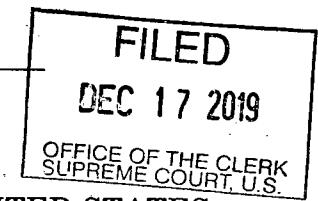


19-1197
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

GwanJun Kim,

Petitioner,
vs.

City of Ionia, et al.,
Respondents.

On Petition for a Writ of Certiorari

To the United States Court of Appeals

For the Sixth Circuit No. 19-1389

PETITION FOR WRIT OF CERTIORARI

GwanJun Kim
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Davison, MI 48423-8188
(616)902-4344

QUESTION(S) PRESENTED

In this case THE PETITION for that “a United States court of appeals has entered a decision in conflict with the decision of” “Complaint in this action under Rule 9(b) would be subject to the relaxed standard that is applied to claims where evidence “lies within [Defendants’] exclusive possession” *Id.*; U.S. ex rel. Tamanaha, 2011 WL 3423788 at *2; (citing United States ex rel. Lee v. SmithKline Beecham, Inc., 245F.3d 1048, 1052 (9th Cir. 2001)); United States ex rel. Franklin, 147 F. Supp. 2d at 49.

The panel was applied wrong that “Rule 9(b)[§ 10(b)] of the Securities Exchange Act of 1934 *See. Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 190 (1994) Held: A private plaintiff may not maintain an aiding and abetting suit under § 10(b). Pp.170-192.] “it does not create a federal cause of action for fraud and dismissed the case” *Id.* Petitioner complaint is not § 10(b).

Therefore, Petitioner asks this Court to address RETROACTIVELY APPLICABLE TO case that are on collateral review.

LIST OF PARTIES

[X] All parties do not appear in the caption of the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

City of Ionia; Jennifer Skorka; Brandon Anderson; Troy Thomas; Jason Eppler ;
114 N Kidd St Ionia, MI 48846

**David K. Otis (P31627)Plunkett Cooney
325 E. Grand River Ave, Ste 250
East Lansing, MI 48823**

RELATED CASES

State of Michigan 64A District criminal Court Case;
police ticket 12494IT1 and IT 2

State of Michigan Circuit Court 2012K-29547-AV

See. Appendix F, G, H

State of Michigan Court of appeal no 334981

State of Michigan Supreme Court no. 155558

The United State District Court Western Michigan
case # Case No. 1:12-cv-01195-GJQ (*Kim I*

Court). The United States Court of Appeals for the
Sixth Circuit *Kim v. City of Ionia* No. 13-2084(6th
Cir. Apr.29, 2014), 15-01178, 18-0650,18-1974 (6th
Cir. January 3, 2019)

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APPENDIX A Sixth Circuit denied the Motion for rehearing on November 4, 2019

APPENDIX B Sixth Circuit Affirmed the district court's that applied wrong law that "Rule 9(b)[§ 10(b)] of the Securities Exchange Act of 1934 *See. Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 190 (1994) Held: A private plaintiff may not maintain an aiding and abetting suit under § 10(b). Pp.170-192.], it does not create a federal cause of action for fraud. *See. Order*

APPENDIX C District court ordered that “his are not estopped or otherwise improperly before this court and dismissed” district order

APPENDIX D. The Sixth Circuit 13-2084 affirmed dismiss on “Additionally, as to Kim’s allegation of judicial fraud, adverse ruling[refused and no address Federal Rules of Civil Procedure 55(a) requires “the clerk must enter the party’s default,”]by a court almost never establish bias or prejudice. See. *Liteky v. United States*, 540 U.S. 540, 555(1994) See. p.3 Order. This is a conspiracy.

APPENDIX E The Sixth Circuit 18-1974 denied on dismiss on Rule 60(b) appeal “*unusual and extreme situation*[The Cause of action Fraud I to VI where principles of equity mandate relief.” *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990) that Respondents involved that the panel was applied that wrong law that “Rule 60(b) does not allow a defeated litigant a second chance to convince the court to rule in his or her favor...and dismiss the case” *Kim v. City of Ionia*, No. 18-1974(6th Cir. January 3, 2019) See. order p.3

APPENDIX F Petitioner obtained State of 8th Circuit, Clerk of Court was entered enter default MCR 2.603(A) See. at The United State District Court Western Michigan case # Case No. 1:12-cv-01195-GJQ docket no. 78 Attachments: # 2

APPENDIX G State of Michigan Judicial Circuit Court issued Summons and Complaint on October 9, 2012.

APPENDIX H Defendants answered to Complaint at federal court on November 5, 2012. *See, Kim I* Docket no.4. Defendants had been default State Court and the U.S. District Court.

No. _____

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To the United States Court of Appeals

For the Sixth Circuit No. 19-1389

PETITION FOR WRIT OF CERTIORARI

GwanJun Kim
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II. PETITION FOR WRIT OF CERTIORARI

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

III. OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeal appears at Appendix A to the petition and is
 is unpublished.

IV. JURISDICTION

For cases from federal courts:

The date on which is United States Court of Appeals decided my case was on September 17, 2019.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 4, 2019 and copy of the order denying rehearing appears at Appendix A .

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

V. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rules of Civil Procedure Rule 9. Pleading Special Matters

In this Case of defendants who violates Federal Rules of Civil Procedure Rule 9(b) *Fraud or Mistake*.

"Rule 9(b) is simply applicable in case where a complaint does not allege fraud or mistake *See. Concha* 62 F.3d at 1503 and "the Complaint in this action under Rule 9(b) would be subject to the relaxed standard that is applied to claims where evidence "lies" within [Defendants'] exclusive possession" and specific citations to each instance of fraudulent conduct would not be required". *Id.*: U.S. ex rel. Tamanaha, 2011 WL 3423788 at *2; (citing United States ex rel. Lee v. SmithKline Beecham, Inc., 245 F.3d 1048, 1052 (9th Cir. 2001)); United States ex rel. Franklin, 147 F. Supp.2d at 49.

The Sixth Circuit Court of appeal wrong that "Rule 9(b)[§ 10(b)] of the Securities Exchange Act of 1934 *See. Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 190 (1994) Held: A private plaintiff may not maintain an aiding and abetting suit under § 10(b). Pp.170-192.], it does not create a federal cause of action for fraud. *See. Order Appendix B.*

Therefore, Petitioner asks this Court to address RETROACTIVELY APPLICABLE TO case that are on collateral review.

VI. STATEMENT OF THE CASE

On 2019 petitioner filed law suit against defendants violated Federal Rules of Civil Procedure, Rule 9(b)[lies] "fraud or mistake" at the district court. The Cause of action as follow:

Cause of action I "Fraud" 9(b)

The District Court Western Michigan case #

Case No. 1:12-cv-01195-GJQ appears (*Kim I*), the State of Michigan 8th Circuit, Clerk of Court was entered enter default against City of Ionia MCR 2.603(A). See APPENDIX F. The U.S. district court refused comply the Rule 55(a) "requires "the clerk must enter the party's default" The evidence Procedural history shows. See.

- A. The State 8th Circuit Court Summons issued on October 9, 2012. See. Appendix G. or *Kim I* Court docket no. 78 Attachments: # 2.
- B. Defendants answered to Complaint at *Kim I* federal court on November 5, 2012. See. Appendix H. The defendants was not Answers *within 21days* Federal Rule of Civil Procedure 12(a)(1)(A)(i) and State Court.
- C. Plaintiff obtained State of 8th Circuit, Clerk of Court was entered enter default MCR 2.603(A) for each named defendant; Jennifer Skorka ; and Brandon Anderson ; Thomas Troy Thomas; Jason Eppler ;City of Ionia. See. Appendix F. or *Kim I* docket no. 78 Attachments: # 2.

Respondents have engaged in conduct that the district court refused and no address and no comply the Rule 55(a) "requires "the clerk must enter the party's default". This is a cause of action and defendants are violated Federal Rules of Civil Procedure, Rule 9(b) "constituting fraud or mistake" at the *Kim I*, district court. The Sixth Circuit 13-2084 affirmed dismiss on "Additionally, as to Kim's allegation of judicial fraud, adverse ruling[refused and no address, and no comply the Rule 55(a) "requires "the clerk must enter the party's default"]

"by a court almost never establish bias or prejudice. See. *Liteky v. United States*, 540 U.S. 540, 555(1994)" See. p.m Appendix D.

The panel was applied that wrong law and Respondents made case law that when the Federal Court record appears that defendants had been default, the court to allow refused, no address, not comply the Federal Rules of Civil Procedure 55(a) requires "the clerk must enter the party's default". But the Court granted defendants summary judgment and denied Second, Petitioner's Motion to remand State Court because State Court entered entry of default. This is defendants violated of the Federal Rules of Civil Procedure Rule 9(b) *Fraud or mistake; conditions of mind* and evidence "lies" within [Defendants'] exclusive possession"" Id.; U.S. ex rel. Tamanaha, 2011 WL 3423788 at *2; (citing United States ex rel. Lee v. SmithKline Beecham, Inc., 245F.3d 1048, 1052 (9th Cir. 2001)); United States ex rel. Franklin, 147 F. Supp. 2d at 49.

Cause of action II "Fraud" 9(b)

The defendants were obtained the *Kim I*, district court refused, and no address, not comply the Statute 28 U.S. Code § 1738 "shall have the same full faith and credit[Plaintiff obtained The State of 8th Circuit, Clerk of Court was entered enter default MCR 2.603(A) See. Appendix F]". The Sixth Circuit 13-2084 wrong affirmed dismiss on "Additionally, as to Kim's allegation of judicial fraud, adverse ruling[refused, and no address the Statute 28 U.S. Code § 1738 requires "shall have the same full faith and credit"[Plaintiff obtained The State of 8th Circuit, Clerk of Court was entered enter default MCR 2.603(A)]"by a court almost

never establish bias or prejudice. See. *Liteky v. United States*, 540 U.S. 540, 555(1994)" See. page. m Appendix D This is a defendants violated Federal Rules of Civil Procedure, 9(b) fraud or mistake" at the Court.

Cause of action III "Fraud" 9(b)

The defendants were obtained the *Kim I*, district court refused comply with Statute 28 U.S. Code §1446(b)(3). The 28 U.S. Code §1446(b)(3) requires "[T]he initial pleading [On October 29, 2012 Defendants failed to answer to complaint "within 21days" State Court MCR 2.108(A)(1) and State of 8th Circuit, Clerk of Court was entered enter default MCR 2.603(A)] are not removable" is REMOVABLE and "by a court almost never establish bias or prejudice. See. *Liteky v. United States*, 540 U.S. 540, 555(1994)" See. p.m Appendix D.

Cause of action IV "Fraud" 9(b)

The defendants were obtained the *Kim I*, district court refused comply with Statute 28 U.S.C. § 1332. The Statute 28 U.S.C. § 1332 required the U.S. District court lacked subject matter THAT subject matter jurisdiction the parties were non-diverse 28 U.S.C. § 1332. This is defendants violated Federal Rules of Civil Procedure, Rule 9(b) fraud or mistake"

Cause of action V "Fraud" 9(b)

The defendants were obtained the *Kim I*, district court refused comply the Statute 28 U.S.C.

§ 1331. "Kim also, contends that district court erred denying his motion to remand the case to state court. He asserts that the instant civil action constituted an appeal of his criminal[appeal State of Michigan *Circuit*, Court 2012K-29547-AV] proceeding that should not have been removed to the district court. The respondents obtained "However, this assertion is belied by record" Order p.4 Sixth circuit No 13-2084 See. Appendix D page o. The Court was belied by Respondents.

The Statute 28 U.S.C. § 1331 requires are the district court has no jurisdiction and not removal because the U.S. district is not criminal appeal, and civil appeal court for the State of Michigan District Court.

Petitioner's assertion WAS NOT "belied by record". The defendants were obtained the *Kim I*, district court that "removal was proper(*Kim I, Id* Dkt. 98-1) which is Respondents made case law that the State criminal appeal case and civil claim, in this Case, the U.S. civil district has a jurisdiction because the U.S. civil district is a State Criminal appeal court. *Kim v. City of Ionia* No. 13-2084(6th Cir. Apr.29, 2014). This is fourth, of cause of action that defendants violated Federal Rules of Civil Procedure, Rule 9(b) constituting fraud or mistake"

Cause of action VI "Fraud" 9(b)

The Court was intentionally belied by respondents, the court received the made-up police video by defendants. The video, the U.S District Court For the Western District of Michigan Case no. 1:12:cv-01195-GJQ Docket no 35 appears that

- A. The police video has NEVER been shows that "*the rear window*". See. Police video. p.1.Defendants' brief in support of defendants' Motion for summary of judgment.
- B. The police video has NEVER been shows that the "*rear window of the pick-up was tinted*". See. Police video. p.1.Defendants' brief in support of defendants' Motion for summary of judgment.
- C. The police video has NEVER been shows that "*the rear window of the pick-up was tinted and you NEVER can see who is driving the vehicle*". See. Police video. p.1.Defendants' brief in support of defendants' Motion for summary of judgment.
- D. The police video has NEVER been shows that "*City of Ionia observed a green, Chevrolet pick-up truck at the Corner of Dexter and Main in the City*" p.1.Defendants' brief in support of defendants' Motion for summary of judgment. See. Police video.
- E. The police video has NEVER been shows that "City of Ionia observed Kim's vehicle at the corner Dexter and Main (*id. at 4-5*) p.2 Exhibit D Opinion. See. Police video. p.1.Defendants' brief in support of defendants' Motion for summary of judgment.
- F. The police video has NEVER been shows that "*Plaintiff saw the police car at the traffic light at eastbound Washington Street and M-66.*" p.3 Defendants' Response Brief opposing plaintiff's Motion for summary judgment.

The District court was intentionally Belied by defendants that "there is no evidence in the record that officer Anderson and Skorka targeted Kim because of his race or nation origin. There is no indication that either of them had any idea who was driving the vehicle until they pulled it over. Accordingly, Kim's selective enforcement claim lack merit".

It is important notes that the *Kim I*, District Court Judge was unable to respond or address to the Evidence "lies [Cause of action, Fraud I to VI.] at all, its response to the other points is unavailing that " Defendants' Motion for Summary Judgment(dkt. #34) is granted, and Plaintiff's Claims dismissed with prejudice. And Plaintiff's Second Motion to Remand and Plaintiff's Motion for summary judgment are denied.

Petitioner next filed court of appeal that the panel was unable to respond or address to the Cause of action Fraud *I to VI* at all, its response to the other points is unavailing that the *Kim I* Sixth Circuit Penal No. 13-2084(6th Cir. Apr.29, 2014) finds that "Kim's allegation of judicial fraud, adverse ruling [refused comply "the clerk must enter the party's default," and refused the Statute 28 U.S. Code § 1738 requires "shall have the same full faith and credit Plaintiff obtained The State of 8th Circuit, Clerk of Court was entered enter default MCR 2.603(A); and refused Statute 28 U.S. Code §1446(b)(3); Statute 28 U.S.C. § 1333; Statute 28 U.S.C. § 1331] by a court almost never establish bias or prejudice. See. *Liteky v. United States*, 540 U.S. 540, 555(1994)" The Sixth Circuit does not care the "lies [Cause of action Fraud I to VI.]within [Defendants'] exclusive possession" *Id*

Petitioner next filed a timely Rule 60(b) appeal at Sixth circuit court, "*unusual and extreme situation* [The Cause of action fraud I to VI]are *where principles of equity mandate* relief." *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990) that the court finds that "Rule 60(b) does not allow a defeated litigant a second chance to convince the court to rule in his or her favor...and dismiss the case" *Kim v. City of Ionia*, No. 18-1974(6th Cir. January 3, 2019) *see. page v Appendix E.*

Petitioner next filed a timely complaint [cause of action I to VI] at different *Kim II*, district court that defendants violated Federal Rules of Civil Procedure, 9(b) fraud or mistake" at the district court. The district court finds that "Moreover, to the extent his claims are not estopped otherwise improperly before this Court [District Court]" (Order p.2 Dkt 4) and dismissed the case. *See. Appendix C.*

Petitioner next filed a timely appeal at Sixth circuit court, which he requests the claim Rule 9(b) special damages"(g),the court finds that The Court of appeal finds that "9(b)[10b] it does not create a private right of action. *See. Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 190 (1994)(“ We have been quite reluctant to infer a private right of action from a criminal prohibition alone ...” This leaves Kim with leg to stand on, so we must dismiss." *See. Appendix B.* The Sixth Circuit does not care the Evidence ““lies” [Cause of action Fraud I to VI.]within [Defendants’ exclusive possession”” *Id*

Therefore, Petitioner asks this Court to address RETROACTIVELY APPLICABLE TO case that are on collateral review.

VII. REASONS FOR GRANTING THE PETITION

To Avoid Erroneous the Sixth Circuit court finds that “Rule 9(b)[10(b)] cause of action I to VI, “lies”] it does not create a federal cause of action for fraud” and affirmed dismiss this case. *See.*

Appendix B.

This Court should Clarify the ““Rule 9(b) would be subject to the relaxed standard that is applied to claims where evidence “lies” within [Defendants”] exclusive possession” and specific citations to each instance of fraudulent conduct would not be required””. *Id.*: U.S. ex rel. Tamanaha, 2011 WL 3423788 at *2; (citing United States ex rel. Lee v. SmithKline Beecham, Inc., 245 F.3d 1048, 1052 (9th Cir. 2001)); United States ex rel. Franklin, 147 F. Supp.2d at 49.

In this case THE PETITION for that “United State Sixth Circuit court of appeals has entered a decision in conflict with the decision of” [Rule 10(a)]“Complaint in this action under Rule 9(b) would be subject to the relaxed standard that is applied to claims where evidence “lies” within [Defendants’] exclusive possession” *Id.*; U.S. ex rel. Tamanaha,2011 WL 3423788 at *2; (citing United States ex rel. Lee v. SmithKline Beecham, Inc., 245F.3d 1048, 1052 (9th Cir. 2001)); United States ex rel. Franklin, 147 F. Supp. 2d at 49.

The panel was applied wrong that “Rule 9(b)[§ 10(b)] of the Securities Exchange Act of 1934 *See. Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 190 (1994) Held: A private plaintiff may not maintain an aiding and abetting suit under § 10(b). Pp.170-192.] “it does not create a federal cause of action for

fraud and dismissed the case" *Id.* Petitioner complaint is not § 10(b). The Sixth circuit panel knows that Petitioner complaint is Rule 9(b) lies.

Furthermore, Petitioner has been show that petitioner lost litigation, Caused by unlawful conduct, the panel was applied that wrong law and Respondents made case law that when State of Michigan 8th Circuit, Clerk of Court was entered enter default MCR 2.603(A) that defendants have a right remove to the federal court.

Also the *Kim I*, U.S. district court refused with federal rules of civil procedure, 55(a) and (b) default judgment and 28 U.S. Code § 1738; 28 U.S. Code § 1446(b)(3); and 28 U.S.C. § 1332; 28 U.S.C. § 1331 *Kim v. City of Ionia* No. 13-2084(6th Cir. Apr.29, 2014) This is evidence "lies [Cause of action Fraud I to VI.]within [Defendants'] exclusive possession" *Id.* This is a crime, shameful, this is not acting like a Court and defendants violated of the Federal Rules of Civil Procedure Rule 9(b) *Fraud or mistake; conditions of mind.*

Petitioner asserts that it would be a fundamental miscarriage of justice to leave the erroneous enhancement in place when applied the wrong law and when respondents "lie"

SIXTH CIRCUIT SPLIT

"The United States *Kim I*, Sixth Circuit court of appeals has entered a decision in conflict with the Rule of", 55(a) and (b) default judgment and statue 28 U.S. Code § 1738; 28 U.S. Code § 1446(b)(3); and 28 U.S.C. § 1332; 28 U.S.C. § 1331;and true casus of action and *Kim v. City of Ionia, Kim v. City of Ionia*, No. 13-2084(6th Cir. Apr.29, 2014). The Sixth Circuit was affirmed the

crime. Only *Kim II*, Sixth Circuit finds by court-self, the “lies” Cause of action Ito VI “Fraud” 9(b) was “it does not create a federal cause of action for fraud” and affirmed dismiss this case. *See.* Appendix B. Petitioner believes that the Sixth Circuit dishonestly finds that alleged the abused its discretion Seven(7)years for the Respondents.

SHOULD BE RETROACTIVELY

As clearly indicated above, The Sixth Circuit No. 19-1389 panel incorrectly decide the facts, and applied the wrong law Seven (7) YEARS;

Petitioner obtained an entry of default at State Court criminal appeal and civil in this case. The respondent city of Ionia, continue Criminally charging Police ticket 12494IT1 and IT 2 approximately \$5,000.00 and arrests him and Respondents removed this case to the U.S. district Civil court and granted the defendants’ motion for summary judgment. This is a fraud. This is the cause of action and defendants violated the Federal Rules of Civil Procedure, Rule 9 (b) fraud and “lie

Therefore, Petitioner asks this Court to address “complaint Rule 9(b) would be subject to the relaxed standard that is applied to claims where evidence “lies” [Cause of action Fraud I to VI.]within [Defendants’] exclusive possession” *Id* as it applies to case on collateral review.

VIII. CONCLUSION

For the foregoing reason, Mr. Kim respectfully requests that this court issue a writ of certiorari to review the judgment. The petition for writ of certiorari should be granted.

Respectfully submitted,

Dated: March 16, 2020 s/ *gwanjunkim*

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