

IN THE UNITED SUPREME COURT OF THE UNITED STATES

Supreme Court of the United States  
APR 30 2019  
OFFICE OF THE CLERK

1)Cynthia Ortiz

§

§

*Plaintiff,*

§

Case No: 4:17-CV-00489-JHP-JEJ

§

Transfer Case No: 5:18-CV-00137-C

Vs.

§

Tenth Circuit Case No: 18-5057

§

Tenth Circuit Case No: 18-5114

§

Tenth Circuit Case No: 19-5003

1)Charles Perry, Individually

§

2)Matthew Powell, Individually

§

3)Josh Burson, Individually

§

4)Dave Roberson, Individually

§

§

§

*Defendants,*

§

*On Petition for Certiorari to the United States Court of Appeals for the Tenth Circuit*

PETITION FOR A WRIT OF CERTIORARI

Cynthia Ortiz, Pro Se Plaintiff

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918-401-0724

## QUESTIONS PRESENTED FOR REVIEW

- 1) Whether the Tenth Circuit has jurisdiction to consider for Interlocutory Appeal, under 28 U.S.C. § 1292 (a) (1) and (b), denial of Injunctive Relief, to correct errors of the Court in providing “an immediate appeal from the Order”, in the case of a transfer from the US District Court, Northern District of Oklahoma to the US District Court, Northern District of Texas even when the District Judge refuses to certify his or her order?
- 2) Whether or not the District Court and Appellate Court committed a clear error in the law and abused its discretion in ordering the transfer from the Northern District of Oklahoma to the Northern District of Texas?
- 3) Whether a transfer is valid when parties are not allowed time to file objections and Writs?
- 4) Whether or not a valid transfer is ratified occurs by a mere transfer of the record resulting in a change of jurisdiction in appellate courts.?
- 5) Which Appellate Court, under 28 USC §1294, the Fifth Circuit or the Tenth Circuit, have jurisdiction to hear the appeal on the matter of the transfer, for interlocutory review due to the denied injunctive order? Both denied having jurisdiction over the matter. This Court’s review is needed to address ambiguity on appellate court jurisdiction on interlocutory appeals pertaining to transfers and settle the jurisdictional disagreement between appellate Courts in this case on the matter being appealed which is the transfer?

### **List of Parties**

1. CYNTHIA ORTIZ, Plaintiff
2. CHARLES PERRY, Defendant, Individually, a Texas State Senator
3. MATTHEW POWELL, Defendant, Individually, Lubbock County District Attorney
4. JOSHUA BURSON, Defendant, Individually, Texas Ranger employed by Texas Department of Public Safety
5. DAVID ROBERSON, Defendant, Individually
6. THE HONORABLE JUDGE JAMES H. PAYNE, U.S. Court, Northern District Of Oklahoma
7. THE HONORABLE MAGISTRATE JUDGE JODI F. JAYNE, U.S. Court, Northern District of Oklahoma

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## OPINIONS BELOW

The Magistrate's Order Denying the Plaintiff's Motion for Injunctive relief on November 13, 2017, Document No. 25, attached hereto.

The Magistrate's Order denying Plaintiff's Motion to Compel Discovery Specific to Jurisdiction, an administrative issue before the Court for consideration, pursuant to Federal Civil Rule 26(b)(1) was issued in Document No. 70, issued on January 31, 2018, attached to the appendix hereto.

The Report and Recommendation of the Magistrate Judge denying Mr Perry's Motion to Dismiss on grounds of personal jurisdiction, granting Mr Powell's, Mr Burson's motion to dismiss on grounds of personal jurisdiction, granting Mr Roberson's motion to dismiss on failure to state claim, denying his Motion to Dismiss on Intentional Infliction of Emotional Distress as Defendant Roberson did not move to dismiss the claim, is filed as Document No. 114, filed on May 11, 2018, attached hereto.

The District Judge's Order granting Defendant's Motions to Transfer from the US Court, Northern District of Oklahoma to the US Court, Northern District of Texas, is filed as Document 130, filed on May 29, 2018, Ortiz v Perry et al, 4:17-CV-00489-JHP-JFJ.

Order denying Petitioner's Request for Reconsideration and Certification for Appeal is filed under Document No. 132 and Notice of Appeal is filed under Document 131, Filed on June 4, 2018, Ortiz v. Perry et al, 4:17-CV-00489-JHP-JFJ. The District Judge denied the Motion as "MOOT", Document No. 133 entered on June 4, 2018.

*Sua Sponte* order from the Tenth Circuit of June 5, 2018 requesting the Plaintiff file a brief describing how the Tenth Circuit has jurisdiction over the matter, filed on Ortiz v. Perry et al, Case No. 18-5017. Petitioner filed her response on June 19, 2018, attached to the appendix hereto.

Order denying Petitioner's Interlocutory Appeal, Docket No. 10572871, Case No. 18-5017, due to lack of jurisdiction, the case was transferred and terminated taking the case out of their jurisdiction. The District Judge refused to certify the his Order.

Order denying Writ of Mandamus on January 10, 2019 in Document No. 10613177

Order denying Petitioner's Motion for Leave of Pauperis filed with the Writ of Mandamus in the Tenth Circuit on December 17, 2018, Document No. 10612975, Denied on January 10, 2019, Document No. 10617724

Order denying Full Panel Re-Hearing on Writ of Mandamus, Document No. 10622294, on January 30, 2019, Document No. 10622699.

Petitioner filed a "Notice to Set Aside for Appeal" with the Northern District of Texas on the transfer on September 13, 2018, Document No. 152. Petitioner's Motion clearly stated her intent was to appeal the transfer upon finality should the Writ of Mandamus be denied. The Fifth Circuit issued an order, on October 3, 2018, Case No. 18-11213, Document No. 00514667682 stating they believed the Notice was docketed in error, but even so, lacked jurisdiction to hear the appeal.

While the Writ of Mandamus was pending decision, Defendants held two ex parte hearings producing requested documents to the Northern District of Texas Court, intentionally misrepresenting the documents they requested in writing were “harassment”, and the case was dismissed and final. Case was dismissed on December 7, 2018, Document No. 180, and final.

Order denying appeal of transfer upon finality, Case No. 19-5003. Appeal was filed on January 18, 2019 and denied on January 22, 2019, Document No. 106204409.

Tenth Circuit, on its own, removed Defendant Roberson from the Defendants. A Motion to dismiss Defendant Roberson had been agreed upon between parties, filed with the Northern District of Oklahoma, on May 21, 2018, Document No. 117, but was never ruled on. Petitioner withdrew her agreement to dismiss due to subsequent acts causing injury. Neither Court ruled on the Motion. Tenth Circuit took upon themselves to remove Defendant Roberson. Petitioner filed a Motion to Correct on February 14, 2019, denied on February 15, 2019, Document No. 10627033.

Order denying full panel re-hearing on February 14, 2019 of appeal upon finality, which the Tenth Circuit Denied on February 15, 2019, Document No. 10627191.

## **JURISDICTION**

On August 25, 2017, the Plaintiff, Cynthia Ortiz, brought suit against Defendants, Charles Perry, Matthew Powell, Joshua Burson, and David Roberson for civil rights violations, specifically, the Fourth Amendment Right preventing illegal search and seizure, and the Fourteenth Amendment Right to Due Process and Equal Protection and violations of 18 USC §§1001, 1512 and 1513. Plaintiff is proceeding on a Pauper’s Leave and alleges violations of Oklahoma state law, assault and battery, seeking injunctive order, slander and defamation, tortious interference, and intentional infliction of emotional distress, perjury and malicious prosecution in the US Court, Northern District of Oklahoma, Tulsa, Oklahoma where the Petitioner has been domiciled since September, 2014, and the state where the injury for which remedy is being sought occurred. (Initial Petition, including Motion for Injunctive Order against Defendants, Document No. 1, filed on August 25, 2018; Amended Petition, including Motion for Injunctive Order, on October 10, 2017 Document No. 14, addressing procedural defects, Second Amended Petition, filed on November 3, 2017, Document No. 19, also requesting an Injunctive Order, Injunctive Relief all three denied by the Magistrate and District Court Judge on September 26, 2017, Document No. 10, District Judge’s denial entered on October 23, 2017 Document No. 16, and the Magistrate’s Denial on November 13, 2017, Document No. 25. Defendants Perry (Document No. 42, filed on December 8, 2017, Powell, Document No. 31, filed on November 29, 2017 and Burson

(Document No. 75, filed on February 9, 2018) filed Motions to Dismiss alleging the Court lacked personal jurisdiction and failure to state claim. Defendant Roberson filed a Motion to Dismiss alleging Plaintiff failed to state claim. (Document No. 44, filed on December 11, 2017). Defendant Burson refused to sign a waiver and did in fact accept a Summons to appear, served by the US Marshal's Service. The Plaintiff properly objected to all Motions to Dismiss in the time prescribed by Federal Rules of Civil Procedure. All documents referred to herein are filed in cause of action Ortiz v. Perry, 4:17-CV-00489-JHP-JFJ.

Petitioner asserted Diversity Jurisdiction, (*See State Farm Fire and Casualty v. Tashire*, 386 US 523 (1967), allowing diversity jurisdiction as long as some opposing parties to the action are diverse); and personal jurisdiction, under the Uniform Interstate and International Procedure Act § 1.03 (a) (3); *International Shoe v. Washington State* 326 US 310 (1945); *McGee v. International Ins. Co.*, 355 US 220 (1957); *Burger King Corp v. Rudzewicz* 471 US 462 (1985); and *Calder v. Jones* 465 US 783 (1984). Petitioner asserted the Northern District of Oklahoma is the proper venue, as the complaint alleges civil rights violations, under USC Title 42 §1983 and violations of Oklahoma State Law.

Because the Petitioner is domiciled in Oklahoma, works and lives in Tulsa, Oklahoma, all acts causing injury occurred in Oklahoma. Some of the acts causing injury were planned and initiated in Texas, but the actual acts causing injury giving rise to this litigation actually occurred in Oklahoma.

Petitioner asserted in her Motion to Compel discovery specific to the matter of jurisdiction, filed on January 11, 2018, Document No. 65, pursuant to Rule 26 (b) (1) the Court must allow discovery to establish the Court's personal jurisdiction, pursuant to the Court's decision in *Commissariat a L'Energie Atomique v. Chi Mei Optoelectronics Corp.* 395 F. 3d 1315 (Fed. Cir. 2005) This was to provide additional evidence Defendant's claims to have no contact with the forum state, when evidence was filed by the Petitioner disputing this fact, addressing minimum contacts, and purposeful availment of Mr Perry, Mr Powell and Mr Burson, that being, the Petitioner presented evidence the acts causing injury for which remedy is being sought in this litigation, were first threatened months prior to acts causing injury and during the months preceding the most substantial injury incurred by the Petitioner.

In communications with friends and family via texts and emails months before the acts causing injury for which remedy is being sought were carried out the Plaintiff told friends and family of the specific threats made to her by Defendants that being “to kill her and/or arrange a false arrest”. While the injury was planned in Texas, the injury actually was threatened in Oklahoma and carried out in Oklahoma and took place in Oklahoma, much of which occurred at the Plaintiff’s work place. The contract for which Defendants are being sued for tortious interference is an Oklahoma contract and duties to fulfill the terms of the contract are by parties operating a business in Oklahoma.

On March 24, 2018, a subsequent event occurred in which the Plaintiff was again harassed by an individual appearing at her workplace, the same as Defendant Roberson, in Oklahoma, appearing to push the Plaintiff to withdraw her litigation against Defendants and pursue the matter by illegal means. The conversation was recorded and filed with the US Court, Northern District of Oklahoma, as Plaintiff’s exhibit “5”, filed with Documents No. 101 and 102, April 20, 2018 with a third Motion for an Emergency Order for Injunction filed as Document No. 88, March 29, 2018, Ortiz v Perry et al; 4:17-CV-00489-JHP-JFJ, with a Notice to the Court of a Report made to the FBI and US Attorney, alleging “victim and witness tampering and harassment” by Defendants directed at the Plaintiff, at her place of work in Oklahoma. The Motion for Injunctive relief was never ruled on as the matter was transferred to the US Court, Northern District of Texas, but was simply terminated. The first Motion for Injunctive relief was denied, the second was unclear even to the Tenth Circuit.

The Magistrate’s Report and Recommendation of May 11, 2018, Document No. 114 of Ortiz v. Perry, 4:17-CV-00489-JHP-JFJ, the Magistrate denies Mr Perry’s Motion to Dismiss taking jurisdiction over the matters to be heard over injuries he caused for which remedy is being sought, while granting motions to dismiss Mr Powell and Burson but recommending a transfer. Ambiguity also exists as Mr Burson refused to sign the Waiver, and instead accepted service of Summons served upon him by the US Marshal’s Office. Under Rule 54 (b) this gives rise to an Interlocutory Appeal.

On May 29, 2018, Document No. 130, filed by District Judge Payne, the District Judge ordered a transfer of the case to the US Court, Northern District of Texas. All of the injury, while planned in Texas, was threatened first in Oklahoma where the Plaintiff lives and works, and then was carried out in Oklahoma. This supports “purposeful

availability". All of the witnesses to the injury live and work in Oklahoma where the injury was actually carried out. Substantially more injury, while planned in Texas, occurred in Oklahoma as that is where the Plaintiff lives, works, and pays taxes, therefore, the witnesses to the events leading to this litigation, live in Oklahoma. As such, the Plaintiff filed an immediate request for reconsideration (Document No. 132, Filed on June 4, 2018; Ortiz v Perry et al, 4:17-CV-00489-JHP-JFJ) and Notice of Appeal (Document No. 131, Filed on June 4, 2018; Ortiz v Perry et al 4:17-CV-00489-JHP-JFJ), sent to the Tenth Circuit who has jurisdiction over matters of the decision making Court. The case was terminated and sent to the Northern District of Texas on March 29, 2018 and opened in the Northern District of Texas, on March 29, 2018 and assigned Case No. 5:18-cv-00137.

On June 5, 2018, The Tenth Circuit requested the Plaintiff address why the Court had jurisdiction, to which she responded as she has herein. The Court states in its order it does not consider Interlocutory Appeals on transfers, in direct conflict with rulings from other Circuit Courts, but the Tenth Circuit states in its *Sua Sponte* Order of June 5, 2018, a denial for injunctive relief is immediately appealable under 28 USC § 1292 (a) (1) and (b) and that it was unclear to them as to whether or not the Motion for Injunctive Relief was denied, transferred or terminated. Subsequently, On July 12, 2018, The Tenth Circuit denied the Plaintiff's request for an appeal citing the reason being they do not have jurisdiction over the transfer and do not, as a rule, hear transfers. This is in direct conflict with decisions made by other U.S. Circuit Court of Appeals. The appeal was filed to appeal the decision made by a Court, that being the US District Court, Northern District of Oklahoma which falls under the jurisdiction of the Tenth Circuit, to which they have jurisdiction and authorization to hear Interlocutory Appeals filed under Rule 54 (b) and 28 USC §1292 (a) (1) and (b), under 28 USC §1294. Petitioner notified the Court of the District Judges denial of certification as "Moot", and asked the Tenth Circuit to remedy and cure all defects in the abuse of discretion of the Magistrate and District Judge.

On July 12, 2018, The Tenth Circuit issued a denial citing it does not have jurisdiction to consider the Plaintiff's Interlocutory appeal, in Ortiz v. Perry, Docket No. 10572871, Case No. 18-5017, due to lack of jurisdiction, the case was transferred and terminated taking the case out of their jurisdiction. The District Judge refused to certify the his Order.

Petitioner filed a Writ of Mandamus with the Tenth Circuit Court of Appeals on November 14, 2018, Docket No. 10605142, Case No. 18-5114. Writ of Mandamus was Denied January 10, 2019 in Document No. 10613177

Petitioner's Motion for Leave of Pauperis filed with the Writ of Mandamus in the Tenth Circuit on December 17, 2018, Document No. 10612975, Denied on January 10, 2019, Document No. 10617724

Petition for Full Panel Re-Hearing on the Writ of Mandamus was filed on January January 28, 2019, Document No. 10622294, Denied on January 30, 2019, Document No. 10622699.

Petitioner filed a "Notice to Set Aside for Appeal" with the Northern District of Texas on the transfer on September 13, 2018, Document No. 152. Petitioner's Motion clearly stated her intent was to appeal the transfer upon finality should the Writ of Mandamus be denied. The Fifth Circuit issued an order, on October 3, 2018, Case No. 18-11213, Document No. 00514667682 stating they believed the Notice was docketed in error, but even so, lacked jurisdiction to hear the appeal.

While the Writ of Mandamus was pending decision, Defendants held two ex parte hearings producing requested documents to the Northern District of Texas Court, intentionally misrepresenting the documents they requested in writing were "harassment", request affixed hereto, and the case was dismissed and final. Case was dismissed on December 7, 2018, Document No. 180, and final.

Petitioner filed an appeal upon finality with the Tenth Circuit Court, appealing the transfer. Case No. 19-5003. Appeal was filed on January 18, 2019 and denied on January 22, 2019, Document No. 106204409.

Tenth Circuit, on its own, removed Defendant Roberson from the Defendants. A Motion to dismiss Defendant Roberson had been agreed upon between parties, filed with the Northern District

of Oklahoma, on May 21, 2018, Document No. 117, but was never ruled on. Petitioner withdrew her agreement to dismiss due to subsequent acts causing injury. Neither Court ruled on the Motion. Tenth Circuit took upon themselves to remove Defendant Roberson. Petitioner filed a Motion to Correct on February 14, 2019, denied on February 15, 2019, Document No. 10627033.

Petitioner filed a Motion for Full Panel Re-hearing on February 14, 2019 of appeal upon finality, which the Tenth Circuit Denied on February 15, 2019, Document No. 10627191.

The jurisdiction of this Court to review the Judgement of the Tenth Circuit is invoked under 28 USC § 1254

(1).

### **CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE**

1. Federal Rule of Civil Procedure 54 (b): “Judgment on Multiple Claims or Involving Multiple Parties. When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.”
  
2. 28 USC §1292: (a)(1) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from: Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;  
(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.”
  
3. Federal Rules of Civil Procedure 26 (b) (1): “*Proceedings Exempt from Initial Disclosure.* The following proceedings are exempt from initial disclosure: (i) an action for review on an administrative record.”

4. Fourth Amendment of the United States Constitution: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
5. Fourteenth Amendment of the United States Constitution "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."
6. Title 18 USC §§ 1001, 1512 and 1513: Prohibiting Perjury, Obstruction of Justice, Retaliation for reporting a crime, and destruction of evidence.
7. OS 21 § 21-421 prohibiting conspiracy to arrange a false arrest.
8. OS Section 766, Restatement of (Second) of Torts - Prohibiting Tortious Interference
9. OS 21§ 641, 642, and 647- Prohibiting Assault and Battery and Aggravated Assault
10. OS Restatement (Second) of Torts §46 - Prohibiting Intentional Infliction of Emotional Distress
11. OS §12-95 Prohibiting Abuse of Process and Malicious Prosecution
12. *USC Title 42 §1983*: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof 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, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

#### **STATEMENT OF THE CASE**

1. Petitioner has had an ongoing problem with Defendant Perry engaging in acts that constitute unwanted contact, stalking and harassment since 2011. The Defendant has engaged in repeated unwanted contact, harassment, threats to cause intentional, malicious and willful injury to the Petitioner. The Petitioner ended a fifteen year career in political consulting and moved twice to get away from and avoid Defendant Perry and to avoid conflict with him, thus having made massive life altering decisions, at great expense to her and her minor child who was in her custody until his recent graduation from high school.



2. The Petitioner sought an Order of Protection in Oklahoma District Court, County of Creek, in May, 2015 against Defendant Perry. The Order was denied due to lack of personal jurisdiction and the Petitioner's failure to comply with Oklahoma statute requiring the filing of a police report. (*See 22 OS §60.2 (A) (1); Marler v. Kloehr, 2012 OK Civ. App 23, 274, P.3d 849*) The reasons stated for the Court's denial were clearly stated on the Order of denial.
3. In October, 2015 through January 29, 2016, the Petitioner began receiving threats of death and/or that Defendant Perry would arrange a false arrest. The Petitioner told friends and family in emails and texts of the specific threats made by Defendant Perry, through Defendant Roberson, at her workplace, filed with the US Court, Northern District of Oklahoma, (Filed as Plaintiff's Exhibits "P" and "Q", filed with Document No. 39 on December 6, 2017, *Ortiz v. Perry et al, 4:17-CV-00489-JHP-JFJ*).
4. Petitioner began experiencing sudden onset of symptoms of poisoning after ingesting drinks at her workplace, diet coke, that appeared to be spiked. In texts also filed with the US Court, Northern District of Oklahoma, Defendant Roberson admits or states "yes" when asked by the Plaintiff is she's being given arsenic. He further admits to sexual assault and states he will not quit. (Filed as Plaintiff's Exhibit "S", filed with Document No. 47 on December 21, 2017; *Ortiz v Perry et al, 4:17-CV-00489-JHP-JFJ*)
5. Due to the escalation of danger, stalking and harassment, the Petitioner filed a police report on January 21, 2016, with Tulsa Police Department as the criminal acts committed against her occurred in Tulsa, Oklahoma at her work place, in compliance with OS 22 §60.2 (A) (1) and *Marler v Kloehr, 2012 OK Civ App 23, 274 P. 3d 849* and in acting as any reasonable prudent individual would under the circumstances. The report was filed with a desk clerk. The desk clerk advised the Petitioner that a detective would be assigned and would call to take possession of evidence.
6. On January 29, 2016, the Petitioner was arrested at her home in Oklahoma, and charged with "Retaliating against a public service by filing a false police report, intending to harm Charles Perry on account of his job". The Petitioner had not yet spoken to a Tulsa Police Detective, had not turned over evidence, and no investigation had commenced or been conducted. There was no determination as to whether or not the report was false, no evidence inspected by any Tulsa Police at all, nor had

there been enough time for any determination at all as to whether or not the Petitioner filed a report that was false. Defendants knew the police report was required under Oklahoma law, due to the Court's denial of the Protective Order in May, 2015. Defendants intentionally impeded the investigation of their crime occurring in Tulsa, Oklahoma, against the Petitioner reported to Tulsa Police, and caused the loss of forensic evidence and video evidence. Because the Petitioner was illegally detained, video evidence was taped over and any poison in the Petitioner's blood or hair worked its way out of her system. Defendants Powell and Burson, had a legal obligation under Brady Rules to collect the evidence, however they did not. A Tulsa Police Detective did not call the Petitioner back to schedule an interview and to collect evidence until February 15, 2016, while the Petitioner was sitting illegally detained in Lubbock County Detention Center. She was therefore physically prevented from responding.

7. The charges were obtained using a perjured statement, submitted before the Court and Grand Jury, in that he intentionally concealed from the Grand Jury, the fact that no police investigation had been conducted or even started, no evidence collected by Tulsa Police, and that the report was not only reasonable and prudent but required by Oklahoma Statute. Mr Burson, a Texas Ranger, and Matthew
8. Powell, the Lubbock County District Attorney who allowed the perjured statement to be presented before the Court and Grand Jury, while acting under the color of law, showed a reckless disregard for the truth. In addition, while acting under the color of law, Mr Burson and Mr Powell violated Title 18 USC §§ 1001, 1512 and 1513 in that the perjured Affidavit cites as a reason to arrest the Plaintiff, was that she made false claims of being poisoned, they further intentionally prevented the reporting of a crime to the police who had jurisdiction to investigate the crime committed against the Petitioner, interfered with the chain of custody of evidence causing the spoliation and destruction of that evidence, and failed to obtain the Petitioner's blood for inspection by a forensic pathologist as is required by Brady Rules.

9. On February 15, 2016, while the Petitioner was sitting in Lubbock County Detention Center, Detective Liz Eagan, of Tulsa Police Department left a voicemail on the Petitioner's phone requesting she come in to give a statement, and to provide evidence for investigation of the crime she reported. (Filed as Petitioner's Exhibit "K", filed with Document 34, Filed on December 4, 2017; Ortiz v Perry et al; 4:17-CV-00489-JHP-JFJ showing date and time the call came in, and transcripts of the voicemail left for the Petitioner by Detective Eagan.)
10. Mr Powell, while acting under the color of law, attempted to coerce the Petitioner to lie about the unlawful arrest by requesting she not go to media regarding details. The Petitioner refused to lie for Defendants, but agreed to maintain confidentiality under the condition that Defendant Perry never ever contact her or anyone she knows again. As a result of the Quid Pro Quo or "inducement" the Petitioner's bond conditions contain a provision that states that Defendant Perry is never ever to contact the Petitioner in any way. Defendant Perry immediately engaged in unwanted contact with the Petitioner as soon as she arrived back home, threatened to arrange a second false arrest or kill her, and has not stopped to this day. The subsequent unwanted contact was documented in the THIRD request for an Injunctive Order filed on March 27, 2018, Document Number 88; Ortiz v Perry et al; 4:17-CV-00489-JHP-JFJ, audio evidence filed as Plaintiff's Exhibit "5".
11. Due to continued threats, in order to protect her safety and well being, friends and media were contacted by the Petitioner and told of the continued threats from Defendant Perry. Defendant Powell then took emails he obtained from media to the Petitioner's attorney and advised him to tell his client, the Petitioner to "shut up" about his terrible mistake. The email from her attorney containing the emails from the Petitioner that went to media, telling them of ongoing threats, were then sent from media to Mr Perry, from Mr Perry to Mr Powell, from Mr Powell, to the Petitioner's attorney were filed as evidence with the US Court, Northern District of Oklahoma, on (Filed as Plaintiff's Exhibits "H", "I", and "M", filed with Document No. 34, on December 4, 2017; Ortiz v Perry et al; 4:17-CV-00489-JHP-JFJ)

12. The charges filed against the Petitioner were dismissed in favor of the Petitioner on June 28, 2017. Mr Powell, knowing he had made a terrible mistake, left the charges in place for a year and a half. Mr Powell personally signed the Order of Dismissal.
13. The Petitioner's mugshot was smeared all over the news in both Texas and Oklahoma and she was slandered and defamed as a result.
14. Oklahoma Statute prohibits both in criminal and civil statute "conspiracy to commit false arrest", OS § 21-421.
15. Qualified Immunity does not apply in this case, to Mr Burson or Mr Powell, as clearly established rights, statutes, and laws were violated that were known or should have been known at the time of the injury, that being the Fourth and Fourteenth Amendments Rights preventing unlawful seizure, the right to due process, and the right to equal protection. In addition, Title 18 USC §§ 1001, 1512 and 1513 were violated, justice was intentionally obstructed, evidence spoiled, a perjured statement put before a Court and Grand Jury in order to obtain an illegal arrest warrant. The denied court order of protection issued in Creek County in May, 2015 clearly cites a reason for the denial as being the Plaintiff's failure to comply with statute in filing a police report when attempting to get a Protective Order. These are blatant violations of clearly established rights in place at the time of injury that both Mr Powell, as a District Attorney, and Mr Burson, acting as a Texas Ranger, knew or should have known were in place at the time the injury to the Plaintiff occurred for which remedy is being sought in this litigation. In addition, multiple American Bar Association Rules were blatantly ignored by Mr Powell in this case. (*See Mitchell v Forsyth 472 US 511 (1985)*)
16. Upon consultation with an attorney, when Petitioner was first arrested, the attorney advised rather than fighting extradition in Oklahoma where she had no access to legal representation, he believed it

to be more beneficial to go back to Texas to obtain a public defender as the charges were filed in Texas, Lubbock County, and she would then have access to legal representation. As such, the Petitioner did not fight extradition.

17. Subsequent to the first denied Motion for Injunction on September 26, 2017 in her Report and Recommendation, due to a procedural defect, in Document No. 10, filed on September 26, 2017, *Ortiz v Perry et al: 4:17-CV-00489-JHP-JFJ*, the procedural error then remedied by the Petitioner, a Second Amended Petition which included a request for Injunctive relief filed as Document No. 19 on November 3, 2017, was again denied by the Magistrate on, November 13, 2017, Document Number 25; *Ortiz v Perry et al: 4:17-CV-00489-JHP-JFJ*, the Third request for Injunctive relief sought by the Petitioner after another incident occurred at her workplace of stalking and harassment, victim and witness tampering, filed on March 29, 2018, Document No. 88, *Ortiz v Perry et al: 4:17-CV-00489-JHP-JFJ*, which even to the Tenth Circuit, in their expression of ambiguity in their *Sua Sponte* Order of June 5, 2018, stating even the Court was unsure if the District Court Judge denied, transferred or terminated the Motion for Injunction, the Petitioner has experienced two additional incidents of stalking, harassment, victim and witness tampering which include texted threats one stating there is some consideration as to whether or not it is worth the risk to Mr Perry to have speculation on him as was seen with Congressman Gary Condit when his intern, Chandra Levy disappeared, to kill the Petitioner. His text of June, 2018 further stats he'd watched the Petitioner's case from "behind the scenes" and indicates he signed a non disclosure for Mr Perry. The Petitioner has repeatedly asked for Court ordered Protection and Injunctive relief to prohibit such continued acts intending malicious, willful, and intentional injury which have posed a serious threat to her safety, well being, income, and have resulted in great apprehension in going to work as these individuals continue to appear at her workplace even after she changes to a different place of business. The Petitioner worked at three different businesses from December, 2017 through August, 2018, having to continually make changes to avoid Defendants continued harassment causing emotional and economic injury in Oklahoma. All Defendants acts causing injury are occurring in the

state of Oklahoma, not Texas. The Petitioner has not been to Texas at all but for the time of her arrest, since she moved from Texas in September, 2014. None of these unlawful acts committed against her are occurring in Texas. All are occurring in Oklahoma. All witnesses to the incidents giving rise to this litigation are in Oklahoma. The Magistrate's decision that witnesses to the perjury are in Lubbock, Texas are incorrect on its face as the witnesses to that injury would be unavailable to the Petitioner as the Grand Jury is sealed. His sworn Affidavit of arrest alone is enough to establish intentional misrepresentation and concealment of material facts.

#### REASON WHY CERTIORARI SHOULD BE GRANTED

1. In *Ebay Inc. v. Mercexchange, L. L. C.*, 547 U.S. 388 (2006) this Court held "Discretion is not whim, and limiting discretion according to legal standards helps promote the basic principle of justice that like cases should be decided alike." *Martin v. Franklin Capital Corp.*, 546 U. S. 132, 139 (2005). The District Court appears to ignore completely, prior case decisions made by the Tenth Circuit and the Tenth Circuit appears to have ruled completely different on the Petitioner's appeal, as they have on prior cases. (See *Chrysler Credit Corp v Country Chrysler* 928 F.2d 1509 (10th Cir. 1991); *Employers Mutual Casualty v Bartile Roofs* 618 F. 3d 1153 (10th Cir 2010).
2. Both the Fifth Circuit and the Tenth Circuit deny having jurisdiction over the matter of the transfer. The transfer is the matter the Petitioner wishes to appeal. The legal basis for the appeal, is for interlocutory review, due to the denied injunction and the substantial difference in opinion of law, being personal jurisdiction and proper venue. Petitioner sought an orders of injunction more than once and each denial was followed by a subsequent incident causing injury in the state of Oklahoma. The injuries were intended to cause loss to the Petitioner where she lives.

The District Court and the Tenth Circuit appear to have failed to give careful and thoughtful consideration to the material facts and the Petitioner's evidence. Petitioner chose the proper forum to bring suit and established the substantial portion of events giving rise to this litigation occurred in Oklahoma, giving Oklahoma Courts personal jurisdiction and the Northern District of Oklahoma, proper venue. The decision to transfer the case was made by the District Court in the Northern District of Oklahoma, thereby placing jurisdiction for the appealable decision in the jurisdiction of the Tenth Circuit, yet both the Tenth Circuit and the Fifth Circuit deny they have jurisdiction to cure the defect and answer the substantial difference of opinion in the law.

3. Review is warranted due to conflicts with opinions of the Tenth Circuit Court, the Sixth Circuit Court, and the majority of the other Circuit Courts when it comes to Interlocutory Appeals on transfers. In *Kalama v. Matson Navigation Company Inc., No 16-3408 (6th Cir. 2017)*, the Sixth Circuit held that the matter should be heard in the Court of Appeals where the matter may be heard when final judgement occurs, as this would be the Court where the matter would be appealable upon final judgement. This decision is in direct conflict with the verbiage of the statute giving authority over the Court who has jurisdiction where the adverse appealable judgement occurred, 28 USC §1294. The Seventh, DC, Fourth, and Second Circuits follow this theory, as applied by the Sixth Circuit, however, Tenth and Eleventh Circuits do not embrace this theory, but rather hold that any decision arising out of a sister court must be filed with that Court of Appeals. The decision the Petitioner appealed did just that; it sought relief from the appealable decision occurring in a District Court within their jurisdiction. The Tenth Circuit's decision that it does not have jurisdiction over the matter of transfer in the Petitioner's petition for an Interlocutory Appeal, appears to conflict with its historical decisions that it has jurisdiction over appealable decisions within its district. The Tenth Circuit, in their *Sue Sponte*, order of June 5 2018, states they are unclear, based on the District Court's ambiguous decision as to whether or not he denied, terminated or transferred the Motion for Injunctive Relief. Injunctive Relief was repeatedly requested by the Petitioner and repeatedly denied. If the Tenth Circuit is going to apply the strict language, in conflict with the interpretation of the Second, Fourth, Seventh and DC Court of Appeals, by kicking the ball down the field, so to speak, to the Court of Appeals who would have jurisdiction

to consider appealable decisions upon finality of the case, the Tenth Circuit disagreeing with this interpretation, then the application applied to other cases must apply to Interlocutory Appeals, for which relief is addressed in statute and law, over transfers in conformity to its other applications of the language in 28 USC §1294.. The Petitioner respectfully submits that review by this Court is warranted.

4. The Petitioner's injuries occurred in Oklahoma, there were more than one, there were blatant violations of clearly established laws, rights and statutes, and substantial loss to the Petitioner occurred as a direct result of the actions of the Defendants. The injury giving rise to this litigation was first threatened in Oklahoma, they occurred in Oklahoma as the injury was directed at the Petitioner, continues to be directed at the Petitioner where she is domiciled in Oklahoma, not in Texas. Due to so many laws, statutes and rights being violated, so many times in Oklahoma, the "minimum contacts" bar, "purposeful avilment bar" have more than been met. Multiple Oklahoma statutes were violated for which the Plaintiff is seeking remedy in this litigation.
5. In *Continental Grain Co. v. Barge FBL - 585, 364, US 19, 26, 27, 80 S. Ct. 1470, 1474, 1475, 4 L. Ed. 2d 1540, cited in Van Dusen v. Barrack, 376 US 612 (1964)*, applying *Van Dusen v. Barrack, 376 US 612 (1964)* as well, the Court states

"the purpose of this section is to prevent the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense."

The intent is not to allow Defendants to move the civil action to a state more convenient for them, but inconvenient for witnesses to the acts causing injury, to intentionally prevent the Petitioner's witnesses from testifying. The substantial ground for difference of opinion and that immediate appeal from the order may materially advance the ultimate termination of the case is jurisdiction. The District Court abused its discretion in denying the Petitioner access to witness to the actual injury by transferring the case to the Northern District of Texas. Transfers are for convenience of the parties, however convenience of the parties is not to outweigh convenience for witnesses. The District Court and the Tenth Circuit Court completely ignored prior decisions of the Tenth Circuit in *Chrysler Credit Corp. v Country Chrysler 928 F. 2d 1509 (10th Cir 1991)*, holding in that case



*“Among the factors [a district court] should consider is the Plaintiff’s choice of forum; the accessibility of witnesses and other sources of proof, including the availability of compulsory process to insure attendance of witnesses; the cost of making the necessary proof; questions as to the enforceability of judgement if one is obtained; relative advantages and obstacles to a fair trial; difficulties that may arise from congested dockets; the possibility of the existence of questions arising in the area of conflict of laws; the advantage of having a local court determine questions of local law; and, all other considerations of a practical nature that make a trial easy, expeditious and economical.”*

The District Court, nor the Tenth Circuit applied the same doctrines of law to this case.

6. The Petitioner has sought relief for Civil Rights Violations, that being a violation of her Fourth Amendment Right to Protection against illegal search and seizure, which false arrest was threatened in Oklahoma and carried out and occurred in Oklahoma, Fourteenth Amendment Right to due process and equal protection, which occurred in Oklahoma. The malicious prosecution and perjury originated in Texas, but resulted in injury incurred to the Petitioner in Oklahoma. The Magistrate used two acts when a substantial portion of acts that resulted in injury for which remedy is sought, were in Oklahoma and witnesses are as well, to justify transfer of the case to Texas. This decision did not comport with common sense, case precedence, or statute governing personal jurisdiction. Defendants first made very specific threats to injury the Petitioner 1) to kill her 2) to arrange a false arrest. The threats were attempted to be carried out or were carried out in Oklahoma. The witnesses, but for the Court and Grand Jury where the perjured Affidavit of Defendant Burson was used to procure an unlawful warrant, which cannot be called as witnesses, are all in Oklahoma. The injuries were initiated in Texas, but carried out in Oklahoma. Because taxpayer funded resources of Oklahoma were used in carrying out the threats, that being the Creek County Detention Center and Sapulpa Police Department, Petitioner has established “purposeful availment” has been met and the Defendants enjoyed the benefits of the of the State of Oklahoma and have subjected themselves to the Courts of Oklahoma where remedy is being sought. Denying the Petitioner access to witnesses to the actual injury, the Petitioner having the burden of proof, the Courts placed her at a severe disadvantage and she is denied the right to due process, fair play, and substantive justice. The purpose of an exception to the finality rule and the need for Interlocutory Appeals are intended to “solve instance where too rigid an adherence to the finality requirement would cause a severe hardship and injustice with a particular litigant.”

7. The requirements to obtain an interlocutory appeal where there is a legal controlling legal question in dispute, that being jurisdiction, and where the Interlocutory Appeal would advance the ultimate termination of the litigation. The Defendants simply found a way to prevent witnesses from testifying to their acts which caused injury for which remedy is being sought in this litigation. (*See Standard Quimica De Venez v Cent Hispanot International 189 F.R.D. 202, 208 (D.P.R. 1999)*)
8. The Tenth Circuit ruled in *Chrysler Credit Corp v Country Chrysler 928 F. 2d 1509 (10th Cir 1991)* “Among the factors [a District Court] should consider is the Plaintiff’s choice of forum; the accessibility of witnesses and other sources of proof.” Oddly, the Tenth Circuit did not apply the same doctrine in the Petitioner’s case. The same is true in their decision in *Employers Mutual Casualty v Bartile Roofs 618 F. 3d 1153 (10th Cir. 2010)*, the Tenth Circuit finding that while insurance policies were negotiated and executed outside of Wyoming, the events giving rise to the claims in the case occurred in Wyoming. Again, the Tenth Circuit failed to apply the same standard, rule of law, and doctrine when deciding upon the Petitioner’s appeal.
9. Petitioner raised the questions of law, requesting the Tenth Circuit rule on the matters raised in *Chrysler Credit Corp v Country Chrysler supra*, in addressing whether or not a valid transfer is ratified by mere transfer of the records and whether or not a transfer is valid when parties have not had time to file Motions for Certification, objections and Writs. The Tenth Circuit failed to rule on this matter of law upon the specific request of the Petitioner. The District Court, Northern District of Oklahoma, issued the decision to transfer on March 29, 2018 and transferred the case to the Northern District of Texas, terminating the case in the Northern District of Oklahoma on the same day. The Tenth Circuit’s decision indicates that termination effectively ends their jurisdiction over the District Court in the Northern District of Oklahoma, to transfer the case, which is the decision being appealed. ( *See Wm A. Smith Contracting Co. v Traveler’s Indem. Co. 467 F. 2d 662, 664 (10th Cir. 1974)*, cited in *Chrysler Credit Corp v Country Chrysler, supra*)
10. Petitioner seeks this Honorable Court’s careful consideration on the Denied request for re-hearing of the Denied Writ of Mandamus on January 30, 2019, the Denied Motion in Leave Forma Pauperis, and the Denied request for re-hearing on the appeal upon finality issued by the Tenth Circuit on February 15, 2019.

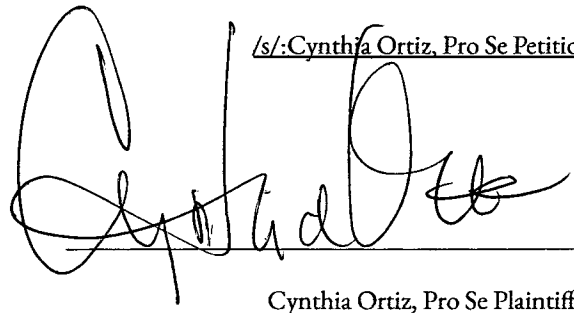
11. The District Judge refused to Certify the appealable order, the Plaintiff cited *Hewitt v. Joyce Beverages of Wisconsin Inc* 721 F. 2d 625, 627 n. 1 (7th Circuit 1983) in her response filed with the Tenth Circuit. Plaintiff specifically states in paragraph 42, the District Court's failure to certify his appealable decision as "MOOT", asks the Tenth Circuit to accept the appeal due to the District Judge's abuse of discretion in doing so, and in closing requests the Tenth Circuit remedy all matters of controlling law in dispute. In *Hewitt v. Joyce Beverages of Wisconsin, Inc. supra*, the Seventh Circuit finds

"Proper certification of decision for interlocutory appeal will be found where district court tracks language of statute authorizing interlocutory appeals or where it is otherwise evident on the face of district court's written order that certification was intended and that district court actually believed statutory requirements were fulfilled. 28 U.S.C.A. § 1292(b)."

A decision of "MOOT" upon request to alter or reconsider a Court's decision, and certify that decision for appeal, is hardly a thoughtful application of the language of 28 U.S.C. § 1292(b) allowing for the use of Interlocutory Appeals or the intent of law to prevent injustices, and excessive burden of expense on litigants and witnesses and advance the litigation to an end.

**CONCLUSION**

WHEREFORE, Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted. and reprieve from this Honorable Court and hereby respectfully requests a reversal of the District Court's decision to transfer the case from the US Court, Northern District of Oklahoma to the US Court, Northern District of Texas.

  
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