

19-6337

Docket No.

In the Supreme Court of the United States

ORIGINAL

MONICA BIRCH-MIN, Individually and as Executrix of the Estate of Aung Min and as Administrator Ad Prosequendum on behalf of the Estate of Aung Min, Appellant Birch-Min,

*Petitioner,*

v.

Supreme Court, U.S.  
FILED  
AUG 10 2019  
OFFICE OF THE CLERK

MIDDLESEX COUNTY BOARD OF SOCIAL SERVICES;  
PLAINSBORO POLICE DEPARTMENT;ADULT  
PROTECTIVE SERVICES; DOES 1 THROUGH 100  
INCLUSIVE,

*Respondents.*

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE THIRD CIRCUIT**

Monica Birch-Min  
Plaintiff-Appellant Pro Se  
Apartment 9E  
801 North Broad Street  
Elizabeth, NJ 07208  
609-423-4296  
Email: monicamin3@aol.com

## Questions Presented

1. Whether the US Supreme Court will permit Government agencies, like Middlesex County Adult Protective Services and local Police in this case, to take away Senior Citizens' Constitutional Rights for due process and the necessity of having a Court Order before invading their private home and removing them for Guardianship?
2. Whether Federal Judges, who did not hear the case, have the authority to misquote or reverse the State Surrogate Court's trial Judge's decision and final Order in the matter of declaring persons incapacitated and needing a Guardian? Can these Federal Judges beingAppealed also reverse the Federal Magistrate Judges' Orders, who sat on the bench and heard the case?
3. Whether the Judiciary Branch of government 3<sup>rd</sup> Circuit Court of Appeals can exert power over the Executive Branch in Administrative Law investigating criminal and other violations? Can they refuse to make the necessary corrections for rule 60b evidence?
4. Does the 3<sup>rd</sup> Circuit Appeals Court Policy to prioritize defending the Judges under appeal meet the standards of the Constitutional Right of the people to a fair and unbiased hearing with a search for the truth based on empirical evidence? Can a Judge make false statements and conclusions about the submission of this evidence?
5. Are Federal Judges above the law when they make decisions?

## **List of Parties**

All parties appear in the caption of the case on the cover page.

In addition, the term "Two Camps of Judges" applies to the parties as the follows::

1. The term "Appealed Judges" in this Certeriori Petition refers to US District Court Judge Brian Martinotti and the US Third Circuit Appeals Court Judges, Morton Greenberg, Steven Bibas, and Michael Chigares. They wrote Orders under appeal without any hearings and contrary to:
- 2 The Trial Judges/Hearing Judges, refer to NJ State Surrogate Court Judge Frank Ciuffani and US Magistrate Judge Douglas Arpert. These Judges are not under appeal and supported the Plaintiff Min's facts about the case with their Opinions and Orders. They heard the entire case in their respective Courts and Roles.

**List of Proceedings\**

- 1. In re: Birch-Min US District Court Docket No. 3:14 cv-00467**
- 2. In re Birch-Min, Docket No. 18-2467, United States Court of Appeals for the Third Circuit, final judgment Request for Rehearing entered May 20, 2019.**
- 3. In re Birch-Min, United States Court of Appeals Third Circuit Writ Prohibition No. 17-1827 and Certeriori for Interlocutory Appeal at the District Court level No. 16-1287**

## Appendix

Opinion of Third Circuit .....	A1
Order Denying Rehearing.....	A6
District Court Opinion Granting Summary Judgment .....	A9
District Court Opinion Denying Rule 60 Motion.....	A20

## TABLE OF AUTHORITIES

### FEDERAL CASES

Allen v. McCurry, 449 U.S. 90 (1980) .....	6, 11
Anderson v. City of Bessemer City, N.C., 470 U.S. 564 (1985).....	6, 25
Bowles v. Russell , 551 U.S. 205, 127 S.Ct. 2360, 168 L.Ed.2d 96 (2007)	
6, 15	
Brower v. County of Inyo, 489 U.S. 593 (1989) .....	6, 12
Elliot v. City of Hartford, 823 F.3d 170 (2d Cir. 2016).....	6, 15
Fla. Ass'n for Retarded Citizens, Inc. v. Bush, 246 F.3d 1296 (11th Cir.2001) ....	6, 16
Gibson v. United States, 781 F.2d 1334 (9th Cir. 1986) .....	6, 12
Graham v. Connor, 490 U.S. 386 (1989) .....	6, 13
Haring v. Prosise, 462 U.S. 306 (1983) .....	6, 11
KH Outdoor, LLC v. City of Trussville, 465 F.3d 1256 (11th Cir. 2006)	
6, 15	
Kremer v. Chem. Constr. Corp., 456 U.S. 461 (1982) .....	6, 11
Lehman v. Revolution Portfolio L.L.C., 166 F.3d 389 (1st Cir.1999) .....	6, 16
Migra v. Warren City Sch. Dist., 465 U.S. 75 (1984) .....	6, 11
Monell v. Dep't of Social Services, 436 U.S. 658 (1978) .....	4, 6
United States v. Place, 462 U.S. 696 (1983) .....	6, 12
Terry v. Ohio, 392 U.S. 1 (1968).....	6, 13
West v. Atkins, 487 U.S. 42 (1988) .....	6, 12

### STATE CASES

Bondi v. Citigroup, Inc., 423 N.J. Super. 377 (App. Div. 2011), certif. denied, 210	
N.J. 478, 45 A.3d 983 (2012) .....	6, 11
First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 921 A.2d 417	
(2007) .....	6, 11

### FEDERAL STATUTES

28 U.S.C. § 1738.....	2, 6, 11
28 U.S.C. § 2107.....	6, 15
42 U.S.C. § 1983.....	4, 6, 11, 12
Fed. R. App. P. 4(a)(7)(A)(ii) .....	6, 15
Fed. R. Civ. P. § 1738\ .....	11
Fed. R. Civ. P. 60(b) .....	6
Fed.R.App.P. 4(a)(4).....	6, 16
Fed.R.Civ.P. 58 .....	2, 6, 15
U.S. Const, Amdt. IV .....	2

### STATE STATUTES

N.J. Stat. Ann. § 2A:31-1, et seq .....	4
N.J. Stat.Ann. § 2A:15-3, et seq .....	4

### IN THE SUPREME COURT OF THE UNITED STATES

## **PETITION FOR WRIT OF CERTIORARI**

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

### **OPINIONS BELOW**

The Opinion of the United States Court of Appeals for the Third Circuit has not been designated for publication and is reproduced in the Appendix. It was decided by Judge Morton Greenberg, Steven Bibas and Michael Chagares.

The Opinions of the United States District Court for the District of New Jersey are unreported and may be found in the Appendix. It was decided by Judge Brian Martinotti.

### **JURISDICTION**

The Court of Appeals issued its decision on January 23, 2019. A timely petition for rehearing and rehearing en banc was denied on May 20, 2019. A copy of the order denying rehearing and rehearing en banc may be found in the Appendix.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED\\

### **U.S. Const., Amendment IV:**

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.

### **28 U.S. Code § 1738:**

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

**The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.**

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

### **Fed.R.Civ.P. 58:**

- a) Separate Document. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:
  - (1) for judgment under Rule 50(b);
  - (2) to amend or make additional findings under Rule 52(b);
  - (3) for attorney's fees under Rule 54;
  - (4) for a new trial, or to alter or amend the judgment, under Rule 59; or
  - (5) for relief under Rule 60.

## Statement of the Case

### A. Proceedings Below

Petitioner, Monica Birch-Min and Aung Min who was live at the time and granted the right to proceed with Mrs. Min, sued the Middlesex County Department of Social Services and the Plainsboro Police Department in the United States District Court for the District of New Jersey alleging a violation of the couple's Due Process rights.

More specifically, she alleged that her husband, who at the time was 93 years old, was unlawfully taken from her care and imprisoned against his will by the Division of Adult Protective Services and forced to participate in unnecessary medical testing, treatment, and institutionalization.

The case US District Court 3:14-cv-000467 was first filed on January 16, 2014 in US District Court, Newark, NJ, and transferred to Trenton, NJ, Federal Court, as a Civil Rights Color of Law complaint with Constitutional violations of the law on the event beginning on January 20, 2012, January 24, 2012, and January 26, 2012 by Middlesex County the Police, Adult Protective Services for compensation from the Wrongful Guardianship case won in New Jersey Surrogate Court case number 235478.. There was an Amended complaint filed for more clarity.

After Aung Min's passing and with a licensed Attorney in a second amended complaint to change the names of Plaintiffs filed a written contract of Agreement in the Order of Consent Docket #58 which was signed by the Court and the two Defense Attorney's to Grant Mrs. Min the status Prosequendum and represent her

husband's claim as herself. Petitioner then asserted four causes of additional action: (1) a survival/wrongful death claim, pursuant to N.J. Stat. Ann. § 2A:15-3, et seq., and N.J. Stat. Ann. § 2A:31-1, et seq.; a *Monell* claim, see *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978), pursuant to 42 U.S.C. § 1983 against Middlesex County Social Services; a *Monell* claim against the Plainsboro Police Department; and a conspiracy claim.

The defendants moved separately for summary judgment and Petitioner moved for summary judgment. In an order entered on March 16, 2017, the District Court awarded summary judgment to the defendants and against Petitioner.

Petitioner timely filed her Summary Judgment as planned and the Judge accepted it as timely, but she was subsequently barred by Judge Martinotti to file a motion for reconsideration because he closed the case on 3/16/17 and wrote Terminated with Prejudice inside. She then moved to disqualify the District Court and had to file a Writ to the Appeals Court in attempt to proceed properly. She also filed a notice of appeal on March 27, 2017, resulting in the appeal docketed in the United States Court of Appeals for the Third Circuit. The appeal was stayed pursuant to Federal Rule of Appellate Procedure 4(a)(4)(A).

In an order entered on April 18, 2017, the District Court denied Petitioner's motion to disqualify Judge Martinotti or recuse himself and stated in its opinion that the matter of reconsideration was administratively closed. The Rule 4(a)(4) stay in this Court was lifted but the appeal to Prohibit Judge Martinotti from deciding was then denied by the Appeals Court. The Case Closed words remained

on the case.

Petitioner sought to reopen the appeal since it was improperly closed according to the official written procedure for closing a case and made report to the (AO) Administrative Office of the Courts of the violations of administrative law and the Judge was inappropriate. The Executive Branch AO were blocked and usurped by a Judiciary Policy 3rdCA to handle it among themselves and defend the Judge.. The Third Circuit denied the motion but granted her leave to resubmit her already filed volumes of paperwork and documents of evidential proof to the Third Circuit Judge because Judge Martiotti claimed they were never filed in the case. And they favored their Judge Martinotti's decision not to recuse himself. But Judge Martinotti then Granted Plaintiff the right to enlarge the time and file a motion for Reconsideration, which she did. He placed it on the docket as if the case was now open. Somehow the words "Case Closed" were never removed, but the case proceeded on time as an open case on the Court Docket. (Although the Third Circuit opinion states that Plaintiff never did send any of her documents to them, this is not so She did file these documents at the time of filing her brief on appeal).

On May 1, 2017, Petitioner filed a second motion for reconsideration. In an order entered on November 28, 2017, the District Court denied it. On December 8, 2017, Petitioner filed a motion to vacate the March 16, 2017 summary judgment order and November 28, 2017 order denying reconsideration, pursuant to Fed. R. Civ. P. 60(b).

Petitioner argued in a supporting affidavit that the summary judgment in

favor of the defendants was void and should be vacated because it was based on facts of fraud, errors, and abuse already decided by the trial Judges. In an order entered on May 17, 2018, the District Court denied the Rule 60(b) motion.

Petitioner timely moved for reconsideration of that order.

In an order entered on May 30, 2018, the District Court denied reconsideration. On June 29, 2018, Petitioner filed a notice of appeal to the Third Circuit seeking review of the District Court's March 16, 2017 order granting summary judgment to the defendants and against her, and orders denying her Rule 60(b) motion and motion for reconsideration of the order denying her Rule 60(b) motion.

The Third Circuit denied the appeal for lack of appellate jurisdiction to the extent that Petitioner sought review of the District Court's March 16, 2017 order awarding summary judgment to the defendants and against her and affirmed the District Court's denial of the Rule 60(b) motion. A motion for rehearing and rehearing en banc was denied. Oral Argument as well as a Settlement Conference was also denied.

#### B. The Facts\

This action is based on an original case 235478 with events beginning January 20, 2012, concerning the same events with the same parties, Middlesex County, Adult Protective Services and Plainsboro Township Police. Petitioner and her husband, an elderly couple, were suddenly, violently, invaded in their home. Petitioner called 911 and filed a report against the invaders for forced entry and the

abduction of her husband without any Court Order or necessary papers. The intruders claimed an alleged anonymous caller made a report which was found to be false.

Dr. Aung Min was kidnapped by government personnel, falsely imprisoned in a medical institution that day, and received harmful treatment contrary to his treating physician and under police order. Without a proper court order and without due process, under wrongful Guardianship, all his assets were confiscated by a newly appointed Guardian and Aung Min became legal property or "chattel" owned by a strange Guardian. He lost his Right to Life Liberty and the pursuit of Happiness for over 5 and ½ months. Petitioner was separated from her husband by the Police's uncalled for removal of Aung Min from their home together on January 20, 2012. Her Loss of Spouse Consortium claim began that day.

On January 24, 2012 Mrs. Min was illegally abducted by the local Police without Court Order while she was attempting to file her Police Officer Bauman 911 call for help report written during the event January 20, 2012. She was suddenly taken with force to a Hospital by the Police for medical testing and a permanent stay. But she was released in couple of days, cleared of having any medical issues. However, this delay obstructed her from filing a complaint against the Defendants in Plainsboro City Hall Criminal Court based on her 911 urgent call Police report. Illegal home entry, without a search warrant is considered a crime.

During her absence, without notification, she discovered her husband was placed under a temporary Guardian. She had to go to court to release him as a Pro

Se.

Briefly stated, Middlesex County filed a complaint against Aung Min for Incapacitation and claimed that he needed Guardianship. Mrs. Min filed opposition based on Pretrial dismissal of classic seven points 1. Police misconduct 2. Willful and deliberate fraud and deception in the compilation and distribution to the Courts 3. Gross distortion in the facts reported in the case. 4 Medical Doctors given grossly falsified information. 5. Age, racial, religious cultural, and ethnic bias abuse. 6. Failure to follow proper procedure. 7. Out of Jurisdiction. All these points charged by Mrs. Min against Middlesex County and others involved in the subject event were investigated and certified by the Surrogate Court and the case was finally dismissed in the Mins favor, which is written in the NJ Surrogate Court. To avoid harassment by the Agencies the Mins had to relocate to Montserrat, which is written in the Court Order.

The Mins presented their plans for Summary Judgment based on a Judicial Notice and appearance of the Trial Judge from the original case, which is written in the transcripts of the US District Court 3:14-cv-000467 on June 5, 2014. Magistrate Judge Douglass Arpert presided. The Defendants' attorneys agreed and sued each other in cross complaints for 100% cause and liability, not the Mins, after the clarification of the base original case by New Jersey trial Judge Frank Ciuffani and United States Honorable Magistrate Judge Douglas Arpert. Page 6 line 1-2 , is a conclusion of the US District Court in the transcripts June 5, 2014. The Plaintiff Monica Birch-Min's statement of facts was correct, and the final Order 6/21/12

included and settled all the Orders before.

Petitioner argued that res judicata applied to this case, under Full Faith & Credit, because it was already tried to the Mins' favor for cause and liability and internal investigation, discovery and medical doctors' testimonies substantiated the injuries and loss. Dr Aung Min was never mentally incapacitated and could not make his own decisions. These matters cannot be retried finding a different result either to the fact that the Mins won and did everything right, not the Middlesex County agencies or local police called by Adult Protective Services (APS). None of the Plaintiff's complaints were ever dismissed by Honorable Judges Freda Wolfson or Judge Peter Sheridan before the last-minute appointment of Judge Brian Martinotti. Judge Wolfson approved the Plaintiff's request to file a Summary Judgment for the case after complete discovery and Judge Peter Sheridan approved the Plaintiff's use of Federal Criteria in the Plaintiff's final calculation for compensation and the US, DOJ Criteria for Victims of a Crime Compensation Fund, they used in their Summary Judgment.

The Defendants accepted the Plaintiff's financial claim presented to them as satisfactory in front of Judge Arpert and discussed all the items. They did not file any opposition within the time permitted. The Plaintiff also filed a separate direct independent Notice of Non-Opposition to the Defendants for this claim published on PACER. Also, there was no response or opposition filed by the Defendants to this notice in time as required.

## REASONS FOR GRANTING THE WRIT OF CERTIORARI

### A. The Decisions Below Conflict with this Court's Decisions Concerning the Scope of 28 U.S. Code § 1738

Under the full-faith and credit statute, 28 U.S.C. § 1738, federal courts in § 1983 actions must give state court judgments the same preclusive effect they would receive in state court under state law. *Migra v. Warren City Sch. Dist.*, 465 U.S. 75, 81 (1984); *Allen v. McCurry*, 449 U.S. 90, 94–95 (1980). See also *Haring v. Prosise*, 462 U.S. 306, 313–14 (1983). This principle controls so long as the federal litigant against whom preclusion is asserted had a full and fair opportunity to litigate his federal claims in state court. A full and fair opportunity to be heard requires only that state judicial procedures meet minimal procedural due process requirements. *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 480–81 (1982); *Allen*, 449 U.S. at 95.

Under New Jersey law, collateral estoppel bars the prelitigation of an issue that has been adjudicated in a prior litigation if: “(1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding. *Bondi v. Citigroup, Inc.*, 423 N.J. Super. 377, 423, 32 A.3d 1158, 1185 (App. Div. 2011), certif. denied, 210 N.J. 478, 45 A.3d 983 (2012) (quoting *First Union Nat'l Bank v. Penn Salem Marina, Inc.*, 190 N.J. 342, 352, 921 A.2d 417 (2007)).

These criteria are clearly met. The competence of the Petitioner's decedent, Aung Min, was at issue as well as the right of the defendants to seize him and place him under restraint. There was no basis for the courts below to refuse to apply collateral estoppel.

### B. Claim is Meritorious

A seizure is “per se unreasonable within the meaning of the Fourth

Amendment unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized.” *United States v. Place*, 462 U.S. 696, 701 (1983)). There is no question that a plaintiff may recover damages under section 1983 for “unreasonable seizure” of his person in violation of the Fourth Amendment. See *Brower v. County of Inyo*, 489 U.S. 593, 595–600 (1989) (determining that use of blind roadblock was a Fourth Amendment seizure, and remanding to determine, *inter alia*, if seizure was reasonable).

To establish a claim under 42 U.S.C. § 1983, plaintiffs must plead that (1) the defendants acting under color of state law (2) deprived plaintiffs of rights secured by the Constitution or federal statutes. *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986). “A public employee acts under color of state law while acting in his official capacity or while exercising his responsibilities pursuant to state law.” *West v. Atkins*, 487 U.S. 42, 49 (1988).

In addition to the preliminary § 1983 requirements, a claim of unreasonable seizure of person requires “government actors [to] have, ‘by means of physical force or show of authority, . . . in some way restrained the liberty of a citizen.’” *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989) (omissions in original) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968)).

Inasmuch as Plaintiff established all of these elements, it was error to dismiss her claims .All three of her Civil Rights Color of law complaints first filed January 16, 2012 in US District Court Newark transferred to Trenton un 3:14-cv 000476 were valid and never dismissed by any hearing District Court Judge including Honorable Freda Wolfson, and Honorable Peter Sheridan who sat on this case with Magistrate Judge Douglas Arpert . Only District Court Judge Brian Martinotti, a last-minute new appointment assigned on the case, decided to dismiss the Plaintiff Min’s case and oppose the other Judges decisions who heard proceedings including the original Trial Judge Frank Ciuffani. The Appeals Panel supported Judge Martinotti using a extremely biased 3<sup>rd</sup> circuit written Operating Policy to prioritize Defending this Appealed Judge Martinotti.

### **C. Appeal to the Third Circuit Timely**

The Third Circuit erected a procedural thicket for no reason whatsoever. It would have made sense to simply reinstate the appeal that had been provisionally dismissed based upon the new information in the Appellant's brief and stamp Reversal on the Decision to deny the Plaintiff's Min Summary Judgment. All their documents were satisfactorily filed and proven. It is a statement of falsehood for the Appealed Judges to say there was not a "shred of evidence filed by the Plaintiffs." There was an Administrative Law Violation in closing the case prematurely without the required due process and the complete exhaustion of remedies. Letters were not mailed to all parties with 30 day notice and the Plaintiffs were blocked from proceeding through the normal Justice process with a Motion to Vacate under rule 60b. Fraud, waste, and abuse, of authority legislating from the bench took place is his approval for Adult Protective Services illegal activities or they were successful in winning the case. Denying the Min's their rights without hearing any part in the case causes dangers for the public's safety and wellbeing with his approval for new unconstitutional legal standards for home invasions and the removal of persons for Guardianship purposes against their will. Precedent is always set in appeals. Law Schools already read their decisions based on illegally obtained information. There must be a continued freeze until the corrections are made.

The Plaintiff has proof of submitting her so called "missing" documents to the District Court via Judge Arpert in Order # 124. In Order #107 the Judge Grants the Plaintiff Min a Court Injunction against Defense Attorney Stone, for submitting the erroneous, false, information which was Vacated by Trial Judge Ciuffani and stated the Plaintiff's medical claims were of a serious nature and harmful to the Mins. Judge Arpert put this information under Seal. The Defendants broke two Judges Orders who heard the case and a written Order of Protective Seal to erroneously present this material for their Summary Judgment. Judge Martinotti Appeals Court supported this action and went against the Original trial Judge and Magistrate Judge. Order of Consent and agreement written by NJ licensed Attorney for the Plaintiff's # 58 Plaintiff Monica Min Prosequendum status as herself for her Husbands' claim was signed by Defense Attorneys and the US

District Court. All the Plaintiffs claims were valid and could not be dismissed by the Appealed Judges when they took over authority at the end years later.

Traditionally the Executive Branch of government overseas administrative law violations. The order denying reinstatement explicitly contemplated that procedure. No matter. The appeal was properly before that Court.

Under Fed.R.Civ.P. 58, a separate document had to be entered upon the order granting summary judgment. Fed. R. App. P. 4(a)(7)(A)(ii), says that a judgment is deemed to be entered on the earlier of the Rule 58 judgment or 150 days after a dispositive order is entered on the civil docket. The only jurisdictional requirement is the need for an appeal within 30 days of the judgment or an extension. See 28 U.S.C. § 2107 ; *Bowles v. Russell* , 551 U.S. 205, 127 S.Ct. 2360, 168 L.Ed.2d 96 (2007). *Hamer v. Neighborhood Housing Services of Chicago* , — U.S. —, 138 S.Ct. 13, 199 L.Ed.2d 249 (2017), tells us that supplemental or implementing provisions in the Rules of Appellate Procedure are not jurisdictional. *Hamer* concerned Rule 4(a)(5)(C) ; its holding applies equally to Rule 4(a)(7)(A)(ii).

A a pro se notice of appeal “must be viewed liberally, and not every technical defect in a notice of appeal constitutes a jurisdictional defect.” *Elliot v. City of Hartford*, 823 F.3d 170, 172 (2d Cir. 2016) (internal quotation marks omitted); see also, e.g., *KH Outdoor, LLC v. City of Trussville*, 465 F.3d 1256, 1260 (11th Cir. 2006).

In any event, two Writs, Prohibition and Interlocutory Cert. to the Appeals Court, were filed on March 27, 2017 within 28 days from 3/16/17 denial, together in person and accepted by the Clerk of this Court. Only one fee was attached they said. Later, the Certiorari Writ for the Appeals Court was closed for lack of additional fee and reopening was denied. But the Plaintiff applied and was granted a Pauperis Order to proceed on the Writs, but it was misfiled. The Writs do not constitute a full-blown appeal of the summary judgment determination. Plaintiff were entitled to file the appeal, according to the Court's decision, when they exhausted all remedies in District Court. Cf. Fed.R.App.P. 4(a)(4). Proper sequence and timing show that the appeal was properly and timely taken and that the docketing fee was

paid. There was a mishandling of the Plaintiff's Documents in the Court Administrative errors found by Order July 16, 2019 from the Appeals Court titled Administrative Error Found.

#### **D. Administrative Closing Improper**

"Administrative closings comprise a familiar, albeit essentially ad hoc, way in which courts remove cases from their active files without making any final adjudication. . . . This means that a court may reopen a closed case—either on its own or at the request of either party—even if it lacks an independent jurisdictional basis for doing so." *Lehman v. Revolution Portfolio L.L.C.*, 166 F.3d 389, 392 (1st Cir.1999) (citing *Fla. Ass'n for Retarded Citizens, Inc. v. Bush*, 246 F.3d 1296, 1298 (11th Cir.2001)).

Thus, if the case was administratively closed, the order was not a final appealable order and no final adjudication had been made. Thus, the appeal could not be deemed untimely.

Administrative Law Violations were filed by the Plaintiffs for the lack of due process in closing the case and the improper procedure by Judge Martinotti. There were no letters mailed to all parties 30 days in advance of the closing date or 60-day period to comply for the Plaintiff's. This is not just an error, but a deliberate consistent pattern of the Judges under Appeal to cover up for the violent crimes and abuse the Plaintiff Mins were victims caused by the Defendants. Decisions were made by the Judges in the Judiciary Branch of government among themselves without checks and balance or search for truth and weighing of empirical evidence from the Plaintiffs. Their written operating Policy prioritized defending the Judge and their reputation without any proper restraint of the law or impunity applied to their performance on behalf of the public.

The blocking of Administrative Office of the Courts and FBI, DOJ, and the Executive Administrative Branch of government including the President POTUS from performing their roles violates the separation of powers set down in the US Constitution. Federal Judges are now permitted to belong to the private sector NJ Bar Association. These private Attorneys Associations meet at the top level with

Federal Judges and have influence on the Judiciary Conference, who write the Policies of the 3<sup>rd</sup> Circuit Appeals Court and all Court processes. The NJ Bar Association publicizes its dedication to defend the Judges and protect their reputation against any criticism or false, accusation, complaints. or comments from the public or news media which damages their reputation or harms them. Fact finding and search for truth was undermine by the Policy of the 3CA to handle all these matters among themselves and removing any checks or balances of the Judges or other personnel. Who is there in the system that defended the Plaintiff Monica Birch Min. about unfair attacks of her and her husband's high-profile reputation or the public?

The Plaintiff Min's were falsely accused by these Federal Judges of losing the first case. An Dr Aung Min, who was never declared incapacitated before these Adult Protective Service employees came to their Mins home that day 1/20/12 without any notice or legal right. And caused them terrible damages to their reputation and falsified the facts of the case final conclusions 6/21/12 regarding the mental state. These 3CA opinions and decisions now as well as the public lost quality for accurate decision and are deprived by this deficiency in judicial process. They Waste fraud and abuse excessive cost and time has resulted unnecessarily for the Plaintiff Monica Birch-Min from the suspension of this oversight authority of the other branches of government to readily correct the errors and take proper action. Fraud cannot be overlooked in this case caused by the actions of theseAppealed Judges Brian Martinotti, and Appeals Panel Judges Steven Bibas, Michael Charges and Morton Greenberg- US District Court Documents number 1-- follow with the Original Trial Judge Frank Ciuffani's Final Order dated 6/21/12 Vacating the Incapacitation Order and Guardianship Order is indisputably the FINAL ORDER in the original case number 235478, not one dated March 13, 2012 before the trial was completed. There were no unsettled Orders to be decided by these Federal Judges under appeal who did not hear any part with the Plaintiff. It is a issue of Federal Judges making false statements falsifying Plaintiff's evidence by discarding it, misquoting the trial Judge Ciuffani and reversing Magistrate

Judge

Douglas Arpert Orders, who sat on the bench and heard everything in their cases.

The Judges that are Appealed also denied oral argument, a Settlement Conference request made by the Plaintiff and a Writ for an Interlocutory Appeal at the District Court level. A proper hearing panel including the hearing Judge Magistrate Judge Douglas Arpert or even Judge Frank Ciuffani who once served on the 3CA should have been permitted to decide prior to writing the decisions between the two Summary Judgments the Plaintiff's and the Defendants submitted.

These issues before the US Supreme Court are not simple issues of errors or relitigating a case that was already decided against the Mins. These issues are of serious criminal fraud and violent vicious crimes which the Plaintiff Monica Birch Min and her husband Dr. Aung Min were victims of serious injuries and outstanding economic loss caused by the Defendants 100%. They admit this fact. A Vacate decision is not negotiable. Yet this last-minute appointed District Court. Judge Martinotti, who refuses to hear anything, disrupts the law and order in the Court and overruns the other Judges to harm victims Plaintiff Min needlessly without restraint.

Even one violation of Administrative Law or Violation of the Constitution would have sufficed for the Granting the Plaintiff Min their complete claim These appealed Judges wrote repeatedly that by law the Plaintiff Mins would have won the claim. Only a higher-level Authority like the US Supreme Court and/ or the US Solicitor General can stop these vicious crimes now authorized by the Appeals Court and make necessary changes to the system to protect the citizens from this kind of crime and oppressive government.

Taking away innocent people's lives and Guardianship, which turns people into chattel owned by a strange Guardian, is a serious matter to be left unaddressed or rectified by the US government. The decision against the Plaintiff Min should be simply reversed in their favor. It should have been done a long time ago without all this fraud, abuse and waste of time added to their lives by a government that is

supposed to protect them.

The Appealed Judges' conclusions "there was not a shred of evidence", they (Defendants) did everything right and were successful in the original case, there were no Constitutional or other violations that the Plaintiff Min were deprived, it was Judge Ciuffani's final Judgment Order (March comes after June?) which are found throughout their written decisions included in the Plaintiff's Appeal. In comparison of the two Camps of Judges, there is a direct contradiction. Proofs are attached from Court records pp. 19-23 located in this document under Reasons for Granting the Writ Certiorari. This comparison confirms that the Plaintiff is right and should have won everything, not the reverse. The Plaintiff did not damage the Defendants, the Defendants damaged the Plaintiffs.

The following documents pp30-35 decided by the Hearing /Trial Judges (1) NJ Court final Order 6/21/12 and (2) US Court portion of transcript 6/5/14 prove the misquote of Appeals Judges (3) Order 124 contain facts concerning Plaintiff's submission of medical, and other evidence serious injuries claimed in her Summary Judgment reviewed by the Magistrate Judge. (4) Order #107 placing defense Attorney Stone for the Police under a Court Injunction restraining Order for using erroneous sensitive information from the illegal home invasion 1/20/12 which was vacated and placed under Protective Seal Order.

In contrast to the Appeal Judges Opinion January 23,2019 p.7 claim that Dr Aung Min was finally declared incapacitated and the opposite is fact. Page 7 is entirely distorted that there was an Order left unsettle not Vacated in the original case and Mrs. Min 's role in the Court case pro se. was declared the opposite by the Trial Judge in US Court transcript. The Appealed Judges stated "not a shred of evidence was submitted" is contradictory to #107. There were no violations and the agencies did everything right is contradictory to #124 issued by the trial Judges. The Appealed Judges reversed the Court Injunction Order against the Defendants and broke the Trial Judge Ciuffani's Protective Seal for publishing the erroneous materials vacated and obtained illegally.

**Challenge to the Court to Produce the Following Documents Necessary for Support of Their claim Against the Plaintiff Monica Birch-Min and Dr Aung Min**

1. TheAppealed Judges should produce the required documents claimed by the Defendants to support their decision to Grant the Defendants /Appellees their Summary Judgment Motion against the Plaintiffs and “make new settled law” from the bench. These documents should exist and should have been submitted to the court. The Plaintiffs proofs are well documented.

The following must be included: Search warrants signed by Court Order Judge before entry into the Plaintiff's home on 1/20/12 or any time preceding the date on which the claim for damages began. A Court Order to abduct Dr. Aung Min from his home. A Court Order for the abduction against Monica Birch-Min's will by the Plainsboro Police on 1/24/12 in handcuffs with use of excessive force in City Hall while she was filing a complaint in City Court based on her 911 Police call for help against the Defendants.

2. Were there any criminal citations before, during, or after filed against the Mins for this activity by Adult Protective Services and the Plainsboro Police? None were ever produced in the case discovery, investigations or existed.

3. Produce the Proof of Service filed in the Middlesex County Surrogate Court and date it was served on the Mins prior to the hearing and Judgement on the Plaintiff's Min for Aung Min's temporary Guardianship by Adult Protective Services Agency staff. The Court records indicate this Notice of hearing is a necessary prior to the process The Court record for Pre-Notice shows it was posted in Feb.6, 2012 after the 1/26/12 decision. This delay denied the Mins the right to defend themselves against the claim for Guardianship or obtain Attorney. This Court Document was filed in the Plaintiffs' Federal case as a Constitutional Violation to due process.

4. Produce Medical documents and pharmacy reports of mental incapacity of Aung Min before the illegal invasion by APS and Plainsboro Police. None were submitted in the trials or for the Defendants Summary Judgment Claim against the Plaintiff Mins.

5. Why did the Appealed Judges state there was "not a shred of evidence submitted" by the Plaintiffs Min when these supportive documents for their claims for Summary Judgment appeared officially on PACER in transcripts and Federal Magistrate Orders 124 and 121 granted in the Plaintiffs' favor? A Court Injunction against the Defendants adversary Attorneys and the Plaintiff's satisfactory completion of her Summary Judgment, including a Justification Report, had these attached documents.

What was the reason for the Appealed Judges to deny the findings and conclusions of the Trial Judges or Federal Judge Arpert's Orders? This is a gross disparity and cover up between the two camps of decisions: Appealed Judges verses Trial Judge's Orders.

6. A challenge is made on inquiry to the Supreme Court of the misquoting of the NJ State Court trial Judge Honorable Frank Ciuffani's final decision on June 21, 2012 by the two Appealed Judges. The words written on the final order 6/21/12 of the case 235478 by trial Judge Ciuffani are quoted as "ORDER VACATING the JUDGMENT OF INCAPACITY AND THE ORDER APPOINTING A GUARDIAN". The words clearly state judgment against Aung Min for being incapacitated was wrong or vacated. He also stated in the Order that appointment of a Guardian was wrong and vacated. How and why did the Appealed Judges state the Defendants won and did everything right against the Plaintiff Mins to the point of writing new settled law, when there was no such medical or other history characterizing the couple in this derogatory way. The discrepancy between the two Camps is matter of fact.

7. Judge Ciuffani testified in Federal Court and wrote orders supporting this claim. Also Judge Arpert, who heard all the Federal proceedings from the beginning

stated, in the Court transcript dated \_June 5, 2014 page 6 line 1, the Court Judge states "Whatever the purpose was, **I do have an order vacating the prior orders of the Court.**" There was no outstanding unsettled Order from the original case.to be open for interpretation Judge or Jury. It was a fact that all the preceding orders were "Vacated" and Middlesex County Attorney Downs interpretation of this Order from the original case was barred. Where are the proofs of the Defendants to support their claim for a Summary Judgment against the Plaintiffs when the trial Judge Ciufanni appeared and held discussion with them on Judicial Notice with Judge Arpert as reported in transcripts dated June 5, 2014?

## CONCLUSION

This case presents issues of exceptional importance. An urgent request for correction is necessary. If left standing, the public would be in grave danger of their life, liberty and the pursuit of happiness as the Plaintiff Min's were. With the new "settled law" written by Appealed Judge Martinotti in effect now and sustained by the Appeals Panel, the legalization of unconstitutional, dangerous procedures deprives the public, of safety and security, in their private homes and encourages crimes.

Anyone can come to the door of a private home without notice or any documentation and claim they were from government agency or police and that they were entitled to break in and enter in force against residents' protest. People were not entitled to resist, or they could shoot them, ransack your home, seize property, shoot your dog etc at will. These intruders could publicly make unsubstantiated, demeaning, derogatory, and slanderous accusations about one without permitting one to respond or have recourse.

Also, the "new settled law "for operating procedure makes anything else these intruders do proper procedure with no violations according to the Appealed Judges' decision in favor of the Defendants. It would be illegal to resist or file suit, because

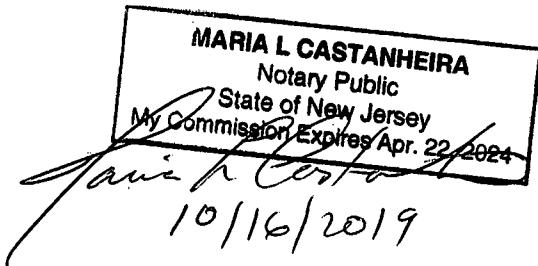
not private citizens or 'We the people.' The trial Judge (Ciuffani with Judge Arpert) was misquoted and reversed by theAppealed Judges (Martinotti and 3CA Panel) on the decisions in this case who supported the Plaintiffs Min as having the Constitutional Rights. The Third Circuit Appeals Court unfairly states their Policy of prioritizing defense for theAppealed Judge as being the most extreme compared to other US Appeals Courts. These ethics are questionable for the public's best interest and a Right to a fair trial.

The Defendants lost the original case and their claim after a trial with a Vacate Order. It was thrown out entirely. The Plaintiff Min should never have been bothered that day. The Public wants assurance that they can be safe from these kinds of intrusions, harm and mistreatment, when they did nothing wrong or unlawful. Intruders can disguise themselves as Police. Are people now supposed to obey them and let them in?

The Policies written, operating or practiced of any government entity may never override the Constitutional Rights of the Citizens or break any of the laws is a traditional rule applied. The government personnel take an Oath of Office for this. The Third Circuit departed from applicable precedents of this Court and those of sister circuits

Certiorari should be granted.

Dated: Revised and submitted October 14, 2019



  
/S/ Monica Birch-Min