

No. 25-652

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SUPREME COURT OF THE UNITED STATES

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Patricia J. Curto,  
Petitioner,

vs.

Erie County Water Authority and Earl L Jann Jr,  
Respondent.

PETITION FOR REHEAR WRIT OF  
CERTIORARI

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

No. 25-652

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SUPREME COURT OF THE UNITED STATES

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PATRICIA J. CURTO,  
PETITIONER

CERTIFICATE OF  
SERVICE

vs.

ERIE COUNTY WATER AUTHORITY and  
EARL L. JANN

RESPONDENTS.

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I certify that on March 23, 2026, Petition for Rehearing Writ of Certiorari to the Clerk of the Supreme Court of the United States and a copy was sent by depositing a true copy of same, enclosed in a post-paid properly addressed wrapper, in an official depository, under the exclusive care and custody of the United States Postal Service with in the State of New York to:

James D. Macri, esq.  
Goldberg Segalla  
655 Main St.  
Buffalo, NY 14203

Dated March 23, 2026

  
Patricia J. Curto, pro se

I, Patricia Curto, the pro se petitioner/plaintiff, am homeless in WDNY. The WDNY law library, closed during Covid and did not reopen. This winter has been severe, resulting in closures, driving bans, delayed mail delivery etc hampering my preparations in this action.

Pro se litigants are held to "less stringent standards" than lawyers, for ex. See Haines v Kerner, 404 US 520 (1971)

This petition to rehear should be granted because (including but not limited to):

Legal and factual matters the court may have overlooked. This petition will demonstrate that the Court overlooked a material point(s) of law and/or fact(s) that, if considered, would have likely changed the outcome.

Correcting mistakes based on fundamental error of law or misstatement of a material fact. Decision conflicts with previous US Supreme Court

Also substantial grounds not previously presented: crucial information, facts or legal arguments that were not raised during the original consideration. Also intervening circumstances: a significant change in the law or controlling legal precedent that occurred after the case was submitted

Major egregious decisions include, for example (further discussion below):

Eliminates jury trials, due process & notice, privacy right, property right/taking = amends constitution

Allows judges, in a jury trial action, to decide

facts contrary to uncontested facts/evidence, contrary to evidence (established proven fact, to rewrite the facts.

Eliminates cause of action for victims of unlawful conduct if the defendant/government could have acted lawfully but did not

Allows government defendants who allege inadvertent error to NOT correct

*There are significant legal questions and issues that may have been overlooked and misinterpreted. This case involves substantial questions of law that affect future cases and contradicts established precedents. I believe the Court overlooked critical facts and made an error in its judgment. This case has significant public policy and societal issues. This case involves important federal questions and departs from accepted judicial procedures---the lower court has departed from judicial procedures that warrants the Court's supervisory review. Pursuant to this action for example: an immigrant could be deported (without due process) for a bogus/false reason stated in "NOTICE"; the gov't after waiting 5+ yrs claims inadvertent mistake; gov't refuses to correct and 9 yrs later still can't return home to USA. Therefore I respectfully ask the Court to reconsider its denial of writ to ensure justice fairness*

## JURISDICTION

Defendants served Notice of Claim. Action commenced in State Supreme Court. Sheriff served summons & complaint

Defendants amended complaint and filed in WDNY without court permission; requesting permission; notice to me. Defendants requested and

WDNY granted time extension to answer but did not and my default motion erroneously denied. Defendants requested time extension for 12(b)(6) motion, not granted but untimely 12(b)(6) erroneously partially granted.

Defendants 5½ years latter moved for summary judgment. Judge McCarthy contacted defense counsel on his own, told to correct motion as it violated his prior order and local rules and extended the court ordered FRCP56 filing deadline.

Magistrate Judge McCarthy's R&R decided not to dismiss case.

WDNY District Judge dismissed the complaint. Order stated pursuant to his written decision which didn't exist. The record on appeal prepared and sent to 2nd Circuit by the WDNY court clerk didn't.

The 2nd Circuit denied my appeal. My argument discussion of it's written decisions follows.

This Court denied Petition for Cert. My motion for time extension to rehear (see appendix) was returned as premature. My motion to rehear was returned for correction and resubmitted here.

This case decisions overturns summary judgment precedent, the non-movant is to be believed, all inferences are to be draw in my favor Anderson v. Liberty Lobby 477 US 242, 255(1986).

FACTS incorporated in below argument/discussion

Curto's application for service was approved 4/20/2006. During the entire time she was a customer, system customer name NOT updated.

Her service was terminated 3/21/2017 pursuant to door knob hanger (scrap of paper)

dated 3/1/2017, see appendix pg 6. It's the only court document where the word "NOTICE" appears, though it's not. "Curto" does not appear,, nor "20 Hazel Ct", nor her account number. It states unnamed customer, who applied for service, had 10 days to call a phone number (not being answered by ECWA = sham) regarding their application, or service would be terminated.

No persons name appears, not Curto, not applicant cited, not employee responsible

Notably the "NOTICE" specifically and affirmatively states: **only** reason is application for service; reason is **NOT "meter change"**, "meter set", "meter reading", nor "inspection of backflow device".

The unnamed customer **did NOT EXIST** nor did their application.

During discovery I requested employee name and job description/duties who was answering the phone number appearing on 3/1/2017 "NOTICE, 3/1/2017 -3/21/2017 and none was provided.

Summary Judgment declaration of Otoka, claims, 5½ yrs latter, he's responsible for the 3/1/2017 "NOTICE" and for terminating/denial of service. ECWA/Otoka waited 5½ years, for the first time in their SJ, claimed an "inadvertent" error but to date has not corrected and Curto remains homeless (since 2017). There is NO superseding "NOTICE". Therefore no lawful reason for termination/denial of service (for 9 years).

During the year long covid pandemic ECWA written covid policy: suspended meter replacements, suspended meter readings and proactively restored service (as mandated by NY State). Curto's service was not restored therefore

proving reason for termination/denial was NOT meter replacement or reading. There was NO lawful reason for termination/denial of service.

This action is **more than utility disconnect** because the government/Erie County Health Dept requires water service from **Erie County Water Authority** to reside in my home. I'm **not only being denied water service but use of my home**, unlike other utilities (electric, gas etc) where there's choice of service provider including nongov't, and not required by govt.

#### TAKINGS

The Second Circuit erred "We agree with the district court that there has not been a non-categorical taking, principally because the impact from the termination of Curto's water service is temporary and within her control to remedy. ECWA has maintained- including throughout this litigation - that it will restore Curto's water service if she permits an ECWA employee to replace her water meter. Accordingly, the district court did not err in granting ECWA summary judgment on Curto's takings claim."

It has been proven water service will not be restored by (needlessly) replacing the meter, if not proven it's disputed and for the jury to decide.

It has been proven denial of service is not in my control and not temporary, if not proven it's disputed and for the jury to decide.

ECWA March 2017 NOTICE" states replacing meter was not reason

Covid pandemic occurred during litigation in WDNY During year long covid pandemic I could

not refuse to permit a ECWA employee to replace my meter because meter replacement was suspended, my service was not restored. Therefore **proving not the reason for denial, not in my control and not temporary.**

The ECWA has not (falsely) maintained throughout this litigation that it will restore Curto's water service by replacing the meter.

During WDNY court ordered mediation negotiations during covid pandemic, the unaccepted offer was made. It was repeated during Magistrate McCarthy summary judgment oral arguments and not accepted.

POINT

Outside defense counsel unaccepted bogus offer was made during court ordered mediation. The unaccepted bogus offer was in fact a false admission by me that the meter needed to be replaced = something they can not prove.

*The unaccepted offer can not be used by the court in it's determination/decision. Outside counsel repeating the offer in court and the court using it in it's decision to dismiss, violates FRCP (68 & 408).*

The offer is bogus and therefore not relevant.

POINT

Being prohibited from residing at my residential property for 9 years is not temporary.

POINT

I have no legal obligation to make an *appointment if meter did need to be replaced.*

ECWA has never been denied access to replace the meter (in my basement). No ECWA has knocked on my door, rung the door bell or in any way announced their presence on my property yet

alone after I opened the door: showed ID, showed work order, showed town plumbing license; requested access to basement to replace meter; been refused access to replace meter; offered any proof meter need to be replaced etc.

Under NY State statute (and caselaw) denial of access to meter (to replace) is NOT a reason for termination/denial of service.

### DUE PROCESS/NOTICE

Minimum requirements: Notice; Opportunity to be heard; Impartial tribunal/hearing.

Purpose of due process is to correct errors. Quoting 2nd Circuit "The opportunity for informal consultation with designated personnel empowered to correct a mistaken determination constitutes a 'due process hearing' in appropriate circumstances," "utility disconnection context that due process requires notice and at least "some administrative procedure for entertaining customer complaints prior to termination...to afford reasonable assurance against erroneous or arbitrary withholding of essential services."

THE 2<sup>ND</sup> CIRCUIT DID NOT FIND THERE WAS A DESIGNATED PERSONNEL EMPOWERED TO CORRECT MISTAKES nor ADMINISTRATIVE PROCEDURE

THE 2<sup>ND</sup> CIRCUIT DECIDED IF THERE WAS, PLAINTIFF WAS PROVIDED DUE PROCESS. Therefore the new precedent is, if a defendant/govt could have acted lawfully but did not, the plaintiff does not have a cause of action.

Court records contain no evidence or claim of designated personnel or administrative procedure. What they claim was an inadvertent mistake (in

2017) still not corrected.

Additionally no one was answering cited phone number; ECWA would not talk to Curto about another customer's application etc (see facts).

During discovery I requested employee name and job description/duties who was answering the phone number appearing on 3/1/2017 "NOTICE, 3/1/2017 -3/21/2017 and none was provided.

The 2<sup>nd</sup> Circuit decided the phone number on the 3/1/2017 "NOTICE" was to schedule meter replacement (not correct mistakes), see below "NOTICE"

The SJ motion for the first time (5½ years after termination), claims inadvertent error, which todate not corrected. Therefore no due process.

NOTICE (aka door knob hanger, appendix pg 6)

Quoting the 2<sup>nd</sup> Circuit decision "utility disconnection context that due process requires notice"

There was no notice, see facts above, for example 3/1/2017 "NOTICE" no identifying information, bogus reason, sham phone number. It couldn't pass for a parking ticket.

POINT

Quoting 2<sup>nd</sup> Circuit "ECWA placed an additional final notice on Curto's door indicating that she needed to call ECWA within 10 days" to "schedule time for the repair" of the meter.

These findings of fact(s) are contrary to the undisputed written "NOTICE" and only court record with "NOTICE" appearing, see facts above.

The "NOTICE" in fact states unnamed **(nonexistent) customer** was to call (a shame number) about their **(nonexistent) application** for

water service and no other reason.

**POINT Alleged 2015 & 2016 correspondence  
(alleged system generated form letter)**

Irrelevant had they existed because never acted upon.

Had they existed 2017 "NOTICE" superseded (replaced).

The entire time Curto was a customer, ECWA did NOT update the customer name from deceased former customer's name. ECWA claims letters were system generated. Therefore would have been mailed to deceased former customer (and should be returned by US Postal Service. ECWA claims a letter was sent registered return receipt, (requiring deceased former customer to come to the post office and he did not and it was returned)

Second circuit quoting "the Supreme Court has consistently held that mailed notice satisfies the requirements of due process". But Supreme Court did not decide if no proof of mailing, no proof letter existed, mailed to wrong (dead) person, correspondence not notice.etc

**No proof**

Not business record as they were produced/forged for this action by defense counsel and so stated

Several different versions of same alleged (forged) letters

Not admissible under FRCP as evidence because not copy nor original

If as they claim letters were system generated, deceased prior customer name would appear

Forged letters do NOT say meter needs to be

repaired but rather updated so ECWA (basement) meter can be read from outside. Notably my meter had been previously updated and was read.

It is for the jury to decide if forged and/or relevant.

The USPS erroneously delivered in 2015 a letter from ECWA addressed to deceased prior customer. When I contacted ECWA was told system generated error, did not want to replace meter = therefore resolved

The USPS erroneously delivered in 2016 a letter from the ECWA addressed to deceased prior customer. When I contacted ECWA was told it was a *deliberate error so I would call them and they would tell me the "real reason" for terminating/denying service which was because I had a dog. After I stated I have friends and neighbors with dogs and their service is not being terminated, she said can't talk to you about other customer's accounts and hung up. The next day when I went to their administrative office in downtown Buffalo was again told terminating service because I had a dog (very old blind poodle mix). Then talked to a supervisor who repeated terminating service because I had a dog. I offered to place the dog in doggie daycare with prior notice. He rejected my offer stating ECWA needed emergency access 24/7 without notice, it was new employee safety policy to deny service to customers with dogs etc. I subsequently learned the erroneous work order related to the erroneous letter was cancelled. Therefore resolved.*

The ECWA 2015 and 2016 harassment etc is not part of this action.

Second Circuit erred in deciding that “The district court determined, and we agree, that Curto received proper notice and an opportunity to be heard prior to the termination of her water service” but there was no written decision

Second Circuit cites *Memphis Light, Gas & Water Div, v. Craft*, 436 U.S. 1, 18 (1978) but not applicable;

- ECWA has not meet the requirements cited
- this case termination of service is also a prohibition to live in my home
- I’m required to have service from ECWA there is no other choice
- there is no designated personnel empowered to correct a mistake (none claimed yet alone proven) and no correction to date

#### POINT

Under NY State law the only reason for termination/denial of service is failure to pay a bill.

In this case the ECWA determined months after termination of service, I had paid for 8000 gallons of water which I did not use. ECWA has not to date refunded any of the money they owe me.

The Second Circuit amended the US Constitution removing Due Process (Fifth and Fourteenth Amendment).

#### TRESPASS

Judge McCarthy correctly and meticulously decided ECWA had trespassed repeatedly

#### POINT

Second Circuit erred when deciding

“We agree with the district court that Curto consented to ECWA’s entry onto her property for service-related reasons when she signed up for water service. *See* Erie Cnty. Water Auth. Tariff 2.39 (“The customer shall grant identified ECWA employees or agents... access to the premises at reasonable times for purposes of installing, reading, inspecting or repairing meters.”); N.Y. Pub Auth. Law 1054(13) (“[ECWA] shall have power: [t]o enter any land, waterways and premises for the purpose of ...examination.”).”

The ECWA tariff (customer rules) cited and provided to Second Circuit is irrelevant as it adopted and became effective (January 2018) after I was no longer a customer (March 21, 2017).

No ECWA employee who entered my private “POSTED NO TRESPASSING” property identified themselves as such

The ECWA employees entered my proper to determine if I was living there, to place a door knob hanger; to search my property etc. They did not install, inspect or repair meter which required entry to basement. They did not knock on my door or ring door bell or etc, see above.

They did falsely claim to have read the meter on multiple occasions, before and after termination of service and no longer a customer. It is for the jury to decide if they did, based on my observations and video vs. employee Otoka who claims to makes inadvertent errors.

The ECWA employee(s) who entered my property did not examine anything. If claimed, a disputed fact for the jury to decide.. .

POINT

Second Circuit erred

“And Curto does not allege that she withdrew permission and then ECWA employees refused to leave.”

Curto’s private property was “POSTED NO TRESPASSING” nothing more is required.

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

Additionally after 3/21/2017 termination Curto was no longer a customer and ECWA could not even claim a right to enter but continued for weeks, months and years

THE 2<sup>ND</sup> CIRCUIT DID NOT DECIDE ECWA EXAMINED ANYTHING.

THE 2<sup>ND</sup> CIRCUIT DECIDED IF ECWA DID THEY WERE NOT TRESPASSING

THE 2<sup>ND</sup> CIRCUIT DID NOT DECIDE ECWA INSTALLED, READ, INSPECTED OR REPAIRED THE METER.

THE 2<sup>ND</sup> CIRCUIT DECIDED IF ECWA DID THEY WERE NOT TRESPASSING

Therefore the new precedent is, if a defendant/govt could have acted lawfully but did not, the plaintiff does not have a cause of action.

WDNY clerks office determines and submits the record on appeal to the Second circuit for pro se litigants only. Lawyers determine and submit record on appeal. After the court clerk limited the record because I’m pro se, the Second circuit in

their foot note 1, “ 1 The district court previously dismissed some of Curto's other claims and rendered other rulings on motions throughout the pendency of the case. Although Curto mentions and even disputes some of these disputes in her brief, we agree with ECWA that she has not adequately developed her arguments on those issues, which are therefore forfeited.”

denied other claims and rulings, even though I disputed in appeal, because not in record on appeal submitted by court clerk. Contrary to pro se litigants are held to” less stringent standards” than lawyers, for ex. See Haines v Kerner, 404 US 520 (1971),

“Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law”, *Olmstead v United States*, 277 US at 485

For the foregoing reasons this Court should grant this Petition for Rehearing Writ of Certiorari and return the case to WDNY for jury trial.

Executed on March 23, 2026



Patricia J. Curto, pro se

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SUPREME COURT OF THE UNITED STATES

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PATRICIA J. CURTO,  
PETITIONER

CERTIFICATE OF  
COMPLIANCE

vs.

ERIE COUNTY WATER AUTHORITY and  
EARL L. JANN  
RESPONDENTS.

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As required by Supreme Court, I certify that the petition for rehearing writ of certiorari is presented in good faith and not for delay.  
I declare under penalty of perjury the foregoing is correct and true

Executed on March 23, 2026

  
Patricia J Curto, pro se

**Additional material  
from this filing is  
available in the  
Clerk's Office.**

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CERTIFICATE OF  
COMPLIANCE

vs.

As required by Supreme Court Rule 33, I certify  
that the petition for writ of certiorari contains 2995  
words.

I declare under penalty of perjury the foregoing is  
correct and true

Executed on March 23, 2026

  
Patricia J Curto, pro se