

IN THE
Supreme Court of the United States

PHILIP EMIABATA, *et ux.*,

Petitioners,

v.

BANK OF NEW YORK TRUST COMPANY, *et al.*,

Respondents.

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

**BRIEF IN OPPOSITION FOR RESPONDENT
JPMORGAN CHASE BANK, N.A.**

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COUNTER STATEMENT OF QUESTION PRESENTED

Did the Second Circuit correctly dismiss Petitioners' appeal as frivolous under 28 U.S.C. § 1915(e), where Petitioners have engaged in a documented pattern of filing meritless cases to delay creditors' enforcement efforts against them, failed to timely file an appellate brief despite multiple extensions and warnings, and presented claims that lack any arguable basis in law or fact?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Sup. Ct. R. 24.1(b), Respondent JPMorgan Chase Bank, N.A., by its undersigned counsel, states as follows:

JPMorgan Chase Bank, N.A. is a wholly owned subsidiary of JPMorgan Chase & Co., which is a publicly held corporation. JPMorgan Chase & Co. does not have a parent corporation and no publicly held corporation owns 10% or more of its stock. However, The Vanguard Group, Inc., an investment adviser which is not a publicly held corporation, has reported that its registered investment companies, other pooled investment vehicles and institutional accounts that it or its subsidiaries sponsor, manage or advise have aggregate ownership under certain regulations of 10% or more of the stock of JPMorgan Chase & Co.

RELATED PROCEEDINGS

- *In re: Sylvia Ngozi Emiabata*, No. 21-bk-30197, (Bankr. D. Conn. July 22, 2022).
- *Emiabata et al. v. Specialized Loan Servicing et al.*, No. 21-ap-03010 (Bankr. D. Conn. Aug. 1, 2022).
- *In re: Emiabata*, No. 3:22-cv-01010-OAW (D. Conn. Oct. 3, 2023).
- *In re: Emiabata*, No. 23-7705 (2d Cir. Apr. 19, 2024).

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INTRODUCTION

Petitioners' petition for writ of certiorari does not present any issue worthy of this Court's review or anything of general importance. Instead, it simply reflects Petitioners' long-running dissatisfaction with the results of litigation which they have pursued vexatiously for years. The courts below correctly applied settled law to dismiss Petitioners' Chapter 13 case, Adversary Proceeding, and subsequent appeals—each was part of Petitioners' long pattern of abusive and meritless litigation aimed at stalling foreclosure. The Second Circuit's decision that the appeal "lacks an arguable basis in law or in fact" is well-supported by the record and conflicts with no authority. Petitioners raise no legal question of general importance, only a case-specific dispute that has already been exhaustively litigated and repeatedly rejected.

STATEMENT OF THE CASE

I. The Bankruptcy Court Dismissed Petitioner's Chapter 13 Case and Adversary Proceeding Because They Were Part of A 15-Year Pattern of Frivolous Filings

On December 7, 2021, Petitioners initiated the underlying Adversary Proceeding (Case No. 21-ap-03010) by filing a Complaint against various defendants, including Respondent JPMorgan Chase Bank, N.A. ("JPMC"), in petitioner Sylvia Emiabata's Chapter 13 case before the United States Bankruptcy Court, District of Connecticut (Case No. 21-bk-30197). *See* Case No. 21-ap-03010, Dkt. 1.

Although hardly a model of clarity, Petitioners' Complaint appears to contain four causes of actions against Respondent JPMC: Count One (Violation of the Automatic Stay), Count Three (Fair Debt Collection Practices Act), Count Five (Truth in Lending Act); and Count Six (Connecticut Unfair Trade Practices Act). *Id.* All of

Petitioners' claims against JPMC appear to relate to a mortgage loan concerning a property at 4510 Little Hill Circle, Austin, Texas (the "Property"). *Id.* at 37-41. Petitioners allege that, in 2012, they refinanced the mortgage loan associated with the Property with JPMC, and claim that JPMC and other defendants named in the adversary proceeding foreclosed on the Property while the automatic stay was in effect during their prior Chapter 13 case, Case No. 19-bk-31645. *See* Case No. 21-ap-03010, Dkt. 1 at 42-45. They also allege that "Defendants," evidently including JPMC, allegedly violated the Fair Debt Collection Practices Act by misrepresenting the status of an unspecified debt to an unknown party (*id.* at 52-60), violated the Truth in Lending Act (*id.* 64-68), and somehow violated the Connecticut Unfair Trade Practices Act (*id.* 69-100), although JPMC's specific conduct is neither identified nor meaningfully connected to any of these claims.

On July 22, 2022, the Bankruptcy Court dismissed Petitioners' Chapter 13 case, concluding it had been "filed in the wrong place and in bad faith." Case No. 21-bk-30197, Dkt. 200 at 1. The Bankruptcy Court found venue improper under 28 U.S.C. § 1408, noting that, "[d]espite the opportunity to do so, the debtor [Sylvia Emiabata] failed to supplement the record and as a result it is insufficient to establish Connecticut as the debtor's domicile, residence, principal place of business, or location of principal assets during the Venue Period." *Id.* at 3.

Beyond venue, the Bankruptcy Court dismissed the case *sua sponte* as an abuse of the Chapter 13 process, concluding that it was the latest in a pattern of bad faith filings by the debtor and her husband, Philip Emiabata, aimed at "invoke[ing]

the bankruptcy automatic stay and to prevent the foreclosure of the Property.” *Id.* Notably, the Bankruptcy Court includes a table chronicling 13 bankruptcy cases across seven Districts filed by the Petitioners between 2004 and 2019, all of which ended in dismissal. *Id.* at 4.

The Bankruptcy Court also emphasized the debtor Sylvia Emiabata’s total failure to comply with bankruptcy requirements: she never completed a meeting of creditors, never proposed a confirmable plan, never provided required financial documentation, and repeatedly filed false or misleading schedules. Her most recent plan didn’t acknowledge the debt at issue and was “unconfirmable on its face.” *Id.* at 6. As for the Adversary Proceeding, the Bankruptcy Court specifically noted that “[m]ost of the claims asserted . . . are non-sensical and frivolous, or, are barred by prior litigation between the parties.” *Id.* at 8.

On August 1, 2022, the Bankruptcy Court dismissed the Adversary Proceeding, as the Bankruptcy Court’s jurisdiction over the Chapter 13 case had terminated. Case No. 21-ap-03010, Dkt. 160.

II. The District Court Dismissed Petitioners’ Appeal Because They Failed to Timely File Their Appellate Brief Despite Multiple Extensions

On August 8, 2022, Petitioners filed a Notice of Appeal from the Bankruptcy Court’s Order dismissing the Chapter 13 Case and the Order dismissing the Adversary Proceeding. *See* Case No. 3:22-cv-01010-OAW, Dkt. 1.

Despite the District Court’s granting three extensions of time, Petitioners still failed to timely file their appellate brief. On June 21, 2023, the District Court dismissed the appeal and closed the case. *See* Case No. 3:22-cv-01010-OAW, Dkt. 22.

On August 10, 2023, Petitioners filed a “motion to alter or amend the judgment,” allegedly pursuant to Fed. R. Civ. P. 60(b), but still failed to file a copy of their appellate brief, which was originally due ten months before. *See* Case No. 3:22-cv-01010-OAW, Dkt. 23, 14.

On September 30, 2023, the District Court denied Petitioners’ “Motion to Amend the Judgment.” *See* Case No. 3:22-cv-01010-OAW, Dkt. 26. The District Court denied Petitioners’ motion on multiple grounds. First, regarding excusable neglect under Rule 60(b)(1), the District Court found that Petitioners had been the cause of repeated delays and had not acted in good faith. The District Court noted Petitioners’ pattern of delay, evidenced by their history of filing over a dozen dismissed bankruptcy cases to stall foreclosure proceedings on a mortgage that had been in default since 2002. *Id.* at 2-3. The District Court also found it significant that while Petitioners claimed they never received court orders and blamed the U.S. Postal Service and District Court Clerk’s Office for their failures to timely file a brief, they provided no evidence to support these claims, and their current motion had been successfully delivered and docketed. *Id.* at 3. Additionally, the District Court expressed doubt about proper venue, noting that Petitioners’ residential address was a UPS store, and that they had failed to provide evidence of Connecticut residency. *Id.* at 4. Second, regarding newly discovered evidence under Rule 60(b)(2), the District Court rejected Petitioners’ claim because their motion failed to allege any new evidence whatsoever. *Id.* Finally, under Rule 60(b)(6) for extraordinary circumstances, the District Court found that Petitioners’ claimed medical issues,

travel, and medication side effects did not rise to the level of extraordinary circumstances, particularly given that they had been able to file multiple extension requests and the instant motion itself, but had failed to file their appellate brief despite multiple extensions and clear warnings that failure to comply would result in dismissal. *Id.* at 4-5.

On October 3, 2023, the District Court entered a Judgment dismissing the case. Case No. 3:22-cv-01010-OAW, Dkt. 27.

III. The Second Circuit Dismissed Petitioners' Appeal Because It "Lacks An Arguable Basis Either In Law Or In Fact"

On November 3, 2023, Petitioners filed a Notice of Appeal to the Second Circuit, seeking review of the District Court's Judgment dismissing the case. *See* Case No. 23-7705, Dkt. 1.

However, Petitioners immediately encountered alleged procedural difficulties that would plague their appeal throughout its brief existence. On December 6, 2023, the Second Circuit issued multiple orders warning Petitioners that the appeal would be dismissed, unless Petitioners submitted proper acknowledgment and notice of appearance forms and Form D-P by December 27, 2023. *See* Case No. 23-7705, Dkts. 19-22. Over the following months, Petitioners filed numerous defective documents that required correction. *See* Case No. 23-7705, Dkts. 46-55, 68-77. Finally, on February 20, 2024, Petitioners made a motion to proceed *in forma pauperis*. *See* Case No. 23-7705, Dkt. 80.

On April 19, 2024, the Second Circuit denied Petitioners' motion to proceed *in forma pauperis* and dismissed the appeal "because it 'lacks an arguable basis either

in law or in fact.” Case No. 23-7705, Dkt. 91 at 2. The Second Circuit further warned Petitioners that “the continued filing of clearly meritless appeals, motions, or other papers could result in sanctions including a leave-to-file sanction requiring [Petitioners] to obtain permission from this Court before filing further submissions.”

Id.

On July 16, 2024, Petitioners filed the instant petition for writ of certiorari, seeking review of the Second Circuit’s dismissal of their appeal.

REASONS FOR DENYING CERTIORARI

I. THE FACTS OF THIS CASE DO NOT PRESENT THE ISSUES RAISED BY PETITIONERS

Petitioners' sprawling list of 18 questions presented, though styled as constitutional or statutory issues, largely bear no meaningful connection to the actual posture or facts of this case.

To facilitate the Court's review, Respondent JPMC has attempted to organize Petitioners' 18 "Questions Presented" into categories based on their apparent legal themes. This effort is necessarily imprecise, as many of the so-called questions are incoherent, incomprehensible, or based on events that never took place in the courts below, which make their intended legal basis difficult to discern. Nonetheless, in an effort to provide the Court with some clarity, Respondent offers the following good-faith categorization. Petitioners' "Questions Presented" generally fall under the following four broad categories: (1) alleged constitutional due process violations; (2) procedural challenges under the Federal Rules of Appellate Procedure; (3) application of 28 U.S.C. § 1915 regarding *in forma pauperis* filings and dismissal of frivolous claims; and (4) assertions of judicial violations of Petitioners' civil rights.

Question Presented Nos. 1, 16, and 17 concern whether Petitioners' property rights were violated through alleged unconstitutional judicial foreclosure procedures and wrongful possession by creditors. However, none of these issues were properly before the Bankruptcy Court, the District Court, or the Second Circuit. No court below addressed, or had the occasion to address, the constitutionality of the

foreclosure proceedings concerning Petitioners' properties or the alleged wrongful possession by creditors.

Questions Presented Nos. 2, 3, 7, 8, 11, and 15 concern alleged violations of Petitioners' Fifth Amendment due process rights in connection with the overall dismissal of the Chapter 13 case, the Adversary Proceeding, and the appeals¹, and the District Court's ruling on Petitioners' Rule 60(b) motion². However, these claims ignore that the courts below acted within their discretion, applying well-established standards, and that Petitioners were afforded every notice and opportunity to be heard, including liberal construction of their filings, multiple extensions of time, extraordinary patience with Petitioners' defective filings, and thorough explanations from both the Bankruptcy Court and District Courts detailing why Petitioners' cases are frivolous and an abuse of the judicial process. These questions present no cognizable due process claims based on the actual record and facts of this case.

Questions Presented Nos. 4 and 5 concern the alleged mishandling of appellate procedures under the Federal Rules of Appellate Procedure, including whether the Second Circuit (or, more likely, the District Court—it is unclear which court

¹ Questions Presented Nos. 4, 5, 6, 7, and 8 reference a "Motion to Reinstate a Complaint to Set Aside," which is, again, not a motion that was filed in any of the courts below. Respondent is unable to discern what, exactly, Petitioners are referring to, as nothing resembling such a motion appears in the record. For the same reason, Respondent did not address Questions Presented No. 6 in the body of this brief. It is impossible to decipher what Petitioners are attempting to argue or how it relates to any filing or ruling in the record.

² Question Presented No. 2 also references a "Rule 59(e) motion," despite the fact that no such motion was ever filed in the courts below.

Petitioners had in mind) should have reinstated a “complaint” (presumably referring to their appeal) based on postmarked filings, extensions under Fed. R. App. P. 26(b), or the suspension of rules under Fed. R. App. P. 2.³ These questions bear no relationship to what actually occurred in this case, where Petitioners were repeatedly warned of the consequences of noncompliance, given multiple extensions, and were afforded every accommodation possible with their filings, yet failed to timely prosecute their appeal at the District Court level.

Questions Presented Nos. 9, 10, 12, and 18 concern alleged violations of 28 U.S.C. § 1915, claiming the District Court and the Second Circuit improperly dismissed Petitioners’ case based on frivolousness. This is the only set of questions that arguably reflects the actual procedural posture and facts of this case. However, as shown in more detail below, these questions, while accurately reflecting what occurred in the proceedings below, do not present any substantial federal question warranting this Court’s review.

Lastly, Questions Presented Nos. 13 and 14 challenge the application of judicial immunity and allege civil rights violations under 42 U.S.C. § 1983, asserting that the federal judges assigned to Petitioners’ case acted outside their authority and deprived Petitioners of their rights. However, these issues are, again, not properly presented for review because Petitioners failed to raise them in the courts below, and

³ Petitioners also cite to “FRAP 30(I)(B)-(C)(1)-(2)(A)-FRAP,” which citation is incomprehensible and does not appear relevant.

this Court is not the appropriate forum for Petitioners' collateral attacks on the judiciary.

In short, Petitioners' questions are either unrelated to the proceedings below, rest on a mischaracterization of the record, or reflect legal theories so untethered from fact that they fail to present any issue worthy of this Court's review. The petition must be denied.

II. THE COURT OF APPEALS' ORDER DOES NOT CONFLICT WITH THIS COURT'S DECISIONS OR WITH OTHER CIRCUITS'

Petitioners have failed to identify any conflict between the Second Circuit's Order and any decision of this Court or that of any other circuit courts. The Second Circuit's denial of Petitioners' motion to proceed *in forma pauperis* and dismissal of their appeal was a correct and routine application of well-established precedent under 28 U.S.C. § 1915(e)(2), which mandates dismissal of claims that are frivolous, malicious, or fail to state a claim upon which relief can be granted.

District courts regularly exercise their statutory authority under § 1915 to dismiss frivolous appeals by litigants who abuse the judicial process. *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (holding that dismissal under § 1915(e) is reviewed for an abuse of discretion, because frivolousness is a decision entrusted to the discretion of the court entertaining the *in forma pauperis* petition, and that the district courts, who are "all too familiar" with factually frivolous claims, are in the best position to determine which cases fall into this category); *see also Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (defining frivolousness under § 1915).

Here, the Bankruptcy Court exercised that discretion appropriately. It thoroughly explained why Petitioners' claims lacked merit and were part of a 15-year pattern of abusive litigation tactics aimed at delaying creditors' enforcement proceedings and wasting judicial resources of the courts in the Second Circuit. The District Court and the Second Circuit, after reviewing the record, reached the same conclusion.

Petitioners point to no contrary authority from any jurisdiction that would have compelled a different result. The absence of any genuine legal conflict confirms that this petition raises no issue worthy of this Court's review.

III. BECAUSE THIS CASE CONCERNS ONLY PETITIONERS, IT DOES NOT PRESENT A QUESTION OF GENERAL IMPORTANCE REQUIRING THIS COURT'S ATTENTION

This case presents no question of general importance warranting this Court's attention. The issues raised by Petitioners are wholly case-specific, rooted in their personal dissatisfaction with the foreclosure of their properties following default on their mortgage that now dates back nearly two decades. The Second Circuit's routine application of established § 1915 standards to dismiss Petitioners' frivolous appeal affects no other litigants and establishes no new legal principle.

This Court's certiorari jurisdiction is reserved for cases that present questions of widespread significance or to settle important questions of federal law. *See Sup. Ct. R. 10.* Petitioners' repeated attempts to relitigate their personal grievances about the outcome of their foreclosure proceedings, dispersed across numerous courts spanning over almost two decades, and culminating in the Second Circuit's recent

ruling, do not come close to meeting this standard and raise no issue that extends beyond Petitioners' particular circumstances.

The courts below correctly applied well-settled law to facts that are unique to Petitioners' extraordinary history of vexatious litigation. No other case would be affected by this Court's review, and no clarification of federal law is needed. Such case-specific disputes fall well outside the scope of issues appropriate for this Court's discretionary review.

IV. THE ORDER BELOW IS CORRECT

The Second Circuit correctly denied Petitioners' motion to proceed *in forma pauperis* under 28 U.S.C. § 1915(e)(2), which mandates dismissal of frivolous claims, and dismissed Petitioners' appeal.

Given Petitioners' well-documented history of meritless and repeated filings of frivolous lawsuits spanning nearly two decades and across numerous jurisdictions—including at least 13 bankruptcy cases in seven districts as noted by the Bankruptcy Court that all ended in dismissal—the Second Circuit was correct in deciding that further judicial resources should not be wasted on Petitioners.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Dated: July 7, 2025

Respectfully submitted,

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