No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

JACOB TEITELBAUM, individually and
as father to CHILD A and CHILD B,
Petitioner

v.

JUDA KATZ, ET AL.,
Respondents

_____

ON PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

_____

PETITION FOR WRIT OF CERTIORARI

_____

Jacob Teitelbaum
c/o Ben Friedman
5 Leipnik Way, #102
Monroe, N.Y. 10950
845-782-7830
Petitioner *Pro Se*

Date: August 12, 2014

QUESTIONS PRESENTED

1. Whether the Second Circuit Court of Appeals improperly dismissed the Petitioner's appeal for lack of jurisdiction after wrongly determining *sua sponte* that notice of appeal was untimely filed?

2. Whether the District Court (S.D.N.Y.) erred in dismissing independent action, brought by Petitioner pursuant to F.R.C.P. Rule 60(d) following the dismissal of his original action by the orders/decisions that were vitiated by fraud upon the court - in which fraud the presiding judge was himself involved - under the doctrines of *res judicata* and judicial immunity?

3. Whether the District Court (S.D.N.Y.) improperly concluded that it lacked subject matter jurisdiction with respect to Petitioner's claims against most of the Respondents under the *Rooker-Feldman* doctrine?

4. Whether the District Court (S.D.N.Y.) erred in not granting Petitioner, a *pro se* and IFP litigant, even one opportunity to amend his Complaint against most of the Respondents, despite his repeated, timely requests?

5. Whether the District Court (S.D.N.Y.) erred in dismissing Petitioner's claims against Respondents for failing to state claim under 42 U.S.C. §§1983, 1985?

6. Whether the Petitioner, already rendered homeless and destitute by the powerful Kiryas Joel political machinery for not complying with their diktat; and, therefore, suffering continuous violation of his constitutional rights at the hands of Respondents, is going to be left without remedy at law?

PARTIES TO THE PROCEEDING

Petitioner, who was Plaintiff in Trial Court, and Plaintiff-Appellant in Court of Appeals, is Jacob Teitelbaum, individually and as father to Child A and Child B.

Respondents, who were Defendants in Trial Court, and Defendants-Appellees in Court of Appeals, are –

Juda Katz

Chaya Katz

Joel Tennenbaum

Bluma Tennenbaum

David Rubenstein

Kiryas Joel Comm Ambulance CRP

District Family Court of Orange County, 9th Judicial Circuit[1]

Christine Brunet

David Hollander

County of Orange

Children's Rights Society, Inc.

Stephanie Bazile, Attorney

Andrew P. Bivona, Judge of the Family Court of Orange County[2]

Maria Petrizio, Attorney

Kim Pavlovic, Attorney

John Francis X. Burke, Attorney

Child Protective Services of Orange County

Department of Social Services of Orange County

John Does 1 through 95

Jane Does 1 through 20

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[1] District Family Court of Orange County was named as defendant in Petitioner's Original Complaint, but its name was later deleted from the Amended Complaint.

[2] Hon. Andrew P. Bivona, Judge of the Family Court of Orange County, was named as defendant in Petitioner's Original Complaint, but his name was later deleted from the Amended Complaint.

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PETITION FOR WRIT OF CERTIORARI

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Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The Order of the Court of Appeals dismissing Petitioner's Appeal, entered on April 2, 2014, appears at Appendix A to this petition. The Court of Appeals' Order denying Petitioner's Motion for Reconsideration, entered on May 19, 2014 appears at Appending B to this petition.

The Decisions issued by the District Court (S.D.N.Y.), and entered on July 2, 2013; March 19, 2013; and February 11, 2013; respectively, from which Notice of Appeal was filed by Petitioner, appear at Appendices C, D, and E, respectively.

JURISDICTION

The federal action arises under the United States Constitution's 14th Amendment and under 42 U.S.C. §§ 1983, 1985, as a federal civil rights action, raising federal question under 28 U.S.C. § 1331. The judgment of the Court of Appeals was entered on April 3, 2014, and the motion for its reconsideration was entered on May 19, 2014. The United States Supreme Court is only one that has the power to make the lower court recognize the Constitutional Rights of an individual. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

1. Factual Background. Petitioner is a resident in a Hasidic, ultra-orthodox, closely-knit community ("the community"). In 2010, Petitioner got involved in a religious campaign against the practice of forced divorces that have been taking place within the community through the use of kidnapping and violence. This evil practice is succinctly described in the criminal complaint (Appendix AF) that was filed in an analogous matter, and is already a widespread menace, as reported in Huffington Post dated October 10, 2013 (Appendix AG).

Certain people in the community disagreed with the religious campaign. They entered into a conspiracy with Orange County, a State actor, as well as others outside the community, with an objective to unlawfully stop Petitioner from participating in the religious campaign.

In pursuance of aforesaid conspiracy, Petitioner has constantly been subjected to severe terrorization and intimidation by certain individuals and

establishments – some of whom are named herein as Respondents – acting in collusion with and/or with the tacit support of Respondent Orange County.

To further the object of conspiracy, the Respondents, acting in concert and collaboration with each other and separately, as well as with the connivance of Respondent Orange County, not only subjected Plaintiff to cruel, inhuman and degrading treatment but also used the State machinery directly and/or indirectly, and abused the process of law, to illegally deprive Petitioner of his Fundamental Rights granted to him by the U.S. Constitution.

2. Trial Court Proceedings (Teitelbaum v. Katz et al., 12-CV-2858). On April 11, 2012, Petitioner, *pro se*, filed, in U.S. District Court for Southern District of New York, an action entitled *Teitelbaum v. Katz et al.*, 12-CV-2858 ("Original Complaint" or "Original Action"), pursuant to 42 U.S.C. §§ 1983, 1985, against Respondents herein, to seek protection from harassment, intimidation, terrorization, and violation of his civil rights he had been suffering at their hands.

The "Original Complaint", inter alia, alleged that in pursuance of aforesaid conspiracy, Petitioner was subjected to severe intimidation, harassment, and terror; his freedom was unlawfully taken away; his family was broken up; and his children were taken away from him by some of the Respondents, acting in collusion with and/or with the tacit support of Respondent Orange County, thereby forcing him to live under constant fear, trauma and emotional turmoil, caused by the continued and ongoing terror they unleashed upon him, with a common objective to unlawfully

deprive him of his Fundamental Constitutional Rights, in an attempt to stop him from participating in aforesaid religious campaign.

Chief District Judge, Loretta A. Preska, by her May 2, 2012 Order, granted Petitioner's application to proceed *in forma pauperis*. The case was then assigned to Judge Vincent Briccetti by Notice of Assignment dated May 10, 2012.

Judge Briccetti, by his May 14, 2012 Order (Appendix F), dismissed Petitioner's claims against two of the Respondents that were named as defendants in Original Complaint; viz., (a) Andrew P. Bivona, a judge of the Family Court of Orange County, on the ground of judicial immunity, and (b) Orange County Family Court, on the ground of sovereign immunity provided by the Eleventh Amendment.

Accordingly, on June 20, 2012, Petitioner filed an "Amended Complaint" (Appendix G), deleting the originally named defendants, Judge Andrew P. Bivona, and the Orange County Family Court. Barring this deletion, Original Complaint and Amended Complaint were identical in all other aspects.

Meanwhile, Judge Briccetti, in his June 19, 2012 Order (Appendix H), acknowledging receipt of "letter from plaintiff stating that he has been 'threatened, intimidated and harassed in an attempt to force [him] to withdraw [his] complaint.' [and] he fears for his safety," directed Petitioner and County Attorney for the County of Orange to appear for a conference regarding these allegations on July 2, 2012. At the conference, as pointed out in Petitioner's letter dated July 20, 2012 addressed to Judge Briccetti (Appendix I), Petitioner "detailed some of the

intimidation [he was] withstanding [that was] targeted to coerce [him] to stop the Original Action," but no suitable action was ordered by Judge Briccetti.

In same letter dated July 20, 2012 (Appendix I), Petitioner specifically requested Judge Briccetti to allow Petitioner's friend, "Mr. Ben Friedman, [to] take over th[e] [Original] Action as his 'Next Friend' under FRCP Rule 17(c)(2) (...) whereby the intimidation would not bear any effect on th[e] [Original] Action; [rather], it would take [Petitioner's] involvement of this case out, avoiding further harassment and intimidation and risk of closure [of the Original Action]". However, Petitioner's request was denied outright by an endorsement made by Judge Briccetti on said letter (Appendix I) itself.

Likewise, Judge Briccetti denied many other valid requests of Petitioner. In letter dated December 23, 2012 (Appendix J), Petitioner requested for dismissal of Respondent David Rubenstein's Motion to Dismiss on the ground of delay, as the said Motion was filed on December 18, 2012 despite Rubenstein having been served with Amended Complaint on June 26, 2012. But Judge Briccetti brusquely denied Petitioner's request by a terse order endorsed on said letter (Appendix J) itself.

Similarly, Petitioner's request made by letter dated January 27, 2013 (Appendix K) that "in light of the recent increased terror by the Defendants to stop [him] from continuing t[he] [Original] Action, [he may be] allow[ed] to send urgent correspondence to [Judge Briccetti's] Chambers by fax in order to avoid long delays by mail or difficult and expensive transportation," was denied unjustifiedly.

At the same time, Judge Briccetti, without any justification, entertained several Motions to Dismiss the Amended Complaint, filed by most, but not all, of the Respondents, named as defendants in Original Action, months after their having been served with the Amended Complaint, and even granted the belated requests of some of them to join in the Motions to Dismiss previously filed by others.

By Memorandum Decision dated February 11, 2013 (Appendix E), Judge Briccetti granted five Motions to Dismiss filed by Respondents – (1) Children's Rights Society of Orange County ("CRS") and Kim Pavlovic; (2) Maria Petrizio; (3) Stephanie Bazile, Christine Brunet, Child Protective Services of Orange County ("CPS"), and Department of Social Services of Orange County ("DSS"); (4) Kiryas Joel Community Ambulance Corporation ("Kiryas Joel EMS"); and (5) David Rubenstein for the following reasons:

(i) "claims against DSS and CPS" were dismissed "because DSS and CPS are not suable entities"; and "[i]f the Court were to construe [Petitioner's] amended complaint liberally to assert claim against Orange County, that claim would be dismissed under the *Rooker-Feldman* Doctrine";

(ii) "claims against Brunet, Bazile, CRS, Pavlovic and Petrizio" were dismissed for "lack [of] jurisdiction with respect to those claims under *Rooker-Feldman* Doctrine"; and

(iii) "claims against Kriyas Joel EMS and Rubenstein" were dismissed "for failure to state a claim."

The February 11, 2013 Decision (Appendix E); however, granted Petitioner leave to further amend his Amended Complaint with respect to his claims against Kiryas Joel EMS and Rubenstein, and directed him to file amended pleadings by

March 11, 2013. Incidentally, in February 11, 2013 Decision (Appendix E), Judge Briccetti erroneously stated: "[a]ccording to the docket, [defendants] Chaya and Judah Katz have not been served with the amended complaint, and they are not parties to any of the pending motions to dismiss," whereas Katzes had been served with Amended Complaint on September 14, 2012.

Later, acknowledging that Katzes had been served, Judge Briccetti issued Order dated February 22, 2013 (Appendix L) granting Petitioner leave to further amend the Amended Complaint with respect to his claims against the Katzes and Tennenbaums as well. Petitioner's time to file Second Amended Complaint was extended to April 12, 2013.

On February 26, 2013, Petitioner filed a "Motion to Reconsider" (Appendix M) the February 11, 2013 Decision (Appendix E), citing substantive grounds and case-law to show that Petitioner's claims were not hit by *Rooker-Feldman* Doctrine, and to seek leave of the Court to – (a) allow him time to further amend his Amended Complaint as to the Respondents against whom his claims were dismissed by the February 11, 2013 Decision (Appendix E) under the *Rooker-Feldman* Doctrine; and (b) name Orange County and certain municipal entities as defendants.

On March 8, 2013, Petitioner's friend, Mr. Ben Friedman, a non-party, filed "Motion to Appoint [him Petitioner's] Next Friend" (Appendix N) along with a supporting Affidavit (Appendix O). Mr. Friedman, along with his Affidavit (Appendix O, at p.127-135), also filed Petitioner's letter dated February 20, 2013, addressed to Chief Judge Preska, wherein Petitioner had not only stated the

instances of his continuing deprivation of constitutional rights by the conspiratorial behaviour of Respondents both before and after the filing of Original Action but also cited the specific factual circumstances and developments which showed that fraud was being enacted upon the Court.

While aforesaid Motion to Appoint Next Friend (Appendix N) was still pending, Mr. Ben Friedman – as Petitioner's Next Friend – filed on March 11, 2013 an "Amended Motion to Reconsider" (Appendix P) the February 11, 2013 Decision (Appendix E), specifically citing detailed reasons and extensive case-law why *Rooker-Feldman* Doctrine did not apply to this action.

Judge Briccetti denied the Amended Motion for Reconsideration by an arbitrary, frivolous and biased Order dated March 19, 2013 (Appendix D), in which he did not even bother to discuss any of the grounds and case-law cited by Petitioner in said Motion, nor gave any reasons for rejecting them.

By Order dated April 2, 2013 (Appendix Q), Judge Briccetti denied Mr. Ben Friedman's Motion to Appoint Next Friend, altogether ignoring the averments made in his supporting Affidavit as well as Petitioner's letter (Appendix O, at p.127-135) filed therewith, and extended Petitioner's time to file a second amended complaint against Respondents; namely, Kiryas Joel EMS, Rubenstein, Juda Katz, Chaya Katz, Joel Tennenbaum, and Bluma Tennenbaum to May 2, 2013. This, coupled with utter disdain with which he had denied Petitioner's earlier requests, indicated that Judge Briccetti's decisions were swayed by the influence of vested interests.

On April 29, 2013, Petitioner filed the following three Motions:

(i) "Motion for Leave to Amend and Supplement"(Appendix R) the Amended Complaint, pursuant to FRCP Rule 15(b)(2) and Rule 15(d), with new facts regarding incidents that had transpired since the filing of Amended Complaint. The proposed Second Amended Complaint was also submitted along with this Motion (Appendix R).

(ii) "Motion for Protective Order and Appointment of Next Friend" (Appendix S) to ensure that Petitioner's rights, liberty and access to the courts are protected. In this Motion, Petitioner cited specific facts and circumstances, and pleaded detailed reasons, arguments as well as relevant case-law in support of his contention.

(iii) "Motion to Revert Position and Preserve Justice" (Appendix T), requesting the Court to change its "current non-neutral and partial" position to "impartial position [...] pursuant to Canon Codes of Judicial Conduct to allow impartiality and neutrality to rule this case."

While aforementioned three Motions were still pending, Petitioner filed "Modified Second Amended Complaint" (Appendix U) on May 2, 2013, and "Second Motion for Leave to File Modified Second Amended and Supplemental Complaint" (Appendix V) on May 17, 2013.

Respondents Kiryas Joel EMS and Rubenstein filed their "Motions to Dismiss" on May 20 and 22, 2013, respectively.

By Memorandum Decision dated May 28, 2013 (Appendix W), Judge Briccetti denied Petitioner's "Motion for Protective Order and Appointment of Next Friend"

(Appendix S), as well as "Motion to Revert Position and Preserve Justice" (Appendix T), without addressing and/or discussing any of the reasons and arguments – duly supported by case-law – cited therein by Petitioner.

Oddly, in the same May 28, 2013 Decision (Appendix W), Judge Briccetti, without giving Petitioner any opportunity of being heard, granted Respondent John Francis X. Burke's "Motion to Dismiss" under the *Rooker-Feldman* doctrine.

Even before granting Respondent Burke's Motion to Dismiss, Judge Briccetti had already demonstrated his bias by allowing Respondent Burke to belatedly file "Notice of Motion to Dismiss" on February 25, 2013 in an apparent abuse of process of law, as Judge Briccetti had himself previously issued an Order to Show Cause for Partial Default Judgment, entered January 25, 2013 (Appendix X), directing Respondent Burke to appear in person on February 20, 2013, and to show cause why default judgment should not be issued against him as he had been served with the Amended Complaint on as early as September 24, 2012.

Aggrieved by the extrinsic fraud that was being perpetrated upon the Court, as well as Judge Briccetti's extreme bias, that was manifested in Judge Briccetti's last few Decisions and Orders, Petitioner filed on June 4, 2013, a "Motion for Extrinsic Fraud Inquest" (Appendix Y), specifically alleging that "[Respondents] had perpetrated extrinsic fraud (...) upon th[e] Court to defraud and harm [him], and th[e] Court didn't stop it but participated in the fraud," and requesting the Court "to schedule an inquest over the extrinsic fraud in th[e] action."

Judge Briccetti issued Memorandum Decision dated July 2, 2013 (Appendix C), whereby "[Respondents'] motions to dismiss [Petitioner's modified] second amended complaint [we]re GRANTED, and [Petitioner's] various motions to further amend the complaint and for other relief [we]re DENIED."

Even a cursory glance at the July 2, 2013 Decision (Appendix C) reveals that Judge Briccetti did not address or discuss therein any of the grounds and reasons cited in Petitioner's various Motions that were summarily declined in said Decision. Not only this, even though Respondents Juda Katz, Chaya Katz, Joel Tennenbaum, and Bluma Tennenbaum – against whom Judge Briccetti, by his Orders dated February 22, 2013 and April 2, 2013 (Appendices L and Q, respectively), had granted Petitioner leave to amend his Amended Complaint – did not file any Motion to Dismiss[3]; still, Judge Briccetti, in a blatant display of undue haste, caused by extraneous influence of vested interests, dismissed Petitioner's claims against these Respondents, too, by his July 2, 2013 Decision (Appendix C), thereby confirming that his said Decision, as well as his prior Orders and Decisions, were vitiated by fraud, in which he, too, had participated under the pressure of vested interests.

Thus, as a result of the acute bias of Judge Briccetti, as well as the fraud enacted upon the Trial Court, in which fraud Judge Briccetti, too, was involved, Petitioner never got the rightful opportunity of being heard in the Trial Court.

[3] A careful perusal of the "Doc. ## 171, 172, 190, 198, 208, 211, 223, 227" of Case No. 12-CV-2858, which are referred to in July 2, 2013 Decision (Appendix C) as "all of the pending motions", reveals that none of these motions was filed by any of the Respondents; namely, Juda Katz, Chaya Katz, Joel Tennenbaum, and Bluma Tennenbaum, meaning thereby that they did not file any Motion to Dismiss the Modified Second Amended Complaint, still it was dismissed against them by Judge Briccetti without giving any reason in his said Decision..

3. ***Independent Action pursuant to Fed. R. Civ. P. 60(d)***

(Teitelbaum v. Darwin et al., 13-CV-5311). Following dismissal of the Original Action by Judge Briccetti's various Orders and Decisions (last of which being July 2, 2013 Decision (Appendix C) that were vitiated by fraud, in which Judge Briccetti himself was involved, and because Petitioner never got the rightful opportunity of being heard in the Original Action, he had no other remedy at law than to invoke the provisions of Rule 60(d) of F.R.C.P. by filing another Complaint as an Independent Action entitled *Teitelbaum v. Darwin et al.*, Case No. 13-CV-5311, filed in the District Court (S.D.N.Y.) on July 30, 2013 (hereinafter "July 2013 Complaint" or "Independent Action") (Appendix Z); i.e., within 28 days of the entry of Judge Briccetti's July 2, 2013 Decision (Appendix C), to seek protection of his Constitutional Fundamental Rights that were being violated by Respondents.

The July 2013 Complaint (Appendix Z) not only named some new defendants; inter alia, including Orange County, a State actor, and Judge Briccetti, in addition to the Respondents named herein, but also pleaded new causes of action, including "extrinsic fraud", and set forth – (a) Petitioner's claims under the provisions of 42 U.S.C. §§ 1983, 1985 for various deprivations of his Fundamental Constitutional Rights by Respondents and new defendants named therein, (b) a clear pattern of how he was being targeted, intimidated, and terrorized in pursuance of a deliberate conspiracy among them, and (c) a clear meeting of their minds.

By Order dated September 20, 2013 (Appendix AA), Chief District Judge Loretta A. Preska granted IFP status to Petitioner.

Thereafter, Chief Judge Preska abruptly issued an Order of Dismissal, entered on October 2, 2013 (Appendix AB), dismissing the Independent Action against Respondent Judge Briccetti under the doctrine of judicial immunity, and against the other Respondents (as well as remaining defendants named in the Independent Action) under the doctrine of *res judicata.*

On October 8, 2013, Petitioner sent a letter to Chief Judge Preska, requesting additional time to file a motion for reconsideration under FRCP 59(e) and Local Civil Rule 6.3. Considering the letter as a motion for extension of time, Chief Judge Preska denied Petitioner's request by her Order dated October 18, 2013.

On October 30, 2013; i.e., within 28 days of entry of Chief Judge Preska's Order of Dismissal, entered on October 2, 2013 (Appendix AB), Petitioner filed:

(i) Motion pursuant to Rules 50, 52, 59, and 60 of FRCP and Local Civil Rule 6.3 (Appendix AC) for Reconsideration of Judge Preska's Order of Dismissal, entered October 2, 2013 (Appendix AB), and

(ii) Motion for Recusal and/or Disqualification (Appendix AD) pursuant to 18 U.S.C. §455(a) and (b)(2), 18 U.S.C. §144, and the Canon Codes of Judicial Conduct 2(A),(B), 3(A)(1),(3),(4), and 3(C)(1)(a), along with supporting Affidavit (Appendix AE).

Both aforesaid Motions were denied by Chief Judge Preska by Order dated December 17, 2013, which was entered on December 18, 2013). (Appendix AH).

4. ***Court of Appeals Proceedings (Teitelbaum v. Katz, Docket No. 14-93-CV)****.* On January 9, 2014; i.e., within the prescribed time limit of 30 days

from the entry of Chief Judge Preska's last Order, entered on December 18, 2013) (Appendix AH), Petitioner filed Notice of Appeal (Appendix AI) from District Court's Memorandum Decision dated and entered July 2, 2013 (Appendix C); Order dated March 19, 2013 (entered on March 20, 2013) (Appendix D), and Memorandum Decision dated February 11, 2013 (entered February 13, 2013) (Appendix C).

On February 3, 2014, Petitioner also filed Motion for Leave to appeal *in forma pauperis* along with necessary Declaration and Affidavit.

By Order dated April 3, 2014 (Appendix A), the Second Circuit Court of Appeals "dismissed the appeal for lack of jurisdiction" after "determin[ing] *sua sponte* that notice of appeal was untimely filed," and "denied as moot" the Petitioner's Motion "for *in forma pauperis* status."

On April 15, 2014, Petitioner filed a Motion for Reconsideration (Appendix AJ) pursuant to Local Rule 27.1 and Rule 27(b) of FRAP, requesting the Court of Appeals to reconsider its April 3, 2014 Order (Appendix A); to admit his Notice of Appeal; and to grant him *in forma pauperis* status.

The Court of Appeals, by its Order dated May 19, 2014 (Appendix B), denied Petitioner's aforesaid Motion for Reconsideration (Appendix AJ), leaving him no other option but to approach this Honorable Court with this Writ Petition.

REASONS FOR GRANTING THE PETITION

1. The Court of Appeals improperly dismissed Petitioner's appeal for lack of jurisdiction after wrongly determining *sua sponte* that notice of appeal was untimely filed, because as stated in Motion for Reconsideration (Appendix AJ):

(i) Under Rule 4(a)(4)(A) of Federal Rules of Appellate Procedure (hereinafter "F.R.A.P."), if a party files in the District Court, among others, a motion "for relief under Rule 60" of FRCP, and "if the motion is filed no later than 28 days after the judgment is entered, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion".

(ii) On July 30, 2013; i.e., within 28 days of the entry of Judge Briccetti's last Memorandum Decision dated and entered July 2, 2013, Petitioner brought an Independent Action **pursuant to Rule 60(d) of FRCP**, which was dismissed by Chief Judge Preska's September 30, 2013 Order (entered October 2, 2013).

(iii) On October 30, 2013; i.e., within 28 days of the entry of Judge Preska's September 30, 2013 Order (entered October 2, 2013), Petitioner filed a Motion pursuant to **Rules** 50, 52, 59, and **60 of FRCP** and Local Rule 6.3 for reconsideration of said Order, which was denied by Chief Judge Preska's Order dated December 17, 2013 (entered December 18, 2013).

(iv) As such, in keeping with the provisions of Rule 4(a)(4)(A) of F.R.A.P., the Notice of Appeal was filed on January 9, 2014; i.e., well within the prescribed time limit of 30 days from the date of entry of Chief Judge Preska's Order dated December 17, 2013 (entered December 18, 2013).

2. The District Court erred in dismissing independent action, brought by Petitioner pursuant to F.R.C.P. Rule 60(d) following the dismissal of his Original

Action by the orders/decisions that were vitiated by fraud upon the court - in which fraud the presiding judge was himself involved - under the doctrines of *res judicata* and judicial immunity, because:

(i) Firstly, the July 2013 Complaint (Appendix Z), filed in independent action, made, inter alia, the following new well-pleaded factual allegations, which were not pleaded either in Original Complaint or any of its subsequent Amendments:

(a) "After filing the original action, the previously ongoing harassment, intimidation and terrorization of Plaintiff was renewed with increased intensity (...), and it was targeted to stop – (a) Plaintiff's original action, (b) his access to court, and (c) his involvement in aforesaid religious campaign. Resultantly, Plaintiff's children were terminated, and he was pushed into a destitute, homeless situation, without normal living conditions." (Appendix Z, at ¶6.)

(b) "once the Defendant Kiryas Joel Community Ambulance Corporation, in collusion with other Defendants (...), by misusing the huge political influence (...) managed to establish a connection with Defendant Judge Briccetti, the latter (...) became biased against Plaintiff." (Appendix Z, at ¶7.)

(c) "Defendant Judge Briccetti, acting under extraneous influence, not only participated in furthering the object of aforesaid conspiracy, but also stopped performing his neutral judicial function, and eventually issued a Memorandum of Decision and Order on July 2nd, 2013 whereby he unceremoniously dismissed the original action with prejudice (...) without giving Plaintiff a fair opportunity of being heard." (Appendix Z, at ¶8).

(d) "Defendant Judge Briccetti's July 2nd, 2013 Order, (...) is, in fact, an order produced by committing extrinsic fraud on Court; therefore, it is void and liable to be set aside" and that "Because the July 2nd, 2013 Order is vitiated by fraud, in which Judge Briccetti himself is involved, and (...) Plaintiff was never given the rightful opportunity of being heard in the original action..." (Appendix Z, at ¶¶9-10).

(ii) Secondly, July 2013 Complaint stated new causes of action; including, "extrinsic fraud" practiced by Respondents on the Court, that were not raised in Original Complaint or any of its subsequent Amendments.

(iii) Thirdly, new defendants; viz., Attorney David Lee Darwin, Attorney Rebecca Baldwin Montello, Attorney Gregg D. Weinstock, Attorney Jeffrey B. Siler, Attorney Terence S. Hannigan, Attorney Patrick T. Burke, and Judge Briccetti were added in July 2013 Complaint.

(iv) Thus, in view of the addition of new material factual allegations, new causes of action and new defendants in July 2013 Complaint, Petitioner's claims, as set forth therein, could not be said to have been barred by the doctrine of *res judicata*. In any case, a "void judgment cannot constitute *res judicata*." *Bruce v. Miller*, 360 P.2d 508 (1960). A void judgment is one that has been procured by extrinsic or collateral fraud, or entered by court that did not have jurisdiction over subject matter or the parties. *Rook v. Rook*, 353 S.E. 2d 756 (1987). It is thus fraud where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his

judicial function – thus where the impartial functions of the court have been directly corrupted." *Envirotech Corp. v. Amstar Corp.*, 48 F.3d 1237 (Fed. Circ. 1995) (quoting *Bullock v. United States*, 721 F.2d 713, 718 (10th Circ.1983)). Intentional corruption or improper influence aren't even necessary elements of fraud on the court if one establishes that the judge has not performed his common judicial function. Such a malfunction of the judicial machinery is itself enough to establish fraud on the court. *Id.*

(v) A court has equitable power to entertain a party's action that seeks to set aside a judgment based upon "fraud in its procurement." because Rule 60(d)(3) preserves a court's power to "set aside a judgment for fraud on the court," and a court may exercise its equitable power to set aside a fraudulent judgment "to maintain the integrity of the courts and safeguard the public." *United States v. Smiley*, 553 F.3d 1137.

(vi) This Honorable Court has held that federal courts possess the inherent power "to vacate [their] own judgment[s] upon proof that a fraud has been perpetrated upon the court." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) [citing *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944)]. This Court also held in *Hazel-Atlas case,* supra, at 246, that "tampering with the administration of justice (...) involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in

which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."

(vii) As regards the dismissal of July 2013 Complaint against Respondent Judge Briccetti under the "doctrine of judicial immunity", this doctrine did not apply, because Judge Briccetti was named as a defendant in July 2013 Complaint not for any of his rulings and/or the judicial acts he performed in his judicial capacity, but for his involvement in the fraud, and for having conspired with other defendants named therein to stop Petitioner's original action by misleading him about his civil rights, discouraging him from seeking protection thereof, and ultimately blocking his access to the Court and justice.

3. The District Court improperly concluded that it lacked subject matter jurisdiction with respect to Petitioner's claims against the Respondents; namely, DSS, CPS, Christine Brunet, Stephanie Bazile, CRS, Kim Pavlovic, Maria Petrizio, and Francis X. Burke under the *Rooker-Feldman* Doctrine[4], because:

(i) The District Court, in its February 11, 2013 decision (Appendix E), correctly noted that:

[4] Claims against DSS, CPS, Christine Brunet, Stephanie Bazile, CRS, Kim Pavlovic, and Maria Petrizio were dismissed by February 11, 2013 Decision (Appendix E), and claims against Francis X. Burke by May 28, 2013 Decision (Appendix W), all under *Rooker-Feldman* Doctrine.

> "Four requirements must be met for the [*Rooker-Feldman*] doctrine to apply: (1) the federal court plaintiff must have lost in state court, (2) the plaintiff must complain of injuries caused by a state court judgment, (3) the plaintiff must invite district court review and rejection of that judgment, and (4) the state court judgment must have been rendered before the district court proceedings commenced. The first and fourth requirements are procedural, and the second and third requirements are substantive;"

but improperly concluded that:

> "All four requirements are met here: (1) plaintiff lost in family court by admitting to neglecting his children and consequently losing custody of them; (2) plaintiff's injuries (i.e. violation of his alleged constitutional right to have custody of his children and to raise them as he sees fit) were caused by the family court's judgment; (3) plaintiff now asks this Court to reconsider the merits of the family court's determinations; and (4) the family court decision was rendered before this action was commenced."

(ii) Actually, as discussed below, none of the four requirements is met:

(1) The first requirement is not met, as the issues raised by Petitioner in Original Complaint and/or its subsequent Amendments, particularly the conspiracy issue and the issue of constitutional rights violation, were presented for the first time before the District Court. The conspiracy alleged, as a matter of law, operates as a completely separate legal issue. There has been no adjudication of any kind and in any other court of the

issue of the violation of Petitioner's constitutional rights and conspiracy claims. These issues were not decided by family court prior to the Original Action being brought, and this is fundamental to the applicability of *Rooker-Feldman* doctrine. "[I]n determining whether that question was raised and decided we must be guided by the record. It has been examined and we find it does not show that the question was raised in any way prior to the judgment of affirmance in the Supreme Court." *Rooker v. Fidelity Trust Co.*, 261 U.S. 114, 117 (1923).

(2) Neither is the second requirement satisfied, as nowhere in Original Complaint and/or its subsequent Amendments, Petitioner complained of injuries caused by a family court judgment; instead, he complained of the injuries caused by the conspiratorial acts of Respondents, as well as the deliberate deprivation and violation of his fundamental constitutional rights, caused by the conspiratorial misuse of State power by Respondents, which was further aggravated by the abuse of process of law by them during the proceedings in family court. A mere mention of the fact in Original Complaint and/or its subsequent Amendments that Petitioner was harassed and persecuted in family court as a result of the conspiratorial actions of Respondents, both jointly and individually, would not

mean that he complained of injuries caused by the adjudications that occurred in family court. The Respondents' conspiratorial behavior, irrespective of the result in the family court, is actionable because the conspiracy that was committed against Petitioner, as a matter of law, is a separate issue from any other act by Respondents. "The crime of conspiracy is an offense separate from the crime that is the object of the conspiracy. Once an illicit agreement is shown, the overt act of any conspirator may be attributed to other conspirators to establish the offense of conspiracy (cf. *People v Salko*, 47 NY2d 230; *People v Sher*, 68 Misc 2d 917) and that act may be the object crime." *People v. McGee*, 49 N.Y.2d 48, 57-58 (N.Y. 1979). Ergo, the conspiracy asserted by Petitioner stands on its own and is in no way dependent on the judicial results in family court.

(3) Likewise, the third requirement is also not met, as nowhere in the Original Complaint or any of the subsequent Amendments did Petitioner ask the District Court to revisit any of the decisions rendered in the family court nor did the Petitioner ask the District Court for relief of anything that resulted from the adjudications in the family court. Petitioner's federal action was against Respondents, and it did not seek either review, rejection, reversal or redress of any of the family court adjudications. A

review of the record from the family court would show that the issues addressed in the family court were fundamentally different from those presented before the District Court, and did not depend on the District Court overruling or in any way superseding the authority of the family court.

(4) And, the fourth requirement is of no moment here because the Petitioner's federal action before the District Court was not based on any state court adjudication or any result from any state court, irrespective of their outcomes. The relief sought by Petitioner in federal action was based wholly in the past, present, and ongoing unconstitutional behavior by Respondents and enjoining them from further harassing and violating Petitioner's constitutional rights. At no time was the District Court asked to review or reverse any state court's action, nor was the District Court asked to prevent the various Respondents from acting within the law in executing their various functions, even as it regards Petitioner. As there was no state court adjudication of the issues presented before the District Court there cannot have been a state court judgment "rendered before the District Court proceedings commences."

(iii) Also see; *McKnight V. Middleton* 699 F. Supp.2d 507, 514 **(**E.D.N.Y. 2010) citing *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 85

(2d Cir. 2005) (alterations in original) (quoting *Exxon Mobil v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)). "The first and fourth requirements are procedural, while the second and third are substantive." *Id*. In this case, the *Rooker-Feldman* doctrine did not bar Petitioner's claims because Petitioner did not "invite district court review and rejection" of a state court judgment. *Id*. The doctrine only applies when "the requested federal court remedy of an alleged injury caused by a state court judgment would require overturning or modifying that state court judgment."*Id*.

(iv) "In the child custody context, in order to satisfy this substantive requirement, a plaintiff must be 'plainly' seeking to 'repair to federal court to undo the [Family Court] judgment." *Green v. Mattingly*, 585 F.3d 97, 102 (2d Cir. 2009) (quoting *Exxon Mobil*, *supra*, 544 U.S. at 293). In *Green*, the Second Circuit held that *Rooker-Feldman* did not apply to a plaintiff's challenge of a temporary custody award that was later reversed by the Family Court itself. *Id*. The Second Circuit reasoned that, since the child had already been returned to the plaintiff by the Family Court, no state-court 'judgment' remained to be undone by federal courts. *Id*.

(v) This Honorable Court may appreciate that if *Rooker-Feldman* Doctrine were applicable, there would be no federal remedy for Petitioner,

particularly as it regards the ongoing conspiratorial harassment and violations of his constitutional rights.

(vi) For these reasons, the District Court's conclusion that it lacks jurisdiction under *Rooker-Feldman* Doctrine is erroneous.

4. As explained below, the District Court erred in not granting Petitioner, a *pro se* and IFP litigant, even one opportunity to amend his Complaint against most of the Respondents, despite Petitioner's repeated, timely requests:

(i) By February 11, 2013 Decision (Appendix E), Judge Briccetti granted Motions to Dismiss filed by the Respondents; namely, CRS, Kim Pavlovic, Maria Petrizio, Stephanie Bazile, Christine Brunet, CPS and the DSS; and, thereafter, did not grant even one opportunity to Petitioner, a *pro se* litigant proceeding IFP, to amend his pleadings against these Respondents and/or to name Orange County and certain municipal entities as defendants, despite the timely filing by Petitioner of Motion for Reconsideration (Appendices M and P) and Motions For Leave to Amend and Supplement the Pleadings (Appendices R and V).

(ii) Lest there be any confusion, Petitioner hereby clarifies that the contents of "Amended Complaint" that is referred to in February 11, 2013 Decision (Appendix E), by which the abovenamed Respondents' Motions to Dismiss were granted, were exactly the same as those of Original Complaint except that the names of Respondents; namely, Orange County Family Court, and Judge Andrew P. Bivona, that had

been named as defendants in Original Complaint, were deleted from the "Amended Complaint" by Petitioner in view of Judge Briccetti's May 14, 2012 Order (Appendix F). As such, it was not an "Amended Complaint" in the true sense.

(iii) The Second Circuit has clearly laid down the law that pursuant to Fed. R. Civ. P. 15(a), "leave [to amend] shall be freely given when justice so requires," even after entry of judgment. *Ruotolo v. City of N.Y.*, 514 F.3d 184, 191 (2d Cir. 2008). "Where there is neither a showing of the movant's undue delay, bad faith or dilatory motive, nor a showing of undue prejudice to the opposing party by virtue of allowance of the amendment, leave to amend should be granted." *In re Winstar Commc'ns*, 2006 U.S. Dist. LEXIS 7618, at 4 (S.D.N.Y. 2006) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)); *Acito v. IMCERA Grp., Inc.* 47 F.3d 47, 55 (2d Cir. 1995).

(iv) Thus, with the Petitioner having not been granted leave by the District Court to amend pleadings in utter disregard of the principle of law laid down in this behalf, there has been a gross and fundamental miscarriage of justice in this case, which deserves to be reversed by this Honorable Court.

5. The District Court erred in dismissing Petitioner's claims against the Respondents for failing to state claim under 42 U.S.C. § 1983 and/or 1985[5], because:

[5] See February 11, 2013 Decision (Appendix E).

(i) While granting the Motions to Dismiss filed by Kiryas Joel EMS and Rubenstein in July 2, 2013 Decision (Appendix C, at p.5), Judge Briccetti wrote: "in SAC[6], p[etitoner] has failed to allege any additional facts with respect to any [respondent] that give rise to a plausible claim that any of the [respondents] acted under the color of state law or conspired to deprive p[etitioner] of his constitutional rights."

(ii) Judge Briccetti actually turned a blind eye to the specific assertions Petitioner made in SAC; i.e., Modified Second Amended Complaint (Appendix U):

> "P[etitioner] is a resident in a Hasidic, ultra-Orthodox, closely-knit community. ... P[etitioner] got involved in a religious campaign against forced divorces that have been taking place through the use of kidnapping within the community." (Appendix U, at ¶1) "Certain people in the community disagreed with the religious campaign, this resulted in severe terror and intimidation when individuals in the community conspired with State actor Defendant Orange County and others outside this community against P[etitioner] in a conspired collaboration acting in concert and separately in a conspiratorial manner to further this goal to intimidate, deprive and violate P[etitioner]'s Civil Rights in many different ways." (Appendix U, at ¶2) "P[etitioner] was subjected to severe intimidation, harassment, terror, his freedom was jeopardized, his family broken up, his children taken away and terminated from him, pushing P[etitioner] into a homeless situation and without normal living

[6] "SAC" was theshort name given to "Modified Second Amended Complaint" in July 2, 2013 Decision (Appendix C).

conditions, under constant fear, trauma and emotional turmoil by the continued and ongoing terror." (Appendix U, at ¶4) "This has left the P[etitioner] with no other option than to seek remedy in this Court. This complaint sets forth a clear pattern of P[etitioner] being targeted, intimidated, and terrorized, it sets forth a clear meeting of the minds between the conspirators, and all Defendants including Defendant Orange County, a State actor. Plaintiff sets forth his claims through 1983 and 1985 actions, for claims of various deprivations of Fundamental Constitutional Rights." (Appendix U, at ¶6)

(iii) Petitioner had thus proffered sufficient claims in SAC that support the indicia that Respondents acted in concert to effect a certain end that would ultimately deprive Petitioner of his Constitutional Rights, both enumerated and unenumerated. Petitioner had asserted that based on the cumulative actions of the various Respondents, there is a facial appearance of a conspiracy, organized by one or more of the Respondents, in which various parties, with or without knowledge of the other actors, acted in concert to achieve the end of depriving the Petitioner of the Rights asserted in SAC.

(iv) In order to be sustainable, a conspiracy charge must contain at least some discernible facts that point to the existence of a conspiracy, and this may "be inferred from the circumstances." *Capogrosso v. Supreme Court of N.J.*, 588 F.3d 180, 184 (3rd Cir. 2009). "The Court is mindful that direct evidence of a conspiracy is rarely available and that the existence of a conspiracy must usually be inferred from the

circumstances. The Court is equally mindful that caution is advised in any pre-trial disposition of conspiracy allegations in civil rights actions." *Id.* at 184-185.

(vii) The Respondents did act under the color of state law because "To act 'under color of' state law for §1983 purposes does not require that the defendant be an officer of the State. It is enough that he is a willful participant in joint action with the State or its agents. Private persons, jointly engaged with state officials in the challenged action, are acting ... 'under color' of law for purposes of §1983 actions." *Lewittes v. Lobis*, 2004 U.S. Dist. LEXIS 16320, 41 (S.D.N.Y. 2004) citing, *Dennis v. Sparks*, 449 U.S. 24, at 27-28 (1980), 101 S. Ct. 183, at 186 (1980).

(viii) Even if some of the Respondents, particularly, the attorneys, were private individuals; still, by virtue of their court appointment they were acting in concert with others, who definitively were state actors, to conspire to violate the Petitioner's constitutional and statutory rights. "Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of §1983." *Harvey v. Plains Twp. Police Dep't*, 421 F.3d 185, 195 (3rd Cir. 2005). The Respondents acted at the direction of state actors and as such became *de facto* agents of the state.

(ix) The Respondents are state actors for §1983 purposes, as "every person who, under color of … [state law] subjects, or causes to be subjected,

any … person within the jurisdiction [of the United States] to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law [or a] suit [in] equity ….” *Arena v. Dep't of Soc. Servs.*, 216 F. Supp. 2d 146, 155 (E.D.N.Y. 2002).

(x) Petitioner had stated the elements required by §§ 1983 and1985. The federal causes of action against the individual defendants were based on allegations of conspiracy and intent to deprive Petitioner of his constitutional rights of free speech and assembly, and to be secure from the deprivation of life and liberty without due process of law. These federal causes of action against the individual defendants were alleged to arise under, inter alia, 42 U.S.C. §§ 1983 and 1985, and jurisdiction was asserted to exist under 28 U.S.C. § 1343. *Moor v. County of Alameda*, 411 U.S. 693, 695 (1973).

(xi) In *Erickson v. Pardus*, 551 U.S. 89, 93-94 (2007), this Court held that:

> “Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Specific facts are not necessary; the statement need only” ‘give the defendant fair notice of what the ... claim is and the grounds upon which it rests.” “*Bell Atlantic Corp.* v. *Twombly* , 550 U.S. __, (2007) (slip op., at 7-8) (quoting *Conley* v. *Gibson*, 355 U.S. 41, 47 (1957)). In addition, when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint. *Bell Atlantic Corp.*, *supra*, at __ (slip op., at 8-9) (citing *Swierkiewicz* v.

Sorema N. A., 534 U.S. 506, 508, n. 1 (2002); *Neitzke* v. *Williams*, 490 U.S. 319, 327 (1989); *Scheuer* v. *Rhodes*, 416 U.S. 232, 236 (1974))."

(xii) In any case, the pre-trial dismissal of Petitioner's case for want of proof of conspiracy was premature, as there had been no discovery of any kind till that time. Petitioner ought to have been allowed a measure of discovery in order to ascertain the facts necessary to move ahead to trial. As such, the dismissal of his claims was not in the interests of fairness and justice, and was unduly prejudicial to Petitioner.

6. Petitioner, already rendered homeless and destitute by the powerful Kiryas Joel political machinery for not complying with their diktat; and therefore, suffering continuous violation of his constitutional rights at the hands of Respondents, cannot be left without remedy at law.

(i) Petitioner has been suffering violation of his constitutional rights, only because he chose to participate in a religious campaign against the evil practice of forced divorces in his community. This practice is concisely described in the criminal complaint (Appendix AF) that was filed in an analogous matter, and is already a widespread menace, as reported in the Huffington Post dated October 10, 2013 (Appendix AG).

(ii) Petitioner has practically been left without remedy at law, after the District Court erroneously dismissed his claims against some of the Respondents under the *Rooker-Feldman* Doctrine, and against the other Respondents for failing to state claim, but without granting him

leave to amend his pleadings; and the Court of Appeals has dismissed his Appeal after incorrectly determining that notice of appeal was untimely filed, apparently without considering that the time limit for filing of Appeal had been extended under Rule 4(a)(4)(A) of F.R.A.P. by timely filing of motions pursuant to, inter alia, Rule 60 F.R.C.P. by Petitioner in the District Court.

(iii) The legal system and structure of this country cannot be so inadequate as to leave Petitioner – a homeless destitute devoid of financial means and resources – without remedy at law; therefore, it is imperative in the interest of justice and equity that this petition be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: August 12, 2014

Respectfully Submitted,

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