

IN THE  
SUPREME COURT OF THE UNITED STATES

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EMMA SERNA d/b/a SERNA & ASSOCIATES  
CONSTRUCTION CO., LLC

v.

MARGETE WEBSTER, ET AL.,

FILED  
MAR 30 2019  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

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On Petition For Writ of Certiorari  
To The United States Court Of Appeals  
For The Tenth Circuit

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PETITION FOR A WRIT OF CERTIORARI

## **QUESTIONS PRESENTED**

### **STATE:**

Mandate granted to the Serna Party filed on March, 2014  
needs a writ of mandamus issued to obtain a written  
judgment to execute, which has money issued with it, and  
state district court refused to sign the judgment. State  
Supreme Court had already ruled, and no factual  
determination was questionable.

Need order to vacate state invalid arbitration award, from 2015,  
procured through arbitrator's misconduct to hear evidence  
material to controversy between the contractor, thus the trial  
court erred. Misconduct by Party member, Webster, who chose  
to mislead the arbitrator that she had paid the contract in full,  
left out the change orders, which are part of the contract, and  
had not been paid.

### **FEDERAL:**

Default judgments: were set aside, but were never signed, in  
federal court, and one defendant refused to respond to the court's  
summons.

Damages for deprivation of civil and constitutional rights, in state  
district court, and federal district court, against the Judicial Defendants.

## **LIST OF PARTY MEMBERS**

**Margette Webster, David Webster,  
State of New Mexico,  
U. S. Judicial Second District Court;  
Carl Butkus; Cindy Molina; Alan Malott;  
Beatrice Brickhouse; Bobby Jo Walker;  
Nan Nash; James A. Noel; Joey Moya;  
Amy Mayer; Madeline Garcia; Arthur  
Pepin; Monica Zamora; Cheryl Ortega;  
New Mexico Construction Industries;  
Pat McMurray; Martha Murillo; Sally  
Galanter; Robert "Mike" Unthank;  
Martin Romero; Amanda Roybal;  
Clayton Crowley; Alex Chisholm;  
Calvin A. Calvert; and John Wells.**

**Defendants/Respondents**

## **CORPORATE DISCLOSURE**

**Petitioner, Serna & Associates Construction Co., LLC has no  
parent company, and no company owns ten percent  
or more of its stock.**

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Constitution of the United States of America

(rev. 1992) 14<sup>th</sup> Amendment.

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42 U.S.C. 1982 Civil Rights Act, stat. 27

Municipalities can be held for violations of  
Constitutional Rights under 42 U.S.C. 1983.

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False Claims Act, United States ex. Rel. Benjamin  
Poehling v. Unitedhealth Group, Inc., et al., Case  
No. CV016-08697 (USDC, CD CA). Common law  
claims for unjust enrichment and payment by  
mistake.

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Bankers Life Co. v. Holland, 346 U.S. 379, 382-83.

(1953), acted beyond its jurisdiction.

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Heckler v. Ringer, 466 U.S. 602, 616 (1984).

Correcting jurisdictional error.

DeBeers Consol. Mines, Ltd. v. United States, 325  
U.S. 212, 217 (1945). Usurpation of power will  
justify the invocation of this extraordinary  
remedy.

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In re Braswell, 358 N.C. 721 (2004). A judge is  
Disqualified from hearing a case when one of the  
Parties has a pending lawsuit against the judge.

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In re Martin, 302 N.C. 299, 310-11 (1981).

The judge was disciplined by the  
North Carolina Supreme Court.

The bias, prejudice or interest which requires a  
Trial judge to be recused from a trial has a  
Reference to the personal or mental attitude of  
The trial judge, either favorable or unfavorable,  
Toward a party to the action before her.

State v. Scott, 343 N.C. at 325.

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Enforcement of Mandate. See Fla. Digestive  
Health Spec., LLP v. Colina 192 So 3d 491, 493  
Fla. 2d DCA 2015. Trial court deviated from,  
and delayed, in enforcing the terms of the  
mandate was presented to the appellate court,  
and they refused, even though they have the  
inherent power to enforce the mandate. The  
ongoing performance in case CV-2007-06641  
consolidated with CV-2007-09594, and federal  
district court denied the temporary injunction-  
a direction contravention of the mandate, the  
federal court could have accomplished the  
enforcement with the aid of the appellate court,  
but refused to acknowledge all submitted  
motions.

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State Supreme Court has left with definite and firm conviction that a mistake has been committed by state district court, by not acknowledging the summary judgment granted to the Serna Party.

Pullman-Standart v. Swint, 456 U.S. 273, 284-85 n. 14 (1982).

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Jurisdictional error: Jones v. First-tier Tribunal [2013] UKSC 19.

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N.M. Appl 1996. Courts will overturn arbitrator's award only where there has been showing of fraud or misconduct on the part of the arbitrator.

Wershaw v. Dimas, 929 P.2d 984, 122 N.M. 592, 1996 NMCA-118.

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12. 2006 New Mexico Statutes-Section 44-7A-24 Vacating Award, (C)(3) the arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy or otherwise conducted the hearing contrary to Section 16 [44-7A-16] NMSA 1978, so as to prejudice substantially the rights of a party to the arbitration proceedings.

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13. (1) the award was procured by corruption, fraud or other undue means.

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14. National Surety Co., V. State Bank, 120 Fed. 593 (8<sup>th</sup> Cir. 1903) Federal Courts will exercise its equity power to prevent a successful party from utilizing a prior final judgment. Rule 60 (b) id at 599. on false arbitration judgment.

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The indispensable elements of such a cause of action are (1) judgment which ought not, in good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any adequate remedy at law.

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Under RCFC 60 (b) (6) the court may vacate judgment.

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Significant questions of constitutional law, under the Constitution of New Mexico and/or the United States, writ of certiorari defendant alleges that the state violated her rights under the fifth, sixth, and four-tenth amendment to the United States Constitution, and Article II, Section 14 of the New Mexico Constitution. The supreme court has jurisdiction to review the Question of law under the constitution of New Mexico or the United States.

State v. Urban, 2004-NMSC-007, 135 N.M. 279, 87 P 3 d 1061.

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15. Writ of Mandamus enforces clear legal rights, and are subject to enforcement.

Schreber v. Baca, N.M. 766, 276 P.2d 902 (1954).

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16. Purpose of mandamus is to compel performance of ministerial duty which one charged with its performance has refused to perform.

State ex rel. Reynolds v. Board of County Comm'rs, 71 N.M. 194, 376 P.2d 976 (1962).

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17. Peremptory writ of mandamus may issue without a hearing. Territory exl Coler v. Board of County Comm'rs, 14 N.M. 134, 89 P252 (1907), aff'd, 215 U.S. 296, 30 S Ct. 111, 54 L.E.d. 202 (1909). Mora County Bd of Educ. vs. Valdez, 61 N.M. 361, 300 P.2d 943 (1956). Writ has to show all facts, that writ of certiorari was filed, and appeal was made to the supreme court.

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18. State Hwy. Comm'nr vs. Quesenberry, 74 N.M. 30, 390 P. 273 (1964). Judge condemned litigant's property, and refused to act, so there is no other remedy, and showed no valid excuse can be given.

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19. Delao v. Garcia, 96 N.M. 639, 633 P.2d 1237 (Ct. App. 1981). Judgments validity not affected by delay or omission. The entry of judgment is a ministerial act and the validity of the judgment is not affected by a delay or omission in entering the judgment.

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20. Old age and Survivor's Insurance. SSR 70-4; Section 207, 452(b), 459 and 462(f) (42 U.S.C. 407, 652(b), 659 and 662(f) Levy and Garnishment of benefits are exempt from execution, levy and garnishment of benefits. 20 CFR 404, 970 SSR 70-4 Social Security benefits are exempt from execution, levy, attachment, garnishment, or other legal process or from the operation of insolvency law. Social Security Act provides that a government entity may hold payment for child support, taxes, and alimony payments.

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21. Mandate-page 194-N.M. Appellate Manual-(B).

1. Issuance: Judgments of the court take effect upon the issuance of the mandate.

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22. Judgments-Vol. 1964; 109 Restrictions to equitable relief. *Marine Ins. Co. v. Hodgson*, 11 U.S. (7 Cranch) 332 (1813). The party with the true and first judgment could and can avail herself, in a court of law, was prevented by fraud or accident.

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23. 2011 N.M. Statutes Section 44-7A-25: Time limit for modification or correction of arbitration award is 90 days after notice of award. No corrections can be made, and the award is null and void.

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24. *Fernandez v. Farmers Ins. Co.*, 115 N.M. 622, 857 P.2d 22 (1993). The district court does not have authority to review arbitration awards.

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25. **Goradia v. Hahn Co.**, 111 N.M. 779, 810 P.2d 798 (1991). Principle purpose of summary judgment is to isolate and dispose of factually unsupported claims or defenses.

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26. **Jaycox v. Ekeson**, 115 N.M. 635, 857 P.2d 35 (1993). Failure to vacate arbitration award pursuant to NMSA (1978) 44-7A-24.

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27. **Fernandez v. Farmers Ins., Co.**, 115 N.M. 622, 857 P.2d 22 (1993) Fraud or lack of fair and impartial judgment, each is a valid grounds for vacating an award. Mistakes of fact or lack of fair and impartial judgment.

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28. **State v. Hocker** case no. M0061-DR-9800041-JA Rule 6-701 NMRA Entry of judgment is mandatory. Cannons 21-100, 21-200A.

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29. **JSC Inquiry No. 98-65 & 99-06.** Supreme Court Docket No. 25,822 N.M. Delaying the signature and filing of a judgment.

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30. **In Cheney v. United States District Court**, 542 U.S. 367 (2004). Litigant may seek relief by petitioning for writ of certiorari and mandamus.

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31. Correcting jurisdictional error is the proper occasions to correct error on the part of the lower court. See *Kerr v. United States District Court*, 426 U.S. 394 (1976). When there is no other avenue for relief, and court of appeals function is exhausted, the supreme court has a right to review the standard of governing a writ to the 109 lower court to sign the judgment, and correcting an alleged error.

32. Trespasser of the law: When a judge does not have jurisdiction, then he and those who advise and act with him/her, or execute his process, are trespassers. *Von Kettler et al., v. Johnson*, 57 III. 109 (1870). U.S. Supreme Court stated that if a court is "without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. *Elliot v. Piersol*, 1 Pet 328, 340 26 U.S. 328, 340 (1928).

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33. *U.S. v. Will* , 449 U.S. 200, 216, 101 S. Ct. 471, 66 L.Ed 2d 392, 406 (1980) *Cohen V. Virginia*, 19 U.S. (6 Wheat) 264, 404 5 Led 257 (1821).

Whenever a judge acts where he/she does not have jurisdiction to act, the judge is engaged in an act or acts of treason.

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34. The Supreme Court, in **Scheuer v. Rhodes**, 416 U.S. 232, 94 S Ct. 1683, 1687 (1974) stated that “when a state officer acts under a state law in a manner violative of the Federal Constitution, she “comes into conflict with the Superior Authority of that Constitution, and she/he is in that case stripped of her of official or representative character and is subjected in her person to the consequences of her individual conduct. The state has no power to impart her/him any immunity from responsibility to the supreme authority of the United States”. The judge then acts not as a judge, but as a private individual (in her/his person).

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35. 2013 NMSC-2013, March 13, attorney Gene N. Chavez suspended from practice, which prohibits a lawyer from mak[ing] false statements of fact to a tribunal. Rule 3.3 NMR 16-303 (A)(1).

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