

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CIVIL TERM

-----X
THE PEOPLE OF THE STATE OF NEW YORK,
ex rel. LEILA ROBINSON, private citizen, on behalf of
MICHAEL BARTON,

Petitioner,

**AFFIRMATION IN
OPPOSITION TO PETITIONER'S
WRIT OF HABEAS CORPUS**

Indictment No. IND-72494-23
Bronx Supreme Court
Criminal Term

- against -

Index No. 815199/2023E
Andrew J Cohen, AJSC
Bronx Supreme Court
Civil Term

THE PEOPLE OF THE STATE OF NEW YORK,
DARCEL D. CLARK, BRONX COUNTY DISTRICT
ATTORNEY, NEW YORK STATE SHERIFF, NEW
YORK STATE POLICE OFFICERS, JOHN DOES #1
THROUGH 5, LOUIS A. MOLINA, NEW YORK STATE
DEPARTMENT OF CORRECTIONS, JUDGE
LAWRENCE E. BUSCHING, BRONX SUPREME
COURT, JUDGE AUDREY STONE, JUDGE,
BRONX SUPREME COURT,

Respondents.

-----X

I, **MELANIE SMITH**, an attorney duly admitted to practice before the courts of this state, affirm under penalty of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules that the following statements are true, except for those statements made upon information and belief, which I believe to be true:

1. I am an Assistant District Attorney in the Office of **DARCEL D. CLARK, the District Attorney of Bronx County**. I submit this affirmation in opposition to petitioner's application, dated October 3, 2023, for a writ of habeas corpus and Temporary Restraining Order pursuant to CPLR Article 70, in relation to his pending criminal prosecution.

2. I am assigned to the prosecution of defendant who is charged under Bronx County Indictment Number IND-72494-23 for Grand Larceny in the First Degree, and related charges, currently pending in Bronx County Supreme Court, Criminal Term, Part 77. I have prepared this affirmation on personal knowledge and on information and belief, based on (a) records maintained by this Office; and (b) the records of the Supreme Court of the State of New York, Civil & Criminal Terms in Bronx County, all of which I believe to be true and accurate.

3. In papers dated October 2, 2023, relator Leila Robinson (who identified herself as "Attorney in Fact" ¹), filed a petition for an Order to Show Cause and Temporary Restraining Order, seeking a Writ of Habeas Corpus on behalf of the defendant, Michael Barton, and names the individuals set forth in the caption above as the respondents (hereinafter, "October petition"). The petition was filed in Bronx County Supreme Court, Civil Term, under Index No. 815199/2023E. On October 6, 2023, Judge Cohen granted the Order to Show Cause (hereinafter, "October OTSC"), directed petitioner to serve the named parties, and set a hearing for October 30, 2023, in Bronx County Supreme Court, Civil Term. The October OTSC identifies the following requests for relief:

- a. a restraining order to prevent any further action on the "unlawful warrant and indictment;"

¹ A review of the roll of attorneys registered in New York does not reveal Leila Robinson as an attorney registered to the admission of the bar. The New York State Unified Court System Attorney Search shows no record of "Leila Robinson" as a registered attorney as of October 25, 2023.

- b. an order vacating and setting aside the “unlawful warrant” from June 26, 2023, because it “was issued without probable cause, lacked proper support by oath or affirmation, and failed to particularly describe the place to be searched and the persons or things to be seized;” and
- c. an order vacating and setting aside the “unlawful indictment” because it was based on evidence obtained through the “unconstitutional warrant.”

4. The October petition in support of the OTSC does not address those requests for relief. Rather, for twenty pages it provides quotations from a variety of sources (the Bible, Declaration of Independence, case law, noted scholars, etc.), proclaims that the government “kidnapp[ed]” (para. 23), and discusses the various statutory requirements for the issuance of a writ of habeas corpus in a number of states, including New York. With the exception of paragraph 19, the October petition contains no specific factual or legal assertions concerning petitioner’s confinement. And even that that paragraph, which asserts that petitioner “is entitled to the Writ of Habeas Corpus since there was not sufficient cause for requiring incarceration instead of bail and/or no bail required is excessive in this particular case” (October petition, para. 19), is too generic. Further, petitioner provides no factual allegations regarding the evidence placed before the court that set the securing order, nor does he attach a transcript of that proceeding. Furthermore, petitioner represents that “no other application for a Writ of Habeas Corpus has been made by me in relation to this case” (*id.*, para. 34).

5. The People submit this affirmation in opposition to the petition for a Writ of Habeas Corpus. First, the petition fails to state a basis for relief because it does not set forth the nature of the purported illegality of detention. Second, the instant petition is a successive petition, and is a mirror image of one that was previously denied on August 17, 2023.

PENDING CRIMINAL INDICTMENT

6. On May 18, 2023, the Bronx County Grand Jury indicted petitioner for Grand Larceny in the First Degree, Forgery, Scheme to Defraud in the First Degree, Falsifying Business Records in the First Degree, and related charges, under Bronx County Indictment Number IND-72494-23. The defendant is charged with stealing title to a \$2,600,000 Brooklyn brownstone, forging the deed to this property, defrauding two other individuals in excess of \$3000, and submitting falsified business records to the City Register in Bronx County, thereby obtaining title to 166 Carroll Street, Brooklyn, New York, in the name of defendant's shell corporation: FREEDOM REAL ESTATE INVESTMENTS (Exhibit A: Indictment).

7. Upon being presented with Bronx County Indictment Number IND-72494-23, Justice Villegas, Bronx County Supreme Court, Criminal Term, Part SCA, issued an Arrest Warrant for defendant on June 22, 2023 (Exhibit B: Arrest Warrant). The defendant was subsequently arrested pursuant to that arrest warrant on June 26, 2023. He was arraigned that same day in Bronx County Supreme Court, Part SCA, and after a bail hearing in which the People presented arguments for setting bail under CPL § 510.30, on which defendant had an opportunity to be heard, the court determined that bail was necessary to ensure defendant's return to court and set bail in the amount of \$250,000 cash, \$750,000 bond, or \$750,000 partially secured bond, with an examination of surety. At that time, the court set a schedule for defendant/petitioner to file his pre-trial omnibus motion (which would typically include any claims that the indictment was not supported by legally sufficient evidence, and/or any claims that evidence should be suppressed because it was unconstitutionally obtained), and adjourned the matter to September 18, 2023 in Part 77.

8. On September 18, 2023, petitioner/defendant appeared along with his appointed attorney, Kevin Mcloon, Esq., in Part 77, before the Honorable Audrey Stone. An omnibus motion had not been filed. Mr. McLoone stated he was sued by the defendant and sought to be released from the case. The court adjourned the matter to October 4, 2023, to appoint new counsel.

9. On October 4, 2023, the defendant appeared in Part 77, and indicated that he wanted to proceed *pro se*. After making an inquiry of the defendant, the Court rejected this request and appointed Michael Espinal, Esq., to represent defendant. The Court set a new motion schedule and the matter was adjourned to December 18, 2023, for decision on defendant's omnibus motion. To date, the date the defendant has not filed an Omnibus Motion.

10. Defendant has not posted bail and is currently confined at the Eric M. Taylor center on Rikers Island.

PRIOR PETITION FOR A WRIT OF HABEAS CORPUS

11. On behalf of defendant, relator Leila Robinson filed a prior petition for a Writ of Habeas Corpus. This initial Writ was submitted to the Bronx County Supreme Court, Civil Term, on August 4, 2023, and given Index No. 812244/2023E (hereinafter, "August petition"). The petition was brought by Leila Robinson on behalf of Michael Barton in her capacity as "a living breathing woman on the Land/Soil, a non-resident Alien, an Indigeneous Choctaw/Washitaw/Muur/Moor, an Asiatic woman of the Asiatic race, Sui Juris Litigant, the Petitioner in Error" (see Exhibit C: Habeas Corpus Petition dated August 4, 2023). Petitioner brought this Writ against the following respondents: "Craig Apple, DBA State of New York Sheriff, Anthony Miranda DBA County of Bronx, Sheriff, Kenneth Stukes DBA DOC, Deputy Warden, All in their Official Capacity." The petition, for all intents and purposes, mirrors the one

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.