

No. _____

IN THE
Supreme Court of the United States

SARA GONZÁLEZ FLAVELL,
Petitioner

- v. -

JIM YONG KIM, DAVID ROBERT MALPASS, SHAOLIN
YANG, OTAVIANO CANUTO,
SOPHIE SIRTAINE, JENNY FUNES AND
PHILIP BEAUREGARD,
Respondents

*On Petition for Writ of Certiorari to the District of
Columbia Court of Appeals*

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

Courts are required to respect the Constitutional rights of all persons. In November 2020 Petitioner filed complaint in D.C. Superior Court alleging common law torts. Respondents removed to federal court which remanded in 2022. D.C. Superior Court denied 'with prejudice' determining Respondents' functional immunity under IBRD's Articles (an international treaty) deprived it of subject-matter jurisdiction. Petitioner appealed. The D.C. Court of Appeals affirmed on October 25, 2024.

Certiorari is sought because the D.C. Court of Appeals' refusal to: allow proper appeal, follow procedural requirements, and correctly apply legal principles and federal law, and so refusal to correctly determine subject-matter jurisdiction, denies Petitioner's Constitutional rights to due process, to be heard, and to bring legal suit when her rights are violated.

This court's writ is equally sought because the decision usurps Congress's powers, so fails to observe separation-of-powers, as the court purports to create a new absolute immunity, oversteps the boundaries of judicial authority and Congressionally-imposed jurisdictional limits and, politicizes and weaponizes the justice system and courts, and claims to create new legal rights or broaden existing rights, dangerously, of both international organizations and those working for them. A right reserved for Congress, and the international parties to the treaty.

The questions presented are:

1. Whether a writ of certiorari is appropriate because, contrary to the judgement of the District of Columbia Court of Appeals and its holding, the court's

determination resulted from failure to carry out its judicial duty to establish its jurisdictional authority under applicable legal principles, including federal law where applicable, not District of Columbia law, which in turn requires international law considerations and principles be applied in interpreting the body of law under which the court determined it lacked jurisdiction (an international treaty, the Articles of Association of the International Bank for Reconstruction and Development ('IBRD')). And the District of Columbia Court of Appeals creation of a new absolute immunity for persons claiming to be acting in 'official capacity' for IBRD's 'purposes' (without evidence or factual underpinning of such jurisdictional facts which were in dispute) is unlawful judicial use of a power reserved for Congress alone, and legal error, and amounts to refusal to carry out the court's judicial duty to respect the right of persons in this land to bring suit for stateⁱ law violations committed in the District of Columbia.

2. Whether writ of certiorari, or other relief, is required because the District of Columbia Court of Appeals, its highest court, erred in failing to correct, and restrain, the District of Columbia Superior Court's abuse of its powers, and abuse of its discretion, denial of jurisdictional discovery and refusal to properly use accepted legal norms to evaluate and establish jurisdiction, and violation of the Petitioner's Constitutional due process rights at law. And whether in turn the District of Columbia Court of Appeals violated those same due process rights in the manner that proceedings in that court were conducted.

ⁱ Congress has determined District of Columbia courts are to be treated equally as 'state courts' .

PARTIES TO THE PROCEEDINGS

Petitioner Sara González Flavell, was Plaintiff in the District of Columbia Superior Court, Plaintiff in the district federal court seeking remand, and Petitioner in the court of appeals.

Respondent in this Court is the Court of Appeals for the District of Columbia (hereafter 'D.C.'). Defendants-Appellees in the District of Columbia Court of Appeals, and before in the D.C. Superior Court, and during the action's removal until federal remand of it, in the District of Columbia District Court, are Jim Yong Kim, David Robert Malpass, Shaolin Yang, Otaviano Canuto, Sophie Sirtaine, Jenny Funes and Philip Beauregard.

RELATED PROCEEDINGS

There are no related proceedings. The courts decisions, and throughout proceedings, erroneously refer to an action Petitioner filed in D.C. Superior Court in 2020 (Case No. 2020 CA 00872) for different causes of action, different time-period on different facts against different defendant (IBRD), as a 'companion' case. That unrelated matter has been wrongfully intertwined by three courts with resulting injustice and lack of independence. That case (No. 23-cv-25) awaits determination.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
RELATED PROCEEDINGS	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	viii
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE PETITION	7

1. International Law Considerations

Certiorari is appropriate to correct the District of Columbia's Court of Appeals failure to consider that federal law requires international treaties to be interpreted in accordance with international law..... 7

I. *IBRD's Articles Provide Officials with 'Functional Immunity' For IBRD Lending Activities Alone*..... 8

II. <i>An International Treaty Codified Into U.S. Law, Cannot Be So Erroneously Extended And Altered By D.C.'s Judiciary</i>	12
--	----

2. Conflict with Federal Law

The need to comply with federal law norms and principles in construing the federal law defense was ignored.....	16
---	----

I. <i>Federal Court Remanded, it did Not Dismiss</i>	17
--	----

II. <i>Federal Law Defense Considerations Ignored</i>	18
---	----

III. <i>Incorrect Dispensation of Burden of Proof</i>	19
---	----

IV. <i>Jurisdictional Discovery</i>	22
---	----

3. D.C. Law Misapplication

Alternatively, writ is necessary as the D.C. courts erred in applying D.C. law principles to federal and international law considerations.....	24
--	----

I. <i>Refusal To Accept Complaint's Facts As True</i>	24
---	----

II. <i>D.C. Law : 'Scope Of Employment'</i>	26
---	----

III. <i>Evidence-Based Fact Finding Was Required</i>	27
--	----

4. Violation of Petitioner's Constitutional Rights and Due Process Ignored; and Repeated Procedural Irregularities

This Court should grant certiorari due to D.C. courts both committing so many and such egregious procedural irregularities that Petitioner's constitutional rights to be heard, to bring her action, to equal treatment under the law, and to Due Process have been denied 28

5. The Grounds for Writ of Certiorari are Met and There is a Compelling Need To Issue Writ of Correction

I. <i>The decision oversteps Separation-of-Powers requirements</i>	34
II. <i>Lawful Authority</i>	35
III. <i>Errors of Law</i>	36
IV <i>Abuse of Discretion</i>	36
V. <i>Extension of Law</i>	37
VI. <i>Certiorari is necessary because the court's refusal to correctly assess jurisdiction denies Petitioner the right to progress her case and deprived the Petitioner of Due</i>	

<i>Process and Equal Protection of Law</i>	37
VII. <i>Creation of conflict with all other courts</i>	39
VIII. <i>The decision raises Questions of First Impression</i>	39
IX. <i>The Questions Presented Are Important and Frequently Recurring</i>	40
CONCLUSION	40

APPENDICES

Appendix A – District of Columbia Memorandum Opinion and Judgement (October 25, 2024).....	3a
Appendix B – District of Columbia Superior Court Omnibus Order (December 7, 2022).....	25a

TABLE OF AUTHORITIES

Cases	Page
<i>Ahmed v. Magan</i> , No. 2:10-cv-342, 2011 WL 13160136 (S.D. Ohio)	23
<i>Alfred Dunhill of London, Inc. v. Republic of Cuba</i> , 425 U.S. 682, (1976).....	10
<i>Am. Tobacco Co. v. Patterson</i> , 456 U.S. 63 (1982).....	14
<i>American Fire & Casualty Co. v. Finn</i> , 341 U.S. 6 (1951).....	19
<i>Apple, Inc., In re</i> 602 F.3d 909, (8th Cir. 2010).	36
<i>Bodie v. Connecticut</i> 401 U.S. 371 (1971)	38
<i>Brzak v. United Nations</i> , 551 F. Supp. 2d (S.D.N.Y) 313, (2008), aff'd, 597 F.3d 107 (2d Cir. 2010)	28
<i>Cheney v. United States Dist. Court for D.C.</i> , 542 U.S. 367, 194 S.Ct. 2576 (2004)	32
<i>Clampitt v. American University</i> , 957 A.2d 23 (D.C. 2008).....	25
<i>Council on American Islamic Relations v. Ballenger</i> , 444 F.3d 659 (D.C. Cir. 2006)	26
<i>De Beers Condol. Mines v. Unites States</i> , 325 U.S. 212 (1945)	37
<i>De Luca v. United Nations Org.</i> , 841 F. Supp. 531 (S.D.N.Y. 1994).....	28
<i>Doe v. Buratai</i> , 792 F. App'x 6 (D.C. Cir. 2019).....	22
<i>Doe v. Zedillo</i> , 782 F.3d 281 (5th Cir. 2015)	23
<i>Donald v. Orfila</i> , 788 F.2d 36 (D.C. Cir. 1986)	28

<i>Factor v. Laubenheimer</i> , 290 U.S. 276, (1933)	12
<i>First City, Texas-Houston, N.A. v. Rafidain Bank</i> , 150 F.3d 172 (2d Cir. 1998).....	22
<i>Hollingsworth v. Perry</i> , 558 U.S. 183, (2010).....	37
<i>Hovey v. Elliot</i> , 167 U.S. 409 (1897).....	38
<i>Francisco S., v. Aetna Life And World Bank Grp.</i> , (ECF No. 14) Case No. 2:18-cv-00010-EJF (D.Utah 2020)	32
<i>Gutierrez de Martinez v. Lamagno</i> , 515 U.S. 417 (1995).....	21
<i>Jam et al v. International Finance Corp.</i> , 586 U.S. 199 (2019) 139 S.Ct. 759;	10, 18, 22
<i>Johnson v. Francis</i> , 197 A.3d 582, (Ct Spec. Appeal Md. 2018).....	26
<i>Lewis v. Mutond</i> , 918 F.3d 142 (D.C. Cir. 2019).....	23
<i>Logan v. Zimmerman Brush Co.</i> , 455 U.S. 422 (1982).....	38
<i>Mallard v. U.S. Dist. Court for the S. Dist. Of Iowa</i> , 490 U.S. 296, 109 S.Ct. 1814 (1989)	35
<i>Marbury v. Madison</i> , 375 U.S. (1 Cranch) 137 (1803)	38
<i>Martin v. Franklin Capital</i> , 546 U.S. 132 126 S.Ct. 704 (2005).	35
<i>Matar v. Dichter</i> , 563 F.3d 9 (2d Cir. 2009).....	22
<i>McClellan v. Carland</i> , 217 U.S. 268 S.Ct. (1910)	37
<i>Murchison, In re</i> , 349 U.S. 133, (1995).....	21
<i>Nyambal v. Int'l Monetary Fund</i> , 772 F.3d 277, (D.C. Cir. 2014)	31

<i>Patton v. Diemer</i> , 35 Ohio St. 3d 68, 518 N.E. 2d 941 (1988)	32
<i>Perisic v. Kim</i> , No. 2018-2038 (D.D.C. 2019)	25
<i>Republic of Argentina v. NML Capital Ltd.</i> , 573 U.S. 134 (2014)	22
<i>Republic of Austria v. Altmann</i> , 541 U.S. 677, (2004).....	10
<i>Rishikof v. Mortada</i> , 70 F.4th 628 (D.C. Cir. 2023).....	23
<i>Rocca v. Thompson</i> , 223 U.S. 317, (1912)	12
<i>Roche v. Evaporated Milk Assn.</i> , 319 U.S. 21, 63 S.Ct. 938 (1943)	23
<i>Samantar v. Yousuf</i> , 560 U.S. 305 (2010)	18, 22
<i>Schlagenhauf v. Holder</i> , 379 U.S. 104 S.Ct. (1964).....	37, 38
<i>Sikhs for Justice v. Nath</i> , 893 F. Supp. 2d 598 (S.D.N.Y. 2012).....	23
<i>Solers, Inc. v. John Doe</i> , 977 A.2d 941 (D.C.2009).....	24
<i>The Amiable Isabella</i> , 6 Wheat. 1 71 (1821).....	14
<i>Trans World Airlines, Inc. v. Franklin Mint Corp.</i> , 466 U.S. 243 (1984)	12
<i>Trump v. Carroll</i> , 292 A.3d 220 (D.C. 2023)	26
<i>Tuck v. Pan Am. Health Org.</i> , 668 F.2d 547 (D.C. Cir. 1981)	28
<i>Tucker v. Alexandroff</i> , 183 U.S. 424 (1902)	13
<i>United States v. D’Auterive</i> , 10 How. 609 (1851).....	13

<i>United States v. Perry</i> , 360 F.3d. 519 (6th Cir. 2004).....	36
---	----

Constitution, Statutes, Treaties and Rules

U.S. Const.: Article III	8
28 U.S.C. §1441	17
Bretton Woods Amendment Act –	
22 U.S. Code .§286h.....	8, 9, 15, 16, 18, 39
International Org’s. Immunities Act 1945...8, 12,18, 22, 25	
Foreign Sovereign Immunities Act (FSIA)1976...11, 22,23	
Code of the District of Columbia	1, 2
District of Columbia Rules of Civil Procedure....	29, 30, 32,
Federal Rule of Civil Procedure 12(b)(1)	24
IBRD’s Articles of Association, Article VII	<i>passim</i>
Restatement (Second) of Agency § 228(1)(a)-(d)	26
The Vienna Convention on Law of Treaties (VCLT)	15

Other Authorities

<i>Chimène I. Keitner, The Common Law of Foreign Official Immunity</i> , 14 Green Bag 2D 61, 72 (2010).....	33
Code of Conduct for U.S. Judges.....	24
<i>Curtis A. Bradley, Conflicting Approaches to the U.S. Common Law of Foreign Official Immunity</i> , 115 AM. J. INT’L L. 1, 7 (2021)	33
<i>Dodge: Foreign Official Immunity in International Law : The Meanings of Official Capacity</i> , 109 AJIL UNBOUND 156, 157 (2015)	20
<i>J. Sutherland Statutory Construction</i> §§5207–5208 (3d ed. 1943)	15

<i>Off. of Foreign Missions, Diplomatic And Consular Immunity: Guidance For Law Enforcement And Judicial Authorities</i>	11
(2018).....	20
<i>Tate Letter (Letter from J.B. Tate, Acting Legal Adviser, U.S. Dep't of State, to P.B. Perlman, Acting U.S. A.G. (May 19, 1952) reprinted 26 Dep't St. Bull. 984-85 (1952).....</i>	10
<i>William S. Dodge & Chimène I. Keitner A Roadmap for Foreign Official Immunity Cases in U.S. Courts, 90 Fordham L. Rev. 677 (2021).....</i>	20

PETITION FOR WRIT OF CERTIORARI

Petitioner, Sara González Flavell, respectfully petitions for writ of certiorari to review the judgement of the District of Columbia Court of Appeals ('D.C. Court of Appeals') so that that court now exercise its judicial duty to apply correct law to determine whether it has subject-matter jurisdiction.

OPINIONS AND ORDERS BELOW

The October 25, 2024 opinion of the D.C. Court of Appeals, denying Petitioner's appeal of a final order of D.C. Superior Court which it has jurisdiction to review under D.C. Code 1981 §11-721(a)(1) is unreported and set forth in Appendix A.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) or, alternatively, 28 U.S.C. § 1651(a). This appeal is timely, this Court's 5th December 2024 Order granting filing deadline extension to March 4, 2025.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

District of Columbia Districts Home Rule Act 1973 provides for individuals to utilize its courts to resolve civil actions.

D.C. Code of Judicial Conduct: 'judges should ensure every person legally interested in a proceeding has full right to be heard according to law'.

D.C. Code § 11-921:

(a) the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia...'

D.C. Court's Rule 1 of Civil Procedure:

These rules govern the procedure in all civil actions and proceedings..... 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.

The Bretton Woods Agreements Act ('BWAA'), 60 Stat 1440 (Dec. 27, 1945), 22 U.S.C. § 286h incorporating into U.S. law International Bank for Reconstruction and Development's ('IBRD's) Articles of Agreement (hereafter 'IBRD's 'Articles') its governing charter.

BWAA §12:

And article VII, sections 2 to 9, both inclusive, of the Articles of Agreement of the Bank, shall have full force and effect in the United States and its Territories and possessions upon acceptance of membership by the United States in, and the establishment of ... the Bank'.

International Treaty IBRD Articles:

Article VII: Status, Immunities and Privileges

*SECTION 1. Purposes of the Article -
To enable the Bank to fulfill the functions*

with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Bank in the territories of each member.

SECTION 8. *Immunities and Privileges of Officers and Employees*

All governors, executive directors, alternates, officers and employees of the Bank (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity.

STATEMENT OF THE CASE

From 1988 Petitioner was employed at IBRD, an entity of the World Bank. From May through December, 2017, Respondents, then employees or officials of World Bank entities, committed unlawful tortious acts outside their official functions and without authority, conspiring against Petitioner in the workplace, on instigation of an individual who numerous times physically assaulted Petitioner and whom Respondents were personally motivated to please. Respondents bullied and duped Petitioner into leaving her Bank position. A month later IBRD terminated her employment, without explanation and not on redundancy basis (as Respondents had fraudulently lead Petitioner to believe) as Petitioner later discovered by review of her Bank personnel file. Respondents' actions and deception, which cannot have furthered the interests of IBRD, caused her and her family loss, pain and suffering.

Petitioner appealed at IBRD's Tribunal ('WBAT'), still believing Respondents' lies, WBAT dismissed her redundancy claim; there was no redundancy to review.

In November 2020 Petitioner filed her action in D.C. Superior Court. To escape the merits, Respondents filed motion-to-dismiss based on 'functional immunity provisions' designed to stop strategic lawsuits aimed at hindering the functions of international organizations, not actions for tortious wrong-doing against individuals acting personally. D.C. Superior Court dismissed 'with prejudice' without hearing, fact-finding or evidence [App.B]. Determining Respondents' defense under IBRD's Article VII.8 deprived it of subject-matter jurisdiction and

Petitioner could not obtain relief under any scenario. D.C. Court of Appeals affirmed [App.A.].

Procedural History

November 12, 2020 Petitioner filed Complaint in D.C. Superior Court.

January 13, 2021 Respondents removed the action to federal court.

March 4, 2021 Respondents filed motion-to-dismiss for lack of subject-matter jurisdiction.

March 7, 2022 the federal court remanded to D.C. Superior Court which re-opened the case.

April 21, 2022 Judge Epstein re-assigned the case because of, and at the request of, the parties', to Judge Williams, assigned to Petitioner's unrelated action.

July 1, 2022 Respondents filed motion-to-dismiss again, briefings completed October 21, 2022.

August 3, 2022 Petitioner moved for re-assignment. August 5, 2022 Judge Williams denied sua sponte. On Petitioner appeal D.C. appellate court postponed determination to final judgment.

August 30, 2022 Petitioner served 'Request for Production of Documents' and on November 5 served court-issued third-party witness subpoenas.

October 7, 2022 Respondents filed motion-to-stay discovery. Filings completed November 14, 2022.

November 4, 2022 Respondents moved to limit Petitioner's free speech communications (a 'gag' order).

December 7, 2022 without allowing Petitioner's requested status hearing, oral argument, or fact-finding, the court issued its 'Omnibus Order'. [App.B]. Dismissing with prejudice, putting Petitioner out of court.

December 19, 2022 Petitioner filed her appeal. Briefings complete June 30, 2023.

January 10, 2023 *sua sponte* mediation order issued.

May 5, 2023 Respondents moved anew for a 'gag' order, granted May 14, 2023 without awaiting Petitioner's objection, timely filed May 16, 2023. Petitioner motion-for reconsideration of the 'gag' order denying her Constitutional free speech rights, never adjudicated.

June 13, 2023 Respondents' motion-to-file Answer under seal, granted June 14.

August 29, 2023 Petitioner moved for oral argument. Denied September 26 2023.

October 6, 2023 Petitioner moved for reconsideration, denied October 13, 2023.

October 25, 2024 Memorandum Opinion and Judgment issued. [App.A].

November 17, 2024 Petitioner filed motion for publication. Denied without opposition briefing.

November 18, 2024 mandate issued.

November 19 2025 Petitioner moved to recall the mandate pending this appeal. Denied without opposition briefing.

REASONS FOR GRANTING THE PETITION

The Constitution provides a right, invaluable to the rule of law, for citizens to pursue civil actions in the courts of this land to protect their rights. The court's refusal to determine its jurisdiction in manner prescribed by law has denied Petitioner that right. The court of appeals fell short of the clear and indisputable standard to follow its own, and the established applicable laws, rules and procedures.

Both D.C. courts misapplied federal law, inappropriately applied D.C. law, and made determination without establishing jurisdictional facts. The decisions expand

limited immunity protection of the workforce of a foreign player, and by extension the immunity of that entity, IBRD, which immunity is provided by international treaty adopted by Congress within specific limits for the sole purpose of furthering that entity's mission. Adjudication in such circumstances and manner was abuse of statutory authority, and refusal to establish jurisdiction by judicial means.

The court's opinion warrants this Court's grant of writ as it breaks with judicial precedent, creates dangerous inroads into Congressionally-authorized jurisdictional territory, broadens Congressionally-limited immunities, is unlawful exercise of judicial authority ceding to political pressure, and abuse of discretion, and exhibits manifest errors of law and failure to observe due process, limiting the Constitutional rights of citizens to bring actions, a right important to the public. Each of which exceptional circumstance is sufficiently clear to require writ issuance.

1. INTERNATIONAL LAW

This Court is required to issue writ in view of the erroneous interpretation and application of a federal law defense. In a stunningly ill-considered judgement [App.A] D.C. appellate court determined IBRD's Articles provided Respondents immunity. To construe this international treaty, the court saw fit to apply D.C. law and speculate as to the parameters of IBRD's Articles term 'official capacity' in respect of each Respondent, including by implying personnel responsibilities by unfathomable generalities gleaned from judicial observations as to U.S. 'HR functions'. Its reasoning lacks legitimate basis and is premised on fundamental error.

The Constitution, Article III, Sect. 2, applies to treaties. In brief, in interpreting BWAA's federal law immunity provision, the court ignored the need to construe federal law which in such instance requires weighing international law considerations. So applying the wrong law. The judgement shows plain error on the face and the proceedings display clear taint through political interference evidencing existence of a two-tiered justice system and judicial politicization that this country's Administration hopes to eradicate. Certiorari must issue.

I. IBRD's ARTICLES PROVIDE OFFICIALS WITH 'FUNCTIONAL IMMUNITY' FOR IBRD's LENDING ACTIVITIES ALONE

U.S. immunities of international organizations flow from their constitutive documents (e.g. U.N. Charter, or IMF Articles of Agreement), or from the International Organizations Immunities Act (IOIA). Both D.C. courts declined to address IOIA immunity, Respondents being unable to produce prerequisite State Department confirmation, but overreached in construing immunity under IBRD's Article VII Sections 2-8 as codified into U.S. law by the BWAA, without applying the necessary restrictions of Article VII Section 1 which must be applied in interpretation as being 'that which Congress knew and intended'.

22 U.S. Code §286h embodies the BWAA, §12 and provides IBRD's Article VII:

'shall have full force and effect in the United States upon acceptance of membership by the United States and establishment of the Bank.'

The BWAA drafters do not reference Article VII's Sections 1 or 10, the latter requiring Member States adoption, the former subscribing the purpose for which the immunities are afforded; these provisions are encompassed by the Articles annexure to the BWAA itself. Present in the BWAA by a structural inference derived from the larger context of the BWAA which was to adopt IBRD's Articles on the U.S. becoming a member party. Section 1's umbrella requirement is overarching and must be utilized in construction of Article VII's remaining Sections 2-9.

Article VII s.1:

'Purposes of Article To enable the Bank to fulfill the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Bank in the territories of each member'

prescribes the reasons and circumstances in which immunities will exist: namely, and solely, for acts undertaken when the Bank is furthering its 'functions', being development operations in Member States. IBRD's website states its function: 'IBRD finances investments across all sectors and provides project technical support and expertise to developing countries.'

In this manner, through Section 1, the Bank's Articles expressly state officers and employees only acquire functional immunity when performing within their 'official capacity' (Article VII.8) *in furtherance of the purpose for which the Bank is established*. Being, reconstruction and development activities in Member States that economically qualify for IBRD assistance.

The Bank's purpose and mission does not encompass employment-related personnel matters. The D.C. courts refused to consider the Article VII Section 1 explanation and limitation of Section 8 *functional immunity of 'all governors, executive directors, alternates, officers and employees of the Bank' to functions performed in furtherance of IBRD's mission/purpose*. This requirement is in keeping with, and mirrors, federal law that under the "restrictive" theory (as annunciated in the Tate Letter (J.B. Tate, Acting Legal Adviser, U.S. Dep't of State, to P.B. Perlman, Acting U.S. A.G. (May 19, 1952) *reprinted* 26 Dep't St. Bull. (1952); also *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, (1976), allows for foreign states to retain immunity for sovereign public acts but not for private commercial acts. See *Republic of Austria v. Altmann*, 541 U.S. 677 (2004). Which interpretation is in keeping and reflected in this Court's own decision concerning 'commercial activities' in *Jam et al v. IFC*, 586 U. S. 199 (2019).

Ignoring this fundamental requirement, first the D.C. court determined, despite the Complaint, the tortious acts were 'employment-related', without proof or verification by IBRD of any 'employment' action. Moreover correct application of Section 1 '*purpose*' requirement would exclude '*employment-related*' acts, not being IBRD's entrusted functions. Next, shockingly, the court determined Article VII.8 provided immunity, such acts being judicially supposed to be within each Respondent's 'official capacity' (without evidence). This was far too big a leap for any court to lawfully make.[App.A-7a,-9a, App.B-49a].

The judicial interpretation ignores international law which requires IBRD's Articles to be strictly construed and

by that construction *only IBRD itself is able to state each Respondent's 'official capacity' for Articles immunity application*. The Bank alone, not any court, can state the 'official capacity' of any member of its cadre, that statement is contained in the Bank's job description of the functions for which such employee (including Respondents) is engaged and/or appointment letter. This both D.C. courts refused to consider or acknowledge.

The D.C. courts supposition as to what the functions of HR officials and directors in the international organization might or might not embody [App.A-9a-11a, 14a, App.B-45a] was pure flight of fiction, and was a frolic that international law, the laws of statutory construction, international treaty provisions, and federal laws did not allow it to undertake. It exceeded judicial authority and its determination is ultra vires.

When each D.C. court erroneously categorized the matter 'employment-related' [App.A.-8a,-9a, 16a, 21a, App.B-42a] and that it believes it cannot look into the 'internal' workings of the Bank,[App.A-14a, 16a, App.B-44a] they distressingly parted with principles underlying international law (as reflected for example in the FSIA) that only sovereign public acts carry immunity, not domestic (mischaracterized as 'internal') workings of international organizations – this is the opposite of what the Bank's Articles intend and state. The boundaries carefully delineated by Article VII Section 1 limiting Sections 2-8 immunities to those *arising only for acts furthering the Bank's purpose* (development and reconstruction lending activities and operations) was wrongfully ignored.

Such reading is not only required by IBRD's Articles, but is in line with international and U.S. federal law under which a foreign state also is liable for breaches committed by its internal institution and with the IOIA as applied to international organizations 'same as'.

In this manner the D.C. courts made interpretations as to international law treaties, disallowed by both U.S. and international law.

II. INTERNATIONAL TREATIES CANNOT BE EXTENDED BY D.C.'s JUDICIARY

The appellate court grossly erred in failing to consider that it cannot alter in such manner or impute or guess by generality, the meaning of the Articles, an international treaty, at all.

As this Supreme Court stated in *Trans World Airlines, Inc. v. Franklin Mint Corp. et al.* 466 U.S. 243 (1984):

International agreements, like "other contracts, . . . are to be read in the light of the conditions and circumstances existing at the time they were entered into, with a view to effecting the objects and purposes of the States thereby contracting,"; *Rocca v. Thompson*, 223 U.S. 317 (1912).

See also *Factor v. Laubenheimer*, 290 U.S. 276 (1933) also and should be interpreted according to the "received acceptation of the terms in which they are expressed." *United States v. D'Auterive*, 10 How. 609 (1851); *Tucker v. Alexandroff* 183 U.S. 424 (1902) (same).

Most fundamentally, a treaty is positive law. Justice Connor quoting Justice Story concerning the judicial treaty-enforcing role:

In the first place, this Court does not possess any treaty-making power. That power belongs by the constitution to another department of the Government; and to alter, amend, or add to any treaty, by inserting any clause, whether small or great, important or trivial, would be on our part an usurpation of power, and not an exercise of judicial functions. It would be to make, and not to construe a treaty. ...We are to find out the intention of the parties by just rules of interpretation applied to the subject matter; and having found that, our duty is.....to stop...

And later:

In the next place, this Court is bound to give effect to the stipulations of the treaty in the manner and to the extent which the parties have declared, and not otherwise. We are not at liberty to dispense with any of the conditions or requirements of the treaty, or take away any qualification or integral part of any stipulation, upon any notion of equity or general convenience, or substantial justice. The terms which the parties have chosen to fix, the forms which they have prescribed, and the circumstances under which they are to have operation, rest in the exclusive discretion of the contracting

parties, and whether they belong to the essence or the modal parts of the treaty, equally give the rule.....

Noting contracting parties have power and 'are alone competent to change or dispense with any formality.... so far as judicial tribunals are called upon to interpret or enforce them. We can as little dispense with forms as with substance.' *The Amiable Isabella*, 6 Wheat. 1, (1821).

Even disregarding the international law transgressions both courts committed and the enormity of disregarding the Treaty's obligations and limitations, to put the matter simply in terms the U.S. court may understand: Functional immunity is statutory, and must be clearly intended by Congress. Being narrow, it must arise from following the requirements of the statute (here the Treaty), which must be strictly construed. The D.C. court not only exceeded judicial authority but exercised Congressional powers it does not possess. This court must issue writ for correction.

Moreover, putting aside that both courts have no authority to 'impute' meaning to 'official capacity' in Article VII.8:

'We ordinarily assume, "absent a clearly expressed legislative intention to the contrary," that "the legislative purpose is expressed by the ordinary meaning of the words used." ' *Am. Tobacco Co. v. Patterson*, 456 U. S. 63 (1982).

When a term 'official capacity' appears in an international agreement or treaty, U.S. courts hold that they must look to international law sources for interpretation.

The *Vienna Convention on the Law of Treaties* frequently cited by U.S. courts as authoritative customary international law states that treaty terms should be interpreted: in good faith; in light of their ordinary meaning; in their context and purpose.

Article VII Section 8 usage of the term 'official capacity' can only be that capacity for which IBRD engaged each Respondent. Instead of accepting this obvious truth and requiring and reviewing as evidence Respondents' Bank 'job descriptions' and/or employment contracts/terms, specifying with certainty each Respondent's IBRD-assigned 'official capacity' (as stipulated by Article VII) both D.C. courts instead guessed by generic national personnel deduction and D.C. law principles each Respondent's 'official capacity'. Had these courts applied the 'reference canon' of statutory interpretation (see J. Sutherland, *Statutory Construction* §§5207–5208 (3d ed.) 1943) to BWAA they would realize IBRD's Articles can mean only the express 'official capacities' in which IBRD employs such official.

Both courts by IBRD's Articles Treaty were required to so enquire each Respondent's 'official capacity' as prescribed by IBRD, a simple matter of supplemental evidence or affidavit to establish whether immunity prevented subject-matter jurisdiction. In failing to do so each failed its duty to examine its jurisdiction by applicable law, and, on Petitioner's request, still so refused.

Thus D.C. Court of Appeals overrode international law requirements issuing ultra vires determination. Only certiorari can now correct its unlawful inroad into federal and international law.

Lastly, international law generally defines the ‘official functions’ of officials as duties performed in an official capacity *on behalf of* a state or international organization, using authority derived from it and to which *immunity ratione materiae* applies. Respondents ‘official capacity’ would only extend to authorized acts, but as Petitioner’s Complaint, WBAT determinations, and Petitioner’s personnel file all make plain, IBRD had authorized no redundancy and expressly forbade Respondents from so acting. Later IBRD’s Ethics Unit found several individuals guilty of misconduct for what had occurred, *a fortiori* unauthorized conduct outside official capacities.

Both D.C. courts did not take into account that federal law required application of international law principles. Certiorari is necessary to correct such egregious unauthorized transgression.

2. CONFLICT WITH FEDERAL LAW

Any immunity would arise solely due to BWAA (22 U.S.C. s 286 et seq.) adopting IBRD’s Articles, international treaty-based obligations (*supra*), and BWAA is federal law to be interpreted and applied in accordance with such, not state law. Both D.C. courts should have considered federal, not D.C., law.

I. FEDERAL COURT REMANDED, IT DID NOT DISMISSAL

Delaying justice, in January 2021, Respondents had removed the action to federal court claiming federal law provided the U.S. district court with 28 U.S.C. § 1441 original jurisdiction based on intended immunity defense.

On March 7, 2022 the U.S. district court adjudicated and remanded. Respondents' dispositive motion, stayed pending removal adjudication, remained in effect, yet the district court *did not dismiss on the basis of that motion*. The federal court's determination is instructive: (1) that court remanded, it did not dismiss, had it reached opinion D.C. Superior Court lacked subject-matter jurisdiction it was obligated by statute to do so. Instead it remanded to D.C. Superior Court from where removal jurisdiction arose. Both D.C. courts ignored this key awkward truth. (2) Respondents' identical 'motion-to-dismiss' and Petitioner's Complaint before the federal court were not sufficient evidence for it to factually determine the motion-to-dismiss. No other evidence was ever before the D.C. courts, both of which refused Petitioner's jurisdictional discovery motions or to order Respondents comply with Petitioner's discovery requests. Yet both D.C. courts made jurisdictional determination that the District court deemed itself not sufficiently capable of determining, on Respondents' same motion-to-dismiss on the same evidence before it. One court must have erred as to evidentiary sufficiency for jurisdictional fact-finding determination.

D.C. Superior Court did not competently adjudicate on disputed jurisdictional facts, it could not, it had no additional evidence, its ruling is based on conjecture.

D.C. Court of Appeals, realizing evidence inadequate, apparently relied only on additional statements contained in a WBAT ruling on an unrelated matter concerning a different party, IBRD, (WBAT only adjudicates IBRD appeals -IBRD wholly-controls WBAT- not individuals appeals) which WBAT barred as challenging a non-existent redundancy. The D.C. appellate court could not

have determined jurisdictional facts of any Respondents' 'official capacity' from WBAT's ruling, yet it steadfastly refused undertaking evidence-gathering or fact-examination.

In such circumstances with a remanded, not dismissed, action, the D.C. court was required to carry out its nondiscretionary, plainly-defined, duty under federal law: to establish by evidence the jurisdictional facts on which its jurisdiction depended, it refused to do so.

II. FEDERAL LAW IGNORED

The defense under consideration arises only by, and under, federal law. The court had before it a never before asked federal law question; 'how are the 'official capacities' of IBRD employees/officials determined for purposes of immunity under BWAA'? Confused, it refused to address the matter and applied the wrong body of law. Although, oddly, considering federal IOIA interpretation of 'official capacity', despite correctly finding IOIA immunity inapplicable here.

Clearly this court must now clarify and explain, and develop this expanding area of jurisprudence, as it did in *Samantar v. Yousuf*, 560 U.S. 305 (2010) and had to in *Jam v. IFC*. The international community so present and growing in D.C. requires this be clarified to prevent confusion in the District's business community.

The D.C. courts were required to use federal law when interpreting and applying a federal law provision, yet both predominantly applied state law construction and cases. Detailed federal law interpretation was ignored.

In particular no examination of the need for 'delegation-of-authority' for immunity was considered (*Watson v. Philip Morris Cos.* 551 U.S. 142 (2007) or of the 'qualified immunity' doctrine (*Harlow v. Fitzgerald* 457 U.S. 800 (1982) as expanded upon in *Pearson v. Callahan* 555 U.S. 223 (2009).

In short, both courts failed to give proper consideration as to which laws to apply. Their decisions lack sound basis. And constitute, including through application of D.C. law, a wrongful extension of federally enacted functional immunity by judicial interpretation that Congress has denied. *American Fire & Casualty Co. v. Finn*, 341 U.S. 6 (1951).

Certiorari must issue so rationale consideration on application of correct law, without judicial suppositions, take place. Certiorari is required.

Additionally, the federal law precedents both courts did see fit to consider were misapplied. The appellate court erred even in that application, not heeding federal law tenets as to burden of proof, jurisdictional discovery and evidence requirements and the need to accept the factual truth of the Complaint.

III. INCORRECT BURDEN OF PROOF

Had the court applied federal law to make its determination it would have placed the onus correctly and required Respondents' burden of proof be met. And "conduct-based immunity turns on the nature of the conduct, rather than on the status of the official" *Off. of Foreign Missions, Diplomatic And Consular Immunity: Guidance For Law Enforcement And Judicial Authorities* 11

(2018). Again, conduct-based immunity depends in part on the scope of the official's authority under foreign law. See Dodge: *Foreign Official Immunity in International Law n: The Meanings of Official Capacity*, 109 AJIL UNBOUND 156, 157 (2015).

All authorities are clear : 'Foreign official immunity should be treated as an affirmative defense with the burden of proof on the defendant.' William Dodge & Chimène Keitner, *A Roadmap for Foreign Official Immunity Cases in U.S. Courts*, 90 Fordham L. Rev. 677 (2021).

D.C. appellate court, relying on nebulous job titles referenced by Respondents' counsels in filings, dispensed with the need for evidence or the discharging of Respondents' burden of proof actually stating it considered it unnecessary [App.B-46a]. Respondents refused to provide correct official titles, functions, reporting lines or purview.

The only 'evidence' of Respondents acting in '**official capacity**' were their court filings statements. And the D.C. courts allowed this despite all federal law precedent and international law requirements that the 'official capacity' be verified to meet the burden of proof. Not a scintilla of evidence was produced. In ignoring the international law obligation and tenets as articulated in the VCTL and other international law treaties, D.C. appellate court denied essential need for Respondents to discharge the burden of proof they bore to establish even prima-facie, the affirmative defense provided by IBRD's Article VII. 8.

First, this refusal by the Court to require Respondents to discharge their burden of proof defies international law

interpretation and federal law requirements, and is an unlawful abuse of authority.

Secondly, the court in allowing the defense with no evidence of the terms of Respondents' offices effectively allowed them to become decision-makers in their own cause. Contrary to bedrock principles of this country's judicial system: *In re Murchison*, 349 U.S. 133 (1955) ('[O]ur system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case ... where he has an interest in the outcome.'). See also *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417 (1995) noting that judicial review is always required so defendants are not an 'unreviewable "judge in their own cause"' stating 'the United States disavows this extraordinary, conspicuously self-serving interpretation.'

Respondents knew their own official capacities gave them no right or authority by IBRD to perform the acts they undertook; they put in argument a defense they knew to be false; and knowing that misconduct proceedings had been brought and sustained by IBRD's Ethics Unit for precisely the tortious unauthorized acts the Complaint particularizes.

The outcome of the appellate court's decision to obviate any burden of proof requirement is to have converted an international treaty's limited functional immunity provision into an absolute immunity on the so-say of the very party accused of wrong-doing. Wrongly leaving Petitioner without remedy in any venue.

Lastly, the courts' gross error has produced the anomalous result that international organization officials now have

greater immunity than that afforded the international entities themselves *Jam v. International Finance Corp.*, (supra.) confirming they do not have absolute immunity under IOIA.

The new path of reversing the onus of proof leaving Petitioner to disprove an unsubstantiated functional immunity puts the burden on the wrong party in tension with longstanding precedent.

The issue being one of first impression, is particularly appropriate for necessary certiorari writ.

IV . JURISDICTIONAL DISCOVERY

Immunity cannot be a possibility or probability, it must rest on proven existence based on factual underpinning. Here jurisdictional facts and merits are intertwined. And disputed. Faced by both courts' refusal to apply correct law or require evidence on which to undertake its fact-finding obligation, Petitioner requested jurisdictional discovery to evidence each Respondent's official capacity and authorization.

The court should have applied federal law addressing foreign state or international organization officials' immunity and jurisdictional discovery, which conclude jurisdictional discovery must be ordered when jurisdictional facts are disputed See *Samantar v. Yousuf*, (supra), *Doe v. Buratai*, 792 F. App'x 6 (D.C.Cir. 2019); *Matar v. Dichter*, 563 F.3d 9 (2d Cir. 2009) and *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134 (2014) (no FSIA sovereign immunity from discovery); *First City, Texas-Houston, N.A. v. Rafidain Bank*, 150 F.3d 172 (2d Cir. 1998) (Allowing jurisdictional

discovery to determine FSIA applicability). And functional (common law) immunity of foreign officials cases allowing jurisdictional discovery when officer's immunity disputed (see *Lewis v. Mutond*, 918 F.3d 142 (D.C.Cir. 2019); *Doe v. Zedillo*, 782 F.3d 281 (5th Cir. 2015) and *Rishikof v. Mortada*, 70 F.4th 628 (D.C.Cir. 2023).

And in the international and governmental contexts allowing jurisdictional discovery to establish qualified immunity (*Ahmed v. Magan*, 2011 WL 13160136 (S.D. Ohio Aug. 8, 2011); *Sikhs for Justice v. Nath*, 893 F. Supp. 2d 598 (S.D.N.Y. 2012).

Despite clear precedent that federal courts favor jurisdictional discovery when there is dispute over an official's immunity, discovery was denied. And this even though Petitioner had served discovery requisitions and Respondents, despite court obligations, refused response.

The court committed error of law, at very least discovery narrowly tailored to address the specific jurisdictional issues was necessary before the Court's ruling on Respondents' unsubstantiated motion-to-dismiss.

In these "exceptional circumstances" Petitioner requests extraordinary writ of certiorari "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Roche v. Evaporated Milk Assn.*, 319 U.S. 63 S.Ct. 938.

The D.C. appellate court's untenable adjudication and immunity determination without jurisdictional evidence is judicial abuse.

3. D.C. LAW MISAPPLICATION

As explained above, both D.C. courts in part determined to analyse and apply D.C. law. State law simply does not and cannot apply. The courts erred. Whether through willfulness or ignorance, displaying prejudice. Compounding the error both then misconstrued and confused even their own laws. This case provides a convenient vehicle for the Court to provide much-needed clarity on the law and guidance to lower courts. Respectfully, this court must seize this opportunity to educate through judicial explanation particularly as the nascent under-developed D.C. courts hope one day to represent an actual state.

I. REFUSAL TO ACCEPT COMPLAINT'S FACTS AS TRUE

The gravamen of the complaint is Respondents' tortious unlawful activity, not an action by IBRD of termination. Yet the D.C. courts re-categorized the case as concerning internal employment decisions of IBRD, as if Petitioner complained of IBRD's irregularity in IBRD's internal process, not Respondents' deliberate fraud outside ambit of IBRD decisions or functions. Both courts, paying lip-service only to accepting the Complaint's facts, ignoring them, accepting Respondents' 'counterfacts'. IBRD did not terminate Petitioner's employment due to redundancy, this was the fraud perpetrated on Petitioner. As the Complaint alleges, Respondents disregarded their functions and acted unlawfully, outside 'official capacities' and responsibilities and the boundaries of their respective offices. This is a jurisdictional fact in dispute.

In assessing subject-matter jurisdiction under Super. Ct. Civ. R. 12(b)(1). '[W]e accept the allegations of the complaint as true, and construe all facts and inferences in favor of the plaintiff *Solers, Inc. v. John Doe*, 977 A.2d 941 (D.C.2009) Yet both D.C. courts refused to do so. Moreover D.C. Appellate Court notes the Complaint alleges physical abuse and next *non sequiturs* that, had there been allegations of physical abuse as Complaint 'Counts' that abuse might be outside 'official capacity' [App.A, footnote 14] but these allegations are contained in the Complaint, and the pro se Petitioner need not use legal terminology ('Counts') for her allegations to legally hold. 'we construe pleadings as to do substantial justice.' *Clampitt v. American Univ.*, 957 A.2d 23, (D.C.2008).

The abuse and torts Respondents inflicted was supportive of, and part and parcel of, the physical abuse Petitioner endured– just an extension. Condoned by D.C. courts, and her Constitutional right to bring suit thwarted by their untethered arbitrary judgments.

Both courts considered *Perisic v. Kim* 2019 WL 5459048, (D.D.C. 2019) instructive, a case not on point, containing no argument that individuals were without 'official capacity', and concerning IOIA 22 U.S.C. §288d(b).

D.C. appellate court next considered possible IBRD waiver (influenced by *Perisic* reasoning), but in the case at bar to move to consider whether IBRD had waived immunity before determining whether Respondents fell within the small class able to obtain Articles functional immunity puts the question backwards.

The judgement was determined on IBRD's Articles [App.A-15a(footnote 15),18a, (footnote 11), App.B-43-

44a-49a,]. The denial of Petitioner's request to establish jurisdictional facts on relevant evidence under applicable law, not judicial supposition, here also amounts to a refusal to adjudicate. See *Railroad Co. v. Wiswall*, 23 Wall. 507 (1875) this Court intervened where a determination amounted to 'refusal to hear and decide'.

II. D.C. LAW: 'SCOPE OF EMPLOYMENT'

In misapplying D.C. law to a federal law question, the court carefully ignored the conclusions of its own recent determination in *Trump v. Carroll*, 292 A.3d 220 (D.C. 2023) (en banc) that 'scope of employment' is a fact-intensive query to be determined solely by the fact-finder, clarifying D.C. 'generally adheres to the Restatement (Second) of Agency's statement of respondeat superior law'. Declining to adopt a categorical reading of *Council on American Islamic Relations v. Ballenger*, 444 F. 3d 659 (D.C.Cir. 2006) Stating D.C. instead 'adhere[s] to a fact-bound inquiry to determine whether the conduct of an employee is within the scope of employment.'

Yet here D.C. Court of Appeals stated it was deciding the fact-intensive fact-bound jurisdictional issue 'as a matter of law':

However, courts 'are able in appropriate cases to assess whether an officer acted within the scope of employment as a matter of law based on **undisputed** facts in the record.' *Johnson v. Francis*, 197 A 3d 582 (Ct Spec. Appeal Md. 2018) [App.A.-19a]

Ignoring that it was relying on the very facts in dispute. The court's judgement that it could determine each Respondent's 'official capacity' as a matter of law without

evidence is at odds with all federal law statutory construction of functional immunity. Denying justice by refusing to perform judicial role. Both D.C. courts were steadfast in determination to thwart the action.

The ruling accepts that D.C. courts will not prevent unlawful conduct within international organizations, this court must issue certiorari to reverse.

For considering its own laws for Articles interpretation, and for such misapplication of D.C.'s laws, and for ignoring of its own recent D.C. law precedent, certiorari must be granted. The D.C. Court of Appeals has muddled and caused confusion in its citizens as to its own laws.

III. EVIDENCE-BASED FACT-FINDING REQUIRED

As noted above, international law and the international treaty require the parties to the Articles to establish 'official capacity' within the four corners, a living document to which only the IBRD can speak.

In hazarding 'official capacity' guesses [App.A.-14a; 20a] both courts failed to perform their duty to determine jurisdiction based on relevant jurisdiction evidence. The Articles provide functional immunity only for IBRD's specific international official's capacity, not for the functions a D.C. judge may prescribe to HR personnel employment based on limited U.S. D.C. experience.

Both courts ignored that Respondent Canuto is forbidden under State Department Executive Director appointment terms to engage on employment at all.

The D.C. courts erred fundamentally in failing to review with specificity and proceeded to issue determinations without sound basis or factual underpinning.

In none of the cases D.C. Court of Appeals cites was 'official capacity' under IBRD's Articles raised or disputed, rather the conduct was looked at knowing each official's functions (see *Brzak v. United Nations*, 551 F. Supp. 2d (S.D.N.Y. 2008), *aff'd*, 597 F.3d 107 (2d Cir. 2010) ("*Brzak II*"), *Donald v. Orfila*, 788 F.2d 36 (D.C.Cir. 1986) *Tuck v. Pan Am. Health Org.*, 668 F.2d 547 (D.C.Cir. 1981), *De Luca v. United Nations Org.*, 841 F. Supp. 531 (S.D.N.Y. 1994). In Petitioner's case the functions of each Respondent were at issue- on which jurisdiction rested. Yet were never evidenced. Each Respondent's 'official capacity' and functions would reveal the truth of Petitioner's Complaint and that fraud had occurred. Such ruling, denying ascertaining, is cruel, unjust, and tainted by bias.

The feckless D.C. courts have now created unlimited immunity to go unchecked by allowing immunity to be established through labels alone. Without probing. Without review. Such supposition of immunity based on dubious pleadings flies in the face of Congress. Giving undeniable appearance of political leaning on the judiciary unacceptably, causing courts to be further brought into understandable disrepute. Public interest requires writ.

4. VIOLATION OF CONSTITUTIONAL RIGHTS, DUE PROCESS IGNORED; AND REPEATED PROCEDURAL IRREGULARITIES

The Constitution guarantees individuals the right to access the courts and pursue legal actions for redress of grievances, and to due process under the fourteenth

amendment, and equal treatment under the law. This right corresponds to the judiciary's authority to hear actions and controversies.

D.C. Superior court is bound by its Rules of Civil Procedure and judicial ethical standards that mandate fair and impartial proceedings. Rule 1 emphasizes its rules should be administered to secure just determination of every action. D.C.'s *Code of Judicial Conduct* (Canon 2) requires judges uphold fairness and impartiality. This embraces the principle that all parties have the right to be heard and that decision be made without bias or prejudice. Instead, as the rulings evidence, Petitioner experienced gas-lighting by the courts.

In turn this bias denied Petitioner's right to a neutral, detached decision-maker, another minimum due process protection. *The Code of Conduct for U.S. Judges* requires judges 'perform the duties of [their] office fairly, impartially' and 'uphold the integrity and independence of the judiciary'. It applies to the judges in both courts, all of whom breached their Code.

The Complaint was filed November 12, 2020. Throughout the cases four-year journey in three courts no court ever held any hearing at which Petitioner was allowed (or informed) to be present. D.C. Superior Court re-set three times its status conference, for reason '*Respondents dispositive motion filings are not complete*' ignoring its **Rule 16** requirement "as soon as practicable after the Compl. is filed." This, like countless others rules, was not followed in Petitioner's action. Which prejudiced her and the progress of her action. This lack of due process and adherence to procedural fairness by the courts was effectively the joining in of gas-lighting Petitioner as 'good

fun', instead of protecting her rights. Apparently considering court-bullying of abused victims acceptable.

Tainted Judicial Assignment: Petitioner's case was assigned to a judge to move in tandem with her unrelated case. Shocked, Petitioner objected. Yet her motion for reassignment was rejected by J. Williams on August 5, 2022, outside the spirit of the court's rules. Respondents' counsel had misled the court when Petitioner was not invited to be present (J. Epstein's Order of 4/21/2022) "*The parties requested that both cases be heard before the same judge.*" Judge Williams knew of these activities and the communications between Respondents and the judges office. The judicial favoring and bias in not treating the parties equally inherent in such assignment on Respondents' sole request tainted all proceedings. The appellate court on Petitioner's immediate appeal deferred adjudication. Thereby denying justice and a fair hearing before an impartial judge.

Discovery: Petitioner properly served discovery requisitions on August 5, 2022 and court-issued subpoenas on November 5 2022, Respondents fell afoul of court obligations in refusing compliance or response and the D.C. Superior Court ignored their obligations.

The D.C. Court of Appeals states:

We recognize that appellant sought discovery (.... IBRD letters and descriptions of each Defs. 'official role' and job description") to test functional immunityHowever... in light of the detailed allegations of the Complaint, there was no need for the development of evidence about whether appellees were acting in official capacities...' [App.A.-22a]

Had the Complaints allegations provided all information necessary as to each Respondent's 'official capacity', why then would Petitioner be seeking discovery for the same? The 'functions' and 'official capacity' cannot be assumed from Petitioner's description of events and is clear error. Specific facts crucial to immunity determination were in issue. See *Nyambal v. Int'l Monetary Fund*, 772 F.3d 277, (D.C.Cir. 2014).

On appeal the D.C. Court of Appeals exercised bias, it:

- failed to notify Petitioner of issued brief scheduling;
- January 10, 2023 sua sponte attempted to require the pro se Petitioner to attend mediation with Respondents' counsel;
- allowed without explanation Response filing 'under seal';
- granted, May 14, 2023, for no lawful reason Respondents' motion to deny Petitioner's constitutional right to free speech and communication;
- July 11, 2023 despite legal issues clearly needing presentation the court placed the action on 'summary' calendar;
- September 26, 2023 denied motion for oral argument, denying reconsideration motion for that order on October 6, 2023;
- denied without full briefing motion-for-publication of the judgement filed November 17, 2024; and
- refused motion to recall the mandate (issued November 18, 2024).

Refusal by **both** courts to grant Petitioner's request to amend the Complaint compounded the abuse of Petitioner's established rights. Both courts agreed that Petitioner cannot correct each court's perceived errors of the Complaint because Respondents could only ever have acted in official capacity, abusing court discretion and creating *blanket* absolute immunity.

The denial of procedural protection afforded by court rules displays the D.C. courts' prejudice and bias, and the presence of political pressure in the two-tier justice system and weaponization of these courts.

Finally, dismissing 'with prejudice' is void for lack of jurisdiction *Patton v Diemer*, 35 Ohio St. 3d 68 518 N.E. 2d 941 ' (lacking jurisdiction dismissal must be 'without prejudice', as explained in *Francisco S. v Aetna Life And World Bank Group MIP* 2:18-cv-00010-EJF (D.Utah 2020). The 'with prejudice' dismissal undermines the very ruling itself. As a practical matter the court will no longer accept filings, so Petitioner's Constitutional right to bring her action is thwarted. For such inconsistency in jurisdictional determination certiorari must be issued.

Petitioner has demonstrated she has "no other adequate means" "to attain the relief she desires" – can no longer file due to unlawful 'with prejudice'. And requests writ. "Exceptional circumstances' amounting to both 'judicial usurpation of power' as well as 'a clear abuse of discretion' will justify the invocation of extraordinary remedy." *Cheney v. United States Dist. Court for D.C.* 542 U.S. 367, S.Ct. (2004).

The extent to which these courts went to deny Petitioner her Constitutional right to bring her action, and her right

under its Rules to a fair process, their refusal to allow her right to prosecute her case and use the courts in the United States, a right guaranteed, are troubling signs for the District of Columbia's population. Such behavior should have been uncountenanced by a court claiming to provide equality to all before it. This deliberate ignoring of applicable law and procedures, goading and form of intimidation should have been beneath the highest court in the District of Columbia, and displays only that the District courts do not administer a just system.

The manner in which Petitioner's legitimate action was suppressed and how these courts locked her out of the court system exemplifies just the sort of 'two-tier' justice system that concerns the current U.S. President. The procedural irregularities are such, and so many, as to amount to abuse of power and unethical conduct. Evidencing politicization of justice, and weaponization of the courts by powerful political parties, Respondents' counsel also representing IBRD. That entity has interjected to intimidate the judiciary, so that it dictates the terms of justice available in this country, distorts law and the courts and orchestrates the denial of Constitutional rights. Ignoring both separation-of-powers and its own precarious right to headquarters in the Nation's Capital. Allowing external institutions to influence judicial authority will lead to political pressure, inconsistent determinations, and harm to U.S. foreign relations. And creates separation-of-powers tensions with the judiciary's role of adjudication. See Chimène I. Keitner, *The Common Law of Foreign Official Immunity*, 14 Green Bag 2D 61, (2010); see also Curtis A. Bradley, *Conflicting Approaches to U.S. Common Law of Foreign Official Immunity*, 115 AM. J. INT'L L. 1, (2021) (noting "potential separation of powers concerns").

The Petitioner has already circulated the matter and judgment in the international community and will increasingly continue do so.

These are troubling concerns and the need for this court to issue certiorari to prevent such threat to the foundation of U.S. democracy and rule of law requires the writ.

This Court must apply its decision to do substantial justice and overturn the decision on each of the grounds above.

5. COMPELLING NEED TO ISSUE WRIT OF CORRECTION

Petitioner requests the court issue writ, and/or all remedies necessary or appropriate.

I. *Separation-of-Powers*: The Congressional limits on the parameters within which international entities officers must abide when in the U.S. have been stretched and broken and an unapproved new absolute immunity for a class created. A matter of first impression for this Court, since this permitted a wrongful extension of federally enacted functional immunity by unauthorized judicial interpretation, ignoring separation-of-powers considerations, and that Congress has denied.

To create a new legal path for parties to plead immunity, outside the statutory parameters is judicial abuse. Certiorari is warranted not only to correct serious jurisdictional error but also to resolve this new conflict in authority and remedy these new inroads.

The matter presents an important question of law to be resolved by this Court as many international organizations are headquartered in D.C and so within the

D.C. courts' jurisdiction, which they now refuse to examine by legal principles or exercise.

II. *Lawful Authority*: Both D.C. courts unlawfully exceeded the bounds of their statutory instructions (*Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296 (1989)). Certiorari is appropriate to correct unlawful act outside jurisdictional authority, and for clear and indisputable legal error (below). By failing to review through evidence-based fact-finding the facts on which its jurisdictional basis was challenged and yet nevertheless determining none exists, the appellate court itself abused its discretion, 'discretion has its limits, it is not whim'. *Martin v. Franklin Capital* 546 US 132 S.Ct. (2005).

The denial of Petitioner's request to establish jurisdictional facts on evidence, not supposition, here also amounts to a refusal to adjudicate. (See *Railroad Co. v. Wiswall*, 23 Wall. 507 (1875) this Court intervened where determination amounted to "refusal to hear and decide"). Here judicial speculation as to 'official capacity' of officials whose very functions and job description were kept shrouded exceeds judiciary prerogative. Both courts refused to conduct adequate jurisdictional assessment because of sensitivity to the identity of an unnamed political entity, even allowing filings under seal for no reason. What could have influenced such erroneous determination?

Certiorari is necessary to protect litigants from lawless obstruction, preventing the courts thwarting their own purpose, and to protect equal treatment in courts within this country despite political foreign pressure from outside forces and institutions that belong to (and act as if still within) a soviet era.

The D.C. courts, from influence or duress, apparently agreed to issue hoax judgments instead of simply requiring instead Respondents pay the reasonable amount of the Complaint. Moreover this country's current administration supports 'law and order', not lawlessness and prejudice.

The Petitioner has no other venue open for justice, except exposure in other venues, if this court does not issue certiorari.

III. *Errors of law*: '[A] clear error of law or clear error of judgment leading to a patently erroneous result may constitute a clear abuse of discretion.' *In re Apple, Inc.*, 602 F.3d 909, (8th Cir. 2010). Both courts ignored precedent and judicial duty, proceeding unlawfully, abusing jurisdictional boundaries, disobeying the Constitution and Congress. This court must issue writ to remedy such excess and judicial overreach.

IV. *Abuse of Discretion*: This Petitioner's constitutional right to bring her action has been violated by the appellate court's failure and refusal to secure its jurisdiction by applying legal norms in the manner required by this country's law. In the circumstances the appellate court abused its discretion, it had a duty indeed to protect her right to use District of Columbia courts to prosecute her action, it failed to do so. See *United States v. Perry*, 360 F.3d. 519 (6th Cir. 2004):

Orders issued without legal basis, conflicts of interest, and generally mysterious conduct reflect exactly the sort of sloppy adjudication that a thorough district court proceeding, i.e., due process, is meant to avoid.

Writ must be ordered for jurisdictional discovery to establish the jurisdictional facts of 'official capacity' : see *McClellan v. Carland*, 217 U.S. 268, S.Ct. (1910), certiorari issued in aid of appellate jurisdiction to prevent unauthorized actions of the lower court.

V. *Extension Of Law*: Both lower courts failed to grapple with federalism constraints, to secure and maintain the uniformity of judicial decision-making it is up to this Court, Petitioner's last resort, to remedy the lower court's abuse of jurisdictional limits and usurpation of Congressional power by its unlawful extension of immunity law, in conflict with U.S. Constitution provisions. Both judgements are judicial "usurpation of power." *De Beers Condol. Mines v. U.S.*, 325 U.S. 212 (1945). (Certiorari issued as the court "ha[d] no judicial power to do what it purport[ed] to do."). Certiorari was issued by the Supreme Court so that the appellate court could 'confine an inferior court to a lawful exercise of prescribed jurisdiction' when there had been a usurpation of judicial power in *Schlagenhauf v. Holder*, 379 U.S. 104 (1964).

VI. *Certiorari is necessary because Petitioner's right to progress her case and Due Process is Violated and she is deprived of Equal Protection at Law*: The touchstone of civil procedural due process is the fundamental right of access to civil courts for all litigants for determination of their actions by a duly empowered court. By acting unlawfully these courts denied Petitioner equal protection under the law, due process, and to have her case heard in an authorized court. The decision conflicts with constitutional principles safeguarded by this Court under the Constitution, Amendment XIV.

The procedural abuse compounded this violation. Its Court Rules are binding, and must be followed ‘relating to the integrity of judicial processes.’ *Hollingsworth v. Perry*, 558 U.S. 183 (2010). Both courts violated Petitioner’s due process rights and committed multiple violations of constitutional 14th amendment protections, including Petitioner’s procedurally protected right to bring her action, and to be meaningfully heard, contradictory to the jurisprudence of this country. The matter at hand is fundamental: the right to a fair court system that allows state courts to function as Congress has enacted and the U.S. Constitution demands. *Marbury v. Madison* 375 U.S. (1 Cranch) 137 (1803). ‘[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever [s]he receives an injury.’ See *Bodie v. Connecticut* 401 U.S. 371 (1971) (14th amendment due process is central to the judicial system’s operation). The two court’s rulings fall foul of the due process clauses. *Hovey v. Elliot* 167 U.S. 409 (1897) ‘not even courts have ‘the power to violate fundamental constitutional safeguards’ ‘.

The court’s muzzling of Petitioner, denial of status hearing, denial of oral argument, imposition of a gag order, and ‘summary calendar’ allocation violate the principle that ‘issues cannot be resolved by a doctrine favoring one class of litigants over another.’ *Schlagenhauf v. Holder* (supra). Petitioner’s day in court, and justice access, is denied. Petitioner’s constitutional right to a meaningful opportunity to be heard when litigating, a central aspect of procedural due process, was ignored. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982).

At this inflection point in judicial history and legal precedent-making, when provided with an opportunity

for clarity and defense of the people of the District of Columbia's rights its courts ducked the issue and kowtowed to outside pressure at the expense of those living and/or working in the District, proving its court system weak, ineffectual and unworthy of status. Confidence in the rule of law, and that appointed judges will administer justice impartially, will continue to erode, and the District of Columbia, its judiciary and court systems will fall into further disrepute for failure to provide equal protection if this Court does not issue certiorari.

VII. *Creation of Conflict*: This Court should grant certiorari because the court decision conflicts with decisions of the D.C. and all Circuits, as well as States' highest courts, on the fundamental question of subject matter jurisdiction prevailing unless functional immunity is actually established, not assumed. The decision below, at odds with all precedent, now renders D.C. the sole outlier on this important question of jurisdictional threshold determination. This Court's review is warranted to resolve this new conflict in approach and authority.

VIII. *The decisions raise Questions of First Impression*: The novel approach the D.C. courts adopted for assessing jurisdictional limits not as prescribed under federal law, and asserted judicial expansion of limited immunity under the BWAA, as well as deference to an unrecognized unaccountable internal tribunal's opinions is an obstruction of justice. This issue causes confusion and uncertainty for all litigants. And is one of first impression. Critical to resolve particularly, with regard to immunity-determination, in view of the amount of international organizations operating in the District. Certiorari should issue.

IX. *The Questions Presented Are Important and Frequently Recurring*: The “judicial act” of violating and decreasing the constitutional jurisdictional reach of courts in this land, and the D.C. Court’s doctrine of determination by speculation, is profound, with lasting effect. This proceeding sets dangerous precedent both lower courts refusing jurisdiction based on unscrutinized theories of international entities internal workings. And that without deferring to international law. Certiorari is necessary to maintain the rule of law and limit judicial speculation as a method for jurisdictional determination, now authorized by the District of Columbia Court of Appeals.

The novelty of the ruling, combined with its potentially broad and destabilizing effects, require this Court’s correction, important for a functioning judicial system. This Court must issue its writ, necessary to resolve the ambiguity and conflict created.

CONCLUSION

Writ of certiorari, or such other relief as the Court sees proper, should be granted.

Respectfully,

Sara González Flavell,
Petitioner *Pro Se*

APPENDIX

TABLE OF CONTENTS

Appendix A – District Of Columbia Court of Appeals
Memorandum Opinion and Judgment(October 25,
2024).....1a

Appendix B – District Of Columbia Superior Court
Omnibus Order (December 7 2022).....25a