'IFP' and dismissing my appeal is attached as Appendix 3. The Second Circuit's July 26th, 2024 published opinion by both a 'panel' and all active members of the Second Circuit denying my motion for 'reconsideration' is attached as Appendix 4.

JURISDICTION

The Second Circuit denied my motion for 'IFP' and dismissed my appeal on June 18th, 2024 (see Appendix 3). The Second Circuit denied my motion for 'reconsideration' on July 26th, 2024 (see Appendix 4). This petition is timely filed pursuant to Supreme Court Rule 13.1 as it was originally filed within 90 days of the July 26th, 2024 denial of my 'motion for reconsideration' on October 24th, 2024 [see *United States v. Ibarra*, 502 U.S. 1 (1991)] and I received a 60 day extension from the Hon. Clerk of the U.S. Supreme Court to file my corrected petition no later than December 30th, 2024. This Court has jurisdiction under 28 U.S.C. § 1651(a) [see *House v. Mayo*, 324 U.S. 42 (1945)].

STATUTORY PROVISIONS INVOLVED

This case involves Rule 37(b)(2)(A) of the Federal Rules of Civil Procedure in relation to the rule established by several Circuit Courts, including the Second Circuit, that a pro se litigant must receive an opportunity to be "heard" prior to the dismissal of a whole lawsuit with prejudice. This case also involves the U.S. Supreme Court's rule-making authority under 28 U.S.C. § 2072(c) concerning 28

U.S.C. § 1915(a)(3) in relation to the fact that the whole 'action' comes up for review on appeal once this certification was issued by the Hon. District Court, especially after the Hon. District Court issued the September 29th, 2022 Order (see Appendix 1) which upheld several claims from my lawsuit under 42 U.S.C. § 1981, along with the NYCHRL and the NYSHRL. This case also involves 28 U.S.C. § 1915(a) which authorizes a Circuit Court to grant IFP status whenever any meritorious issues are presented on appeal. Additionally, this case involves the relationship between the deprivation of the security of person and property with 42 U.S.C. § 1981, whether or not race is involved, which relates to the Ninth, Thirteenth, and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

I commenced this action on May 4th, 2021 in the United States District Court for the Southern District of New York against Alliance Nursing Staffing of New York, Inc., my former employer from July 2018 to February 2019, for condoning racially motivated violence and intimidation in the workplace against me, along with disparate treatment based on race in relation to another white (Caucasian) employee. Alliance is a home care agency which provides care for both young and older people at home. I worked for Alliance as a home health aide (a caregiver) and my job was to provide Alliance's home care clients with assistance with their activities of daily living (ADL's). On January 23rd, 2019, Alliance called me to assign me to work for a home care client named Joan Schwartz for January 24th, 2019. On that date, Joan Schwartz subjected me to a steady barrage of opprobrious racial

verbal comments, an assault by violently swinging a walking cane toward my head, along with a frivolous 911 report because my skin color and race are Black. There was a white (Caucasian) caregiver from Alliance on that day, and Joan Schwartz specifically told me that she preferred the white caregiver over me because her skin color is "white". After I reported the incident to Alliance, the company confirmed that Joan Schwartz was in fact motivated by hatred targeted against Black caregivers, but there was nothing they could do about it. On February 13th, 2019, I sent Alliance a letter explaining that I would have to suspend my work duties due to the violence and intimidation in the work environment and that I did not feel safe, along with the fact that I was left traumatized by my experience on the Schwartz assignment. Alliance sent me an arbitration agreement on February 26th, 2019, and later on that same day, Alliance wrongfully terminated my employment without taking any corrective action (see September 29th, 2022 Order under Appendix 1).

This petition arises from the denial of my motion for 'IFP' by the Second Circuit, the denial of my request for placement on the Second Circuit's 'expedited appeals calendar' (XAC), and the related dismissal of my appeal of the District Court's January 8th, 2024 Order by the Second Circuit in an Order dated June 18th, 2024 (see Appendix 3), along with the July 26th, 2024 denial of my motion for reconsideration (see Appendix 4), which was denied by both the panel and "all active members of the Second Circuit". Because the District Court's January 8th, 2024 dismissal Order carried a certification pursuant to 28 U.S.C. § 1915(a)(3), the

Second Circuit had to screen my appeal to determine if I presented any non-frivolous issues for review. This process is detailed in *Coppedge v. United States*, 369 U.S. 438 (1962):

> "Nevertheless, if, from the face of the papers he has filed, it is apparent that the applicant will present issues for review not clearly frivolous, the Court of Appeals should then grant leave to appeal *in forma pauperis*..."

As my brief on appeal to the Second Circuit demonstrates (see Appendix 5), along with my FRAP 44 questions (see Appendix 6), and my 'motion for reconsideration' en banc (see Appendix 7) demonstrate, I clearly presented several issues for review on appeal which were clearly not frivolous and therefore warranted the Second Circuit to grant me IFP status, which was not a discretionary act by the Second Circuit, but instead a "duty", as explained in *Johnson v. United States*, 352 U.S. 565 (1957):

> "Upon a proper showing, a Court of Appeals has a duty to displace a District Court's certification."

Wherefore, I believe that the Second Circuit should have protected my right to be heard under the Fourteenth Amendment, and should have given my appeal, my motion for IFP, and my motion for placement on the Second Circuit's 'expedited appeals calendar' (XAC) full consideration with a full briefing by all parties on the merits of the case.

REASONS FOR GRANTING THE PETITION

As demonstrated by my questions on appeal, which includes this petition along with all appendices submitted herein, I very respectfully and humbly believe that I raised non-frivolous issues which deserve proper adjudication, as a matter of law and in the interest of justice in this matter. As demonstrated by the questions raised herein, issuing a writ in this matter is necessary and appropriate in the aid of the U.S. Supreme Court's appellate jurisdiction. I clearly have no other adequate means to obtain relief in this matter given the fact that the Second Circuit has already dismissed my whole appeal without full briefings on the merits of the case. Overall, my right to a writ at this point is, respectfully and humbly, clear and indisputable. In the case of *House v. Mayo*, 324 U.S. 42 (1945), the U.S. Supreme Court ruled that 28 U.S.C. §1651 empowers the Court to review cases from a Circuit Court when that Circuit Court denies a litigant the right to appeal, such as in my case:

> "But § 262 of the Judicial Code, 28 U.S.C. § 377, authorizes this Court "to issue all writs, not specifically provided for by statute, which may be necessary for the exercise of [its jurisdiction] and agreeable to the usages and principles of law."
>
> By virtue of that section, we may grant a writ of certiorari to review the action of the court of appeals in declining to allow an appeal to it. *In re 620 Church St. Corp.,* 299 U. S. 24, 299 U. S. 26, and cases cited; *Holiday v. Johnston,* 313 U. S. 342, 313 U. S. 348, note 2; *Wells v. United States,* 318 U. S. 257; *Steffler v. United States,* 319 U. S. 38. And not only does our review

extend to a determination of whether the circuit court of appeals abused its discretion in refusing to allow the appeal, but if so, it extends [Page 324 U. S. 45] also to questions on the merits sought to be raised by the appeal. *See Holiday v. Johnston, supra; Steffler v. United States, supra.* We hold that the same principles are applicable here."

Because the issues I raise herein, as a whole, have merit along with important relevance beyond this lawsuit in relation to the interpretation of civil rights and the rules surrounding equal and fair access to the federal courts for all citizens of the United States, I very respectfully and humbly believe that this case deserves the very precious and limited attention of the Hon. United States Supreme Court.

I. **Whether the Second Circuit erred in dismissing my question on appeal that 42 U.S.C. §1981 protects against the deprivation of the security of person and property in the enforcement of contracts, whether or not race is a factor, pursuant to the Ninth, the Thirteenth, and the Fourteenth Amendments to the U.S. Constitution, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court, and is an important federal question decided by the Second Circuit in a way that conflicts with *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. ___ (2023), *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), along with other relevant decisions by the U.S. Supreme Court.**

As demonstrated under my FRAP 44 questions (see Appendix 6), my 'motion for reconsideration' en banc (see Appendix 7), and my questions on appeal (see question VII on page 102a of Appendix 5), I raised serious issues in relation to the interpretation of 42 U.S.C. §1981. This constitutional challenge to the interpretation of 42 U.S.C. §1981 may seem novel, yet it rests on already well-established principles of law by the U.S. Supreme Court.

It has been recognized by the U.S. Supreme Court that the Civil Rights Act of 1866 does not specifically prohibit race discrimination, but instead establishes equal treatment in relation to certain rights [see bottom of page 5 to page 6 of the Hon. Justice Thomas concurring in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. ___ (2023)]:

> "See M. McConnell, Originalism and the Desegregation Decisions, 81 Va. L. Rev. 947, 958 (1995) ("Note that the bill neither forbade racial discrimination generally nor did it guarantee particular rights to all persons. Rather, it required an equality in certain specific rights"). And, while the 1866 Act used the rights of "white citizens" as a benchmark, its rule was decidedly colorblind, safeguarding legal equality for *all* citizens "of every race and color" and providing the same rights to all."

It is important to note that 42 U.S.C. §1981 has its source from the Civil Rights Act of 1866 (see Sections 16 and 18 of the 'Enforcement Act of 1870') and the Thirteenth Amendment [see *U.S. v. Nelson*, 277 F.3d 164, 177 (2d Cir. 2002)]. Both the Thirteenth Amendment and the Civil Rights Act of 1866 do not specifically or solely create a claim for race discrimination [see Civil Rights Cases, 109 U.S. 3 (1883); also see bottom of page 5 to page 6 of the Hon. Justice Thomas concurring in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. ___ (2023)].

In 'M. McConnell, Originalism and the Desegregation Decisions,81 Va. L.Rev. 947, 958 (1995)', the author cited 'Steven J. Heyman, The First Duty of

Government: Protection, Liberty and the Fourteenth Amendment, 41 Duke Law Journal 507-571 (1991)' which is a scholarly article that discusses a state's duty to protect a person from the deprivation of security of person. On page 552 of Steven J. Heyman's 'The First Duty of Government', the author explains that the debates surrounding the Civil Rights Act of 1866 were based on 'Blackstone', and the author explained that lawmakers agreed that "the right to personal security" is a fundamental right under the Civil Rights Act of 1866:

> "Republicans explained the Civil Rights Act in terms of natural rights theory and the classical legal tradition. "What are civil rights?" asked Representative James Wilson of Iowa, the floor manager of the bill in the House. "I understand civil rights to be simply the absolute rights of individuals. '294 Following Blackstone and Kent, Wilson defined these "natural" or "absolute rights" as "'[t]he right of personal security, the right of personal liberty, and the right to acquire and enjoy property.' "295 Other Republicans explained the Act in the same terms. 296"

The issue of "personal security", or security of person, is defined in 'Chapter VIII: Of Wrongs, and Their Remedies, Respecting the Rights of Persons" in the 'Sir William Blackstone, Commentaries on the Laws of England in Four Books, vol. 2 [1753]' as follows:

> "And the absolute rights of each individual were defined to be the right of personal security, the right of personal liberty, and the right of private

property, so that the wrongs or injuries affecting them must consequently be of a corresponding nature.

I. As to injuries which affect the personal security of individuals, they are either injuries against their lives, their limbs, their bodies, their health, or their reputations."

Blackstone categorizes the deprivation of security of person based on, but not limited to, "threats" and an "assault". My lawsuit alleges and demonstrates with clear documentary evidence that Alliance knowingly and willfully subjected me to racially motivated "threats" and an "assault" in the workplace (see September 29th, 2022 Order under Appendix 1). It is important to note that in the *Slaughterhouse Cases*, 83 U.S. 36 (1872) [Mr. Justice SWAYNE, dissenting], the U.S. Supreme Court explained that "labor" is "property" – "Labor is property, and as such merits protection". Therefore, the deprivation of the security of property under §1981 can establish a claim for adverse terms and conditions of work.

The interpretation that the deprivation of the security of person and property in the enforcement of contracts is a cognizable claim under 42 U.S.C. §1981 [§ 1977 of the Revised Statutes], whether or not race is a factor, is supported by the earliest decisions of the U.S. Supreme Court, as demonstrated in *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) which explains that the source of the 'colorblind' provision in the 14th Amendment is based on the "all persons" language used in that Amendment, which the U.S. Supreme Court also stated was the direct basis for 42 U.S.C. §1981 [§ 1977 of the Revised Statutes]:

"The Fourteenth Amendment to the Constitution is not confined to the protection of citizens... These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality, and the equal protection of the laws is a pledge of the protection of equal laws. It is accordingly enacted by § 1977 of the Revised Statutes, that

"all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.'"

In Students for *Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S.___ (2023), on page 15 of the Hon. Justice Thomas concurring, it was explained that all decisions related to the 14th Amendment are 'colorblind', that is, 'race' or 'color' are not required as a precondition to receiving the benefits of the Amendment:

"The earliest Supreme Court opinions to interpret the Fourteenth Amendment did so in colorblind terms. Their statements characterizing the Amendment evidence its commitment to equal rights for all citizens, regardless of the color of their skin. See ante, at 10–11."

The rights guaranteed under the 13th Amendment, the Civil Rights Act of 1866, along with the 14th Amendment are clearly enforceable whether or not race is a factor. Wherefore, 42 U.S.C. §1981 [§ 1977 of the Revised Statutes] should also be enforceable whether or not race is a factor, especially since prohibiting race discrimination was not the direct intent of the Civil Rights Act of 1866, and it was instead intended to provide all citizens with equal rights in relation to the security of person and property.

Based on all of the foregoing facts and laws, the current interpretation of 42 U.S.C. §1981 is too restrictive as it only allows a claim that is based on race discrimination. A claim should be cognizable under 42 U.S.C. §1981 for the deprivation of security of person and property in the 'making and enforcement of contracts', in the right to 'sue', the right to be 'parties' to a suit, the right to 'give evidence', and in the receipt of the "full and equal benefit of all laws and proceedings". Because 42 U.S.C. §1981 specifically states that the rights guaranteed under this statute should be available to all citizens the same way that they are already available to "white citizens", it is fundamentally unequal to require a person of color to always prove that race was the motivating factor for the deprivation of any of these rights as a means to receive the protection of the statute for the deprivation of the security of person or property. If all citizens are equal, one should not be required to prove that race is a factor prior to receiving the benefits of a civil right statute which guarantees rights that the statute already assumes are automatically available to "white citizens" by virtue of their race. Which means, the

statute assumes that "white citizens" are always likely to receive the right to the security of person and property, yet a Black citizen must prove that race is a factor to receive those same rights that "white citizens" automatically receive. On page 14 of the Hon. Justice Thomas concurring in Students for *Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. ___ (2023), it was explained that it is unconstitutional to "restrict the rights of citizens on account of race":

> "Our cases had thus "consistently denied the constitutionality of measures which restrict the rights of citizens on account of race." Id., at 11–12; see also Yick Wo, 118 U. S., at 373–375 (commercial property)".

Both the Thirteenth and the Fourteenth Amendments to the United States Constitution establish the unconstitutionality of requiring race discrimination as a precondition for a 42 U.S.C. §1981 claim, especially when the direct right established under this statute resides in the right to be secure in one's person and property; race discrimination based on the "white citizens" language in the statute should be considered as an extremely severe aggravating factor, yet it should not be the main or determining factor for the claim. It is simple and logical that all citizens should be able to enforce their contractual relationship with their employer without being subjected to malicious conduct intended to deprive them of the security of their person or their property, which includes the labor being provided. Providing labor under violence and intimidation deprives an individual of the security of their labor (property) and constitutes a form of involuntary servitude.

Additionally, because race discrimination is made cognizable under 42 U.S.C. §1981 only by virtue of the term "white citizens", the term "all persons" at the beginning of 42 U.S.C. §1981 should also be given meaning. In *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), the U.S. Supreme Court's ruling clearly demonstrates that the deprivation of any right under 42 U.S.C. §1981 because of a person's 'national origin' is an impermissible motive:

> "These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality, and the equal protection of the laws is a pledge of the protection of equal laws. It is accordingly enacted by § 1977 of the Revised Statutes..."

Because the Fourteenth Amendment clearly amended the definition of "citizens" in Section I of the Amendment, in comparison to the Civil Rights Act of 1866, by explaining that "naturalized" persons or persons "subject to the jurisdiction" of the United States are also U.S. citizens, the Fourteenth Amendment creates a strong right to not be discriminated against because of one's 'national origin' because the Fourteenth Amendment declares that all citizens are equal, no matter where the person comes from, as long as a person is "subject to the jurisdiction" of the United States. In another sense, one citizen cannot be treated better than another citizen because of the other person's 'national origin'. As already demonstrated under *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), § 1977 of the Revised Statutes (42 U.S.C. §1981) was enacted according to the Fourteenth Amendment, which demonstrates that discrimination based on a person's 'national

origin' also applies to 42 U.S.C. §1981. In *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. ___ (2023), the U.S. Supreme Court explained that the Fourteenth Amendment was intended to protect "all persons" under the jurisdiction of the United States, regardless of "nationality" (national origin):

> ""[T]he broad and benign provisions of the Fourteenth Amendment" apply "to all persons," we unanimously declared six years later; it is "hostility to . .race and nationality" "which in the eye of the law is not justified." Yick Wo v. Hopkins, 118 U. S. 356, 368–369, 373–374 (1886); see also id., at 368 (applying the Clause to "aliens and subjects of the Emperor of China"); Truax v. Raich, 239 U. S. 33, 36 (1915) ("a native of Austria"); semble Strauder, 100 U. S., at 308–309 ("Celtic Irishmen") (dictum)."

Based on all of the foregoing, discrimination based on 'national origin' seems to also be an impermissible motive under 42 U.S.C. §1981. Based on *Barbier v. Connolly*, 113 U.S. 27 (1885), *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), and *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. ___ (2023), it seems that there are five (5) impermissible motives under 42 U.S.C. §1981, which were constitutionalized under the Fourteenth Amendment. They are (a) the deprivation of the "security of person", (b) the deprivation of the "security of property", (c) the deprivation of civil rights because of race, (d) the deprivation of civil rights because of color, and (e) the deprivation of civil rights because of national origin.

The word "proceedings" under 42 U.S.C. §1981 should also be given meaning, which I interpret as being Alliance's duty to investigate my complaints and oppositions and to take corrective action, and the record in my lawsuit clearly demonstrates that Alliance did neither, although Alliance admitted to me that Schwartz's conduct was motivated by "hatred" targeted against Black caregivers or people of color.

Additionally, I very respectfully and humbly believe that the U.S. Supreme Court's analysis of 42 U.S.C. §1981 in *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 206 L. Ed. 2d 356 (2020) was incomplete because it failed to take into account relevant case law in relation to the "post-ratification" history of the statute and the analysis failed to give meaning to "slavery" and "involuntary servitude" in discussing Section II of the Civil Rights Act of 1866 in justifying the "but for race" decision of the Court. In *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 206 L. Ed. 2d 356 (2020), the U.S. Supreme Court explained that — "When it first inferred a private cause of action under §1981, this Court described it as "afford[ing] a federal remedy against discrimination... on the basis of race" — yet, the U.S. Supreme Court did not mention *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), which is probably one of the first (if not the first) discussions about 42 U.S.C. §1981, and it did not take race into account. Additionally, in *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 206 L. Ed. 2d 356 (2020), the U.S. Supreme Court referred to Section II of the Civil Rights Act of 1866 and stated as follows:

"That rule supplies useful guidance here. Though Congress did not adopt a private enforcement mechanism for violations of §1981, it did establish criminal sanctions in a neighboring section. That provision permitted the prosecution of anyone who "depriv[es]" a person of "any right" protected by the substantive provisions of the Civil Rights Act of 1866 "on account of" that person's prior "condition of slavery" or "by reason of" that person's "color or race." §2, 14 Stat. 27. To prove a violation, then, the government had to show that the defendant's challenged actions were taken "'on account of'" or "'by reason of'" race—terms we have often held indicate a but-for causation requirement. Gross, 557 U. S., at 176–177."

Here, the U.S. Supreme Court raised Section II of the Civil Rights Act of 1866, yet the Court did not analyze the term "condition of slavery" and did not mention the modern or contemporary equivalent of slavery, which is "involuntary servitude", which are terms that present the full scope of the provisions of that Section of the Civil Rights Act of 1866. Section II of the Civil Rights Act of 1866 states as follows:

"And be it further enacted, That any person who... shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act... on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly

convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty..."

Being that Section I of the Civil Rights Act of 1866 determines the "badges of slavery", based on Section II of the Civil Rights Act of 1866, a 'badge of slavery' is the deprivation of any 'right' for the following two (2) impermissible purposes: (a) "on account of such person having at any time been held in a condition of slavery or involuntary servitude", or (b) "by reason of his color or race". The definition of "involuntary servitude" would most simply be defined as the deprivation of the 'security of person and property'. From general knowledge, slavery was marked by forced labor through violence, threats of violence, or general threats (deprivation of security of person), and it was also marked by terrible terms and condition of work, no pay, extremely low pay, and untimely pay (deprivation of security of property). Clearly, the deprivation of security of person and property also applies to "involuntary servitude", in a contemporary sense. Therefore, it is reasonable to conclude that Section II of the Civil Rights Act of 1866 not only mentions "color or race" as the impermissible motivating factor for depriving a person of a right guaranteed under Section I of the Act, but it also mentions the deprivation of a right because a person was in a condition of "involuntary servitude" or because a person was deprived of the 'security of person and property'.

In my situation with Alliance, it is clear that Alliance deprived me of my right to enforce my contractual relationship, under 42 U.S.C. §1981, on account that I filed complaints and oppositions about being deprived of the security of my person

(racially motivated assault and frivolous 911 report) and property (labor) as a result of being subjected to the Schwartz assignment, and also because I filed a complaint and opposition that Schwartz's conduct was motivated by racism because my skin color and race are Black.

Additionally, in *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 206 L. Ed. 2d 356 (2020), the U.S. Supreme Court greatly relied on 42 U.S.C. §1982 to affirm its decision to establish a "but for race" only causation as follows:

> "This Court's treatment of a neighboring provision, §1982, supplies a final telling piece of evidence. Because §1982 was also first enacted as part of the Civil Rights Act of 1866 and uses nearly identical language as §1981, the Court's "precedents have . . . construed §§1981 and 1982 similarly." CBOCS West, Inc. v. Humphries, 553 U. S. 442, 447 (2008). Section 1982 guarantees all citizens "the same right . . . as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property." And this Court has repeatedly held that a claim arises under §1982 when a citizen is not allowed "to acquire property . . . because of color." Buchanan v. Warley, 245 U. S. 60, 78–79 (1917) (emphasis added); see also Jones v. Alfred H. Mayer Co., 392 U. S. 409, 419 (1968); Runyon v. McCrary, 427 U. S. 160, 170–171 (1976). If a §1982 plaintiff must show the defendant's challenged conduct was "because of" race, it is unclear how we might demand less from a §1981

plaintiff. Certainly ESN offers no compelling reason to read two such similar statutes so differently."

I believe that the U.S. Supreme Court may have erred in its comparison of §1982 to §1981 because the term "for the security of persons and property", which refers to 'involuntary servitude', were specifically left out of §1982. This is significant because those terms add additional meaning to the scope of the §1981 statute as I have already explained herein. Clearly, §1981 covers issues related primarily to labor or slavery, and §1982 primarily covers issues related to housing or real estate.

Importantly, under Section II of the Civil Rights Act of 1866, the lawmakers decided to add the impermissible purpose of "on account of such person having at any time been held in a condition of slavery or involuntary servitude" prior to citing "color or race". Under the same standard established by the U.S. Supreme Court in *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 206 L. Ed. 2d 356 (2020), it is clear that Section II of the Civil Rights Act of 1866 establishes that there are at least two (2) impermissible motives for depriving a person of any right guaranteed under the Civil Rights Act of 1866, and they are (a) on account of a person having been subjected to 'involuntary servitude' (the deprivation of the security of person and property), and (b) color or race. Therefore, I very respectfully and humbly believe that the U.S. Supreme Court should clarify if the "but for race" standard still applies to 42 U.S.C. §1981 claims.

Another important point is the fact that 42 U.S.C. §1985, which prohibits a "conspiracy to interfere with civil rights", makes absolutely no mention of 'race or color' as an impermissible purpose for engaging in such an unlawful conspiracy, yet repeatedly makes the deprivation of the security of "person or property" the impermissible purpose under this statute. If race or color were the basis of civil rights, the lawmakers would have surely codified it under 42 U.S.C. §1985. It is apparent that it was because the intent was to make race or color a non-issue in the benefits of civil rights that the lawmakers only made the deprivation of the security of "person and property" the main impermissible purposes for a "conspiracy to interfere with civil rights".

This Constitutional challenge to the interpretation of 42 U.S.C. §1981 has merit, as demonstrated by the text of the statute, its "pre-ratification history", and the "post-ratification history" of the statute. It is therefore clear that my appeal raised several non-frivolous issues for review, and my motion for 'IFP' should have been granted, and my appeal should have not been dismissed by the Second Circuit pursuant to 28 U.S.C. §1915(e).

II. **Whether the Second Circuit erred in dismissing my question on appeal that the term "all persons" under 42 U.S.C. §1981, which was adopted from Part I of Section I of the Fourteenth Amendment, makes a claim for violation of civil rights because of one's 'national origin' cognizable under this statute, whether or not race is a factor, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court, and is an important federal question decided by the Second Circuit in a way that conflicts with *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), along with other relevant decisions by the U.S. Supreme Court.**

Please see arguments under Point/Question (I).

III. If 42 U.S.C. §1981 covers issues other than "color or race", and considering that Section II of the Civil Rights Act of 1866 cites "involuntary servitude" (deprivation of the security of person and property – race not necessary under the Thirteenth Amendment) or "color and race" as impermissible purposes to violate a person's civil rights, whether the "but for race" standard established under *Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 206 L. Ed. 2d 356 (2020) is still good law and whether this standard is unconstitutional pursuant to the Thirteenth and Fourteenth Amendments to the U.S. Constitution as these parent constitutional amendments to §1981 require race neutrality, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court.

Please see arguments under Point/Question (I).

IV. Whether the term "proceedings" under 42 U.S.C. §1981(a) includes all steps, actions, procedures (investigative and remedial) an employer must follow under both state and federal law in the making, enforcement, and termination of contracts in relation to the security of the person and property of any employee, and whether the deprivation of the equal right to these "proceedings" constitutes a violation of 42 U.S.C. §1981, which are important questions of federal law which have not been, but should be, settled by the U.S. Supreme Court.

Please see arguments under Point/Question (I).

V. Whether Section Ten of the Civil Rights Act of 1866 establishes an appeal as of right to the U.S. Supreme Court based on all questions of law raised specifically in relation to the construction of any Section of the Civil Rights Act of 1866, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court.

Section Ten of the Civil Rights Act of 1866 specifically states that a genuine challenge to the interpretation of the Civil Rights Act of 1866, in of itself, creates a question of law worthy of the attention of the United States Supreme Court. Therefore, I respectfully believe this section creates an appeal as of right under the circumstances herein.

VI. **Whether the Second Circuit erred in dismissing my question on appeal that a pro se litigant has the right to be 'heard' prior to a final dismissal Order from a District Court, which is a decision that is in conflict with the decision of other U.S. Court of Appeals on the same important matter, and has so far departed from the accepted and usual course of judicial proceedings, and which sanctioned such a departure by the District Court, as to call for an exercise of this Court's supervisory power.**

As demonstrated under question VI in my brief on appeal (see page 102a,149a, and 156a of Appendix 5), the District Court dismissed my lawsuit without giving me the right to be heard, in contradiction with the right to due process under the Fourteenth Amendment to the U.S. Constitution. In *Snider v. Melindez*, 199 F.3d 108, 113 (2d Cir.1999), the Second Circuit previously ruled as follows on the right to be "heard" prior to a final dismissal:

> "On the other hand, providing the adversely affected party with notice and an opportunity to be heard plays an important role in establishing the fairness and reliability of the order. It avoids the risk that the court may overlook valid answers to its perception of defects in the plaintiff's case. Furthermore, denying a plaintiff an opportunity to be heard "may tend to produce the very effect [the court] seek[s] to avoid — a waste of judicial resources — by leading to appeals and remands." *Perez v. Ortiz*, 849 F.2d 793, 797 (2d Cir. 1988). Unless it is unmistakably clear that the court lacks jurisdiction, or that the complaint lacks merit or is otherwise defective, we believe it is bad practice for a district court to dismiss without affording a plaintiff the opportunity to be heard in opposition. As we have previously stated, dismissal in such a manner may be, "by itself, grounds for reversal." *Square D Co. v. Niagra*

Frontier Tariff Bureau, Inc., 760 F.2d 1347, 1365 (2d Cir. 1985) (Friendly, *J.*) (internal quotation marks and citations omitted); *Schlesinger Inv. Partnership v. Fluor Corp.*, 671 F.2d 739, 742 (2d Cir. 1982) (same); *see also Perez*, 849 F.2d at 797 (sua sponte dismissal with affording plaintiff notice and opportunity to be heard is "itself grounds for reversal," (quoting *Square D*), although permitted in some circumstances where a complaint is obviously frivolous); *cf. Eades v. Thompson*, 823 F.2d 1055, 1062 (7th Cir. 1987) (observing that "[a]t least four circuits do not permit sua sponte dismissals without notice and an opportunity to be heard")."

The final part of this citation from the Second Circuit that – ""[a]t least four circuits do not permit sua sponte dismissals without notice and an opportunity to be heard"" – demonstrates that the Second Circuit's decision to dismiss this question on my appeal conflicts with the decisions of other circuits on the same issue, and therefore warrants intervention from the U.S. Supreme Court to settle this issue about the right to be "heard" prior to a final dismissal, which is related to the right to due process under the Fourteenth Amendment to the U.S. Constitution.

VII. **Pursuant to the supervisory and rule-making powers of the U.S. Supreme Court under 28 U.S.C. § 2072(c), whether the Second Circuit erred in dismissing my question on appeal that the District Court's certification under 28 U.S.C. §1915(a)(3) brings up the whole 'action' (lawsuit) for review on appeal, which is a decision in conflict with the decision of other U.S. Court of Appeals on the same important matter, and which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court.**

As demonstrated in my 'motion for reconsideration' by panel and en banc

(see question II on page 192a of Appendix 7), a certification under 28 U.S.C. §1915(a)(3) bring up the whole case for review on appeal based on the decisions of other Circuit Courts, including the Fourth Circuit in the case of *Tolbert v. Stevenson*, 09-8051, Decided February 14th, 2011 (4th Cir.), which stated as follows:

> ""Instead, as we have already explained, multiple subsections of § 1915 repeatedly use the word "action" in ways that reference the entire case."

Based on the fact that the Second Circuit declined to exercise jurisdiction over my whole lawsuit and denied my request for XAC placement (expedited appeals calendar), it is therefore clear that the Second Circuit did not agree with this interpretation of this statute, which therefore demonstrates that there is a conflict in the interpretation of 28 U.S.C. §1915(a)(3), which should be resolved by the U.S. Supreme Court pursuant to the court's rule-making power under 28 U.S.C. § 2072(c) to determine the finality of an order for the purpose of appeal.

VIII. Whether an IFP litigant, proceeding under a 28 U.S.C. §1915(a)(3) certification, demonstrates non-frivolous issues on appeal upon supporting those issues raised with relevant and clear case law from the Circuit Court in question, from another Circuit Court, or from the U.S. Supreme Court, which is an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court.

The concept that supporting arguments on appeal with relevant case law from Circuit Courts, along with the U.S. Supreme Court, should be sufficient for a Circuit Court to reverse a 28 U.S.C. §1915(a)(3) certification is supported by the decision of the U.S. Supreme Court in *Johnson v. United States*, 352 U.S. 565 (1957):

"Upon a proper showing, a Court of Appeals has a duty to displace a District Court's certification."

The "proper showing" standard under 28 U.S.C. §1915(a)(3) is a very important question of federal law that should be settled by the U.S. Supreme court because it relates directly to a citizen's right to access federal courts to get redress for the deprivation of the security of person or property. Because I raised non-frivolous issues on appeal, which were supported by relevant case law, I respectfully believe that the Second Circuit should have granted my motion for IFP and should have not declined to review my appeal by dismissing it under 28 U.S.C. §1915(e).

CONCLUSION

Wherefore, I very respectfully and humbly ask the United States Supreme Court to grant all the relief requested herein, along with all other relief the Court deems just and proper. Thank you.

Dated: Bronx, New York
December 30th, 2024

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CERTIFICATE OF COMPLIANCE

I, Sherly Cadet, certify that this brief contains 7,107 words.