

No.-----

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**RICKY KAMDEM-OUAFFO**

Petitioner

v.

BALCHEM CORPORATION, GIDEON OENGA (In Personal capacity and in capacity with Balchem Corporation), BOB MINIGER (In Personal capacity and in capacity with Balchem Corporation), RENEE McCOMB (In Personal capacity and in capacity with Balchem Corporation), THEODORE HARRIS(In Personal capacity and in capacity with Balchem Corporation), JOHN KUEHNER (In Personal capacity and in capacity with Balchem Corporation), TRAVIS LARSEN (In Personal capacity and in capacity with Balchem Corporation), MICHAEL SESTRICK(In Personal capacity and in capacity with Balchem Corporation)

Respondents

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE US COURT OF APPEALS FOR THE SECOND CIRCUIT  
(CASES No. 23-455 AND 23-458)**

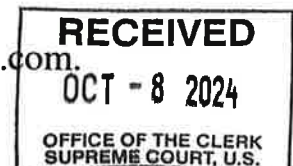
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**CORRECTED APPLICATION ADDRESSED TO JUSTICE SONYA  
SOTOMAYOR FOR PERMISSION TO FILE AN OVERSIZED IN  
FORMAT PAUPERIS PETITION FOR A WRIT OF CERTIORARI UNDER  
SUPREME COURT RULE 12.4 FOR RELATED APPELLATE CASES # 23-  
455 AND 23-458**

**Date:** 10/03/2024

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## GROUND FOR THE APPLICATION AND RELIEF SOUGHT

**Honorable Justice Sotomayor,**

Petitioner gives thanks to the Court for the extension of time it provided under petitioner's Application No. 24A69. Enclosed is the Corrected version of the Petition in accordance with the guidelines provided by the Clerk in the 09/04/2024 Letter.

This Petition was very difficult to prepare for several reasons. 1)- the large number of Opinions and Orders from proceedings below; 2)- the inferior courts violated two Jurisdictional Rules and every relevant adjudicative steps of the Civil Procedures; 3)- the inferior courts violated every fundamental constitutional rights to which Petitioner is entitled like anybody else, including flagrant violations of the First, Fourth, Fifth, and Seventh Amendments of the Constitution; 4)- every violation of jurisdictional or fundamental constitutional rights runs afoul of all aspects of the Supreme Court Rule 10, resulting in more than one grounds to argue in support of a Writ Of Certiorari under Supreme Court Rule 10.

Petitioner had initially thought that because Appellate Cases No. 23-455 and 23-458 were kept separate by the Court of Appeals, Petitioner would have to file separate Petitions for a Writ Of Certiorari. However as Petitioner worked on his petitions, he reached an understanding that because Case No. Case No. 7:19-cv-09943-PMH was dismissed under the doctrine of Res Judication in relation to Case

No. 7:17-cv-02810-PMH-PED, the two cases needed to be briefed in one Petition for a Writ of Certiorari.

Petitioner has earnestly considered how to shorten his Petition to the page limit mandated by the court. But the only way to do so would require that Petitioner abandons material facts that are relevant to fundamental constitutional rights, along with the compelling arguments that are available under Supreme Court Rule 10 in support of the same. The decision to abandon material facts and compelling arguments that are relevant to fundamental constitutional rights is simply not one that a pauper American like pauper Muslim Petitioner can make on his own because the Constitution is a shared heritage between rich and poor Americans and thus deserves to be defended with every real and relevant material fact or argument so that the court can make a final decision in interest of all Americans. In fact, the Rules and Precedents of the Supreme Court are clear on the message that during the exercise of its discretionary power, the Supreme Court looks for those Petitions that Present facts and arguments in support of Questions that could be resolved for a greater purpose of justice and law than simply providing relief for the Petitioner's grievances. Thus Petitioner reached an understanding that he will not be acting in good conscience should he withhold any information from the Supreme Court which he found during his legal research and which he believes would support the court's duty to uphold the constitution and to lead the inferior courts in the correct direction.

Each of the three constitutional Questions Presented by Petitioner is sufficient to be a separate stand-alone Petition for A Writ Of Certiorari. However, based upon *Mansfield, C. L. M. R. Co. v. Swan*, 111 U.S. 379, 382 (1884)” it does appear that because of the two Subject-Matter Jurisdiction defects under the Fed. R. Civ. P. Rules 6(b)(2) and 72(a) as argued under QUESTION I, the Supreme Court is REQUIRED under Article III Section 2 of the constitution to exercise appellate review of the Subject-Matter Jurisdiction when a clear violation occurred in the inferior courts:

“Similarly, a court, including an appellate court, will raise lack of subject-matter jurisdiction on its own motion. “[T]he rule, springing from the nature and limits of the judicial power of the United States is inflexible and without exception, which requires this court, of its own motion, to deny its jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record.” *Id* at 701 – 702.

Petitioner found that there were two fundamental defects of Subject-Matter jurisdiction and of due process of law with regard to the manner in which the inferior Courts dismissed Petitioner’s Complaints. One of the Subject-Matter Jurisdiction defects is that the Magistrate Judge’s 10/01/2020 Order upon which the inferior Courts predicated the Dismissal of Case No. 7:17-cv-02810-PMH-PED was timely Objected to under the Fed. R. Civ. P. Rule 72(a) by Petitioner on the date of 10/12/2020 prior to the deposition date. But Petitioner’s Rule 72(a) Objection was never heard by a US Judge as required by the Fed. R. Civ. P. Rule 72(a). Petitioner

found that whenever other US Court of Appeals encountered such a situation in an Appeal, they simply vacated the District Court Order on ground of defect of Jurisdiction. They explained that a Magistrate Judge's Order against which a timely Rule 72(a) Objection was filed is not a Final Order until a US Judge hears and decides the pending Rule 72(a) Objection.

The Second Subject-Matter jurisdiction defect is that the courts below "*Ordered, Adjudged, Decreed*" Or "*Affirmed*" that Petitioner's Motion to vacate pursuant the Fed. R. Civ. P. Rule 60(b)(4) that was filed ten (10) months after the Judgment as a Motion under the Fed. R. Civ. P. Rule 59(e). However, the Fed. R. Civ. P. Rule 6(b)(2) literally prohibits a federal court from extending the time within which a Motion under Rule 59(e) may be filed which is currently set to 28 days. In addition, no other court uses the Standards of "*abuse of discretion*" for the analysis or review of a Rule 60(b)(4) Motion for Relief from a Void Order because a Rule 60(b)(4) Motion is a pure question of law.

The two Subject-Matter jurisdiction and procedural defects highlighted above are further exacerbated by the fact that Petitioner complaints were dismissed after Petitioner had applied for Summary Judgment at least three times, and every time the District Court Denied Petitioner's Application without prejudice under the pretext that Respondents wanted more discovery without however providing any specific as to what other discovery Respondents needed in addition to the ones

Petitioner had already produced. On this issue, other US Court of Appeals hold that it is a violation of Fed. R. Civ. P. Rule 56(d) when a Motion for Summary Judgment is Denied for the continuation of unspecified discovery question. They explained that Rule 56(d) requires that once a party submits an Application for Summary Judgment, a continuation may be provided for a non-movant only upon a showing in an Affidavit or Declaration that the non-movant has need for specified discovery that could only be obtained from the movant. For the rest, Questions II and III are direct constitutional issues that arose during proceedings.

Accordingly, in light of the nature of the decisions and of the actions of the inferior courts that created the particular circumstances resulting in the necessity for such an oversized Petition, Petitioner prays that the court considers the enclosed Oversized In Format Pauperis Petition on the merits of the constitutional Questions Presented and of the Compelling Arguments submitted by Petitioner under the Supreme Court Rule 10 in support of the allowance a Writ Of Certiorari. Of course in the eventuality that the court allows Certiorari on one or several questions, the court could indicate its preference for which aspects the parties should focus their subsequent Briefs on.

Respectfully submitted.

Date: 10/03/2024



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## **ENCLOSURES**

- 1) Corrected Oversized In Forma Pauperis Petition For A Writ Of Certiorari.**
- 2) Appendix To The Oversized In Format Pauperis Petition, Volumes 1 to 5.**
- 3) Affidavit Proof Of Service.**