

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

MIRIAM E. ROCAH, as District Attorney of
Westchester County,

Petitioner,

- against -

MATTHEW J. COSTA, Judge of the New Rochelle
City Court, MICHAEL MOLINA, Defendant, and
GUSTAVO VILLAMARES SERRANO, Defendant,

Respondent.

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HON. SUSAN CACACE
COUNTY COURT JUDGE

NOTICE OF MOTION

Index No. 01356/2022

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AND COUNTY COURTS

COUNSEL:

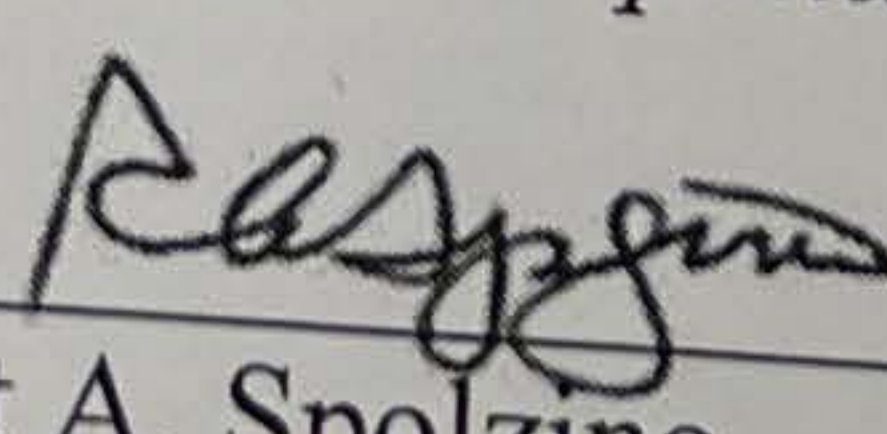
PLEASE TAKE NOTICE that upon the affirmation of Robert A. Spolzino, Esq., dated July 1, 2022, and the accompanying exhibits and memorandum of law, respondent Judge Matthew J. Costa will move before this Court, at the Richard J. Daronco Westchester County Courthouse, 111 Dr. Martin Luther King Boulevard, White Plains, New York, on the 27th day of July 2022, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order dismissing the petition pursuant to CPLR 3211(a)(7) and 7804(f) and for such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR 2214 (b), answering affidavits, with supporting papers, if any, shall be served at least seven days before the date on which the motion is to be heard.

Dated: White Plains, New York
July 1, 2022

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Attorneys for Respondent Judge Matthew J. Costa

By:


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2. This is a proceeding pursuant to CPLR article 32. The petitioner seeks a writ of prohibition to enjoin Judge Costa from enforcing those portions of two discovery orders, one entered in the case of respondent Michael Molina and one entered in the case of respondent Gustavo Villamares Serrano, which precluded the District Attorney from offering certain evidence in those cases as a result of the District Attorney's failure to comply with the discovery obligations under CPL article 245.

3. For the reasons more fully set forth in the accompanying memorandum of law, the petition should be dismissed because it fails to state a valid basis for a writ of prohibition.

4. A writ of prohibition enjoining a court from taking a particular action lies only when

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AFFIRMATION

Index No. 01356/2022

ROBERT A. SPOLZINO, an attorney duly admitted to practice law in the State of New York, affirms the following to be true under the penalty of perjury:

1. I am a member of the firm of Abrams Fensterman, LLP, the attorneys for respondent Judge Matthew J. Costa. I submit this affirmation in support of Judge Costa's motion to dismiss based upon my review of the petition filed by the District Attorney under CPLR article 78 and the documents submitted by the District Attorney in support of the petition. True and correct copies of the petition and the supporting documents are attached as exhibit A.
2. This is a proceeding pursuant to CPLR article 78 in which the District Attorney seeks a writ of prohibition to enjoin Judge Costa from enforcing those portions of two discovery orders, one entered in the case of respondent Michael Molina and one entered in the case of respondent Gustavo Villamares Serrano, which precluded the District Attorney from offering certain evidence in those cases as a result of the District Attorney's failure to comply with the discovery obligations under CPL article 245.
3. For the reasons more fully set forth in the accompanying memorandum of law, the petition should be dismissed because it fails to state a valid basis for a writ of prohibition.
4. A writ of prohibition enjoining a court from taking a particular action lies only when

the court is acting or threatening to act either without jurisdiction or beyond its authorized powers. In each case at issue here, Judge Costa had jurisdiction pursuant to CPL article 245 over the discovery dispute, as well as authority to issue discovery sanctions for the District Attorney's noncompliance with the discovery requirements. Judge Costa therefore acted in accord with his statutory authority by imposing sanctions for the discovery violations in each case.

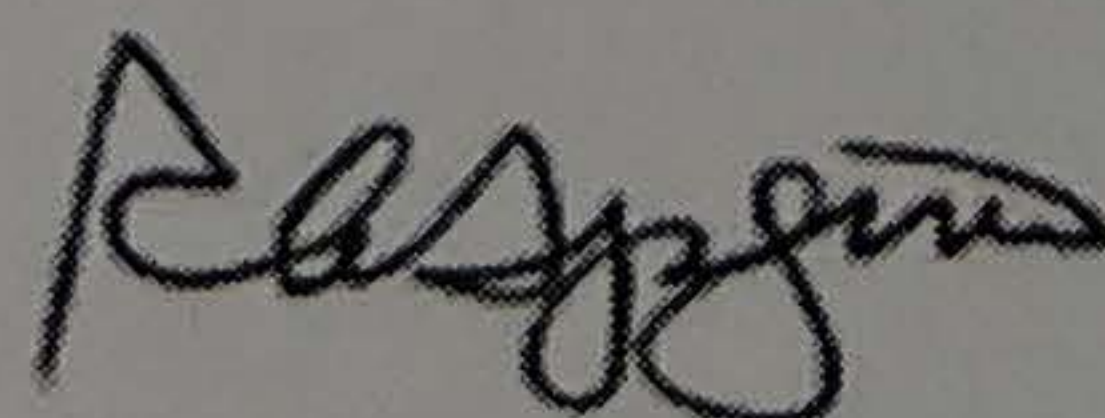
5. The District Attorney, in fact, concedes that Judge Costa had jurisdiction over the discovery disputes and was authorized by statute to impose sanctions for discovery violations in each case. Indeed, the plain language of CPL 245.80 makes clear that Judge Costa had the discretion to impose sanctions for discovery violations. The District Attorney nevertheless seeks a writ of prohibition enjoining Judge Costa from acting in accordance with his legal authority and enforcing the statutorily authorized sanctions.

6. The petition, in sum and substance, argues that a writ of prohibition lies here because Judge Costa's decision to impose discovery sanctions was wrong—not because Judge Costa acted in excess of his powers by imposing discovery sanctions. The District Attorney's position, although framed as an argument that Judge Costa acted beyond his authority, is nothing more than an attempt to seek collateral review of an alleged pre-trial error. This is not a cognizable basis for a writ of prohibition.

7. For all these reasons, as more fully set forth in the accompanying memorandum of law, the petition should be dismissed.

WHEREFORE, affirmant respectfully requests that respondent's motion to dismiss the petition be granted in all respects.

Dated: White Plains, New York
July 1, 2022



Robert A. Spolzino