25-6645

No._____

IN THE
Supreme Court of the United States

LA'SHAUN CLARK

Petitioner,

v.

NEW YORK CITY HOUSING AUTHORITY,
NEW YORK INSULATION & ENVIRONMENTAL SERVICES INC,
JLC ENVIRONMENTAL CONSULTANTS INC.

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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QUESTIONS PRESENTED

The U.S. Supreme Court ruled in Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986) "quoting "Page 475 U. S. 831 The participation of a judge who has a substantial interest in the outcome of a case of which they know at the time they participate necessarily imports a bias into the deliberative process. This deprives litigants of the assurance of impartiality that is the fundamental requirement of due process.

The Questions Presented:

(1) Whether magistrate Judge shopping violates the 14th. Amendment of the U.S. Constitution of due process when a district court judge knowing that they and their spouse have a financial interest in a case allows defendants and a defendants indemnifying insurance company to hand pick a magistrate judge by having the Pro Se docket manager illegally manually change the random court assignment to a different magistrate judge and the magistrate judge and their spouse also have a known financial interest in the outcome of a case and both judges refuse to disqualify ?

(2) Whether Collateral Estoppel (issue preclusion) applies to new evidence in a current suit brought in Federal Court under Diversity of Citizenship jurisdiction under New York law CPLR 214-C two injury rule for a latent separate and distinct disease (Silicosis) in which the Petitioner-Plaintiff was not afforded a full and fair opportunity to provide Expert testimony as to causation in a previous suit as to the newly diagnosed latent separate and distinct disease (silicosis) that was diagnosed after the judgment was already entered in the previous Federal Court Diversity of Citizenship jurisdiction case ?

PARTIES TO THE PROCEEDINGS

Petitioner- La'Shaun Clark- Plaintiff-Appellant In The United States Court of Appeals for the Second Circuit, Plaintiff in the United States District Court for the Southern District of New York.

Respondents- New York City Housing Authority, New York Insulation & Environmental Services Inc., JLC Environmental Consultants Inc.- Defendant-Appellees in The United States Court of Appeals for The Second Circuit, Defendants in the United States District Court for the Southern District of New York.

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PETITION FOR WRIT OF CERTIORARI

Petitioner La'Shaun Clark petitions for a writ of Certiorari to review the judgement of the United States court of Appeals for the Second Circuit entered On December 22, 2025 that affirmed the judgment of the U.S. District Court for the Southern District of New York entered on February 28, 2025 and May 30, 2025.

OPINIONS BELOW

The decision and judgment of the United States Court Of Appeals for the Second Circuit that affirmed the judgment of The U.S. District Court of the Southern District Of New York is reported as 25-486 cv La'Shaun Clark v. New York City Housing Authority December 22, 2025. The decision of The U.S. District Court of the Southern District of New York that dismissed petitioners Complaint is unreported and available as Clark v. New York City Housing Authority No. 24 Civ. 1625 (AT) (RFT) February 28, 2025 and May 30, 2025. Oral argument was held in the U.S. Court of Appeals for the 2nd. Cir. on December 17, 2025 case 25-486.

JURISDICTION

The decision and Judgment of The United States Court Of Appeals for the Second Circuit was entered on December 22, 2025- Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1) This petition for writ of Certiorari is timely pursuant to USSC Rule 13.1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV- 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. The Due Process Clause requires that the decision to deprive a person of a protected interest be entrusted to an impartial decision maker. This rule applies to both criminal and civil cases. The Supreme Court has explained that the neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law and preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. 28 U.S.C. §455 (a), (b)(4), (b)(5) iii – Disqualification of Judges

INTRODUCTION

This case has significant nationwide importance as to the systemic issues of Judge shopping in the United States District Court for the Southern District of New York that is a more complex and egregious form of judge shopping than the typical judge shopping that usually occurs in the form of forum shopping. This case has a significant question of first impression as to constitutional rights of due process as to judicial impartiality regarding Judge Shopping that is being violated that could be labeled as "Internal Judge Shopping "which occurs from within the judicial system of the courts through ECF docket Clerks, judicial law clerks, judicial

interns and others alike who have access to the ECF case assignment system are intentionally illegally changing the random case assignments on behalf of litigants at the behest of litigants and their lawyers who are communicating with judges Ex-Parte through the judge's judicial law clerks, Lawyers of litigants who were former judicial law clerks, judicial interns and Clerks staff members of the court which is discussed in detail regarding this case at statement of the case in this petition. As to petitioners-Plaintiffs case the particular U.S. SDNY ECF docket Clerk's name is Lourdes Aquino initials shown on the ECF docket as (laq) has committed this egregious violation of due process of altering the random case assignment at the behest of respondent-defendants lawyers and Magistrate Judge Robyn Faith Tarnofsky that Judge Analisa Nadine Torres was complicit and fully aware of the illegal change of the random case magistrate judge assignment that took place on **April 8, 2024** See **Pet. App 6a** certified docket sheet in *La'Shaun Clark v. New York City Housing et.,al. (AT)(RFT) No. 24 Civ. 1625.*

The U.S. Court of Appeals for the Second Circuit blatantly ignored mandatory vertical stare decisis of this court's precedent in *Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986) "quoting "Page 475 U. S. 831, Tumey v. Ohio, 273 U.S. at 273 U. S. 523; Ward v. Village of Monroeville, supra, at 409 U. S. 60,* ; *Liljeberg v. Health Svcs. Acq. Corp., 486 U.S. 847 (1988), Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955* and ignored my properly preserved question of first impression in Oral argument argued in Clark v. New York City Housing Authority et. al on December 17, 2025, 2nd. Cir. Appeal case docket # 25-486 that was also argued in my appeal brief 2nd. Cir. Dkt.[40.1] as to magistrate Judge shopping that violates the XIV Amendment of the U.S. Constitution of due process that deprived Petitioner of a fair and impartial proceeding as Both SDNY judges Analisa Nadine Torres and her husband Stephen C. Whitter and Magistrate judge Robyn Faith Tarnofsky and her husband Antony L. Ryan Esq. all have a financial interest in the outcome of petitioners case as to respondent-defendants New York City Housing Authority, New York Insulation & Environmental services Inc.'s indemnifying insurance company American International Group (AIG) and JLC Environmental Consultants Inc.'s attorneys law firm

Kennedy's Law who has an extensive legal panel partnership with AIG insurance. The U.S. court of appeals for the Second Circuit is aware and allows the U.S. District Court for the Southern District of New York to repeatedly engage in the most egregious form of judge shopping that completely obliterates the foundation and core principles of the U.S. Constitution as to due process by allowing defendants and plaintiffs lawyers in cases to have docket Clerks, judicial interns, law clerks etc. manually change the random case assignment and in certain instances the courts Clerks at the behest of Judges on the behalf of litigants and or litigants indemnifying insurance companies are directly outright assigning cases to specific judges that have a substantial interest in the outcome of a case at the behest of litigants and their lawyers who are looking for favorable outcomes in their case, resulting in allowing litigants and their lawyers to hand pick the judge of their choice in which the SDNY judges and certain Second Circuit appellate judges are complicit in which violates due process disseminating the right to judicial impartiality.

This widespread corruption of direct intentional internal judge shopping as described above in the U.S. SDNY District Court which **irrefutably** happened in my Case *La'Shaun Clark v. New York City Housing Authority et. al No. 24 Civ. 1625*

also may have " Allegedly " (emphasis added)

been even committed against the Commander and Chief of the U.S. President Donald John Trump see case assignment in *Carroll v. Trump (1:20-cv-07311)/ (1:2022-cv-10016) District Court, S.D. New York,* as the second circuit 12/22/2025 decision in my case 25-486 cited in **Pet. App. 1a pg. [3]** ***Carroll v. Trump, 151 F.4th 50, 68 (2d Cir.2025).,*** that the U.S. President possibly may not be aware of the judge shopping that goes on in the U.S. SDNY Court as described herein that must be investigated to put a stop to this egregious unethical and unconstitutional conduct This must be stopped immediately as this type of judge Shopping is far worse than your typical forum shopping because it can be either side whether plaintiff or defendant whose lawyers have connections with the Clerk's office and through Clerk staff, judicial law Clerk's and judicial interns (some lawyers for litigants were former law clerks of judges in the SDNY who have direct contact information for the judge they shopped to be assigned to their case and the ECF docket

Clerks and other court staff who assist with the case opening and assignment are altering the random court assignments of judges and Magistrate judges on the ECF docket by intentionally re-designating cases to a specific Magistrate Judge and or outright assigning cases directly to an Article lll judge on behalf of a litigant and their lawyers. The Judges allow it because they have a substantial interest that could be affected by the outcome of the case and certain political biases.

U.S. SDNY Article I. Magistrate Judge Robyn Faith Tarnofsky used her former law Clerk Oren Silverman currently an associate attorney at Rivkin Radler as a liaison to have Ex-parte Communications with all Respondent-Defendants lawyers and particularly respondent-defendant JLC Environmental Consultants Inc.'s Attorney Nitin Sain of Kennedys law which ties into how Judge Analisa Nadine Torres and Magistrate judge Robyn Faith Tarnofsky was complicit with respondent-defendants lawyers in allowing the ECF Pro Se docket manager Lourdes Aquino (laq) to illegally override Judge Analisa Nadine Torres's signed order of magistrate judge referral to the Honorable Magistrate Judge Jennifer E. Willis see **Pet. App. 6a**

Dkt. [16] and See **April 8, 2024** two no document Texts of SDNY Pro Se manager/ ECF Docket Services manager Lourdes Aquino illegally changed the random magistrate judge case assignment to Magistrate Judge Robyn F. Tarnofsky and judge Analisa Torres was complicit as a Docket Clerk has no legal authority to change a judges order nor manually change the random court assignment of judges in which is discussed in the statement of the case in this petition. This judge shopping is not limited to magistrate judge shopping it also occurs for Article lll assignment and is a very serious systemic ongoing cycle of the dissemination of constitutional rights of due process as to the rights to an impartial tribunal that must be stopped.

STATEMENT OF THE CASE

Petitioner La'Shaun Clark is a disabled IFP Pro Se litigant who formerly lived at 1100 Teller Avenue Apt. 1H Bronx, New York 10456 from 2004 to 2012 Claremont Consolidated housing projects owned by respondent defendant New York City Housing Authority (NYCHA). Unbeknownst to Petitioner-Plaintiff Approximately 4 months before

petitioner-Plaintiff moved into the NYCHA owned project, On February 9, 2004 Respondent-defendants New York Insulation & Environmental Services (NYIES) and JLC Environmental Consultants Inc. (JLC) hired by respondent-defendant NYCHA conducted asbestos abatement of chrysotile asbestos floor tiles. Respondent-Defendant New York Insulation & Environmental Services Inc. (NYIES) installed 16.5 bags of a floor tile product called Ardex K-15 that contains the toxic substance of Chrystalline Silica quartz that causes Silicosis. In 2009 the floor tiles started to break in the apartment unbeknownst to the Petitioner-Plainiff that it contained Ardex K-15 that contained the carcinogenic substance of Chrystalline silica Quartz. Respondent-defendant NYCHA and NYIES was paid federal funds to install new floor tiles in various NYCHA developments Contract AS0200030 that was supposed to cover the Ardex K-15 however respondent-defendant NYIES admitted in their deposition testimony See **Pet. App. 2a marked as Exhibit C** that they did not install any new floor tiles in any of the NYCHA apartments that the federal government paid for them to do to cover the Ardex K-15 that contained the Chrystalline silica quartz and made a deliberate and unequivocal formal judicial admission that they purchased Ardex K-15 for $1,485 at $3.00 per square feet for 495 square feet of the apartment and installed it in Petitioner-Plaintiffs former apartment on February 9, 2004. Respondent-Defendant JLC for contract PD0210086 was hired by respondent-defendant NYCHA as a consultant who was responsible for certifying the materials used by the abatement contractor NYIES as to the Ardex K-15 and JLC Environmental Consultants Inc. testified in their deposition **Pet.App.3a marked as Exhibit H** that all three defendant-respondents came to an agreement to use the Ardex K-15 that contained the chrystalline Silica Quartz for asbestos abatement of floor tiles in various NYCHA buildings however no new tiles were installed to cover the Ardex K-15 to protect exposure from the Chrystalline Silica Quartz and respondent-defendant JLC Environmental admitted that as a consultant and air sampling /project monitor that they did not conduct any Chrystalline Silica Quartz Air monitoring nor sampling in the apartment despite the fact the Ardex K-15 MSDS stating long term exposure causes silicosis and cancer see **Pet.App. 4a marked as Exhibit A** of the Ardex K-15 MSDS stating it causes Silicosis and Cancer.

Petitioner-Plaintiff had previously filed a lawsuit January Of 2020 Clark v. New York City Housing Authority et al, No. 1:2020cv00251 Document 325 (S.D.N.Y. 2022) for asbestos exposure. Petitioner-Plaintiff had filed an amended complaint on February 12, 2021 Clark v. N.Y.C. Hous. Auth. Jan 21, 2021 514 F. Supp. 3d 607 (S.D.N.Y. 2021 adding a claim of fraudulent concealment for Chrystalline silica quartz as discovery documents were produced of the respondent-defendants NYCHA/NYIES contract AS0200030 that showed Ardex K-15 was used for asbestos abatement in various NYCHA developments and specifically in my former apartment, the Feb. 12, 2021 amended complaint was specifically for chrystalline silica Quartz as to fraudulent concealment in the inducement of the NYCHA lease contract Case 1:20-cv-00251-PAE-GWG. The Honorable judge Paul A. Engelmayer on 12/28/22 dismissed Petitioners claims solely on the grounds that petitioner was not able to provide expert testimony as to general causation as to Asbestos and Chrystalline Silica Quartz being the cause of my Lupus diagnosed in 2012. After the 12/28/22 judgement dismissing the previous case was already filed, While on Appeal in the previous case 2nd. Cir. case # 22-3233 I discovered new evidence that I had silicosis diagnosed on 5/1/23. I had filed an FRE 201 motion to take judicial notice of my new diagnosis on 7/18/23 in the previous appeal 2nd. Cir. Case # 22-3233 however because it had nothing to do with the the decision in the previous case the second circuit denied the motion and never addressed any fear of developing cancer claim nor any medical monitoring nor was silicosis and fear of developing cancer actually litigated, not necessarily decided and i did not have a full and fair opportunity to provide expert testimony to prove that the new evidence of my silicosis was caused by the long term exposure to Ardex K-15 that contained the Chrystalline Silica Quartz that I breathed in for 8 years from 2004 to 2012, that respondent-defendant NYCHA exposed me to a cloud of silica dust even more so from grinding and abrading the broken floor tiles in a 2011 floor tile removal of the old existing floor tiles **see Pet. App.4a marked as Exhibit G,** unbeknownst to petitioner at that time that it was covered up with Ardex-K15 instead of new floor tiles that should have been installed however was not installed.

On **March 1, 2024** petitioner filed a new lawsuit *La'Shaun Clark v. New York City Housing Authority et. al No. 24 Civ.*

1625 in the U.S. SDNY in diversity of citizenship jurisdiction 28 U.S.C. § 1332 under New York law CPLR 214-C two injury rule for a latent separate and distinct disease injury. Pursuant to New York law The "two-injury rule" allows a renewed running of the statute of limitations from the discovery of a second injury caused by a single exposure. To qualify, the second injury must be separate and distinct-- "qualitatively different" -- from the first and accrual as to statute of limitations starts from the date of diagnosis see *Wells v. 3M Co. 2016 NYSlip Op 02508 Decided on March 31, 2016.*

" in which Silicosis is a separate and distinct illness that can only be caused by Chrystalline Silica Quartz see Petitioners-Plaintiffs non-retained Expert witness treating physicians notarized affidavits at **Pet. App. 5a marked as Exhibits S and T.** On February 28, 2025 U.S. SDNY District Court Judge Analisa Torres erroneously dismissed my claims on collateral estoppel grounds adopting the Report & Recommendation of U.S. SDNY magistrate judge Robyn F. Tarnofsky who was illegally assigned to my case by the pro Se manager/ ECF docket manager Lourdes Aquino at the behest of respondents for their Magistrate judge shopping operation scheme.

REASONS FOR GRANTING THE WRIT

I. The Second Circuit Court Of Appeals Decision Conflicts With This Court's Precedents And Committed Manifest Injustice Intentionally Misapplied Collateral Estoppel For A Non-litigated Issue For A Latent Separate And Distinct Disease Injury, Refusing To Adhere To The Erie Doctrine Failing To Apply The Substantive New York State Law CPLR 214-C Two Injury Rule For A Latent Separate & Distinct Disease Injury (Silicosis) In Which Petitioner Lacked A Full And Fair Opportunity To Provide Expert Testimony In A Prior Suit Of The New Evidence Of Silicosis From Long Term Exposure To Ardex K-15 That Contains The Toxic Substance Of Chrystalline Silica Quartz.

The Second Circuit Court of Appeals refused to apply the Erie doctrine which is U.S. Supreme Court Precedent in the landmark case *Erie Railroad Co. v. Tompkins (1938),*

refusing to apply the Substantive New York State law CPLR 214- C two injury rule for a latent separate and distinct injury (silicosis) in a Federal diversity of citizenship jurisdiction case as to fear of developing cancer . Under the prevailing New York case law, in order to maintain a cause of action for "fear of [developing] cancer" following exposure to a toxic substance a plaintiff must establish both that he was in fact exposed to the disease-causing agent and that there is a "rational basis" for his fear of contracting the disease .This "rational basis" has been construed to mean the clinically demonstrable presence of the toxin in the plaintiff's body. commonly in cases of this sort of physical contamination cannot be demonstrated for decades, so that many causes of action to recover damages for "fear of [developing] cancer" based upon exposure to toxins with long incubation or latency periods will be subject to summary dismissal. However, if a Plaintiff does in fact develop a disease of the toxin exposed to, they can bring another action within three years of discovering their injury pursuant to CPLR 214-c. See *Wolff v. A-One Oil, 216 A.D.2d 291, 291 (2d Dep't 1995)* the New York Appellate Court ruled that another action could be brought within three years of discovering their injury if a plaintiff does in fact develop a disease caused by the toxin, this wholly defeats the U.S. court of Appeals for the second Circuit court's erroneous decision to affirm the district court's decision of applying collateral estoppel to Silicosis and fear of developing cancer claim. New York law certainly applies in this case , However even if the federal collateral estoppel law is applied it would still be the same legal analysis as New York law as if an appeal is taken and the appellate court affirms on one ground and disregards the other, there is no collateral estoppel as to the unreviewed ground see *United States v. Rodiek, 117 F.2d 588, 593 (2d Cir. 1941), aff'd, 315 U.S. 783, 62 S.Ct. 793, 86 L. Ed. 1190 (1942)* see also *Moran Towing Transportation Co. v. Navigazione Libera Triestina, S.A., 92 F.2d 37, 40 (2d Cir.), cert. denied, 302 U.S. 744, 58 S.Ct. 145, 82 L.Ed.2d 855 (1937).* In which New York State law applies the same legal analysis as to federal law on collateral estoppel and on collateral estoppel on alternative grounds see *Tydings v. Greenfield, Stein & Senior, LLP, 11 N.Y.3d 195 (2008),*

under New York law collateral estoppel is limited in such circumstances to the point actually determined.' *Schuylkill Fuel Corporation v. B.s&sC. Nieberg Realty Corp., 250 N.Y. 304, 307, 165 N.E. 456, 457.* It was not determined that Ardex K-15 MSDS containing 30 to 60%
Chrystalline Silica Quartz states it causes silicosis and cancer it was not actually litigated for fear of developing cancer and medical monitoring nor the duty owed and breach thereof in the previous suit in *Clark v. New York City Housing Authority et al, No. 1:2020cv00251 Document 325 (S.D.N.Y. 2022* If a Plaintiff in a New York State Court is able to bring another case (second suit) pursuant to CPLR 214- C two injury rule for a separate and distinct disease as to fear of developing cancer from exposure to a toxic substance within 3 years
of discovery of a disease as ruled in *Wolff v. A-One Oil, 216 A.D.2d 291, 291 (2d Dep't 1995)* it should also be allowed in a Federal court for a plaintiff bringing a suit in diversity of citizenship jurisdiction which is subject to the same substantive state laws as if the case had been brought in a state court known as the *Erie doctrine* , if a federal court 'can rely upon a conclusion
in early litigation as one which is to remain final as to it, and not to be reheard in any way, while in a state court the Petitioner-Plaintiffs state law claims may be tried and heard and a different conclusion reached, a most embarrassing situation is presented.
* * * Such a result would lead to inequality in the administration of New York State law CPLR 214-C two injury law for a latent separate and distinct disease injury leading to discrimination and to great injustice and confusion' *United States v. Stone & Downer Co., 274 U.S. 225, 236, 47 S.Ct. 616, 619, 71 L.Ed. 1013.*
The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even although there be different demands, when the question upon which the recovery of the second demand depends has under identical circumstances and conditions been previously concluded by a judgment between the parties of their privies." *United States v. Stone & Downer Co., 274 U.S. 225 (1927)* and the thing adjudged in the decision of *Clark v. N.Y.C. Hous. Auth. 20 Civ. 251 (PAE)*

(GWG) ,R&R at Dkt.. [311] (Sep 14, 2022) / Clark v. New York City Housing Authority et al, No. 1:2020cv00251 – Document 325 (S.D.N.Y. 2022) did not consist in the 2020 case decisions of the Ardex K-15 MSDS stating it contained 30 to 60 percent Chrystalline Silica Quartz and causing pneumoconiosis (silicosis) and cancer as the previous 2020 case did not decide this issue nor was it actually litigated as the U.S. Supreme Court ruled in *United States v. Stone & Downer Co., 274 U.S. 225 (1927)* an estoppel only applies when the question upon which the recovery of the second demand depends has under **identical circumstances and conditions** been previously concluded by a judgment between the parties of their privies. The circumstances and conditions are not entirely identical as Petitioner-Plaintiff did not have a clinical diagnosis of the separate and distinct disease of pneumoconiosis (silicosis) nor a severe emotional
distress for fear of developing cancer diagnosis in the 2020 case thus could not provide expert testimony for circumstances that had yet to materialize under New
York law CPLR 214-C two injury rule as to a latent separate and distinct disease injury as defined in *Wolff v. A-One Oil, 216 A.D.2d 291, 291 (2d dep't 1995)* that allows another action to be brought for a fear of developing cancer claim within three years of discovery of a separate and distinct disease injury in which the statute of limitations accrual starts from the date of diagnosis see *Wells v. 3M Co. 2016 NYSlip Op 02508 Decided-on March 31, 2016* which supports that Petitioner-Plaintiffs Claims are timely as to the statute of limitations as to all respondent-defendants. CPLR 214-C (2) injury rule as to a separate and distinct disease injury was not a remedy of law that the petitioner-Plaintiff could have pursued in the 2020 case see *Davidson v Capuano, 792 F2d 275 2nd. Circuit Court of Appeals.*
Only material, relevant and necessary facts decided in a former action are conclusively determined thereby. The judgment does not operate as an estoppel as to immaterial or unessential facts, even though put in issue by the pleadings and directly decided see *Stannard v. Hubbell, 123 id. 528.)* See *Springer v. Bien Court of Appeals of the State of New York Jun 16, 1891 128 N.Y. 99 (N.Y. 1891).*
The U.S. Court of Appeals for the second circuit cited *Paramount Pictures Corp. v. Allianz Risk Transfer AG, 31 N.Y.3d 64, 72 (2018).* Which is indisputably misapplied case law as that case had to do with res judicata not collateral

estoppel, however because it was cited I will break it down as to why it's misapplied in *paramount pictures corp. v. Allianz risk transfer AG 31 N.Y. 3d 74, 72 (2018)* the New York State Court of Appeals ruled as follows:

Nearly 10 years ago, following an unsuccessful investment venture, the parties began litigating their dispute in federal court. The district court entered judgment in favor of Paramount Pictures Corporation—the defendant in that action—and that judgment was affirmed on appeal. Paramount—now the plaintiff—subsequently initiated this state court action. In this appeal, defendants assert that Paramount's claim is barred by res judicata because it should have been asserted as a counterclaim in the earlier federal action. We agree.

The second circuit court of appeals should know that res judicata is Claim preclusion not issue preclusion AKA (collateral Estoppel) the U.S. SDNY *Clark v. New York City Housing Authority No. 24 Civ. 1625 (AT) (RFT) February 28, 2025* decision was intentionally erroneously misapplied on Collateral estoppel grounds not res judicata. The Second Circuit knows that the case law cited in the December 22, 2025 judgment **Pet. App. 1a on pg. [4]** of NY Court of Appeals decision Paramount pictures v. Allianz as to Res judicata doesn't apply to petitioner-Plaintff's State law claims under New York Law CPLR 214-C two injury rule as to the latent separate and distinct disease Silicosis as General causation as to a latent disease that is a separate and distinct disease injury (silicosis) was not an issue identical, nor actually decided nor was fear of developing cancer and medical monitoring necessary to the judgment. Res judicata is Claim preclusion on an entire claim as to whether a claim or issue could have been made in a prior case but was not. There was no way possible for Petitioner-Plaintiff to provide Expert Testimony for a latent separate and distinct disease of silicosis under New York law CPLR 214-C two injury rule for silicosis in the previous U.S. SDNY Clark v. New York City housing authority et al case *1:20-cv-00251 R&R at dkt. [311] and dkt. [325]* when Silicosis was not diagnosed during that time and petitioner-Plaintiff during the previous case did not have an increased risk of developing cancer moreover, as to why Res judicata does not apply because Petition-Plaintiff could not have brought such a claim under New York law CPLR-214 C two injury rule as to a separate and distinct disease injury of the issue of

silicosis was not a traversable remedy of law that I could have asserted during the previous suit see *Davidson v Capuano, 792 F2d 275 2nd. Circuit Court of Appeals.* The 12/22/2025 **Pet. App.1a** 2nd. Cir. Decision defies its own horizontal stare decisis in *Davidson v Capuano, 792 F2d 275 2nd. Circuit Court of Appeals* as to res judicata which is not even the same as collateral Estoppel of issue preclusion. Petitioner- plaintiff could not have provided expert testimony in the previous suit for a latent disease that had yet to materialize which the second circuit court of Appeals 12/22/2025 decision **Pet. App. 1a** decision was pure defiance to U.S. Supreme Court precedent in *United States v. Stone & Downer Co., 274 U.S. 225, 236, 47 S.Ct. 616, 619, 71 L.Ed. 1013.* and conflicts with the U.S. Supreme Courts binding mandatory authority as Res judicata does not bar a suit, even if it involves the same course of wrongful conduct as alleged earlier, so long as the suit alleges new facts or a worsening of the earlier conditions
See *Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955.*
The Second Circuit stated in the case # 25-486 12/22/2025 decision **Pet. App. 1a on pg. [4]** the following: But to prevail on her new claims for recovery, Clark must necessarily relitigate an issue that the District Court resolved in the earlier litigation: whether Clark had "adduce[d] sufficient evidence to establish the element of general causation" and in particular the "general capacity of the crystalline silica quartz that she claims remained in" her apartment to cause her injuries. Clark, 2022 WL 17974899, at *3. Specifically, in the earlier litigation the District Court concluded that Clark had not offered expert testimony establishing causation as is required under New York law. See id.; *Nemeth v. Brenntag N. Am., 38 N.Y.3d 336, 342–44 (2022).*
The U.S. Court of Appeals failed to state the indisputable fact that Petitioner-Plaintiff would not have to re-litigate General causation as to Chrystalline silica Quartz as to general causation for my Lupus that I was diagnosed with that caused me to be disabled in 2012, as the issue of General causation for chrystalline Silica Quartz as to Lupus in the previous suit is not identical to the issue of General causation as to Silicosis in this suit that is a latent separate and distinct disease that applies to New York law CPLR 214-c two injury

rule that I properly stated a claim for. ARDEX K-15 Manufactures Safety data sheet (MSDS) **Pet. App. 4a marked as Exhibit A** irrefutably States that it causes Silicosis from long term exposure. Silicosis can only be caused by Chrystalline Silica Quartz in which Petitioners only exposure to Chrystalline Silica Quartz was from being exposed to Ardex K-15 from living in the respondent-defendant NYCHA owned apartment from 2004 to 2012 8 long years of direct exposure to the floor tile product of Ardex K-15 that was uncovered and was grinded and abraded by respondent-defendant NYCHA in 2011 that exposed me to a cloud of silica dust unbeknownst to me that it contained silica dust from Ardex K-15 . Why should the Petitioner-Plaintiff be left without a remedy to be recompensed for this horrible debilitating lung disease of silicosis that has no cure and doesn't even have any specific treatment that puts me at an increased risk of developing cancer that i constantly fear that I may develop just as i already have developed silicosis this is confirmed by petitioner-Plaintffs non-retained Expert witness treating physicians notarized affidavits **Pet. App. 5a marked as Exhibit S and T.** As to *Nemeth v. Brenntag N. Am., 38 N.Y.3d 336, 342–44 (2022).* Cited by the 2nd. Cir. **Pet. App. 1a** specific causation
as to the levels was not actually litigated nor was a full and fair opportunity afforded to litigate the Chrystalline Silica Quartz contained in the Ardex K-15 Causes Silicosis and cancer as a plaintiff must first establish general causation and general causation as to Expert Witness testimony for Ardex K-15 as to the issue of Silicosis and cancer was not actually litigated nor was levels of 30 to 60 % quartz contained in Ardex K-15 MSDS **Pet. App. 4a marked as exhibit A** ever litigated nor decided .

The Second circuit continually refuses to apply the law as it is written Nemeth v. Brenntag is merely a mirror of the Supra case *Parker v. Mobil Oil Corp., 7 N.Y.3d 434, 448 (2006)*
That Clearly has a lesser stringent analysis as it relates to dose response and quantifying levels of exposure as the New York case law Parker in which Nemeth particularly cited says and ruled:

It is well- established that an opinion on causation should set forth a plaintiff's exposure to a toxin, that the toxin is capable of causing the particular illness (general causation) and that plaintiff was exposed to sufficient levels of the toxin to cause the illness specific causation) Where we depart from the Appellate Division is that we find it is not always necessary for a plaintiff to quantify exposure levels precisely or use the dose-response relationship, provided that whatever methods an expert uses to establish causation are generally accepted in the scientific community.

The argument that precise quantification is not necessary finds support in case law from other jurisdictions. For example, the Fourth Circuit has noted that "while precise information concerning the exposure necessary to cause specific harm to humans and exact details pertaining to the plaintiff's exposure are beneficial, such evidence is not always available, or necessary, to demonstrate that a substance is toxic to humans given substantial exposure and need not invariably provide the basis for an expert's opinion on causation" see (*Westberry v Gislaved Gummi AB, 178 F3d 257, 264 [4th Cir 1999];* It is manifest injustice to foreclose Petitioner-Plaintiff from the opportunity to recover money damages from the Respondent-defendants causing me to have Silicosis and a fear of developing cancer when the respondent-defendant New York Insulation & Environmental Services Inc. (NYIES) admitted in Sworn deposition testimony that NYIES did use Ardex K-15 that contained the Chrystalline Silica quartz installed $1,485 of Ardex K-15 at $3.00 per sq. ft. for 495 sq. ft. and did not install any new floor tiles to cover the Ardex K-15 as stated in deposition testimony **Pet. App. 2a marked as Exhibit C.**

Nemeth v. Brenntag N. Am., 38 N.Y.3d 336, 342–44 (2022) case was about asbestos which is measured differently than Chrystalline Silica quartz. Petitioner-Plaintiff case is not the same circumstances as nemeth as Petitioner-Plaintiff non-retained Expert treating Physicians in this case stated he did a-differential diagnosis and stated that petitioners exposure to Ardex K-15 that contained 30 to 60 % Chrystalline Silica quartz exceeded the permissible Exposure limit (PEL) of 50 micrograms per cubic meter of air in an 8 hour TWA as well as silicosis being a separate and distinct

disease-all of which he stated to a reasonable degree of medical certainty. See *Matott v. Ward, 48 N.Y.2d 455,461*

See*matter of Lopez v Superflex, Ltd.2006 NYSlip Op 05694 [31 AD3d 914] July 13, 2006 Appellate Division, Third Department*
See *McCullock v. H.B. Fuller Co. United States Court of Appeals, Second Circui Jul 27, 1995 61 F.3d 1038 (2d Cir. 1995).* However the Second Circuit Court of Appeals didn't bother to consider my non-retained Expert Witness treating Physicians notarized affidavits **Pet. App. 5a marked as Exhibits S and T.**
The Ardex K-15 MSDS attached **Pet. App. 4a marked as Exhibit A** is permissible evidence to establish that it causes silicosis and cancer as a manufacturer's Safety Data Sheet can be used as evidence in a toxic tort case to prove the hazards of a product and the injuries it can cause see *McCullock v. H.B. Fuller Co. United States Court of Appeals, Second Circuit Jul 27, 1995 61 F.3d1038 (2d Cir. 1995).* The Second Circuit refused to apply U.S. Supreme Court precedent that is mandatory authority as to the Standards of Fed.R.civ. P. 12 for a motion to dismiss and erred as matter of law affirming the district court weighing the evidence on a rule 12(b)(6) motion to dismiss *Conley v. Gibson, 355 U.S. 41, 45, 78 S.Ct. 99, 101, 2 L.Ed.2d 80(1957)*
To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).* **Fed. R. Civ. P. 8. (a)**only requires a short and plain statement showing that the pleader is entitled to relief; and a demand for the relief sought, which may include relief in the alternative or different types of relief.
The Second Circuit Court of Appeals Citing in **Pet. App. 1a on Pg. [4]** *paramount pictures corp. v. Allianz risk transfer (2018)* about res judicata is misapplied case law as this cited case law is not about collateral estoppel however, i will address it anyway as follows:
Res judicata (claim preclusion) if applied too rigidly, could work considerable injustice. In properly seeking to deny a litigant two "days in court", courts must be careful not to deprive him of one *Commissioners of State Ins. Fund590, 595).* Thus, claim preclusion is tempered

by recognition that two or more different and distinct claims or causes of action may often arise out of a course of dealing between the same parties, even though it is not, except in refined legal analysis, easy to say that a different gravamen is factually involved (see, e.g., *Smith v Kirkpatrick, 305 N.Y. 66).)* It is true that even when two successive actions arise out of the identical course of dealing, the second may not be barred, it has been said, if "[t]he requisite elements of proof and hence the evidence necessary to sustain recovery vary materially See "*(Smith v Kirkpatrick, 305 N.Y. 66, 72, supra)* thus the Second Circuit Court of Appeals misapprehended *Paramount Pictures Corp. v. Allianz Risk Transfer AG, 31 N.Y.3d 64, 72 (2018)* cited in the 12/22/2025 Decision **Pet. App. 1a on pg. [4]** as the requisite elements of proof and hence the evidence necessary to sustain recovery vary materially in this suit as to Ardex K-15 causing Silicosis and Cancer as oppose to the previous case *Clark v. New York City Housing Authority et al, No. 1:2020cv00251 Document 325 (S.D.N.Y. 2022* that did not consist of the district court deciding the fact that ARDEX K-15 MSDS **Pet. App. 4a marked as Exhibit A** stating it causes Silicosis and cancer.

Fear of developing cancer, increased risk of developing cancer, medical monitoring was not actually litigated and I did not have a full and fair opportunity to litigate Silicosis and a fear of developing cancer because I had not yet been diagnosed or even told by my doctors that I had silicosis if I had I would have been able to present the Expert testimony presented at **Pet. App. 5a marked as Exhibit S and T** just as I am doing in this case but it just hadn't occurred in the previous case.

Res judicata and collateral estoppel should only apply if a judgment in the current case would destroy or impair rights or interests established by the first" see *Schuylkill Fuel Corp. v. Nieberg Realty Corp., 250 N.Y. 304, 307)* The estoppel is limited in such circumstances to the point actually determined see US Supreme Court vertical stare decisis of mandatory authority *(Cromwell v. County of Sac, supra)*

If a judgement is decided in favor of the petitioner- plaintiff in the present case based on the claims in the present case it would not destroy or impair the rights or interests established by the previous case as the judgment in the previous case would remain in tact as Petitioner-plaintiff does not have to prove fraudulent concealment for fraud in

the inducement as to a lease contract and doesn't have to prove reliance on any fraudulent misrepresentations by respondent- defendant NYCHA of the lease agreement and I am not trying to rescind the lease agreement contract to receive any reimbursement for rent paid to the respondent-defendant New York City Housing Authority which would be a negligence in breach of contract claim in which this is not a breach of contract claim which would have only allowed pecuniary out of pocket costs as to damages if I had actually received a judgment in the previous case as to fraudulent concealment, nor would I need to prove fraud at all in order to prevail in the present action, therefore the judgment in the previous case in favor of respondent-defendant NYCHA regarding fraudulent concealment as to Chrystalline Silica Quartz would remain unchanged because the issue and point that was decided in the previous case was whether a reasonable person would be influenced in deciding whether or not to rent and apartment because of Ardex K15 see *Clark v. New York City Housing Authority et. Al case # 1:20-cv-00251 R&R at dkt. [311] and dkt. [325].*

Even under the New York State Court Of Appeals law res judicata still would not apply as it is not sufficient to establish the identity of the two causes of action, that the plaintiff was seeking in both actions to recover the same amount of money, or even the same damages.

It is well settled that one may sue to recover damages for fraudulent representations upon a sale of property, and if he fails to establish the fraud and is defeated upon that ground, that he may subsequently bring an action for breach of warranty based upon the same transaction and the same representations and to recover precisely the same damages. In one case the action is based upon tort,

and in the other upon contract, and the causes of action are not identical and could not be sustained by the same evidence, thus res judicata does not apply

see *Marsh v. Masterson, 101 N.Y. 401, 407, 5 N.E. 59, 61 (1886).*

The court never ruled that ARDEX K-15 that contained the chrytalline silica Quartz was not present, the court actually stated that I did not provide expert testimony to prove that chrystalline silica quartz had caused my lupus which is not identical to general and specific causation as to ardex K-15 that contained the chrystalline silica Quartz being able to cause silicosis because it was not diagnosed or told to me by

any medical professional that I had silicosis at the time of the district courts ruling which was filed on 9/14/22 and 12/28/22 in *Clark v. N.Y.C. Hous. Auth. 20 Civ. 251 (PAE) (GWG) ,R&R at Dkt.. [311] (Sep 14, 2022) / Clark v. New York City Housing Authority et al, No. 1:2020cv00251 Document 325 (S.D.N.Y. 12/28/2022)* No doctor had even told me that Ardex K-15 caused my lupus in the last case however I had no choice nor other remedy and had to raise the fact that Ardex K-15 that contained the Chrystalline Silica quartz was concealed to preserve my claim as to New York law CPLR 214-C two injury rule in case I had developed a latent, separate and distinct disease injury as once i knew that I was exposed to Chrystalline Silica quartz that was in the Ardex K-15 I knew that i could latently develop Silicosis and or cancer at a future date and unfortunately I did develop silicosis and a fear of developing cancer

Just as the Ardex K-15 **Pet. App. 4a marked as exhibit A** states it causes Silicosis and cancer. In the previous Suit doctors only stated that I had exposure to Chrystalline silica quartz in *Clark v. New York City Housing Authority et al, 1:2020cv00251 Document 325 (S.D.N.Y. 12/28/2022* and that I had asbestos pleurisy. I couldn't file a claim as to silicosis before it was diagnosed as how could any Expert testify to something that had not yet occurred it's not possible this is why clearly there was no full and fair opportunity which completely supports why collateral estoppel does not apply and it's manifest injustice and collateral estoppel was erroneously wrongfully applied knowing that it was inapplicable to my case and was only applied because of Judge Analisa Torres and Magistrate judge Robyn Tarnofsky's and their spouses financial interests in respondent-defendant NYCHA and respondent-defendant NYIES indemnifying insurance company AIG as why both judges were complicit in respondent- defendants Magistrate Judge Shopping operation that they had the Pro Se manager/ECF docket manager Lourdes Aquino illegally change the random case assignment of the magistrate judge on **April 8, 2024** in *Clark v. New York City Housing Authority No. 24 Civ. 1625 (AT) (RFT)*

Petitioner- Plaintiff is not trying to re-litigate any fraudulent concealment claim based on any reliance of written statements and or misrepresentations of the lease agreement contract against respondent- defendant NYCHA nor is plaintiff seeking any fraud damages against respondent-

defendants JLC and NYIES thus res judicata and collateral estoppel do not apply to the present action see *Brown v. Lockwood, 76 A.D.2d 721, 738-739, 432 N.Y.S.2d 186;* "A judgment upon a matter outside of the issue must, of necessity, be altogether arbitrary and unjust, as it concludes a point upon which the parties have not been heard. And it is upon this very ground that the parties have been heard, or have had the opportunity of a hearing, that the law gives so conclusive an effect to matters adjudicated. And this is the principal reason why judgments become estoppels, but records or judgments are not estoppels with reference to every matter contained in them. Although a decree in express terms purports to affirm a particular fact, or rule of law, yet if such fact or rule of law was immaterial to the issue, and the controversy did not turn upon it, the decree will not conclude the parties thereto.'" See (*Stokes v. Foote, 172 N.Y. 341.)* , See *Woodgate v. Fleet, 44 N.Y. 1, 13;* , See *Stannard v. Hubbell, 123 N.Y. 520;* See *Hymes v. Estey, 116 N.Y. 501, 509*

New York law does recognize and allow claims based on emotional distress for fear of developing cancer See *Ferrara v. Galluchio, 5 N.Y.2d 16* In which a fear of developing cancer is grounded in an emotional distress (mental anguish/ anxiety) claim which was never actually litigated nor necessarily decided in the previous suit *Clark v. New York City Housing Authority et al,No. 1:2020cv00251 Document 325 (S.D.N.Y. 2022)*

by judge Paul A. Engelmayer regarding my most recent 5/1/23 diagnosis of silicosis (pneumoconiosis), due to plaintiff's silicosis diagnosis on 5/1/23 it caused the fear of developing cancer to worsen to the point that petitioner-plaintiff's fear of developing cancer has caused me to be in continuous treatment with Board Certified Psychiatrist Dr. Bakari E. Vickerson since February of 2024 see his non-retained Expert witness treating physician notarized affidavit at **Pet. App. 5a marked as Exhibit S.**

Collateral estoppel is inappropriate in light of the discovery of the new evidence of petitioners-plaintiffs diagnoses for the latent separate and distinct disease of silicosis diagnosed on 5/1/23 subsequent to the previous federal case 12/28/22 judgement see *Khandhar v. Elfenbein United States Court of Appeals, Second Circuit Sep 3, 1991 943 F.2d 244 (2d Cir. 1991)* under New York law Collateral estoppel does not apply to a litigant who has not had a full and fair opportunity to

litigate their claims see *David v. Biondo Court of Appeals of the State of New York Oct 22, 1998, 92 N.Y.2d 318 (N.Y. 1998)* It is indisputable that petitioner-plaintiff could not have provided expert testimony as to Ardex k-15 causing her to have Silicosis that was diagnosed on 5/1/2023 and a fear of developing cancer as to the 12/28/22 decision in *Clark v. New York City Housing Authority et al, No. 1:2020cv00251 Document 325 (S.D.N.Y. 2022)* nor was silicosis, fear of developing cancer, increased risk of developing cancer nor medical monitoring actually litigated and wasn't diagnosed during the first Suit in *Clark v. New York City Housing Authority et al, No. 1:2020cv00251 Document 325 (S.D.N.Y. 2022).* New York Law CPLR 214-C two injury rule for a separate and distinct disease injury (silicosis) was not a remedy of law that was traversable. A matter alleged that is neither traversable nor material shall not estop *Reynolds v. Stockton, 140 U.S.268, 269* The point of the inquiry, of course, is not to decide whether the prior determination should be vacated but to decide whether it should be given conclusive effect beyond the case in which it was made (see, e.g., Restatement, Judgments 2d [Tent Draft No. 3], § 88, Comment i).when collateral estoppel is in issue, the question as to whether a party had a full and fair opportunity to litigate a prior determination, involves a practical inquiry into the realities of litigation. A comprehensive list of the various factors which should enter into a determination whether a party has had his day in court would include such considerations as the size of the claim, the forum of the prior litigation, the use of initiative, the extent of the litigation, the competence and experience of counsel, the availability of new evidence, indications of a compromise verdict, differences in the applicable law and foreseeability of future litigation" (quoting) " *Gilberg v. Barbieri Court of Appeals of the State of New YorkJun 16, 198153 N.Y.2d 285 (N.Y. 1981).* There was no full and fair opportunity to litigate nor provide Expert testimony in the prior suit that Ardex K-15 caused Petitioner to have silicosis and fear of developing cancer because Silicosis had not been diagnosed nor told to Petitioner by any medical professional that she had silicosis in the previous suit so therefore no full and fair opportunity existed at the time in the previous suit thus the Second Circuit Court of Appeals application of collateral estoppel is manifest injustice and contrary to N.Y. State law that is binding in diversity of citizenship jurisdiction cases pursuant

to this court's binding precedent of the Erie doctrine in *Erie Railroad Co. v. Tompkins (1938)*

The Second circuit also defied U.S. Supreme Court precedent in *Foman v. Davis, 371 U.S. 178, 182 (1962)* that ruled the right to amend is to be heeded. The 2nd. Cir. Failed to address Amending the complaint and didn't even address my Rule 15(a)(2) motion to amend the complaint to add the 2019 Notice of Claim to my Complaint filed at SDNY Dkt. [73] and [74] that would have cured the issue surrounding the notice of claim as to respondent-defendant NYCHA filed at SDNY Dkt. [39-2] see Pet. App 6a that was already decided that the 2019 notice of claim gave respondent-Defendant NYCHA adequate notice as to Ardex, that contained the Chrystalline Silica Quartz see *Clark v. N.Y.C. Hous. Auth. Jan 21, 2021 514 F. Supp. 3d 607 (S.D.N.Y. 2021*

II. To decide A Question of first impression to Establish a Precedent as to Whether Magistrate Judge shopping violates the 14th. Amendment of the U.S. Constitution of due process when a district court judge knowing that they and their spouse have a financial interest in a case allows defendants and a defendants indemnifying insurance company to hand pick a magistrate judge by having the Pro Se docket manager illegally manually change the random court assignment to a different magistrate judge and the magistrate judge and their spouse also have a known financial interest in the outcome of a case and both judges refuse to disqualify.

Congress has, as noted, provided that a known financial interest in a party, no matter how small, is a disqualifying conflict of interest and one that cannot even be waived by the parties. 28 USC Section 455(b)(4) requires disqualification when a judge knows of his or her financial interest in a party. However, actual knowledge of the interest need not be present if the circumstances are such that the objective test of Section 455(a) is triggered by a financial interest. Even where the facts do not suffice for recusal under § 455(b) ... those same facts may be examined as part of an inquiry into

whether recusal is mandated under § 455(a). The two sections focus on different types of conflicts requiring recusal. Section 455(b) focuses on interests and situations which raise conflicts, while `the goal of section 455(a) is to avoid even the appearance of partiality.'" (alteration omitted) (quoting *Liljeberg, 486 U.S. at 860, 108 S.Ct. 2194*)),
United States Code, section 455(a) provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned." This statute embodies the principle that "to perform its high function in the best way justice must satisfy the appearance of justice." *Offutt v. United States, 348 U. S. 11, 348 U. S. 14*. in which the Second Circuit Court of Appeals failed to adhere to U.S. Supreme Court precedent moreover,
the Magistrate judge shopping that occurred in this case *Clark v. New York City Housing Authority No. 24 Civ. 1625 (AT) (RFT)* that both judges and their spouses have financial interests in which both judges were complicit in allowing the defendants to have the SDNY Pro Se manager/ECF docket manager Lourdes Aquino with ECF docket initials (laq) to change the magistrate judge random case assignment and refused to disqualify warrants vacatur on even a higher standard than the 28 USC 455 statute provides and warrants vacatur under rule 60 b on constitutional grounds that violated Petitioners due process rights to an impartial tribunal as this court has ruled The participation of a judge who has a substantial interest in the outcome of a case of which he knows at the time he participates necessarily imports a bias into the deliberative process. This deprives litigants of the assurance of impartiality that is the fundamental requirement of due process see *Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986); "quoting "Page 475 U. S. 831*. The real reason why the second circuit affirmed the erroneous decision of the district court on their misapplied and erroneous interpretation of collateral estoppel defying this courts precedent of the Erie doctrine refusing to apply New York law CPLR 214- C two injury rule for a latent separate and distinct disease injury affirming the decision of U.S. SDNY district court Judge Analisa Nadine Torres entered on February 28, 2025 and May 30, 2025,
case *Clark v. New York City Housing Authority No. 24 Civ. 1625 (AT) (RFT)* is because I filed a 28 U.S. Code § 455 motion to disqualify both Judge Analisa Nadine Torres and

magistrate judge Robyn Faith Tarnofsky and filed a rule 60 B motion to vacate SDNY dkts. [90], [91] **Pet.App. 6a**
On The Grounds Of 28 U.S. Code § 455 (a), (b)(4), (b)(5) iii for both judges having an appearance of impropriety in which their impartiality might reasonably be questioned as well as both judges and their spouses having a known financial interest in the outcome of my case that requires mandatory disqualification and because I exposed the Corruption of magistrate Judge shopping of illegal case reassignment conducted by the Pro Se manager/SDNY ECF docket manager " Lourdes Aquino at the behest of all respondent-defendants lawyers, AIG insurance company, SDNY Article I. Magistrate Judge Robyn Faith Tarnofsky and Article III. Judge Analisa Nadine Torres and the second circuit is trying to rug sweep the fact that Judge Analisa Nadine Torres repeatedly sits over cases in which she has a known financial interest and defies U.S. Supreme Court precedent and violated my constitutional due process rights to an impartial judge, just as she recently also violated the U.S . Security and Exchange Commissions rights to an impartial tribunal sitting over *SEC v. Ripple lawsuit case No. 1:20-cv-10832* as
Judge Analisa N. Torres knows that her husband Stephen C. Whitter is a Finra-Affiliated broker Wells Fargo advisor and Judge Analisa Nadine Torres knows that means her husband has a financial interest that could be affected and has already been affected in a benevolent manner by Judge Torres's landmark ruling that XRP is not a security because Wells-Fargo Advisors allegedly offer digital assets Cryptocurrency investments to their wealthy clients including but not limited to bitcoin and other Crypto currency investments. I filed 28 USC 351 judicial misconduct complaints dated October 7, 2025 against both Judges Analisa Torres and Magistrate Judge Robyn Faith Tarnofsky as to their complicity of aiding & abetting respondent defendants in their Magistrate Judge operation Scheme that also cited the *SEC v. Ripple lawsuit case No. 1:20-cv-10832* case and received a letter from the Second Circuit clerk's office from Dina Kurot dated November 1, 2025 however when you search the Finra website it now all of a sudden shows that Stephen C. Whitter Judge Analisa Torres's husband FINRA licenses from all 50 states as of November 5, 2025 suddenly miraculously has ended proving the second circuit court of Appeals and Judge Analisa Torres is trying to conceal the fact that Judge Analisa

Torres's husband Stephen C. Whitter does in fact have a financial interest in the outcome of my case as he has a substantial financial interest in AIG Insurance who is respondent-defendant New York insulation & Environmental Services Inc.'s indemnifying insurance company in which Judge Analisa Torres owns AIG Stock however, the evidence is already in the record see Second Circuit case 25-486 at dkt. [40.1] pgs. [200 through 212 of 242] see 2nd. Cir. dkt. [40.1] on pg. [212] document date of June 11, 2025 in bold black letters and numbers showing in highlight Wells Fargo Advisors or an affiliate has received compensation for investment banking services within the past 12 months. Wells Fargo Advisors or an affiliate has a significant financial interest in the issuer AIG **see Pet. App 6a** Wells Fargo Advisors or an affiliate has managed/co-managed a public offering within the past 12
months. Wells Fargo Advisors or an affiliate expects to receive or intends to seek compensation for
investment banking services within the next three months AS TO AMERICAN INTERNATIONAL GROUP (AIG). The Second Circuit defied the U.S. Supreme Court's precedent that ruled Disqualification of a judge is appropriate when he or she reasonably should have known that the situation created an appearance of impropriety, even if the judge was not actually aware of
the details of the situation Liljeberg v. Health Svcs. Acq. Corp., 486 U.S. 847 (1988)
United States Code, section 455(a) provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned." This statute embodies the principle that "to perform its high function in the best way justice must satisfy the appearance of justice." *Offutt v. United States, 348 U. S. 11, 348 U. S. 14.*
The Second Circuit stated in the 12/22/2025 decision **Pet. App. 1a on pg. [5]** states: (Petitioner-Plaintiffs) Her assertions of bias by the District Judge and the Magistrate Judge rest on "remote, contingent, indirect[, and] speculative interests. There is nothing remote, indirect, speculative or contingent on the indisputable unequivocal fact with clear and convincing evidence that Judge Analisa Torres owns Stock in the respondent-defendant New York Insulation & Environmental Services Inc.'s (NYIES) indemnifying insurance company AIG insurance that her husband Stephen

C. Whitter is a Wells Fargo advisor who brokers AIG stocks and other AIG insurance products and investments and as a Wells Fargo advisor has a significant financial interest in AIG insurance who is paying for the litigation of respondent-defendant NYIES and AIG hired their attorney Richard E. Leff of BBC Law LLP. to represent them and AIG insurance had the Attorney Richard E. Leff to write and file a joint letter motion signed by all respondent-defendants directly addressed to Judge Analisa Torres under the false guises that he was requesting an extension of time that was clearly not necessary because they had not been served the summons and complaint Rule 4 time to respond to a complaint does not accrue until a defendant is properly served therefore it is absolutely evident with clear and convincing evidence of why after i objected to the joint letter motion filed on April 4th and 5th. 2024 in *Case 1:24-cv-01625-AT-RFT Clark v. New York City Housing Authority et al* four days later the Pro Se manager ECF DKT. Manager illegally manually changed the random case assignment of the magistrate judge to Robyn F. Tarnofsky.

District Court Judge Analisa N. Torres Abused Her discretion in refusing to disqualify herself pursuant to 28 U.S. Code § 455 (a) (b)(4), (b)(5) iii as to her familial legacy business of the " Pamela C. Torres " Daycare center located in the Mill Brook Housing Projects in the Bronx New York owned by the Respondent-defendant NYCHA see SDNY **Case 1:24-cv-01625-AT-RFT dkt.[81-1], [81-2]**. Judge Torres's Day care center owned by Respondent-defendant-NYCHA was initially established by her parents back in the late 1950's and named after Judge Torres's sister who passed away from Leukemia and the Pamela C. Torres DayCare Center **Pet. App 6a**
is currently still operational. Judge Torres's family legacy NYCHA owned day care center and the Mill-Brook Housing Projects as a whole was established, constructed and implemented by Judge Torres's family. Judge Analisa Nadine Torres personally worked at the Daycare Center and was board member and director of the Respondent-Defendant NYCHA owned daycare center see **Case 1:24-cv-01625-AT-RFT SDNY Dkt. [81-3] on pgs. [4] and [7]** of the actual document.

Judge Torres's brother Ramon Torres is a board member of the Pamela C. Torres Day Care Center owned by respondent-defendant NYCHA see dkt. [86-1] that

receives NYC ACS funding, NYS DOH funding and because it's owned by the respondent-defendant NYCHA also receives federal funding. Judge Analisa Torres's Brother Ramon Torres is a retired New York City Housing Authority Assistant see SDNY dkt. [81-5]. The Mill Brook Housing Projects where Judge Torres's DayCare Center owned by respondent- defendant NYCHA is located is included in the respondent-defendant's NYIES and NYCHA contract AS0200030 and respondent-Defendant JLC and NYCHA contract PD0200186 see SDNY **Case 1:24-cv-01625-AT-RFT** dkt. [81-4] that is one of the many NYCHA buildings that involves this case in which all respondents misappropriated Federal funds by failing to install new floor tiles and used ARDEX-K15 for asbestos floor tile abatement and was paid federal funds to install new floor tiles but did not do so instead used Ardex K-15 containing the carcinogenic substance of Chrystalline Silica Quartz over an old existing layer of floor tiles and failed to conduct any Air monitoring see Petitioner- Plaintffs- NYS DOL Subpoena Exhibit J at **Case 1:24-cv-01625-AT-RFT** SDNY dkt. [44-1] pgs. [133 through 141 of 369] No records found and No records as to the existence of Respondent-Defendant JLC'S Alleged Project-monitor/Alleged Air sampling technician.
Judge Analisa Torres's familial legacy daycare center business owned by respondent-defendant NYCHA is a development that is included in the contracts in this case involving all Respondent-Defendants and is a business that judge Analisa Torres has work history and
Judge Anslisa Torres's Brother Ramon Torres is a board member of and a retired NYCHA
Housing Assistant in which Respondent-Defendant NYCHA made a formal judicial admission to in open court in oral argument held on December 17, 2025 case # 25-486 U.S. Court of Appeals for the second Circuit. Respondent-defendant NYCHA does own the Pamela C. Torres Day care center the property is 100 % owned by respondent-Defendant NYCHA is still operating and Judge Analisa Torres's brother Ramon Torres is currently a Board member. Judge Analisa Torres and the second circuit court of appeals is trying to conceal this information because for one the Daycare Center where these innocent children attended in the millbrook housing projects in the Bronx New York are all subject to developing Silicosis just as I have developed, unbeknownst to them these children who are adults now and even children

that attend there now were all exposed to the ARDEX K-15 that respondent- defendant NYIES installed over existing floor tiles in various NYCHA developments contract AS0200030. This case would have a financial impact on Judge Torres's family legacy business of the Pamela C. Torres Daycare as the children, staff, parents, NYCHA housing employees were all exposed to this ARDEX K-15 and this case would have a devastating impact on Judge Analisa Torres's brother Ramon Torres financially and her family legacy NYCHA owned Day Care center. The second circuit court of appeals 12/22/25 decision stating in **Pet. App. 1a** that the conflict of interests is remote and speculative is utter nonsense as this is a direct financial substantial interest and other personal interests that Judge Analisa Nadine Torres has in the outcome of my case. In re *Murchison, 349 U. S. 133, 349 U. S. 136 (1955)*. The degree or kind of interest is sufficient to disqualify a judge from sitting "cannot be defined with precision." Ibid. Nonetheless, a reasonable formulation of the issue is whether the"situation is one 'which would offer a possible temptation to the average judge to lead him not to hold the balance nice, clear and true.'" *Ward v. Village of Monroeville, supra, at 409 U. S. 60.* Judge Analisa N. Torres refusal to disqualify herself from Petitioner- Plaintiff case in which Judge Torres and her Spouse Stephen C. Whitter have a financial interest in respondent-defendant New York Insulation & Environmental Services inc.'s (NYIES) indemnifying insurance company In this case American International Group (AIG) that could be affected by the outcome of this case violates due process of the XIV Amendment of the U.S. Constitution depriving Petitioner-plaintiff of a fair and impartial proceeding. In no way may Judge Analisa Torres and Robyn Tarnofsky's financial interests / conflicts of interests allowing respondent-defendants to magistrate judge shop be deemed constitutionally acceptable simply because of the possibility of reversal on appeal in which the 2nd. Cir. Allowed my constitutional due process rights to be abridged as I was entitled to neutral and detached judges in the first instance however the district court and the Appellate court both failed to hold the balance nice, Clear and true *Ward v. Village of Monroeville, U.S. 57 (1972)*

Judge Analisa Torres's family established the entire development of the Mill-brook Housing projects in the Bronx in addition to the establishment of the Day Care Center in

which receives Federal, City and State Funding. Judge Analisa Torres also owns Stock in the respondent-defendant New York Insulation & Environmental Services Inc.'s (NYIES) indemnifying insurance company American International Group (AIG) who hired Respondent NYIES attorney Richard E. Leff of BBC Law LLP. as why respondent-defendant NYIES attorney Richard E. Leff had filed a first Joint letter motion signed by all respondent-defendants attorneys Richard E. Leff, Miriam Skolnik and Nitin Sain directly addressed to U.S. District Court Judge Analisa Torres Dated **April 4, 2024** pretending they were requesting an extension of time in which was a moot request because they had not been served the summons and Complaint therefore they had all the time in the world and the clock for the time to respond to a complaint doesn't start until a defendant is served the summons and complaint as to FRCP Rule 4. **See Pet. App. 6a** explaining

how the random case magistrate judge assignment was illegally manually changed on the ECF docket by the Pro Se office manager/SDNY ECF docket manager "Lourdes Aquino "at the behest of respondent-defendants lawyers that both judges Analisa Torres and Magistrate judge Robyn Faith Tarnofsky were unequivocally complicit with due to both judges and their spouses substantial and financial interests in the outcome of Petitioners case as to Respondent-defendants NYCHA and NYIES indemnifying insurance company AIG that deprived petitioner of an impartial proceeding which violates due process as both judges refused to disqualify that the Second Circuit Court of Appeals See certified U.S. SDNY docket sheet at Pet. App. 6a On March 19, 2024 the case was Originally assigned to U.S. SDNY District Court Judge Analisa Torres and magistrate judge Jennifer E. Willis as *Clark v. New York City Housing Authority No. 24 Civ. 1625 (AT) (JW)*

On March 20, 2024 at dkt. [11] Judge Analisa Torres Ordered for US Marshals service as to all respondent-defendants for Summons and complaint

On March 21, 2024 Petitioner-Plaintiff emailed a demand letter as to respondent-Defendant New York Insulation & Environmental services Inc.'s (NYIES) indemnifying insurance company American International Group AIG CEO Peter Zaffino and also emailed Starr insurance also indemnifying NYIES, Emailed Allianz insurance indemnifying NYCHA and Emailed Crum & Forster

indemnifying JLC Environmental consultants Inc. see **Pet.App.6a dkt. [87-2] On March 27, 2024** FRCP 4 service package Hand delivered to U.S. Marshals of Judge Torres's order of service at dkt.[11], order granting IFP at dkt. [4], Complaint and Summons. On **April 4, 2024** Dkt. [14] a notice of Appearance was made by Attorney Richard E. Leff on behalf of respondent-defendant New York Insulation and Environmental Services inc. (NYIES) who AIG hired to represent respondent- defendant NYIES in this case as well as AIG did so in the previous 2020 case..The same day April 4, 2024 at dkt.[15] respondent -defendantNYIES Attorney Richard E. Leff filed a joint letter motion signed by all respondent-defendants requesting an extension of time and what he called a pre- answer motion conference addressed directly to U.S. SDNY District Court Judge Analisa Torres. None of the defendants had been served the summons and complaint therefore asking for an extension of time is moot as to Rule 4 service of process as the time to respond to a complaint doesn't start until the defendant is properly Served. Respondent-defendant NYIES attorney Richard E. Leff made a formal judicial admission in oral argument on December 17, 2025 2nd. Cir. Case # 25-486 that he did in fact write and filed a joint letter motion signed by all respondent-defendants requesting an extension of time in which Judge Analisa Torres was fully aware that respondent-defendants had not yet been served by the Marshalls nor the NY Secretary of State when they filed the first joint letter motion at Dkt. [15] however Judge Analisa Torres still entertained their request ordering on **April 5, 2024** at Dkt. [16] in a signed order referring the case to magistrate judge Jennifer E. Willis to decide their request for an extension of time and for a pre-answer motion conference which no such pre-answer motion conference exists in the federal rules of civil procedure for defendants who had not yet even been served the summons and complaint. Filed on **April 4th. And 5th. 2024** Petitioner-Plaintiff at Dkt. [17] and [19] wrote a letter to judge Analisa Torres objecting to Dkt. [15] respondent-defendants first joint letter motion that requested an extension of time before they were even served. AIG insurance had instructed the lawyer Richard E. Leff of BBC Law LLP. Hired by AIG to write the letter to Judge Analisa Torres as I had emailed the CEO Peter Zaffino on **March 21, 2024 see SDNY Dkt. [87-2]** which gave defendants prior notice as to whom the judge was that was assigned to the case

in advance of them actually being served the summons and complaint. Respondents did not want the Honorable magistrate Judge Jennifer E. Willis as the magistrate judge on the case who was randomly assigned on **March 19, 2024** because she had no conflicts of interests and no affiliation to respondent-defendants NYCHA, NYIES's indemnifying insurance AIG nor JLC's attorneys law firm Kennedy's law who has and extensive legal panel partnership with AIG insurance.

The certified docket Sheet **Pet. App. 6a** is irrefutable evidence that on **April 8, 2024** four days after respondent-dependent NYIES attorney Richard E. Leff hired by AIG insurance filed the first Joint letter motion addressed directly to Judge Analisa Torres who owns stock with AIG who hired respondent defendant- NYIES attorney Richard E. Leff is when the Pro Se manager/ SDNY ECF Docket services manager " Lourdes Aquino " illegally manually changed the **March 19, 2024** random case magistrate judge assignment to Robyn F. Tarnofsky on **April 8, 2024** in a two separate no document texts on the ECF docket and on the same day **April 8, 2024** right after the Pro Se manager/ ECF docket manager Lourdes Aquino illegally changed the Random case assignment to Magistrate Judge Robyn F. Tarnofsky is when respondent-defendants NYCHA and JLC decided they would file their notice of appearance however keep in mind all respondent-defendants had signed the joint letter motion that was already filed by respondent-defendant NYIES attorney Richard E. Leff hired by AIG insurance on **April 4, 2024** at **Pet. App. 6a** at Dkt. [15] when the case was originally randomly assigned to the Honorable magistrate judge Jennifer E. Willis so why did the other two attorneys Miriam Skolnik of Herzfeld & Rubin PC for respondent-defendant NYCHA and Nitin Sain of Kennedys Law for JLC; why did they not file their appearances on **April 4, 2024** and why didn't any of them file any acknowledgment of service until after the Pro Se manager/ ECF manager Lourdes Aquino illegally change the random court assignment of the magistrate judge to Robyn Faith Tarnofsky. This irrefutably is magistrate judge shopping that violated my constitutional rights of due process that deprived me of a fair and impartial tribunal and proceeding that both Judge Analisa Nadine Torres and Magistrate Judge Robyn Faith Tarnofsky were complicit as the certified docket sheet irrefutably shows that respondent-defendant NYIES attorney Richard E. Leff of

BBC Law LLP. hired by AIG insurance knew he didn't actually need an extension of time because it shows that the Marshall's and the N.Y. Secretary of State shows respondent-dependent NYIES was served on **April 19, 2024** at Dkt. [27] and on **May 10, 2024** N.Y. Secretary of State at Dkt. [25]. The first joint letter motion signed by all respondent-defendants attorneys was filed on **April 4, 2024** at Dkt. [15] proving all respondent-defendants lied about needing an extension of time to respond as they were not served yet see **Pet. App. 6a.** the real reason and ulterior motive behind the joint letter motion filed on **April 4, 2024** at Dkt.[15] to Judge Analisa Torres was for them to have the court illegally change the **March 19, 2024** random case assignment of the Honorable magistrate Judge Jennifer E. Willis to Magistrate Judge Robyn F. Tarnofsky this is not speculation, conjecture or conclusory but is an absolute certainty of truth and fact as the certified docket sheet **Pet. App. 6a** shows that the Pro Se manager/ECF Docket manager Lourdes Aquino with the ECF docket initials of (laq) illegally changed the random court assignment to Magistrate judge Robyn F. Tarnofsky on 4/8/2024. A court docket Clerk has absolutely no legal authority to override a judges signed order without approval, Judge Analisa Torres allowed this judge shopping as Judge Analisa Torres didn't refer Magistrate Judge Robyn Tarnofsky amending the referral of the magistrate judge until two months later on 6/18/2024 at Dkt. [41] which was the day after all respondent-defendants had already filed their motions to dismiss this means Magistrate Judge Robyn Faith Tarnofsky was sitting over my case without jurisdiction when she was scheduling conferences, making orders and rulings before 6/18/24 as a Pro Se manager/ECF docket Clerk has absolutely no legal authority to change a judges order by manually reassigning a case to a different magistrate judge at the behest of a defendants lawyers in a case and both Judges are aware of it but do nothing to ameliorate it because both judges and their husbands have conflicts of interests and financial interests that could be affected by the outcome of my case as to the main defendant NYCHA and defendant NYIES'S indemnifying insurance company AIG as described herein. **See Pet. App 6a**

As to Article I Magistrate Judge Robyn Faith Tarnofsky Regarding her Complicit collusion with defendants Attorneys in the above related case in their Magistrate Judge Shopping Operation Scheme,Using the Judges office to obtain special

treatment for respondent- defendant NYCHA, New York Insulation & Environmental Services inc. regarding their indemnifying insurance company (AIG) and Defendant JLC Environmental Consultants inc.'s (JLC) law firm Kennedy's law also known as Kennedy's CMK LLP. who provides an ongoing partnership of legal panel services to American International Group (AIG) insurance company. AIG who hired Attorney Richard E. Leff of BBC Law LLP.; AIG insurance company is a client and corporate partner of Magistrate Judge Tarnofsky's husband Antony L. Ryan Esq. for the
Legal Aid Society and volunteers of Legal Services inc. (vols) in which Mr. Ryan serves as a board member and chairman for the organizations. AIG insurance company is a partner with the Legal Aid Society and Vols who provide annual contributions of $100,000 plus to both organizations that Magistrate Judge Tarnofsky's husband is a board member and chairman. Magistrate Judge Robyn Tarnofsky's husband Antony L. Ryan Esq. also represented AIG insurance company in several high profile lawsuits as so did Magistrate Judge Tarnofsky
during her tenure at Paul Weiss, Rifkind, Wharton & Garrison. AIG insurance also is a corporate financial sponsor to NYLAG Legal Clinic in which Magistrate Judge Tarnofsky was the Founding Director.
Magistrate Judge Robyn Faith Tarnofsky has engaged in this egregious conduct in other cases of having the Pro Se ECF Docket Service manager "Lourdes Aquino "initials on the Docket shows (laq). Change the Random court assignment of the magistrate judge to her on behalf of litigants in cases where she and her husband Antony L. Ryan Esq. of Cravath, Swaine and Moore are in Extra-judicial corporate financial partnerships such as his direct Extra-judicial partnership with respondent-defendant NYCHA for the NYCHA (Rees) job plus program as Chairman of VOLS . Judge Analisa Torres allowed Magistrate Judge Robyn F. Tarnofsky to illegally preside over my case knowing that the Pro Se Clerk had reassigned the case on **April 8, 2024** without any legal authority or legitimate grounds to manually change the magistrate Judge to Robyn Faith Tarnofsky which is unequivocally Magistrate Judge Shopping. Magistrate Judge Robyn Faith Tarnofsky also used her former Law Clerk Oren Silverman currently an associate attorney of Rivkin Radler to be a liaison to have Ex-parte Communications with

respondent- defendants in this case as I now know of why Judge Robyn F. Tarnofsky's former law clerk Oren Silverman on 6/11/2024 Court ordered conference called respondent-defendant JLC Environmental Consultant Inc.'s attorney in the SDNY district Court Nitin Sain of Kennedys law on his personal unlisted mobile phone number that he stated to have a 914 area code that was not even listed on the docket, there is no legitimate reason or cognizable reason as to why a magistrate Judges law Clerk would have a defendants lawyers personal phone number and insisted on directly connecting the defendants lawyer to a conference call he was over 5 minutes late for and the magistrate was also over 5 minutes late for her own conference. Magistrate judge Robyn Faith Tarnofsky also had Ex-parte Communications with the SDNY Deputy Clerk Daniel Ortiz and another SDNY clerk employee Rachel Slusher obstructing justice persuading them not to issue my Subpoena for evidence of the 6/11/2024 and 8/26/2024 full unedited audio recordings of Conference calls that would prove that Magistrate Judge Robyn Faith Tarnofsky was prejudice and bias in fact towards me that would prove that she was complicit with respondent-defendants judge shopping her to be the magistrate judge to my case. See *La'Shaun Clark v. New York City Housing Authority et. al case 1:24-cv-01625-AT-RFT at Dkts. [94, 95, 96, 97, and 99]*

All of this not only gives an appearance of impropriety pursuant to 28 U.S. Code § 455 (a) in which Judge Analisa Torres and Magistrate Judge Robyn Tarnofsky's impartiality might reasonably be questioned but requires mandatory disqualification pursuant to 28 U.S. Code § 455 (b)(4), (b)(5) iii The Second Circuit Court of Appeals usurped this court's precedent in *Liljeberg v. Health Svcs. Acq. Corp., 486 U.S. 847 (1988* as to my Rule 60 B motion to vacate pursuant to 28 U.S. Code § 455 (a) as to this courts three-part analysis. The U.S. Supreme Court explained in Liljeberg, judgments entered by judges whose impartiality might reasonably be questioned under § 455(a) are voidable under Rule 60(b)(6) if the Court's three-part analysis warrants vacatur as follows: (1) "It is appropriate to consider the risk of injustice to the parties in the particular case. • (2) " It is appropriate to evaluate the risk that the denial of relief will produce injustice in other cases.

• (3) "It is necessary to assess the risk of undermining the public's confidence in the judicial process.

Magistrate Judge Robyn Faith Tarnofsky has allowed litigants and their lawyers in other cases to have the Pro Se manager/ ECF Docket manager Lourdes Aquino to illegally change the magistrate judge random court assignment to her in cases that involve clients of her husband Antony L. Ryan Esq. in which he has ongoing Corporate financial partnerships and whom he represents or has represented In the SDNY district court and Second circuit Court of Appeals as well as various other circuit courts, district courts and jurisdictions in the United States see the case assignment being changed by the Pro Se Manager/ ECF docket manager Lourdes Aquino in *Fady Sorial et al v. Robinhood Financial, LLC., Case No. 1:2024cv02752 – (JLR) (RFT)*, See *Sean A. Clark v. NYCHA case 1:24-cv-02741* in whom i have no relation to as it is a male Pro Se litigant with a similar name to me that sued NYCHA. There is also a non pro Se case that doesn't involve the Pro Se manager Lourdes Aquino of a different clerk assigning Magistrate Judge Tarnofsky directly to a case concerning AIG insurance who is a client and a financial partner with Magistrate Judge Robyn Tarnofsky's Husband Antony L. Ryan see *AIG Insurance Company of Canada v. State National Insurance Company 1:24-cv-0920* all of this proves there's widespread corruption of Magistrate Judge shopping that involves Magistrate Judge Robyn F. Tarnofsky being assigned cases that involves litigants in which she and her husband Antony L. Ryan Esq. have conflict of interests. There is no reasonable lawful explanation as to why cases that involve NYCHA and AIG insurance are being assigned to Magistrate Judge Robyn F. Tarnofsky. This is not a coincidence as she indisputably has represented AIG in her past employment at Paul Weiss as well as her husband Antony L. Ryan Esq. who has also represented AIG in several high-profile lawsuits and is in Partnership with NYCHA and AIG **Pet. App 6a** receiving financial contributions from AIG for two separate organizations that he is Board member and Chairman. The Second Circuit Court of Appeals allowed Magistrate Judge Robyn F. Tarnofsky to cover up her egregious conduct and complicity with respondent-defendants Judge shopping for her to be illegally assigned to my case and violated Petitioner-Plaintiffs XIV Amendment constitutional rights of due process depriving Plaintiff-Appellant's rights to a fair and impartial proceeding for refusing to disqualify herself from this case and in addition

to constitutional violations also separately pursuant to 28 U.S.C. §455(a), 28 U.S.C. §455(b)(4), 28 U.S.C. §455(b)(5)iii and Violating The Judicial Code Of Conduct For U.S. Judges Including but not limited to Canon 3 A (4), Canon 3(b)(2), Canon 3(b)(6) as Magistrate Judge Robyn F. Tarnofsky and her Husband Antony L. Ryan Esq. have a financial interest in respondent- defendantNYIES'S indemnifying insurance company in this case American International Group (AIG) that could be affected by the outcome of this case. AIG who hired defendant-Appellee NYIES attorney Richard E. Leff of BBC Law LLP. ; (AIG) is a financial sponsor of NYLAG where Judge Tarnofsky was the founding Director of NYLAG's SDNY Pro Se Clinic. AIG who hired defendant-Appellee NYIES attorney Richard E. Leff of BBC Law LLP. (AIG) Is a partner and sponsor Contributing $100,000 + plus Annually to the Legal Aid Society where Magistrate Judge Robyn F. Tarnofsky's husband Antony L. Ryan Esq. is a Board member see SDNY Case 1:24-cv-01625-AT-RFT at dkt. [91-3] Exhibit 19 Filed 05/05/25 [Page 5 of 10] and 2nd. Cir. Case 25-486 at Dkt. [40.1] Pgs. [185 through 199] of AIG insurance, legal aid society and volunteers of legal services Inc. Publications showing Magistrate Judge Robyn F. Tarnofsky's husband Antony L. Ryan Esq. of Cravath Swaine & Moore is member, board of directors for the Legal Aid Society and chairman of VOLS.

It's also no coincidence that in my case 25-486 Oral Argument held on December 17, 2025 Second Circuit Panel judge Raymond Joseph Lohier Jr. Owns investments with AIG insurance as he disclosed in his 2020 financial disclosure at number 4. IRA AIG American Pathway (Annuity) as why he was selected to be on the panel to be a decision maker in my Appeal he should have recused himself because he unequivocally knew that I had argued in my Appeal brief and Reply brief about both judge Analisa Torres who owns AIG stock and Magistrate judge Robyn Tarnofsky and both judges husbands direct substantial pecuniary interests in the outcome of my case as to respondent-defendant New York insulation & Environmental Service Inc.'s indemnifying insurance company AIG insurance and the fact he knew can be confirmed by the December 17, 2025 oral argument in case 25-486 as he said in open court on the record that the panel had my briefs and it was very well in mind, however 2nd. Cir. Panel judge Raymond Joseph Lohier Jr. decided to also ignore this court's precedent that ruled The participation of

a judge who has a substantial interest in the outcome of a case of which he knows at the time he participates necessarily imports a bias into the deliberative process. This deprives litigants of the assurance of impartiality that is the fundamental requirement of due process see *Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813 (1986); "quoting "Page 475 U. S. 831.*

Second Circuit Panel Judge Jose A. Cabranes also showed direct prejudice, bias and disrespect towards me in the 2nd. Cir. Oral argument on December 17, 2025 as he tried to get me to agree to his false assertions stating I had previously moved for disqualification of judges in the SDNY when I had not. I affirmatively stated that this is the first case that I had moved for disqualification of judges in the SDNY and he was extremely rude and disrespectful and wouldn't allow me to state my arguments as to Magistrate Judge Robyn Faith Tarnofsky. The second circuit panel with the exception of Judge Dennis Jacob's treated me differently than other litigants similarly situated who argued on December 17, 2025 as they allowed others to extensively exceed their time limits but did not allow me the full 6 minutes allotted by interrupting my argument not to ask any legal questions or clarification of any mixed questions of facts and law but vehemently tried to thwart my argument and tried to coerce me into agreeing to the false accusation that I had moved to disqualify judges in previous cases when I affirmatively stated I did not. The Second Circuit Court of Appeals is retaliating against me denying me my constitutional rights to access documents in my Appeal Case 25-486 as they without notice restricted my access to documents filed in my case as I'm no longer able to view any documents filed in my Appeal case 25-486 on Pacer this is a violation of my due process rights to have access to the court for my own case.

The Second circuit court of Appeals restricted access because They're trying to conceal from the public the egregious violations of Due process of Judge Shopping that is a systemic problem in U.S. SDNY Court of the Pro Se manager/ ECF Docket Service manager Lourdes Aquino and other SDNY clerk staff who are illegally changing the random case assignments of judges and or outright assigning cases to a specific judge at the behest of litigants and their lawyers that the SDNY Judges Analisa Nadine Torres, Robyn Faith Tarnofsky and other SDNY Court officials are complicit in at the behest of litigants and their lawyers in which the Judges

have financial interests and or other substantial interests in the outcome of cases and political biases. The SDNY ECF Docket Services clerk " Lourdes Aquino " with the docket initials of (laq) has also assigned cases to specific judges in cases that involve our Commander and Chief President Donald John Trump one of them being see *State of New York v. Donald J. Trump (1:25-cv-01144) District Court, S.D. New York*. This judge shopping is highly concealed as why the SDNY ECF docket case assignment of judges only shows the initials of the court staff such as (laq) that stands for Lourdes Aquino or for Example in certain cases the initials on the ECF docket will show (pc) which stands for Paulina Calistru who is a judicial intern which is extremely concerning because i don't know of any law that gives a judicial intern nor a Pro Se manager/ECF docket clerk the authority to manually assign cases to a specific judge and or change the random case assignment and such unauthorized conduct of judge shopping by a court employee on behalf of a litigant and their lawyers in which a judge is aware of and refuses to disqualify having a conflict of interest/ financial interest not only warrants Vacatur under rule 60 (b) but also allows the U.S. Supreme Court to vacate under Rule 60(d) (3) set aside a judgment for fraud on the court which is not confined to the 1 year statute of limitations for rule 60(b) 1, 2 and 3.
The Second Circuit in my case 25-486 decided 12/22/25 **Pet. App. 1a on pg. [3]** cited *Carroll v. Trump, 151 F.4th 50, 68 (2d Cir. 2025).* As to Collateral Estoppel as I reviewed the Carroll v. Trump case there's a few things that I must state as to the fact that President Donald John Trump lacked a full and fair opportunity to litigate his case and as this Judge shopping constitutional violation of due process may possibly have also affected him as well in the SDNY that warrants investigation as to Judge Shopping which would be a violation of President Trumps Due Process rights however, I will not speak as to any merits of the case but only as to my personal knowledge of the demographics and my past personal knowledge of the Bergdorf Goodman store located on 57th. Street and 5th. Ave. In New York City. In 1996 and 1997 I had applied for a job several times at the Bergdorf Goodman store. I used to go there just to window Shop and try on different clothing and shoes and to buy my favorite Versace lipstick which was the only thing I could afford to buy from the little money i made from my after school job at Beth Abraham Nursing Home. I was into modeling and music

back then and had a passion for fashion as why I frequently would go to Bergdorf Goodman on days that I had no school or work. I distinctly remember that security was top tier and there were always sales floor people who would escort you to dressing room attendants who would take the merchandise into the dressing rooms and then allow you to try it on, you could not even get passed a sales person nor a dressing room attendant to try on clothes and they would stand outside the dressing room to ask if you needed a different size and or were you going to buy as this is how sales attendants would get commission for sales this was the case for all departments on each floor the sales people would follow you everywhere and security was always watching. I didn't get hired in 1996 because I was still in high school and Bergdorf Goodman at that time was hiring for full time positions. In 1997 after graduating from high school i applied again to work at Bergdorf Goodman and several other high-end Stores in the 57th. St and 5th avenue vicinity such as Tourneau Time Machine flagship store which presently the name was changed in 2018 to (Bucherer) is directly across the street from Bergdorf Goodman. In 1997 I actually was hired to work at Bergdorf Goodman and Tourneau at the same time. I chose to take the the job at the Tourneau watch store which was next door to Trump Towers because Bergdorf Goodman was only for a seasonal position for the Christmas holiday season and I needed something long term. I used to see President Trump come into the Tourneau watch Store when I worked there and in passing on 57th. St. 5th. Avenue in New York City and he always was very respectful and cordial to everyone. Again I'm not going to comment on the allegations of his case but to the content of his character as a man that my Lord and Savior Jesus Christ has chosen to be the commander and chief of this Country and we all should respect our leaders. The Second Circuit Court of Appeals has veered far away from upholding the Constitution and respecting Supreme Court precedent which is disheartening and unfair in allowing judges and Court officials at the behest of litigants and or indemnifying insurance companies to engage in the most egregious form of Judge shopping that deprives litigants to their God given constitutional rights to due process and other constitutional fundamental rights and liberties that are no longer being protected. This clandestine activity of internal Judge shopping must be stopped as it undermines the integrity of the judicial system and is truly a

disgrace to our nation's Constitutional Republic. No litigant whether Plaintiff or defendant should be allowed to hand pick a judge and the judges should not allow the random case assignment to be changed or directly assigned to them via court clerk docket ECF docket clerks because the judge has financial interests and other conflicts of interests that could be affected by the outcome of a case and thus the judge intentionally misapprehends the law by applying Collateral Estoppel knowing that it was inappropriate and inapplicable to a meritorious case. This court should grant Certiorari for two reasons (1) The U.S. Court of Appeals for the Second circuit refused to apply U.S. Supreme Court Precedent for several cited cases in this Petition and as Justice Gorsuch has previously stated " Lower court judges may sometimes disagree with this Court's decisions, but they are never free to defy them " and reason number (2)
Judge shopping that takes place in the SDNY affects litigants nationwide and causes judges to misapply the law for preferential treatment towards a particular litigant in which the judge has a substantial interest in the outcome of a case which affects people who are subject to the jurisdiction of the United States District Court For the Southern District of New York and this case is the appropriate vehicle for the United States Supreme Court to establish precedent for Judge shopping that should be constitutionally prohibited as it violates due process to a fair and impartial tribunal.

CONCLUSION

The Petition for writ of Certiorari should be granted.

Respectfully Submitted,
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