

25-652

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Patricia J. Curto,

Petitioner,

V.

Erie County Water Authority

Earl L. Jann, Jr

Respondents.

FILED

JUL 01 2025

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

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On Petition For Writ of Certiorari  
United States Court of Appeals  
For The Second Circuit

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PETITION FOR WRIT CERTIORARI

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Patricia J Curto, pro se  
20 Hazel Court  
West Seneca, NY 14224  
Email: nikkidog1125@yahoo.com

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SUPREME COURT, U.S.

## PETITION FOR WRIT OF CERTIORARI

QUESTION (additional questions see below)

Assuming the Rule of Law exist, have you ever seen a case that deviates so far from the Rule of Law? For example (including but not limited to):

Plaintive/petitioner received essential government service from Erie County Water Authority 4/20/2006 - 3/21/2017

Defense counsel/defendants without proof, alleged a letter was sent registered mailed to the previous customer (who at the time was long deceased) and when the deceased previous customer did not go to the post office and sign for the letter it was returned to ECWA.

The Court of Appeals decided this letter provided plaintiff with notice, due process etc when the ECWA terminated her service a year later (3/21/2017). Notably ECWA (superseding) written "notice" (different) reason alleged an unnamed nonexistent customer, did not call between 3/1/2017 and 3/11/2017, an incorrect ECWA phone number provided and which no employees were answering, regarding the unnamed nonexistent customer's nonexistent application for water service.

The ECWA waited 5½ years after termination and for the first time in their Rule 56 motion, claimed 3/1/2017 "notice" was an inadvertent error. ECWA has not to date corrected the alleged inadvertent error; has not restore essential service to date; and plaintiff remains homeless.

The Court of Appeals denied appeal of WDNY granting ECWA Rule 56 motion, deciding in part Cuto had received due process, notice etc..

Petitioner Patricia J Curto, request that this court issue a writ of certiorari to reverse and remand the decision below. This case should be returned to the WDNY for a jury trial.

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#### TABLE OF AUTHORITIES

Butler v Ratner, 173 Misc.2d 783;  
People v Smith, 5 Misc.3d 1005A;  
Katz v. United states 389 US 347;  
People v Scott 79 NY.2d 474  
EEOC v. May & Co., 572 F. Supp. 536, 38 Fed. R.  
Serv. 2d (Callaghan) 481, 1983 U.S. Dist. LEXIS  
13415 (N.D. Ga. 1983

#### JURISDICTION

The Second Circuit order denying appeal dated January 8, 2025 is reproduced at App1-7. The Second Circuit order denying timely (February 18, 2025) rehearing petition, dated April 10, 2025 is reproduced at App 8.

US Supreme Court Clerk on July 9, 2025 returned writ correspondence regarding errors/corrections US Supreme Court Clerk on September 17, 2025 returned writ correspondence regarding additional errors/corrections

The Court has jurisdiction under 28 USC 1254(1)

#### STATUTORY PROVISIONS INVOLVED

Due process and Notice fourth amendment of constitution. Taking clause of US constitution. Federal statutes 42 USC1983. New York State constitution and statutes for privacy rights and property rights and negligence.

FRCP 56 : "Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated"

#### PETITION FOR WRIT CERTIORARI STATEMENT

Plaintiff/petitioner is appearing pro se, is homeless, does not have Pacer, the WDNY Law Library closed during Covid pandemic and never reopened. She commenced this action in NY State Supreme Court County of Erie; defendants served summons and complaint personally by Erie County

Sheriff.. Defense counsel on the eve required answer: amended complaint; filed the amended complaint in WDNy without seeking court permission and without notice to Curto (claiming they did not know how to contact her falsely because the summons stated how to contact her). Defense counsel was allowed to continue in WDNy requested tie extension to answer which was granted but defendants did not (defaulted, Curto motion for default incorrectly denied) AND requested a time extension to file 12(b)(6) motion which was not granted.

Eventually Defendant(s) Erie County Water Authority outside counsel filed a motion for Summary Judgment in this jury action (action filed by the defendants in WDNy ). The motion violated Judge McCarthy's scheduling Order and the WDNy local rules, as it did not include a pro se summary judgment statement. Judge McCarthy sua sponte contact defense counsel and extended deadline.

Magistrate Judge McCarthy Report and Recommendation (see App 11) decided NOT to dismiss the action.

District Judge Sinatra erroneously reversed Judge McCarthy's R & R denial of summary judgment (see App 11) and dismissed the action. Judge Sinatra's Order stated it was pursuant to his written decision. The written decision did NOT exist when his order filed, mailed received my me, appeal filed and WDNy clerk submitted the record on appeal to the court of appeal

Notably Appeals court repeated reference in it's denial of appeal the district court decisions none of which were attached to WDNy Judge

Sinatra order granting summary judgment (see App 11). Notably Judge Sinatra's order stated it was pursuant to his written decisions

The Second Circuit Appeals court denied the appeal and plaintiffs petition for panel rehearing or rehearing en banc on 4/2/2025 (see App 1 ). Appeals court issued mandate on 4/10/2025 (see App 1). Therefore this petition is proper.

The Second circuit of Appeals order denying the appeal did include decisions by the second circuit appeals court and where patently erroneous.

Defense counsel did not serve their appeal reply brief, appendix etc upon plaintiff and was erroneously considered by the appeals court. Decisions are without regard to laws/rule of law, evidence and rights. On motion for summary judgment, court cannot try issues of fact; it can only determine whether there are issues of fact to be tried. EEOC v. May & Co., 572 F. Supp. 536, 38 Fed. R. Serv. 2d (Callaghan) 481, 1983 U.S. Dist. LEXIS 13415 (N.D. Ga. 1983). The defendants having made the Rule 56 motion have through affidavits the burden of proof

The court(s) roll on a FRCP 56 are limited but were exceeded here.

"Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated"

Additionally the courts are limited as the instant case is a jury trial (as requested by defendants) Court(s) erred in decision that were for the jury to decide

Court erred in deciding facts in dispute and not supported by defense  
Court erred when plaintiff had established alleged fact(s) false  
Conclusory decisions by court(s)  
Rule of law violated  
Court erred in deciding facts/issues not in dispute  
Court erred when plaintiff had proven/established facts  
The court erred (violated FRCP) including and using defendants mediation/negotiation settlement offer

**PROCEDURAL DUE PROCESS (see App 12-16)**  
**Plaintiff's Essential Govt Service Wrongfully terminated (per defendants and 2<sup>nd</sup> Circuit erred in dismissing action)**

Although Judge McCarthy did not find it necessary to include in his decision of denial of due process, I would add the following:

First and foremost (alleged) ECWA employee Aaron Otoka alleges for the first time in his summary judgment (inadmissible) declaration, he terminated Curto's water on 3/21/2017 pursuant to his 3/1/2017 door knob hanger ("NOTICE") and it was "inadvertent" error....notably 5 ½ years later. An alleged inadvertent error that to date has not been corrected.

Curto's service has not been restored and there's no new "NOTICE". Therefore no reason for denial of service (Curto's continuing homelessness).

ECWA's door knob hanger "NOTICE" states "application FOR service" not as ECWA

erroneously claims "application TO service". The only "application" in record is Curto's application for water service which was long ago approved.

Plaintiff's application for defendant ECWA essential required govt service was approved and received service for many years. Notably during the entire time she received water ECWA did not update the customer name from previous customer in their system.

Govt (Erie County Health Dept and town code enforcement) makes ECWA service a requirement for plaintiff to reside at her residential property

Plaintiff received govt defendant ECWA essential service to March 21, 2017 (last date of service)

The government/Erie County Water Authority employee Aaron Otoka, alleges for first time in SJ declaration that he was responsible for 3/1/2017 "Notice" door knob hanger pursuant to which he terminated by service 3/21/2017.

The government/Erie County Water Authority employee Aaron Otoka after waiting 5½ years, alleges in his (inadmissible) SJ declaration, inadvertent error.

Therefore rendering null and void the termination of my essential govt service and any reason govt/Otoka alleged

Over 8 years after terminating and years after alleging inadvertent error/mistake, has not turned water on and refuses to restore my service, not allowing me to return to my home and I remain homeless

Second circuit erred in denying my appeal and WDNY erred in granting rule 56



JURY TO DECIDE INADVERTENT VS  
INTENTIONAL

The government/Erie County Water Authority employee Aaron Otoka waited 5½ years to allege an inadvertent error and refuses to correct. It for the jury to decide intentional vs. negligent infliction of emotional distress etc

During those 5½ years (including but not limited to) suffered as a homeless elderly person through covid pandemic, deadly historic WNY blizzards, record setting summers heat, Canadian wildfire smoke etc

DOOR KNOB HANGER

March 2, 2017 a door knob hanger was left on my door dated a 3/1/2017 allegedly by ECWA employee Otoka

The scrape of paper hung from my door knob:

Allegedly from ECWA

No ECWA employee name appears ECWA employee Otoka has 5½ yrs latter alleged he completed and left

Plaintiff's name does NOT appear nor any one's name (not addressed to anyone)

Plaintiff's address does NOT appear nor does anyone's address

Plaintiff's ECWA account number does NOT nor does anyone's

Phone number for ECWA service dept is incorrect

No ECWA employee from 3/1/2017 - 3/21/2017 answered the phone number listed

ECWA will not discus another customer's account

ECWA application for service alleged, did NOT exist

There was only one reason = application, all other reasons affirmatively eliminated

Meter reading was specifically and affirmatively eliminated as a reason

Meter replace was specifically and affirmatively eliminated as a reason

When the appeals court decided door knob hanger was a proper/legal notice and due process, appeals court necessarily erroneously decided new customer/owner submitted new application for plaintiff's property (20 Hazel Court)

Only reason was an application for water service from a new customer and no other reason = eliminating anything to do with water meter or reading meter

A door knob hanger requiring an unidentified nonexistent new customer who submitted a nonexistent application for service at an unidentified nonexistent address, to call a phone number no ECWA service dept employee was answering, the Appeals Court erroneously decided plaintiff received proper notice and her due process rights were not violated

APPEALS COURT DECISIONS (see appendix mandate) Procedural Due Process (pg 3 &4)

Cites Memphis Light 436 US 1 consultation with designated personnel empowered to correct a mistake constitutes due process

- record contains no proof of any personnel being designated or empowered to correct mistakes (was not provided by defendants when responding to her discovery requests for)
- there is no claim by the defendants any personnel was designated or empowered

- there is no affidavit by any employee they were designated or empowered
- to date their admitted mistake has not been corrected

THEREFORE plaintiff denied due process

There is no admissible evidence ECWA  
mailed 8 letters to plaintiff:  
POINT

The letters were system generated per the defendants

Previous customer name had not been system updated as of 3/21/2017 termination per defendants. Defendants claim at least one of the letters was returned by the post office. Therefore no letters were mailed to Patricia Curto  
POINT

Defendants 26 (a)(1) initial disclosure 9/14/2021 alleged letters were a blank form letter with a postum attached to upper left corner containing multiple dates = no name, no account number. The area of the letter designated for customer name address was blank.

After a year of litigation 8/10/2022 produced a supplemental disclosure where the blank form letters multiple dates in the upper left corner was replaced by US post Office mailing label address. Defendants even noted the change/addition. This form letter(s) had no date(s) and area of the letter designated for customer name address was blank.

These letters are not business records but prepared for the purpose of this litigation. Therefore not business records and subject to the Rules of Evidence and are inadmissible.  
POINT

Phone number provided for the service

department was incorrect.

The stated purpose of the call was to make an appointment NOT to correct a mistake. Notably plaintiff had no legal obligation to make an appoint.

THEREFORE plaintiff denied due process  
Additionally

The letters were never acted upon therefore irrelevant During oral rule 56 arguments before Judge McCarthy defense was asked by Judge McCarthy if the letters were acted upon and counsel replied no.

In 2015 erroneously/accidentally I received a letter and eventually talked to ECWA employee who told me it was an error, did not want to replace meter, wanted me to read meter because employee Otoka (meter reader) heard a dog bark inside and would not enter the property to read the meter from the outside port. Therefore 2015 ECWA refused to access/enter my property. ECWA employee has not disbuted/

In 2016 erroneously/accidentally I received a letter and eventually talked to ECWA employee who told me, reason the letter was sent was so I would call and would be told the real reason, that being I had a dog (extremely old blind poodle mix). I argued my friends and neighbor had dogs. She replied can't talk about other customers, confidential. ECWA employee has not disputed,

The next I went downtown to administrative office and was told the same. I requested to speak to a supervisor who told me the same. I offered to put the dog in doggie daycare if they told me when they were coming but was told ECWA needed access 24/7 without notice for emergencies. ECWA

employees have not disputed

**THEREFORE COURT ERRED IN DENYING  
APPEAL**

**TRESPASS**

See App 16-23 Judge McCarthy findings and decisions.

Also see:

Butler v Ratner, 173 Misc.2d 783; People v Smith, 5 Misc.3d 1005A; Katz v. United states 389 US 347; People v Scott 79 NY.2d 474

ECWA employee's did not install, read, inspect, repair meter during repeated trespasses before termination and for years after termination.

If in dispute what they did, it's for the jury to decided based on my testimony (and if necessary surveillance video) and any employee testimony.

**TAKING  
POINT**

Curto can not reside and has not resided at her residence since 2017. The Erie County Health Dept and town code enforcement prevents Curto from residing at her residential property with out ECWA service.

Appeals court erroneously decided termination of service is temporary and within plaintiff's control (blame the victim).

ECWA suspended meter replacement and reading during Covid pandemic year starting 3/2020.

Plaintiff's water was not restored during covid year

What reason was plaintiff being denied

service? Could not be for meter replacement or reading.

Therefore not in her control.

POINT

Appeals court erroneously decided Curto refused to allow employee to replace meter

There is no evidence or allegation Curto ever did not permit/denied an employee.

There is no evidence or allegation an ECWA employee knocked on her door/rang bell, she came to the door, ECWA requested and was denied access to replace a meter.

Assuming they showed ECWA ID, had a town plumbers license, work order etc

Curto has no legal obligation to make an appoint for meter replacement.

POINT

There is no proof the meter needed to be replaced.

Judge McCarthy denied defendants request to extend his expert witness deadlines.

POINT

It's been alleged by ECWA they wanted to install a smart meter. In New York State County of Erie installation of smart meters is optional. During 2003 NYSE&G send Curto notices she had a right to opt out of electric smart meter and procedure = they acted lawfully.

POINT

Settlement offers/negotiations can not be part of the court proceedings or decisions...false offer to restore Curto's service

THEREFORE COURT ERRED DENYING  
APPEAL

#### OTHER CLAIMS

ECWA determined after termination final meter reading I had paid for 8,000 gallons of water which I had not used. I am not disputing this claim. ECWA has not to date returned money I paid for 8,000 gallons of water I did not use.

The appeals court erred (pg 2 footnote) in dismissing all my other claims.

My appeal request a full review

It should be noted in the WDNY the court clerks office decides the record on appeal and sends it to the appeals court for pro se litigants. Any alleged inadequacy should be addressed to the WDNY by the appeals court.

THEREFORE COURT ERRED DENYING  
APPEAL

#### Reason for granting Petition

The lower courts have erred.

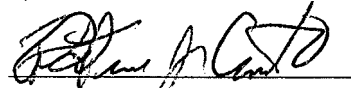
The lower courts have conflicting views on the issues

The issues are of great legal and national significance

#### Conclusion

For the foregoing reason this Court should grant this Petition for Writ of Certiorari.

Executed on November 17, 2025

  
Patricia J. Curto, pro se