

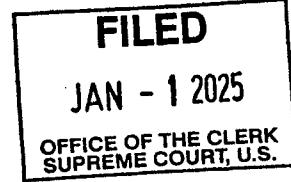
No. 24-6320

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in the **Supreme Court of the United States**

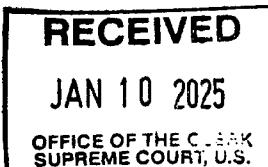
AARON ABADI,
Petitioner,

v.



ERIC LEROY ADAMS (IN HIS PERSONAL CAPACITY), THE CITY OF
NEW YORK, BILL DE BLASIO (IN HIS PERSONAL CAPACITY),
NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE,
DAVE A. CHOKSHI (IN HIS PERSONAL CAPACITY), THE UNITED
STATES OF AMERICA, CENTER FOR DISEASE CONTROL &
PREVENTION, ROCHELLE PAULA WALENSKY (IN HER PERSONAL
CAPACITY), NATIONAL INSTITUTES OF HEALTH, ANTHONY STEPHEN
FAUCI (IN HIS PERSONAL CAPACITY), WORLD HEALTH
ORGANIZATION, PFIZER INC., MODERNA, INC., ECO HEALTH
ALLIANCE, X CORP. (FORMERLY TWITTER, INC.), ALPHABET INC.
AND META PLATFORMS, INC.,

Respondents.



On petition for writ of certiorari to review a decision by the U.S. SECOND CIRCUIT COURT OF APPEALS, affirming the UNITED STATES DISTRICT COURT for the Southern District of New York decision to dismiss the Complaint.

PETITION FOR WRIT OF CERTIORARI

Petitioner:

Aaron Abadi (Pro se)
82 Nassau Street Apt 140
New York, NY 10038
Tel: 212-785-0370
Email: abadi.rne@gmail.com

QUESTIONS PRESENTED

1. Does the enforcement of COVID-19 vaccine mandates violate individual rights protected under the First and Fourteenth Amendments?
2. Should the unchecked use of executive emergency powers be subject to more stringent judicial review?
3. How should courts balance public health objectives with individual constitutional protections when scientific evidence is disputed or incomplete?
4. Does the failure of lower courts to provide adequate reasoning for dismissing claims brought by indigent pro se litigants violate principles of judicial fairness and equal access to justice?

I. **PARTIES TO THE PROCEEDING**

The parties to this proceeding are all listed above:

II. **CORPORATE DISCLOSURE STATEMENT**

Plaintiff/Petitioner is a pro se litigant, and not a corporation.

III. **STATEMENT OF RELATED PROCEEDINGS**

This petition arises from the decision of the United States Court of Appeals for the Second Circuit dismissing the case Abadi v. Adams et al., Case No. 24-1608. The Second Circuit issued its decision on November 15, 2024, DktEntry: 43.1 (Appendix Page ??), and subsequently denied the petitioner's motion for reconsideration and request for an en banc hearing on December 27, 2024, DktEntry: 48.1 (Appendix Page ??).

There are no other cases directly related to this case, that Applicant is aware of.

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PETITION FOR WRIT OF CERTIORARI

Aaron Abadi respectfully petitions for a writ of certiorari for this Court to review the judgments of the U.S. Second Circuit Court of Appeals and the U.S. District Court for the Southern District of New York in this case.

VI. OPINIONS BELOW

The following opinions are included in the appendix to this petition:

Second Circuit Order of Dismissal, issued November 15, 2024, DktEntry: 43.1 (Appendix Page 1a).

Second Circuit Order Denying Motion for Reconsideration, issued December 27, 2024, DktEntry: 48.1 (Appendix Page 2a).

District Court Order of Dismissal (Appendix Page 3a).

VII. JURISDICTION

This petition is timely filed as the Order denying the Motion for Reconsideration was issued on December 27, 2024, and this petition is submitted well within the 90-day deadline.

This Court has jurisdiction under 28 U.S.C. §1254, which provides:

“Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree...”

VIII. PROVISIONS, STATUTES, & REGULATIONS

42 U.S.C. §1983: Civil action for deprivation of rights under color of law.

5 U.S.C. §§701–706: Administrative Procedure Act, addressing judicial review of agency actions.

Federal Tort Claims Act (FTCA), 28 U.S.C. §§1346(b), 2671–80: For tort claims against federal entities.

21 U.S.C. §360bbb-3(e)(1)(A)(ii): Emergency use authorization conditions for medical products, including COVID-19 vaccines.

New York City Provisions:

NYC Emergency Executive Order #225: Required vaccination for indoor entertainment, dining, and fitness.

NYC Executive Order #78: Mandatory vaccination or weekly testing for city employees and contractors.

Order by NYC Health Commissioner (December 2021): Mandated COVID-19 vaccination in workplaces.

Public Health and Safety Standards:

Centers for Disease Control and Prevention (CDC) guidance on COVID-19 and vaccination benefits.

New York City Charter Sections 556 and 558: Authority for public health orders and measures to control communicable diseases.

IX. STATEMENT OF THE CASE

1) This case arises from a dispute over the constitutionality and enforcement of New York City's COVID-19 vaccine mandates, which required vaccination for employment, access to public spaces, and other fundamental activities. Petitioner, Aaron Abadi, challenged these mandates as unconstitutional, alleging violations of federal statutory and constitutional rights, including those protected under the First and Fourteenth Amendments.

2) The mandates at issue include New York City Emergency Executive Orders #225 and #78, as well as the December 2021 Order by the NYC Health Commissioner. These orders collectively required employees and patrons to provide proof of COVID-19 vaccination for access to workplaces and public venues, with limited exceptions. Petitioner asserted that these mandates were based on flawed scientific evidence and disproportionately impacted his ability to work, conduct business, and access public spaces, in violation of his civil rights.

3) In the District Court for the Southern District of New York, Petitioner filed a pro se complaint citing 42 U.S.C. §1983, the Administrative Procedure Act (5 U.S.C. §701 et seq.), and the Federal Tort Claims Act (28 U.S.C. §1346). The complaint was dismissed under 28 U.S.C. §1915(e)(2)(B) for failure to state a claim and lack of subject matter jurisdiction. The District Court's judgment, issued on May 28, 2024, included certification under 28 U.S.C. §1915(a)(3) that any appeal would not be taken in good faith.

4) On appeal, the Second Circuit affirmed the District Court's dismissal, finding that the claims lacked an arguable basis in law or fact. The Second Circuit subsequently denied Petitioner's motion for reconsideration and request for an en banc hearing.

5) In a prior appeal, *Abadi v. City of New York*, No. 22-1560 (2d Cir. May 8, 2023), the Second Circuit vacated the district court's judgment and remanded the case with instructions to dismiss it without prejudice. The appellate court determined that the Key to NYC program and vaccination requirements for City employees had expired, rendering the claims moot. However, by vacating the lower court's dismissal and ordering a dismissal without prejudice, the Second Circuit explicitly recognized that the petitioner's claims were not frivolous and left open the possibility for future litigation under appropriate circumstances. This earlier ruling contrasts starkly with the decision in the present case, where the Second Circuit affirmed the district court's dismissal of similar claims as frivolous. The inconsistency between these rulings highlights the need for this Court's review to resolve the conflicting interpretations and to ensure fair treatment of claims brought by indigent pro se litigants.

6) Petitioner now seeks review by this Court to address significant legal questions regarding the interplay of public health mandates, individual constitutional rights, and federal statutory protections.

X. WHY THE COURT SHOULD GRANT THIS WRIT

1) The Supreme Court's intervention is essential to resolve significant and recurring legal questions arising from the enforcement of public health mandates and their implications for constitutional rights. The Court's authority to resolve these questions is grounded in precedents such as *Marbury v. Madison*, 5 U.S. 137 (1803), which establishes the Court's role in interpreting constitutional rights, and *Cooper v. Aaron*, 358 U.S. 1 (1958), which reinforces the need for uniform constitutional application.

2) **Conflicting Opinions in the Circuit Court:** The inconsistent rulings by the Second Circuit, including a prior decision in *Abadi v. City of New York*, No. 22-1560 (2d Cir. May 8, 2023), which vacated a lower court's dismissal and remanded for dismissal without prejudice, demonstrate the need for this Court's intervention. While one panel recognized the claims as non-frivolous, the current panel dismissed similar claims as frivolous, creating uncertainty that only this Court can resolve. This conflict is akin to the issue highlighted in *United States v. Mendoza*, 464 U.S. 154 (1984), emphasizing the need for consistency in federal rulings.

3) **Conflicting Judicial Outcomes on Vaccine Mandates:** Courts across the nation have issued conflicting decisions regarding vaccine mandates, creating legal uncertainty. For instance, *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), upheld vaccine mandates for public health, but its application has been questioned in modern contexts, such as in *Roman Catholic Diocese of Brooklyn v.*

Cuomo, 141 S. Ct. 63 (2020), where COVID-19 restrictions were struck down for infringing on constitutional protections. This inconsistency underscores the need for a definitive ruling from this Court to establish uniform standards for balancing public health objectives with individual liberties.

4) **Broader Implications Beyond Mootness:** This case is not moot. Public health crises are ongoing, and the emergence of new diseases, such as avian influenza, underscores the importance of resolving these issues. The reasoning in *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167 (2000), explains that cases are not moot if the challenged actions could reasonably recur. Similarly, *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), demonstrates that COVID-19 restrictions remain justiciable even after they are lifted, given the potential for reinstatement.

5) **Equal Access to Justice:** The mistreatment of pro se and indigent litigants, as demonstrated in this case, raises fundamental concerns about fairness in the judicial system. *Haines v. Kerner*, 404 U.S. 519 (1972), holds that pro se pleadings are to be liberally construed and must not be dismissed without explanation. Furthermore, *Lassiter v. Dept. of Social Services*, 452 U.S. 18 (1981), underscores the importance of fairness in judicial proceedings, particularly for indigent litigants.

6) **Constitutional Rights at Stake:** This case implicates core constitutional principles, including the right to bodily autonomy under the Fourteenth Amendment and the freedoms of speech and assembly under the First

Amendment. In *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990), the Court recognized the constitutional right to refuse unwanted medical treatment, and *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943), protects individuals against coercion by the state, relevant to bodily autonomy and vaccination mandates.

7) **Abuse of Emergency Powers:** The unchecked use of executive orders to impose sweeping mandates without robust legislative oversight sets a concerning precedent. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), limits executive power, emphasizing that emergency actions must respect constitutional boundaries. Similarly, *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934), establishes that emergency powers do not nullify constitutional rights.

8) **Significance of Scientific Basis for Mandates:** The mandates were allegedly premised on incomplete or flawed scientific data, raising critical questions about the evidentiary standards required to justify restrictions on constitutional rights. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), establishes standards for the admissibility of scientific evidence, relevant to evaluating vaccine mandate justifications. Additionally, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000), highlights the need for government policies to be supported by sound scientific and legal principles.

9) This case presents a unique and timely opportunity for the Supreme Court to address these urgent issues, provide clarity, and ensure that constitutional protections are upheld in the face of evolving public health challenges.

XI. CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that this Court grant the writ of certiorari. This case presents critical constitutional and statutory questions with far-reaching implications for public health policy, individual rights, and the integrity of the judicial system. This Court's review is necessary to resolve conflicting interpretations of vaccine mandates, reaffirm the principles of equal justice, and provide clarity on the balance between public health imperatives and constitutional protections.

Respectfully submitted on December 31, 2024,



AARON ABADI, Petitioner (*pro se*)
82 Nassau Street Apt 140
New York, NY 10038
Tel: 516-639-4100
Email: abadi.rne@gmail.com