

8/25/25

No.: 25-643

In the
Supreme Court of the United States

Onwy Uzoigwe,

Petitioner

v.

Charter Communications LLC.,

Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Second Circuit

PETITION FOR WRIT OF CERTIORARI

Onwy Uzoigwe

4212 Flowerton Rd.

Baltimore, MD 21229

Phone: (347) 572-8280

Email: o.uzoigwe@gmail.com

Pro se Petitioner

QUESTIONS PRESENTED

1. Whether the Second Circuit erred in holding that a defendant's late return of a CPLR 312-a acknowledgment form does not constitute proper service under New York law and therefore does not trigger the forum-defendant rule, contrary to this Court's removal jurisprudence and the Second Circuit's own binding precedent in *Morse v. Elmira Country Club*, 752 F.2d 35 (2d Cir. 1984).
2. Whether a federal appellate court may make factual findings in the first instance—such as deeming service “unsuccessful”—when the district court made no such finding and the record supports service completed under state law.

RELATED CASES

- *In re Onwy Uzoigwe v. Charter Communications LLC*, A.L.J. Case No. 020-06925 (N.Y. Unemployment Ins. App. Bd. Admin. Law Judge Section June 15, 2020)
- *Onwy Uzoigwe v. Charter Communications (DE) et al.*, Supreme Court, Queens County, New York Case 717511/2023, removed on Sept. 29th, 2023.
- *Uzoigwe v. Charter Communications, LLC*, No. 1-23-CV-07383, E.D.N.Y. Motion to dismiss granted April 24th, 2024, judgment entered May 31st, 2024.
- *Uzoigwe v. Charter Communications, LLC*, No. 24-1399-CV, 2d. cir. (summary order), affirmed May 1st, 2025. Motion for rehearing/en banc denied June 5th, 2025.

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- The decision of the New York Administrative Law Judge, Unemployment Insurance Appeal Board, is unpublished but available at *In re Onwy Uzoigwe v. Charter Communications LLC*, A.L.J. Case No. 020-06925 (N.Y. Unemployment Ins. App. Bd. Admin. Law Judge Section June 15, 2020; see Appendix to Petition, APP. 133-135).
- The district court's opinion is unpublished but available at *Uzoigwe v. Charter Communications, LLC*, No. 1:23-cv-07383 (E.D.N.Y. Apr. 24, 2024).
- The opinion of the United States Court of Appeals for the Second Circuit is unreported but available at *Uzoigwe v. Charter Communications, LLC*, 24-1399 (2d Cir. May 1, 2025, affirming the district court's judgment).

STATEMENT OF THE CASE

The United States Court of Appeals for the Second Circuit denied the appeal by summary order on May 1, 2025. While the decision is labeled a "summary order," it contains a detailed rationale that resolves factual disputes and adopts reasoning inconsistent with both Second Circuit and Supreme Court precedent. The Second Circuit's order denying the petition for panel rehearing and rehearing en banc was entered on June 5, 2025. The decision of the United States District Court for the Eastern District of New York granting Respondent's motion to dismiss is unreported and was entered on April 24, 2024.

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered on May 1, 2025. A timely petition for panel rehearing and

rehearing *en banc* was denied on June 5, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to Rule 1(f), see Appendix to Petition for pertinent text.

- U.S. Const. amend. V
- 28 U.S.C. § 1441(b)(2)
- 28 U.S.C. § 1738
- Fed. R. Civ. P. 12(b)(6)
- N.Y. CPLR § 312-a
- N.Y. CPLR § 311-a
- N.Y. CPLR § 303(b)
- N.Y. CPLR 308(3)
- 28 U.S.C. § 1652
- Fed. R. App. P. 3, 4
- Fed. R. App. P. 52(a)

STATEMENT OF THE CASE

Petitioner, a former employee of Charter Communications LLC, brought an action in New York Supreme Court asserting claims for Breach of Contract, NYC Title 20 Retaliation, and Negligence based on Charter's representations that Petitioner's employment was permanent and would not be terminated absent a six-step process. Petitioner personally served Charter's registered agent in accordance with N.Y. CPLR 311-a (or N.Y. CPLR § 308(3)) prior to removal. Nonetheless, Charter removed the case to federal court under 28 U.S.C. § 1441(b)(2), asserting Petitioner had not completed service.

The District Court denied Petitioner's Motion to Remand with no acknowledgment to a subsequent service, and later Dismissed the Complaint under Rule 12(b)(6), finding, *inter alia*, that Petitioner had

not sufficiently alleged a contract altering at-will status. The Second Circuit affirmed in a Summary Order. Despite its summary designation, the order includes detailed reasoning that effectively engages in factual findings and legal determinations that conflict with binding authority. The appellate court agreed that Petitioner properly served the Respondent pursuant to the first half of NY CPLR 312-a. The appellate court found clear error; concluding that there was a subsequent service, although they dismissed evidence of proper service under New York law and rejected contractual claims without giving due weight to inferences in favor of the *pro se* litigant.

Petitioner filed for Rehearing and Rehearing *En banc*, arguing that the court misapplied New York law, overlooked established pleading standards, and exceeded the appropriate scope of review at the

Motion to Dismiss stage. The Second Circuit denied the rehearing request.

REASONS FOR GRANTING THE WRIT

I. THE SECOND CIRCUIT'S DECISION UNDERMINES THE FORUM DEFENDANT RULE

The Second Circuit's decision conflicts with the statutory bar on removal by forum defendants who have been properly served. Courts nationwide diverge on whether pre-removal service under state law triggers § 1441(b)(2). Petitioner produced *prima facie* evidence of personal subsequent service on Charter's agent under CPLR § 311-a (or CPLR § 308(3)). The Second Circuit's dismissal of that evidence raises a federalism concern and contradicts the *Erie* doctrine.

**II. THE COURT OF APPEALS
IMPROPERLY ENGAGED IN FACT-FINDING ON A RULE 12(B)(6) MOTION**

Rather than taking well-pled allegations as true, the court resolved facts at the 12(b)(6) stage. Supreme Court precedent makes clear that it is improper to resolve facts at the 12(b)(6) stage.

**III. THE COURT OF APPEALS
IMPROPERLY RESOLVED FACTS
FOUND IN THE FIRST INSTANCE ON
APPEAL**

After finding the clear error, the court improperly made a finding in the first instance that, Petitioner's subsequent service was "an unsuccessful attempt at mailed service", instead of concluding that there was a subsequent service that was completed. (See Appendix: App. p. 35n.1). This conflicts with Federal Rule where district courts, and not appeals courts, are the finders of facts. It also conflicts with Supreme

Court precedent requiring courts to resolve factual inferences in favor of plaintiffs at the pleading stage.

IV. THE LOWER COURTS FAILED TO LIBERALLY CONSTRUE PRO SE PLEADINGS

Both the district court and the court of appeals failed to credit the well-pled factual allegations regarding the employment contract and Charter's pre-termination procedures. This contravenes the mandate that pro se pleadings be liberally construed and not dismissed for technical deficiencies.

V. THE SECOND CIRCUIT FAILED TO FOLLOW ITS OWN PRECEDENT ON SERVICE

The court ignored binding Second Circuit precedent in *Morse v. Elmira Country Club*, which holds that failure to return a signed acknowledgment of service does not invalidate otherwise valid service under New York law. This departure warrants review.

VI. THE LOWER COURTS RESOLVED FACTS THAT WERE RESOLVED IN THE PRIOR ADMINISTRATIVE PROCEEDING

The prior administrative decision in the New York State Unemployment Insurance Appeals Board resolved many of the facts which the lower courts chose to resolve anyway, conflicting with the Supreme Court's holding in *Univ. of Tennessee v. Elliott*, 478 U.S. 788, 106 S. Ct. 3220, 92 L. Ed. 2d 635 (1986). (See Appendix: Pet App. pp. 42-45; see also pp. 109-111).

VII. THE DISMISSAL OF THE CONTRACT CLAIM CONFLICTS WITH PRECEDENT ON IMPLIED EMPLOYMENT AGREEMENTS

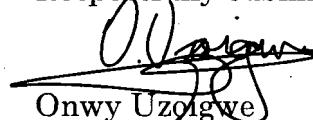
The complaint alleged (1) a prior administrative decision reviewed by a judge which was found in Petitioner's favor and completely refuted the Respondent's reason for termination, where the Petitioner was given a full and fair opportunity to litigate, (2) a written assignment letter confirming

permanent employment and offered to Petitioner in the middle of Respondent's strike with IBEW Local 3, (3) verbal assurances, and (4) conduct consistent with a progressive discipline policy. These allegations, taken as true, were sufficient to survive a motion to dismiss. Lower courts are divided on how such facts affect the at-will presumption under New York law.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,



Onwy Uzoigwe

4212 Flowerton Rd.

Baltimore, MD 21229

Phone: (347) 572-8280

Email: o.uzoigwe@gmail.com

Pro se Plaintiff