No. : 24-927

Supreme Court of the United States

BRIAN BURKE,
Plaintiff-Appellant, v.
HOUSING AND SERVICES, INC., KENMORE HOUSING DEVELOPMENT FUND CORPORATION, KENMORE ASSOCIATES, L.P., CITY UNIVERSITY OF NEW YORK, KENMORE HOUSING CORPORATION, NEW YORK STATE ATTORNEY GENERAL, NEW YORK CITY TRANSIT AUTHORITY,
Defendants-Appellees,

On Petition For A Writ of Certiorari from the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

Brian Burke
Petitioner *pro se*
145 East 23rd Street #4R
New York, NY 10010
646-434-8513 briantburke@gmail.com

QUESTIONS PRESENTED

1) Can Standing for a constitutional question (NYS Labor Law 190) be defeated by Judicial Error

2) Can RICO claims be defeated by Judicial Error, without apparent remedy?

TABLE OF CONTENTS

OPINIONS BELOW

On May 16, 2024 the Summary Order was entered into the record by the Second Circuit. On June 28, 2024 an Order on Petition for Rehearing/Hearing En Banc was Denied.

JURISDICTION

On May 16, 2024, 2019 a Summary Order was Entered upholding the District Court's Memorandum and Order. On May 30, 2024 a timely Motion for Rehearing and/or Panel En Banc was Filed and Served, and this was Denied on June 28, 2024. The Jurisdiction of this Court is invoked under 28 U.S. Code § 1254. Courts of appeals; certiorari; certified questions, and Rule 10 of Part III of The Rules of The Supreme Court "(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

STATUTORY PROVISIONS INVOLVED

1) United States Constitution
2) **18 U.S. Code § 1964 - Civil remedies**
3) **18 U.S.C. 1343—Elements of Wire Fraud**
4) **18 U.S.C. Section 1341—Elements of Mail Fraud**

STATEMENT OF CASE

In 2018 Petitioner filled the instant, underlying case in the SDNY after discovering massive (Medical) Fraud within medical documents from Bellevue Hospital requested for a 9/11 NYCERS pension (due to diagnosed PTSD and relevant Service at Ground Zero). That unprecedented, malicious, knowingly

fraudulent/defamatory, secret 'diagnosis' (Delusional Disorder DSM-5 297.1 (F22)) caused an unsurprising denial of same and substantial economic loss from an earned pension that Petitioner undoubtedly, otherwise of the Fraud, qualifies for. That Fraud was committed by Appellant's landlord (Kenmore Associates/HSI). As the Fraudulent Concealment was not discovered until after Statue of Limitations expired on Malpractice and Defamation. Petitioner requested tolling in Amended Answer, which was denied by the SDNY (without explanation) and the Second Circuit (via Judicial Error). On February 26, 2001, Plaintiff was hired by NYC Transit as a Civil Servant/Train Operator. On September 13, 2001 I was assigned to Ground Zero/Chamber Street. Injuries (including PTSD) resulted, one symptom was/is Whistle-Blowing by this Litigant. Neither NYCT nor Kenmore would tolerate same. Among other criminal, ongoing acts by NYCT, massive wage theft (ongoing since 2015), Fraud and Perjury and Obstruction of Justice by NYCT counsel in state court sworn documents. This is RICO. In addition, in an EDNY case, NYCT used *Labor Law 190* ("Employer" includes any person, corporation, limited liability company, or association employing any individual in any occupation, industry, trade, business or service. The term "employer" shall not include a governmental agency.), which Plaintiff believes to be unconstitutional, was used to justify the ongoing wage theft. This standing was mentioned in the Amended Answer, as well as, most importantly, Plaintiff's Opposition to the (first) Report and Recommendation. The Second Circuit simply ignored this clear standing, and claimed it was not addressed! Please see the following excerpts from the Petition for Panel Rehearing/Hearing En Banc, "Starting with 1.a material factual or legal matter was overlooked in the decision; we review the Summary Order (att.) page 4

paragraph 2 "Burke contends that the district court erred in dismissing his claims against the Attorney General – by which he sought to enjoin enforcement of New York Labor Law § 190(3) – for lack of standing. Burke forfeited this argument, however, when he failed to object to the portion of the magistrate judge's report and recommendation that proposed dismissal of this claim on standing grounds. *See Smith v. Campbell, 782 F.3d 93, 102 (2d Cir. 2015)* ("Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a [forfeiture] of further judicial review of the magistrate's decision.")." The first sentence is correct. The second sentence is incorrect as to one word- "when", which should instead read "if". In fact one of the honorable Panel Judges asked if I in fact objected to the Magistrate Judge's Findings that I had no standing to challenge LL 190. I did Object, in my PLAINTIFF'S OPPOSITION TO REPORT AND RECOMMENDATION, AFFIRMATION, MEMORANDUM OF LAW AND EXHIBITS (document 143 on Pacer/SDNY) with the relevant section starting on page 10 (of 25), paragraph 1, line(s) 5-25 ; "Mr. Daniel Chiu, *esq.*, Counsel for NYCT, then as now, stated in court, in his pleadings/ motion(s), that NYS Labor Law 190 bars this government employee from obtaining remedy under NYS Labor Law. Thus the uncontested standing.[emphasis added] Unlike with the 'Taylor Law' case, no party has raised any dispute with Affiant/Litigant's ongoing contention that LL 190 is unconstitutional under the 5th Amendment (Taking Clause), Due Process Clause(s), Right to Petition Government for Redress of Grievances (https://en.wikipedia.org/wiki/Right_to_petition), Equal Protection Clause of the 14th Amendment and the Right to a Jury Trial, under 42 U.S. Code § 1983. Civil action for

deprivation of rights....." and pages 16, 17 paragraph 1 line(s) 4- 26; "Additionally, Petitioner has requested amicus curiae from one, or more Law Professor(s), Law School(s)/Clinic(s), and/or Legal and/or Civil Rights organization(s). The request is with regard to the claim of unconstitutionality re: LL 190. Petitioner would again request, in the interest of clarity, the Court strike LL 190 along the lines encapsulated by A3284 and/or S5087 and is requesting no alterations of NY LL 196. If it is required to request leave for nonparties to file amici, please see this as requesting thereof. Petitioner believes this is primarily, at its heart, a definitive 1983 case, but requests the Court consider RICO in this pleading stage, prior to trial, summary judgment, or discovery, especially for NYCT, Mr. Weir and Mr. Chiu, state actors, and Kenmore, who is the definitive 'non governmental' state actor. That would give this body jurisdiction over the state claims, as well, in the interest of judicial efficiency/Justice." This was not the only outrageous, definitive Judicial Error in the Second Circuit's Summary Order. See "Again with 1.a material factual or legal matter was overlooked in the decision; we address page 5 paragraph 2; "Burke next argues that the district court erred by refusing to toll the statute of limitations for his defamation and medical malpractice claims against the City and Bellevue. But equitable tolling requires a showing that "the defendant actively misled the plaintiff," which Burke did not plausibly allege in his amended complaint. *O'Hara v. Bayliner, 89 N.Y.2d 636, 646 (1997).*" In the 73 page Amended Complaint, Plaintiff did nothing other than show "the defendant actively misled the plaintiff"!!!!! Of course, Plaintiff alleges (and proved) that Bellevue (and, of course, Kenmore, *et al.*, Dr. O'Brien, Mr. Camire) "actively misled the plaintiff". While stating in Briefs that the gravamen is Public Corruption, any

reading of all the Amended Complaint (and subsequent pleadings) that Fraud (Mail/Wire/Health care Fraud) would accommodate all the (ongoing and preceding) Criminal Conduct by Defendants. Kenmore brutally Defrauded/gaslighted Bellevue. But Bellevue knew their false "diagnosis" was/is false by their actions, i.e. "actively misled" by not informing their alleged "patient" (myself) of their knowingly false, malicious "diagnosis". Bellevue, and Kenmore, never discussed, or intended Plaintiff become aware of their weaponizing medical care/ diagnosis, full stop. I would have to refer the Second Circuit to the dozens of pages of medical evidence included in the Amended Complaint, which delineate the malicious, concerted, almost successful, attempt to conceal conduct they knew, and showed they knew by actions and/or inactions, were/are actionable. If the voluminous evidence the Defendants "actively misled the plaintiff" is upheld as insufficient, then 3. the proceeding involves one or more questions of exceptional importance. All citizens in the catchment area now have no protections against medical fraud, or fraud in general, unless we can correct this. Plaintiff does not believe that was, or is, the intent of the Second Circuit, but nevertheless,..." See also "Please see next finding in Summary Order, page 5 "As to Burke's breach-of contract claims against the Transit Authority, his former employer, Burke now argues that the district court should have excused his failure to exhaust administrative remedies because such exhaustion would have been futile. Yet Burke never raised this argument when opposing the Transit Authority's motion to dismiss. As a result, he has forfeited that argument on appeal. See *Anderson Grp., LLC v. City of Saratoga Springs,* 805 F.3d 34, 50 (2d Cir. 2015) ("It is well settled that arguments not presented to the district court are considered [forfeited] and generally

will not be considered for the first time on appeal.")."We have another error. Please see PLAINTIFF'S OPPOSITION TO NEW YORK CITY TRANSIT AUTHORITY MOTION TO DISMISS Document 65 page 12 "The contract violations include, but are not limited to, the ongoing Wage/OT Theft, since April 9, 2015 to present, for which a timely Contract Grievance was submitted, ... Petitioner acknowledges a Step I, wherein Supervisor Ms. Bey lied in her 'decision', claiming all monies were paid. That document was submitted, as a False Instrument for Filing, in a WCL 120 case. Furthermore after a Step II last January 2017, no 'decision' has been rendered by NYCT, a third Contract Grievance in 2016 for the 'termination' and additional Vacation and Sick pay for 2016 and 2017 the fourth, for Differential. NYCTA, in collusion with TWU Local 100, intentionally failing it's Duty of Fair Representation, have blocked any further processing of said four (4) grievances. These Grievances must be heard by the Binding Contract Arbitrator, but NYCTA knows they will lose and thus perform numerous felonies to assure that will not happen." And on page 14 "9) With regard to the salient Breach of Contract, "[P]laintiff must first exhaust his administrative remedies, which he has not done, and establish a breach of the duty of fair representation, which plaintiff has also not done. (10) Clearly, Petitioner has shown, or will, a 'pattern' of criminal conduct falling under the Federal and NYS Civil R.I.C.O., including, but not limited to, NYCTA. This additionally violates the contract under 'Expedited Grievances' 2 Petitioner pleads with NYCTA/TWU Local 100 TO BE ALLOWED TO 'EXHAUST ADMINISTRATIVE REMEDY'!!! What more can Petitioner do to obtain this 'remedy' (i.e. a ruling by the Contract Arbitrator, see above). NYCTA, in their complete corruption & debasement, insult all with their

'unclean hands'/Catch 22 illogic. Petitioner must exhaust administrative remedy, 100% controlled by NYCTA (and TWU Local 100) in order to seek remedy in an actual court, yet they block the scheduling, or 'decision' in all four Grievances at issue, for years! "d. Expedited Arbitration 1. Sick leave, shortage and differential grievances shall be processed, heard and determined through the instant expedited arbitration procedure. The parties may mutually agree to have other cases processed through this procedure. A differential grievance involving a major interpretation of the collective bargaining agreement may be submitted to the Impartial Arbitrator pursuant to the contract interpretation grievance procedure set forth above upon mutual agreement of the parties.....2. A mutually agreed upon Impartial Arbitrator(s) will be authorized to hear and decide those cases that the parties agree shall be heard pursuant to the expedited arbitration. 3. At the conclusion of each hearing date, the Impartial Arbitrator shall issue an Award for each case heard during that day. Awards issued by the Arbitrator shall be final and binding." Page 33, Contract. 3 Of course Petitioner has, or will when TWU Local 100 Answers/Moves, that they violated their Duty of Fair Representation! Where is NYCTA's standing to argue on behalf of TWU Local 100? Is Counsel stipulating NYCTA and TWU Local 100 are of one mind/agenda? Sounds a bit like conspiracy/collusion and the ultimate violation of the admitted Duty of Fair Representation! In NYCTA, by Counsel's, specious, knowingly false, 'argument' that, presumably Local 100 did perform their Duty of Fair Representation, where is that evidence/ counterargument? How is this case not the definitive case of TWU Local 100's absolutely stipulated to breach of undisputed Duty of Fair Representation? Chiu's, *et al.*, ongoing, relentless, actionable, Perjury/

Subornation/Obstruction of Justice, Wire/Mail Fraud, Forgery/False Instruments for Filing, etc.. Sounds like R.I.C.O. Predicate Felonies! As to..." And more "Next, the Summary Order states "And while Burke contends that the district court erred in dismissing his claim against the Transit Authority under the Racketeer Influenced and Organizations Act ("RICO"), **18 U.S.C. § 1964(c),** he argues only that RICO should apply to public agencies. That argument "fails to address adequately the merits" of the district court's dismissal of his RICO claim, which was based on Burke's failure to allege a pattern of racketeering activity. *Terry v. Inc. Vill. of Patchogue*, 826 F.3d 631, 632–33 (2d Cir. 2016) (rejecting non-responsive argument because "even a litigant representing himself is obliged to set out identifiable arguments in his principal brief" (internal quotation marks omitted))." Please see Document 63, SDNY PLAINTIFF'S OPPOSITION TO NEW YORK CITY TRANSIT AUTHORITY MOTION TO DISMISS. See page 10 "Furthermore Mr. Chiu's Perjuries/ Subornations/False Instrument Filings/ Obstruction of Justice/Fraud on the Court(s) are becoming more obvious and create an admitted danger to his law license, employment, *etc.*. That is the real reason for this outrageous attack on constitutional Due Process Rights of Petitioner. This apparent "motion within a motion" for Injunctive Relief constitutes Fraud. NYCTA has submitted false W2's to Petitioner and the IRS and NY State Tax Department, defrauded Petitioner by swearing to various bodies that Differential and/or wages have been paid, failed to Direct Deposit said monies (wire fraud) all to (albeit so far successfully) Obstruct Justice. Then we have the Perjury, Subornation, Forgery/False Instrument(s), *etc.*. the definitive SLAPP." And "In that case, Mr. Chiu, *esq.*, submitted one Perjurious Verified Affidavit, and two Suborned Affidavits. In his, he lied and

stated, under oath, that Petitioner was/is paid 'Differential' monies, and this was/is knowingly false. In addition he suborned a fellow employee to back up this lie. A third he suborned to lie about a False/Forged Instrument for Filing. This is the real reason(s) for the now understandable motive for this outrageous attack on Remedy and the Rule of Law." RICO. See also page 12 foot note 10 "Petitioner acknowledges a Step I, wherein Supervisor Ms. Bey lied in her 'decision', claiming all monies were paid. That document was submitted, as a False Instrument for Filing, in a WCL 120 case. Furthermore after a Step II last January 2017, no 'decision' has been rendered by NYCTA. This additionally violates the contract under 'Expedited Grievances'" More RICO/Obstruction of Justice/Mail/Wire Fraud. Ongoing massive Wage Theft/Fraud through today, continuous since 2015, 9 years of fraud." And "Finally, please see page 7 of Summary Order "Burke argues that the district court erred in granting summary judgment on his RICO and section 1983 claims because Kenmore did not negotiate with Burke in good faith during court-ordered mediation. But Kenmore's good faith – or lack thereof – during mediation had no bearing on the district court's grant of summary judgment, which instead turned on the fact that Burke failed to demonstrate that Kenmore was a state actor or had committed RICO predicate acts. See Terry, 826 F.3d at 632–33 (rejecting argument that failed to address the merits of the district court's decision). In light of his failure to raise any argument as to how the district court erred, Burke has "The duty of fair representation in labor negotiations was born in Supreme Court case law to protect against racial discrimination and as a bastion of individuals' interests during exclusive union representation in the collective bargaining process. The law later became as much a prescription for deference

to unions as a protector from arbitrary union rule. As it currently stands, the law has become a minimal safeguard against wholly irrational and invidious union conduct far from the original guarantee of competent and committed union representation. Almost 25 years after the Supreme Court recognized a duty of fair representation in federal labor law, the New York legislature enacted the Taylor Law – officially the Public Employees' Fair Employment Act. Since the adoption of the Taylor Act, the New York legislature and courts have incorporated the federal doctrine into the statute for use by New York's public sector employees." forfeited any challenge to the district court's summary judgment order." This is incorrect. Please see AFFIRMATION IN OPPOSITION TO DEFENDANT'SLOCAL CIVIL RULE 56.1 STATEMENT page 9 "25.) It is refreshing that Defendants have (effectively) admitted to Wire Fraud, see "*United States v. Hanson*, 41 F.3d 580, 583 (10th Cir. 1994) (two elements comprise the crime of wire fraud: (1) a scheme or artifice to defraud; and (2) use of interstate wire communication to facilitate that scheme); *United States v. Faulkner*, 17 F.3d 745, 771 (5th Cir. 1994) (essential elements of wire fraud are: (1) a scheme to defraud and (2) the use of, or causing the use of, interstate wire communications to execute the scheme), cert. denied, *115 S.Ct. 193 (1995); United States v. Cassiere, 4 F.3d 1006 (1st Cir. 1993)* (to prove wire fraud government must show (1) scheme to defraud by means of false pretenses, (2) defendant's knowing and willful participation in scheme with intent to defraud, and (3) use of interstate wire communications in furtherance of scheme); *United States v. Maxwell*, 920 F.2d 1028, 1035 (D.C. Cir. 1990) ("Wire fraud requires proof of (1) a scheme to defraud; and (2) the use of an interstate wire communication to further the scheme.").

https://www.justice.gov/archives/jm/criminal-resource-manual-941-18-usc-1343-elements-wire-fraud. a predicate Civil Rico Felony https://jenner.com/system/assets/publications/21107/original/2021_RICO_Guide.pdf." and page 13 "Please see, again, Amended Complaint, exhibit c, pages 11-32, and attached 'Bellevue Documents' wherein Ms. Rossi appears to plead with Bellevue for them to contact NYCT, clearly to get Plaintiff fired. After they clearly refused, Ms. Rossi contacted NYCT herself. There is no other way NYCT could have obtained the secret, mendacious, knowingly false, Medical/ Mail/Wire Fraud, unless, again Bellevue themselves did. They did not, as they stated in their medical records. Bellevue also refused to perform a removal under the NYS Mental Hygiene Law, requested by Ms. Rossi/Kenmore, styled a "9.58 transport" through the Fraudulent Bellevue Medical Documents, again see Exhibit C, pages 31-32, paragraph 19. Plaintiff's Sister, Kelly Burke, supplied a sworn Affidavit, wherein she stated unequivocally she never told Ms. Rossi/ Kenmore/HSI that Plaintiff was "hospitalized by psychosis in his 20's" that Kenmore willfully, fraudulently, maliciously, without basis, repeatedly informed Bellevue. This outrageous lie still exists, replete, in Bellevue's database, and again, itself, contributed greatly to the NYCT 'termination' and the Bellevue Fraud was the sole reason for the very costly NYCERS 9/11 pension denial.

Kelly Burke denies, in the strongest terms, under oath, that she informed Kenmore of this mendacious Fraud. See also attached Bellevue Documents and Kelly Burke Affidavit." And page 18 "what Housing Court believes does not 'save' as appropriate defenses for the housing holdover, an epically frivolous, harassing, vexatious, litigation, filed days after Plaintiff exposed

their massive Wire/Mail Fraud, Obstruction of Justice, False Instruments for Filing, Forgery, for filing two backdated, false, fraudulent "permits" they claim were granted in 2017, while including the stop work order number from February 2018, is the quintessential issue(s) for the jury and otherwise not relevant to instant case. See exhibit DD pages 13 and 14. Kenmore submitted to OATH two document allegedly dated, respectively, 04/24/2017 and 09/05/2017 wherein said documents included the two violation numbers issued in February 2018, an impossibility, due to this whistle-blower's successful complaint of dangerous, un-permitted, unlicensed work performed by Kenmore. Please see also certified transcript of the 2018 OATH hearing attached." See, e.g., *Weixel v. Bd. Of Educ., 287 F.3d 138, 145-46 (2d Cir. 2002)* (construing a prose complaint to make the best arguments that the allegations suggest)."

REASONS FOR GRANTING THE WRIT So why would this concern the Supreme Court? First, Rule 10 "or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;". 1) We now have case law[1] blocking Remedy/Access to the Courts via challenging/thwarting potential remedy for clearly, undisputed unconstitutional Statutes. If having Wages stolen for over 9 years continuously, via LL 190, does not constitute 'harm' as required under standing, what would? If an unexplained, undefended, equal protection violating Statute, where there is actual Standing/Harm,

[1] The Second Circuit stated in their Summary Order "RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT." Please see Unpublished Opinions: A Convenient Means to an Unconstitutional End ERICA S.WEISGERBER "

cannot be challenged, then ***Marbury v. Madison, 5 U.S. 137 (1803)*** has been effectively overturned by the Second Circuit. The definitive conflict, violating the USSC's most important Binding Precedent. Are all, hard working, honorable, Public Employees in New York to be continuously threatened by there 'employer who is not an employer' for ever? Is/are no New York Public Employee's earned wages safe? Why? Sounds like an excellent reason to Reverse and Remand instant case back to SDNY for Jury Trial, and for the USSC to strike the mentioned sentence in LL 190 that denies us Public Employees in New York Remedy for Wage Theft. As to the RICO claims, the only actual, in any way correct explanation (via SDNY) of the Dismissal is that as to the pattern of racketeering by Kenmore/HSI, the Fraud/False Instruments, entered into evidence in an administrative law/OATH Hearing, that underlying allegation (lack of permitted/licensed work) was not a predicate felony. This is correct. But no explanation, from the parties or courts, as to the legality of the forged documents attempting to Obstruct Justice and RICO. Like all other legal argument/evidence, simply not addressed in the headlong rush to the forgone conclusion. So what RICO cases are now sufficient in the Second Circuit? Any? Unknown. One more reason to Reverse and Remand. As to the other Predicate Felonies by Kenmore/ HSI, the outrageous Medical/Wire/Mail Fraud, via Bellevue. Is/are these crimes Predicate RICO or not? Do we in the Second Circuit catchment area have any remedy for this type of malicious fraud? If not, why not? As to the tolling, either we within the Second Circuit ambit are granted tolling for Fraudulent Concealment, or we are not. This current decision encourages the bad faith crimes by Kenmore, *et al.,* why? Please, in the interest of Justice and the Rule of Law and Due Process, take this Petition and restore the

enumerated rights of New Yorkers back to where it stood prior to this/ these egregious Judicial Error(s).

CONCLUSION For the aforesaid reasons this Honorable Court should Grant this Petition for Writ of Certiorari, in the interest of Supreme Court Precedent, proper enforcement of Statue, common law and the Public Interest, the Rule of Law, Justice and Remedy.

Respectfully Submitted_/S/_____

Brian Burke, Petitioner *Pro Se*

APPENDIX A 2ND CIRCUIT 05/16/24

23-635 Burke v. Housing & Services, Inc. UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT SUMMARY ORDER RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL. At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of May, two thousand twenty-four. PRESENT: DENNIS JACOBS, ROBERT D. SACK, RICHARD J. SULLIVAN, Circuit Judges.

_____BRIAN BURKE, Plaintiff-Appellant, v. No. 23-635 HOUSING AND