

NOV 14 2017

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BRENDA JOYCE HAYNES — PETITIONER
(Your Name)

vs.

MIKE ACQUINO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS 2ND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRENDA JOYCE HAYNES
(Your Name)

11 NORTHUMBERLAND AVENUE
(Address)

BUFFALO, NEW YORK, 14215
(City, State, Zip Code)

(716) 768-4813
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

(1) Whether the United States Court of Appeals for the Second Circuit's adoption of District Court's Decision not to give preclusive effect pursuant to 28 USC § 1738 to a final state court judgment is in direct conflict with this Court's Decision reached in *Allen v. McCurry* 449 US 90. ?

(2) Whether the United States Court of Appeals for the Second Circuit Acquiesce to District Court's dismissal of the plaintiff's 42 USC § 1983 municipality claims are in direct conflict with this Court's Decision reached in *Leatherman v. Tarrant City* 507 US 163. ?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- (1) Mike Acquino, defendant-appellee
- (2) William Rezabek, defendant-appellee
- (3) Jason Whitenights, defendant-appellee
- (4) Bohdan Papisz, defendant-appellee
- (5) John Sullivan, defendant-appellee
- (6) Unknown Officers, defendant-appellee
- (7) Unknown Others, defendant-appellee
- (8) Buffalo Police Department, defendant
- (9) Erie County Sheriff's Department, defendant
- (10) Erie County District Attorney's office, defendant
- (11) City of Buffalo, defendant
- (12) Diane T. O'Gorman, defendant
- (12) Erie County

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JUNE 30th, 2017.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: AUGUST 17th, 2017, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FRC P RULE 1

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

FRC P Rule 8

(a) CLAIM FOR RELIEF, A pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

FRC P RULE 15

(a) Amendments Before Trial.

(1) Amending as a matter of course, A party may amend its pleading once as a matter of ~~the~~ course within;

(A) 21 days after serving it or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b)(e), or (f), whichever is earlier.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S. Code § 1738 - State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

42 U.S. Code § 1983 - Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S. Code § 1985 - Conspiracy to interfere with civil rights

(3) DEPRIVING PERSONS OF RIGHTS OR PRIVILEGES

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws;..... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S. Code § 1986 - Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding \$5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no

widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances..

U.S. Constitution

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be

compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution

Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Constitution

13th Amendment Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

U.S. Constitution

14th Amendment

Section 1.

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

Trial order of dismissal New York Consolidated Laws, Criminal Procedure Law - CPL § 290.10

At the conclusion of the people's case or at the conclusion of all the evidence, the court may, except as provided in subdivision two, upon motion of the defendant, (a) issue a "trial order of dismissal," dismissing any count of an indictment upon the ground that the trial evidence is not legally sufficient to establish the offense charged therein or any lesser included offense.

STATEMENT OF THE CASE

- (1) The petitioner, proceeding pro se and in forma pauperis, commenced her civil rights (1983) complaint on April 29th, 2010 alleging civil rights violations against all of the defendants named in the list of parties on page ii.
- (2) Judge Saragusa dismissed with prejudice the petitioner's municipality claims, on July 1st, 2010.
- (3) District Court Judge Telasca dismissed the petitioner's municipality claims and supplemental claims, on April 6th, 2011.
- (4) The petitioner filed her notice of appeal to challenge the dismissal of the claims against the municipality defendants on May 5th, 2011.
- (5) The United States Court of Appeals for the Second Circuit declined Appellate jurisdiction over petitioner's appeal # 11-1815 on August 2nd, 2011.
- (6) The trial was had between June 1st and 9th, 2016, at the close of trial the petitioner made an oral motion for a directed verdict based upon 28 USC § 1738 which Magistrate Foschio denied in open Court.
- (7) The petitioner then made a written motion for reconsideration relying upon 28 USC § 1738, on June 9th, 2016.
- (8) The District Court Magistrate (Foschio) refused to apply 28 USC § 1738 on petitioner's behalf by claiming. In open court that § 1738 did not apply to criminal Court orders, on 6/9/16, 9

STATEMENT OF THE CASE

(9) The petitioner then filed her notice of appeal to the United States Court of Appeals for the Second Circuit on July 19th, 2016.

(10) On appeal the petitioner argued that District Court (Foschio) erred when he refused to give full faith and credit to the final judgment of the New York State Criminal Court, on June 14th, 2017.

(11) The United States Court of Appeals for the Second Circuit adopted the District Court's findings that the State Criminal Court Order which finally determined that the defendants did not have probable cause for the arrest of the petitioner.

(12) On appeal the petitioner also argued in her brief that both District Court Judges Saragusa and Telasca erred when they dismissed the petitioner's claims against the municipalities involved, in violation of Fed. Rules 8 and 15 and Leatherman.

(13) The United States Court of Appeals for the Second Circuit acted in acquiesce with the Orders of both District Court Judges (Saragusa and Telasca) which dismissed all of the petitioner's municipality claims, when they instructed the clerk of the Court to amend the caption of the petitioner's appeal.

REASONS FOR GRANTING THE PETITION

I. The unchallenged adoption by the Panel of the United States Court of Appeals for the second Circuit of the District Court's misapplication of the legal standards outlined in *Jenkins v. City of New York* is in direct conflict with this Court as outlined in *Allen v. McCurry* 449 US 20 (1980).

a) In the instant case District Court ruled that according to (*Jenkins, supra*) that the City Court Judgement of Judge Fiorella dated 12/6/10 which finally determined the issue of probable cause in the petitioner's favor and against the respondents, should not receive preclusive effect.

(b) The district court's decision not to give preclusive effect to the final judgment of City Court Judge Fiorella issued pursuant to NYC CPL § 290.10 is in direct conflict with the legal principles enumerated in *Jenkins (supra)*, which relied on *Matter of Juan C. v. Cortines* 223 AD2d 126 (1996), to establish that once the prerequisites for applying the doctrine of collateral estoppel to a state court judgment has been met which are :

(i) "identity of parties and issues, a prior proceeding resulting in a final and valid judgment in which the party opposing the estoppel had a full and fair opportunity to litigate".

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(b)once these prerequisites have all been met then (" the state court judgment is immune from challenge in district court on collateral estoppels grounds") Matter of Juan C, v Cortines (supra).

(c) It is undisputed that the defendants unlawfully arrested the plaintiff-appellant without a warrant on February 3rd, 2009.

(i) It is undisputed that all of the defendants testified at either the pretrial hearings or at the criminal trial in an effort to establish probable cause as is required by law whenever an arrest without a warrant is made (see Thompson v Bucholz 107 mo. App. 111 and Larson v Erickson 142 Wn 236 Wash 1927).

(ii)The undisputed facts contained in paragraphs (c) and(c)(i) establishes the identity of the parties and of the issue.

(d) It is undisputed that the City Court Judge Fiorella concluded the suppression hearing with an order of dismissal for lack of probable cause in favor of the plaintiff-appellant.(Dkt.

(i) It is undisputed that the City Court's suppression hearing order of dismissal for lack of probable cause was overturned on appeal, and remanded back to the City Court with explicit instructions that the City Court Judge should find probable cause unless City court make a specific finding that the officers hearing testimony is not credible and that they had not observed a violation offense.....(Dkt. Entry # 94 attachment 1).

(ii) It is undisputed that all of the defendants were present at the trial had on December 2, 2010 and that the City court Judge determined (dkt.# 94 attachment 2) that the defendant's had lacked probable cause to arrest the plaintiff-appellant, even after being instructed to find that the arrest should be rule lawful absent the above-mentioned specific findings (supra).

(e) The undisputed facts contained in paragraphs (c)(iii-v) establishes that the defendants-appellees had at least two full and fair opportunities to litigate the issue of probable cause, in which

they were mandated by law to overcome the presumption that the arrest is unlawful (supra (c)(i), where the defendant-appellees were the complaintant's in the above mentioned criminal proceedings, and were the sole parties responsible for causing the criminal proceedings to take place.

REASONS FOR GRANTING WRIT

(f) The undisputed facts contained in paragraphs (c)(i) and (d)(i)(ii) established that there were two or three prior criminal proceedings which resulted in a final and valid judgment of lack of probable cause at the initial arrest, after two years of litigation in state court (dkt entry #94 attachment 2)

(g) The court in Jenkins (*supra*) while relying on Cortines, rephrased the prerequisites in the following manner "In New York, collateral estoppel has two essential elements. "First, the identical issue necessarily must have been decided in the prior action and be decisive of the present action, and second, the party to be precluded from relitigating the issue must have had a full and fair opportunity to contest the prior determination".

(h) In addition the court in Jenkins (*supra*), while citing *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 US 75 further acknowledged that "There is no doubt that " a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the state in which the judgment was rendered".

(i) It is undisputed that the state criminal proceedings which the defendants personally initiated lasted for almost two years and was finally concluded when City Court issued a trial court order of dismissal pursuant to NY State CPL sec. 290.10.

(i) Under NY State CPL sec. 290.10 the order can only be granted " at the conclusion of the people's case or at the conclusion of all the evidence, the court may,....upon motion of the defendant, issue a trial court order of dismissal, dismissing any count of an indictment upon the ground that the trial evidence is not legally sufficient to establish the offense charged therein or any lesser included offense....

(ii) The Restatement Second of Judgments explains the concept of judgment finality for issue preclusion purposes: "The rules of *res judicata* are applicable only when a final judgment is rendered. However, for purposes of issue preclusion (as distinguished from merger and bar), 'final judgment' includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect." (Rest.2d Judgments, § 13, italics added.) This section "makes the general commonsense point that such conclusive carry-over effect should not be accorded a judgment which is considered merely tentative in the very action in which it was rendered. On the contrary, the judgment must ordinarily be a firm and stable one, the 'last word' of the rendering court--a 'final' judgment." (Id, § 13, com. a, italics added.)

REASONS FOR GRANTING WRIT

(iii) As emphasized by the Restatement, it is important to determine whether a judgment is "final" for purposes of appellate review or merger and bar, as distinguished from issue preclusion in subsequent actions. (Rest.2d Judgments, § 13, com. b.) The requirement of finality of judgment is interpreted strictly, as indicated above, when considered for purposes of appellate review or application of bar or merger. Issue preclusion, however, is a different matter. "But to hold invariably that that kind of carry-over is not to be permitted until a final judgment in the strict sense has been reached in the first action can involve hardship--either needless duplication of effort and expense in the second action to decide the same issue, ..." (Id, § 13, com. g.) The Restatement cautions: "Before [giving carry-over effect], the court should determine that the decision to be carried over was adequately deliberated and firm, even if not final in the sense of forming a basis for a judgment already entered. Thus preclusion should be refused if the decision was avowedly tentative. On the other hand, that the parties were fully heard, that the court supported its decision with a reasoned opinion, that the decision was subject to appeal or was in fact reviewed on appeal, are factors supporting the conclusion that the decision is final for the purpose of preclusion."

(iv) , several courts... have applied collateral estoppel to preclude a defendant from relitigating multiple claims where the defendant had the incentive and complete opportunity to contest the issue fully in the first action. (Zdanok v. Glidden Company, Durkee Famous Foods Division (2d Cir. 1964) 327 F.2d 944, 956, disapproved on other grounds Local 1251 Int. U. Of U.A., A. & A.I.W. v. Robert Shaw Controls Co. (2d Cir. 1968) 405 F.2d 29; United States v. United Air Lines, Inc. (E.D. Wash. 1962) 216 F. Supp. 709, 728, affd. sub nom. United Air Lines, Inc. v. Wiener (9th Cir. 1964) 335 F.2d 379, 404, cert. dism. 379 U.S. 951 [13 L. Ed. 2d 549, 85 S. Ct. 452]; Hart v. American Airlines, Inc. (1969) 61 Misc.2d 41 [304 N.Y.S.2d 810, 814-815], contra, Price v. Atchison, T. & S. F. Ry. Co. (1958) 164 Cal. App. 2d 400 [330 P.2d 933]; Nevarov v. Caldwell (1958) 161 Cal. App. 2d 762 [327 P.2d 111].).

(j) The New York State and Federal Laws mentioned above combined to direct the course of action to be taken by district court when presented with the above mentioned undisputed facts of this case and that is to give preclusive effect to the City Court Judgment of Judge Fiorella where said order is a final judgment of the criminal proceedings had below and issued pursuant to NY State statute CPL 290.10(which can only be rendered after the people has rested their case in chief),where all of the defendants who had arrested the plaintiff-appellant without a warrant and were thereby mandated by law to establish probable cause in order to overcome the common law presumption that the arrest was unlawful and where the defendants initiated the criminal proceedings by personally filing the accusatory instrument, all of the defendants

REASONS FOR GRANTING WRIT

were present and available to establish the prerequisite probable cause at all of the criminal proceedings held over the course of two years but were unable to do so.

(k) Therefore District Court has failed to properly apply the above mentioned legal standards outlined in Jenkins (*supra*) to the above mentioned undisputed facts which were known to district court prior to reaching the determination not to give preclusive effect to the City Court Order of Judge Fiorella made in favor of the plaintiff-appellant, District Court's determination not to give preclusive effect to the state court judgment is therefore of exceptional importance and would have a chilling effect on the ability of New York State Litigants, relying on 28 USC 1738 for preclusion by collateral estoppels in Federal Court, based on State Court Judgments which qualify under Jenkins (*supra*), if not overturned where district court's reliance on Jenkins is misplaced and which results in a complete conflict with Jenkins (*supra*).

(l) Nothing in the legislative history of section 1983 reveals any purpose to afford less deference to judgment in state criminal proceedings than those in state court civil proceedings.

(m) As mentioned above the court in *Allen v McCurry* 449 US 90 (1980) found that "There is in short no reason to believe that Congress intended to provide a person claiming a federal right an unrestricted opportunity to relitigate any issue already decided in state court simply because the issue arose in a state court proceeding in which he would rather not been engaged at all,

The Allen Court also made mentioned to the following commentary:] See *id.*, App., at 78 (comments of Rep. Perry) ("Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices. In the presence of these gangs all the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes and feared detection. Among the most dangerous things an injured party can do is to appeal to justice. Of the uncounted scores and hundreds of atrocious mutilations and murders it is credibly stated that not one has been punished"); *id.*, at 653 (comments of Sen. Osborn) ("The State courts, mainly under the influence of this [Klan] oath, are utterly powerless"); *id.*, at 394 (remarks of Rep. Rainey) ("The question is sometimes asked, Why do not the courts of law afford redress? Why the necessity of appealing to Congress? We answer that the courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity. What benefit would result from appeal to tribunals whose officers are secretly in sympathy with the very evil against which we are striving?"); *id.*, App., at 153 (comments of Rep. Garfield) ("But the chief complaint is not that the laws of the State are

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unequal, but that even where the laws are just and equal on their face, yet, by a systematic maladministration of them, or a neglect or refusal to enforce their provisions, a portion of the people are denied equal protection under them"); *id.*, App., at 166-167 (comments of Rep. Williams regarding Klan methods of securing perjured testimony).

(n) The Panel's Decision which affirms the decision of the district court in this matter and reads "" As a preliminary matter the District Court was correct in concluding that the City Court's Decision was not owed any collateral estoppel effect in the instant case see *Jenkins v City of New York* 478 F3d 76, 85-86 (2nd Cir. 2007) is in direct conflict with the United States Supreme Court in *Allen* (*supra*).

II. The unchallenged acquiesce by the Panel of the United States Court of Appeals for the Second Circuit , of District Court's dismissal of the Petitioner's 1983 civil rights claim against municipalities, is in direct conflict with this Court in *Leatherman v Tarrant County Narcotics Intelligence and Coordination Unit* 507 US 163 (1993).

(o) The plaintiff-appellant filed her in forma pauperis 1983 civil rights complaint on April 29th, 2010 alleging civil rights violations against the above named defendants as well as against the City of Buffalo and the County of Erie.

(p) On July 7th 2010 Judge Saragusa erroneously dismissed with prejudice the plaintiff's actions against the Buffalo Police Department. Erie County Sheriff's Department and Erie County District Attorney's office(dkt. Entry #3)

(q) On April 6 2011 District Court Judge Michael Telesca erroneously dismissed the second, third and fourth causes of action in the plaintiff-appellant's amended complain, along with the plaintiff-appellant's motion for leave to file a supplemental complaint dated February 23rd, 2011(dkt. Entry #6).

(r) The record shows that the claims contained in the plaintiff-appellant's complaint and amended complaint which were dismissed by both District Court Judge Saragusa and Telesca were all of the civil rights claims which named municipalities as defendants.

(s) On July 19th, 2016 the plaintiff-appellant filed a notice of appeal (dkt. Entry #103).

(t) On November 2nd, 2016 the plaintiff-appellant filed her brief which contained (inter alia) questions Two and Three . (*supra*) which both challenged the dismissals of all of the plaintiff-

appellants 1983 civil rights claims naming municipalities as defendants, were those dismissals were made by District Court Judge Saragusa and District Court Judge Telesca respectively.

(u) On June 30th, 2017, The Panel issued a Decision in which they overlooked or declined to rule on the plaintiff-appellant's second and third issues raised in her appellant's brief.

(v) The United States Supreme Court's ruling in *Leatherman v Tarrant County Narcotics Intelligence and Coordination Unit* 507 US 163 (1993), set the standard for what is required to state a claim against a municipality in a 1983 civil rights action which is as followed: *Held*: A federal court may not apply a "heightened pleading standard" more stringent than the usual pleading requirements of Federal Rule of Civil Procedure 8(a)-in civil rights cases alleging municipal liability under § 1983. First, the heightened standard cannot be justified on the ground that a more relaxed pleading standard would eviscerate municipalities' immunity from suit by subjecting them to expensive and time consuming discovery in every § 1983 case. Municipalities, although free from *respondeat superior* liability under § 1983, see *Monell v. New York City Dept. of Social Services*, 436 U. S. 658, do not enjoy absolute or qualified immunity from § 1983 suits, *id.*, at 701; *Owen v. City of Independence*, 445 U. S. 622, 650. Second, it is not possible to square the heightened standard applied in this case with the liberal system of "notice pleading" set up by the Federal Rules. Rule 8(a)(2) requires that a complaint include only "a short and plain statement of the claim showing that the pleader is entitled to relief." And while Rule 9(b) requires greater particularity in pleading certain actions, it does not include among the enumerated actions any reference to complaints alleging municipal liability under § 1983. Pp. 165-169.

(w) The Panel's failure to address the issues contained in the plaintiff-appellant's appeals brief is equivalent to a denial of plaintiff-appellant's appeal to overturn the Decisions of District Court Judges Saragusa and Telesca to dismiss the plaintiff-appellant's 1983 claims charging municipalities as defendants, due to her failure to satisfy unlawful heightened pleading required by both District Court Judges mentioned above, and in direct conflict to the U.S. Supreme Court's ruling in *Leatherman* (*supra*).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brenda Joyce Haynes

Date: November 13th, 2017