No. 25-5038

SUPREME COURT OF THE UNITED STATES

NICHOLAS WEIR - PETITIONER

vs.

MONTEFIORE MEDICAL CENTER, ALBERT EINSTEIN COLLEGE OF MEDICINE, EVRIPIDIS GAVATHIOTIS, ANNA GARTNER, LITTLER MENDELSON, JEAN L. SCHMIDT, and EMILY C. HAIGH - RESPONDENTS

On Petition for a Writ of Certiorari to

the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED FOR REVIEW

If Marrese v. Am. Acad. of Orthopaedic Surgeons, 470 U.S. 373, 380 (1985) and/or 28 U.S.C. § 1738 are controlling, should the Federal Court recognize the cursory nature of facts shielding them from being barred by collateral estoppel under *Dunn*, (N.Y. 2015) and the liberal nature of New York Judiciary Law section 487 to permit a plenary action for attorney deceit under Marta Urias v. Daniel P. Buttafuoco, 18 (NY 2024)?

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Nicholas Weir, a high achieving biotechnology scholar who has been subjected to aggressive, prolonged, complex, and life-threatening U.S. military recruitment efforts instigating various legal harms directly and indirectly to Mr. Weir such as his wrongful termination from his research technician job at Montefiore Medical Center and Albert Einstein College of Medicine, respectfully petitions this court for a writ of certiorari to review the judgment of United States Court of Appeals for the Second Circuit.

V. OPINIONS BELOW

On September 6, 2023, the United States District Court for the Southern District of New York (Katherine Polk Failla, Judge) dismissed Petitioner's Complaint sua sponte after the Court's Order to Show Cause was briefed. See **Appendix A**. On May 6, 2024 and May 22, 2024, the United States District Court for the Southern District of New York (Katherine Polk Failla, Judge) dismissed Petitioner's motion for reconsideration and Petitioner's second motion for reconsideration, respectively. See **Appendix B.** On January 24, 2025, the United States Court of Appeals for the Second Circuit denied Mr. Weir's appeal and Mr. Weir ultimately filed a petition for rehearing and rehearing en banc. See **Appendix C** (Joint petition and Summary Order

attached). On February 26, 2025, the United States Court of Appeals for the Second Circuit denied Mr. Weir's petition for rehearing and rehearing en banc. See **Appendix D**.

VI. JURISDICTION

Mr. Weir's petition for hearing and rehearing en banc to the United States Court of Appeals for the Second Circuit was denied on February 26, 2025. Mr. Weir invokes this Court's jurisdiction under 28 U.S.C. § 1254 or other applicable law, having timely filed this petition for a writ of certiorari within ninety days of the United States Court of Appeals for the Second Circuit denial of the joint petition for rehearing.[1]

VII. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

28 U.S.C. § 1738:

"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,

[1] See also Rule 29(2).

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. (June 25, 1948, ch. 646, 62 Stat. 947.)"

<u>The 1st, 5th, 7th, 9th and 14th Amendments of Constitution of the United States of America</u>

1st Amendment of Constitution of the United States: "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."

5th Amendment of Constitution of the United States: "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 offence 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."

7th Amendment of Constitution of the United States: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law. In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

9th Amendment of Constitution of the United States: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

14th Amendment of Constitution of the United States: "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. Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability. Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the

United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void. Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article. *Changed by section 1 of the 26th amendment."

VIII. STATEMENT OF THE CASE

In *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985), the U.S. Supreme Court noted that for state court judgments, federal courts apply the "preclusion law of the State in which judgment was rendered." See *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985); see also 28 U.S.C. § 1738 (providing that state court judgments "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.").[2]

In *Marta Urias v. Daniel P. Buttafuoco*, 18 (NY 2024), the New York Court of Appeals noted that a plaintiff alleging attorney deceit can pursue a plenary action.

[2] These statements were essentially taken from the Summary Order of this case. While the Second Circuit cited the law and authority, the Second Circuit failed to abide by their guidance as discussed herein.

See *Marta Urias v. Daniel P. Buttafuoco*, 18 (NY 2024) (Judiciary Law "section 487 authorizes a plenary action for attorney deceit [...] we decline to confine a plaintiff alleging attorney deceit to the sole option of proceeding under CPLR 5015").

In the *Matter of Jill A. Dunn, an Attorney, Committee on Professional Standards* 27 N.E.3d 465, 24 N.Y.3d 699, 3 N.Y.S.3d 751 (New York Court of Appeals, 2015), the New York Court of Appeals gave guidance on "whether collateral estoppel applies in respondent attorney's disciplinary proceeding to bar her from challenging the findings of a United States magistrate judge made in the context of a sanctions motion. Under the circumstances presented here, we hold that respondent did not have a full and fair opportunity to litigate the issue of her alleged misconduct."

In *Dunn*, the New York Court of Appeals noted that "the determination here was made on papers— without cross-examination or the opportunity to call witnesses. Although Dunn did testify before the Magistrate, it was in the context of the motion for reconsideration and was for the purpose of determining whether the trust's assets should be unfrozen. Essentially, the issue before the Magistrate there was whether the annuity agreement was new evidence that the SEC could not have discovered in a timely fashion through the exercise of due diligence. While the issue of whether Dunn had made false statements in her written declaration concerning her prior knowledge of that agreement may have been relevant, it was certainly not the focus of the hearing on the motion. The cursory nature of the sanctions proceeding itself failed to provide a full and fair opportunity to litigate the issue."

In this case, Circuit Judges, José A. Cabranes, Reena Raggi, and Alison J. Nathan, applied collateral estoppel to Petitioner's tort and fraud claims (Weir IV) stemming from the conduct of Respondents in the state action (Weir II) to bar Petitioner from challenging the findings of the Supreme Court of the State of New York, the County of Bronx[3] (Ruben Franco, Judge) made in the context of a motion for summary judgment and cross-motion for sanction (Weir II).[4] Like *Dunn*, Petitioner argued that he did not have a full and fair opportunity to litigate the two fraudulent affirmations submitted as exhibits to the motion for summary judgment. See Appendix C.

IX. REASONS FOR GRANTING THE WRIT

1. The two fraudulent affirmations submitted as exhibits to the motion for summary judgment did not allow the parties a full and fair opportunity to litigate their alleged fraudulent nature and they were cursory within the context of motion for summary judgment and cross-motion for sanction under *Dunn*, (N.Y. 2015).

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[3] Affirmed by Appellate Division (First Judicial Department)

[4] Weir I refers to Weir v. Montefiore Med. Ctr., No. 16 Civ. 9846 (KPF), (S.D.N.Y. Feb. 22, 2018)
Weir II refers to Weir v. Montefiore Med. Ctr., Index No. 42000/2020E (RF), (N.Y. Sup. Ct. Bronx Cnty. Nov. 5, 2021)
Weir III refers to Weir v. Montefiore Med. Ctr., (1st Dep't 2022)
Weir IV refers to this case: Weir v. Montefiore Med. Ctr., No. 23 Civ. 4468 (KPF), (S.D.N.Y. Sept. 6, 2023)

In this case, Second Circuit Judges, José A. Cabranes, Reena Raggi, and Alison J. Nathan, appropriately acknowledged that Appellant has a viable Judiciary Law § 487 claim against Emily C. Haigh, Jean L. Schmidt, and Littler Mendelson (hereafter, "attorney Appellees"). See Summary Order included in Appendix C. However, the Circuit Judges noted that "[a]s to Weir's claim under New York Judiciary Law § 487—that the attorney defendants responded late to his discovery demands, made false statements, and conspired to deceive the court—those issues were addressed in the state court's summary judgment decision when the court denied Weir's cross-motion to hold the attorneys in contempt and to sanction them, and to compel production of outstanding discovery. See Weir, 2021 WL 7286472 at *6–7." None of the issues identified by the Second Circuit pertains to the two fraudulent affirmations introduced for the first time as exhibits to the motion for summary judgment.

On September 8, 2021, Respondent Anna Gartner[5] signed an affirmation in support of Defendant's motion for summary judgment ("affirmation#1"). See NYSCEF Doc. No. 140 in Weir II). On September 9, 2021, Respondent Evripidis Gavathiotis signed an affirmation in support of Defendant's motion for summary judgment ("affirmation#2). See NYSCEF Doc. No. 146 in Weir II. On September 9, 2021, these two affirmations were filed in Weir II action by attorney Appellees or Respondents. Id.

[5] "Emily C. Haigh" was erroneously stated in the joint petition instead of "Anna Gartner" as the individual who wrote one of the two affirmations. A review of NYSCEF Doc. No. 140 in Weir II reveals that the affirmation was actually written by Anna Gartner.

On October 1, 2021, Petitioner filed a cross-motion in-part "to sanction Defendants' attorneys for their frivolous conducts throughout the discovery process". See NYSCEF Doc. Nos. 154 and 156 in Weir II. In his moving paper under the section to "Contempt of Court, to Sanction, and to Compel Discovery", Petitioner made no reference to affirmation#1 or affirmation#2. Id. The inclusion or reference to the affirmations were pertaining to the summary judgment. As the Court of Appeals of New York reasonably interpreted that such inclusion or reference is cursory in nature. See In re Dunn, (N.Y. 2015) ("The cursory nature of the sanctions proceeding itself failed to provide a full and fair opportunity to litigate the issue.").

Consequently, Petitioner did not have a full and fair opportunity to litigate the issues associated with affirmation#1 or affirmation#2 so they are legally divorced from Weir I and II. Presuming Weir II was indeed dismissed on the merits, the Circuit appropriately stated that Appellant (or Petitioner) is precluded from raising all other factual allegations against attorney Appellees raised prior to the summary judgment motion and in the Appellant's cross-motion. See Hansen v. Miller, (2d Cir. 2022) citing Sykes v. Mel S. Harris & Assocs. LLC , (2d Cir. 2015) and Marta Urias v. Daniel P. Buttafuoco, 18 (NY 2024).

2. The post-judgment facts stated on appeal in the Appellate Division, First Judicial Department, were cursory in the context of the appeal under *Dunn,* (N.Y. 2015).

New or continued fraudulent and deceptive statements made on appeal (Weir III):

On August 10, 2022, attorney Appellees submitted their brief to the State Appellate Court which included new or continued fraudulent and deceptive statements about Appellant. See NYSCEF Doc. No. 10 in Weir III. These are post-judgment facts and therefore not collaterally estopped in Weir IV. See Charlene Simmons v. Trans Express Inc, (NY 2021) and Koether v. Generalow, (N.Y. App. Div. 1995).

A meticulous review of Appellant's briefs in Weir IV and Weir III (see NYSCEF Doc. Nos. 6 and 11 in Weir III) reveals the fraudulent and deceptive nature of attorney Appellees' post-judgment and post-judgment confession statements in their briefs in Weir III and Weir IV. These post-judgment and post-judgment confession fraudulent statements violated New York Rules of Professional Conduct (22 NYCRR 1200.0) rules 8.4 (c), (d) and (h); 3.3 (a) (1); and 3.4. See *Dunn*, (N.Y. 2015).

Temporary Abandonment of Favorable Summary Judgment and Request for Settlement:

In Appellant's brief submitted to the State Appellate Court, Appellant noted that Appellees contacted Appellant to settle the employment claims, confessed to Appellee's unlawful actions, and requested Appellant convey a monetary amount of interest. See NYSCEF Doc. No. 6 ¶¶ 114, 118 in Weir III. These facts are post-

judgment facts and therefore not collaterally estopped in Weir IV. See Charlene Simmons v. Trans Express Inc, 34 (NY 2021).

Waived Argument in Opposition for the two Aiding and Abetting Claims in Weir III:

In their brief, Appellees attempted to abandon the two Aiding and Abetting Claims in Weir II. This waived argument in opposition came subsequently of Appellees' post-judgment confession and request for settlement amount. The State Appellate Court disregarded Appellees' attempted abandonment of the two aiding and abetting claims and affirmed the dismissal of the two aiding and abetting claims that was already in the Judgment. While the State Appellate Court did not explicitly cite the judicial estoppel doctrine, the State Appellate Court's silence implicitly points to the restrictions associated with the judicial estoppel doctrine. Maharaj v. Bankamerica Corp., (2d Cir. 1997).

Appellees were judicially estopped from waiving argument in opposition of the two aiding and abetting claims. Appellees' waived argument in opposition of the two aiding and abetting claims reveals Appellees fraudulent concealment of not only the viability of at least two of the ten claims in Weir II but also their unlawful actions in undermining Appellant's substantive rights such as equal access to the Court, due process, right to jury trial, right to petition, and a fair hearing. These facts are post-

judgment facts and therefore not collaterally estopped in Weir IV. See Charlene Simmons v. Trans Express Inc, (NY 2021).[6]

All the post-judgment facts stated on appeal in the Appellate Division, First Judicial Department, were cursory in the context of the appeal under Dunn, (N.Y. 2015) and therefore not collaterally estopped in Weir IV. See Charlene Simmons v. Trans Express Inc, (NY 2021).

3. The post-judgment facts stated on appeal in the Appellate Division, First Judicial Department, and the submission of two fraudulent affirmations secured the granting of a motion for summary judgment can be liberally construed to violate Petitioner's constitutional and civil rights under Erickson v. Pardus, 551 U.S. (2007).

In Erickson v. Pardus, 551 U.S. (2007), the United States Supreme Court has recognized that Pro Se Litigant should be afforded a special solitude in light of the unbalanced scale going up against an attorney. See Erickson v. Pardus, 551 U.S. (2007) ("The Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because petitioner has been proceeding, from the litigation's outset, without counsel. A

[6] Only the facts that are legally divorced from the facts in Weir II can carry the claims in Weir IV to the stage of summary judgment or trial. Notwithstanding their legal divorce, the legally divorced or precluded facts of Weir II can legally cheer on the viable and plausible facts in Weir IV as background facts. See Bearer v. Teva Pharms. USA, Inc., (E.D. Pa. Sept. 08, 2021) ("Indeed, "prior acts that are not actionable because they are time-barred may still be cited as background evidence in support of a timely claim.'")

document filed pro se is "to be liberally construed," Estelle, 429 U. S., at 106, and "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers,").

In this case, the Second Circuit Judges noted that Petitioner "does not otherwise explain how the attorney defendants violated his constitutional or civil rights." See Appendix C. The post-judgment facts and submission of two fraudulent affirmations were stated in the Complaint and other submissions in both the District Court and the Second Circuit. The District Court and the Second Circuit deviated from the guidance in Erickson and failed to do a liberal construction of Pro Se Petitioner's submissions.

X. CONCLUSION

For the foregoing reasons, petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.[7]

[7] Petitioner has argued before Judges primarily in state court as a pro se litigant. Petitioner believes that he can argue before this Court; however, Petitioner is open to accept an assigned counsel, or to resume his search for a pro bono attorney who is willing to argue before this Court should this Court not be fond of a pro se litigant arguing before it.