

19-7806

No. _____

Supreme Court, U.S.
FILED

JAN 27 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Cherunda Lynn Fox — PETITIONER
(Your Name)

vs.

U.S.P.S. et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

6th Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Cherunda Lynn Fox

(Your Name)

P.O. Box 20274

(Address)

Ferndale, Mi. 48220

(City, State, Zip Code)

(313) 208-5940

(Phone Number)

ORIGINAL

Questions Presented

Whether the defendants were served on 3-19-18 as verified by the court record, the Judge and receipt personally verified by the Attorney General, defaulted this case in plaintiff's favor 5-18-18.

Plaintiff/Appellant Answers:

YES

Whether the 3 methods of service required, the Clerk's written instructions, Electronic Case Filing (ECF) and FedRCivP4 are in violation of the 14th Am due process and equal protection clauses of the law.

Plaintiff/Appellant Answers:

YES

LIST OF PARTIES

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

☒ All parties **do not** appear in the caption of the case on 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:

On February 22, 2018, USPS emailed me, stating, "We are sorry, but the full names and addresses of our employees cannot be made available to you." Email attached in Appendix.

RELATED CASES

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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

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[] reported at _____; or,

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,

[] has been designated for publication but is not yet reported; or,

☒ is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 10-30-19.

☒ No petition for rehearing was timely filed in my case.

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

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Constitutional and Statutory Provisions Involved

US Const. Art. 2 Section 1	4
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Michigan Const. Art. 1 Section 2	4

STATEMENT OF THE CASE

After being humiliated and discriminated against by postal employees constantly due to my rare disability of pantoea agglomerans, race, sex and religion, for exercising my Constitutional rights to run for President. I received a non-descript post card hidden in a bundle of 2 weeks of mail ending my mail delivery.

I emailed for the names and addresses of employees to file this action. On 2-22-18, I received a reply email from Rose Griffin refusing to provide me with the names and addresses of the PARTIES for this action.

On 3-19-18, I filed this action. Defendant AG verified being served by telling me personally she received them that same day by Electronic Case Filing (ECF) instantaneously when I filed with the court.

She said, "they're sitting on the desk." She wanted to know why I was there (duplicating that)? I told her I didn't trust her client (defendant postal service) to deliver. I would always personally serve as a backup. She said, "ok". Several different AG's accepted papers from me. Defendants usually sign and date and/or date stamps my copy and/or writes handed delivered and/or "HD" with her/his initials, then hands my documented copy back to me, everytime. Invoking waiver and estoppel.

I also mailed her a copy from Detroit's main Post office that is on the same street 2 minutes away, known for twice daily deliveries and same day delivery to Downtown Detroit businesses in their 48226 zip code. I am an ECF applicant. (Pertinent documents in Appendix)

The government defendant had 60 days to respond by 5-18-18. They responded 3 days late, without leave from the court on 5-21-18. The lower courts erred in failing to grant judgment in plaintiff's favor. Plaintiff won this case on 5-18-18.

Rules and Analysis

A late response is a nullity. *Gilchrist v. Bandera Ele. Co-op*, 966 S.W.2d 716 (Tex. App. 1998). This record indicates permission for late file was granted in 7-17-19, but none the day this case defaulted on 5-18-18. The record must contain an affirmative indication that the trial court permitted the late filing or the response is a nullity. *Jackson v. Motel 6*, No. 05-17-00487-CV (Tex. App. Aug. 17, 2018) Here, the defendant is the federal government. The record indicates the government

personally verified service of process occurred on 3-19-18.

Federal defendants are generally permitted 60 days from date of service of process to respond to complaint. *Henderson*

Historical Naval Maritime Foundation, No. 2:10-cv-00536 GEB KJN PS (E.D. Cal. Mar. 9

2010). The government response was due 5-18-18. It was

filed 3 days late without leave from the court. Parties are

not free to ignore deadlines set by the court rules. *Barringer v.*

Whitworth, Civil Action No. 18-CV-11174 (E.D. Mich. Jul. 25, 2018).

Plaintiff insisted 5-21-18 response be waived as it was late and without leave. Movant has the right to insist the respondent waive consideration of the response for failing to obtain the trial court's permission to file it late. *Neimes v. Kien*

Chung Ta, 985 S.W.2d 132 (Tex. App. 1999) The defendants late filing

rose to a level of failure to prosecute. *Cunningham v. Mich. Dep't of*

State Police, Case No. 17-14224 (E.D. Mich. Jun. 21, 2018) In untimely filings, all

substantive issues are waived as procedural requirements are not met. *Cherunda Idemudia v. Consolidated Rail Corp.* 2:94-cv-73312 (ED Mich 1995, affirmed on appeal).

Thus, the lower courts erred because defendant verified receiving this case on 3-19-18. It defaulted on 5-18-18 due to tardiness. Plaintiff should have been granted default judgment in her favor when requested on 5-21-18.

The district court also erred when they stated that 36 labeled specific, numbered and in order objections from plaintiff to the Report and Recommendation was only 1. While accepting the defendants labeled "*General Objections*" at all, as they violated the magistrates instructions, LR 7.2.1 and FedRCiv P 72(2).

General objections are waived because they're inadequate. A general objection has the same effect as

inadequate. A general objection has the same effect as

General objections are waived because they're
instructions. FR 1.2.1 and FedRCP 1.2(5).

Objections, at all, as they violated the magistrates

While accepting the defendants labeled "General
plaintiff to the Reborn and Recommendation was only 1
labeled specific, numbered and in order objections from

The district court also erred when they stated that 38
defendant judgment in her favor when requested on 2-21-18
2-18-18 due to tardiness. Plaintiff should not have been granted
verdict receiving this case on 3-18-18. It occurred on

Thus, the lower courts erred because defendant
was not notified of any

are not met. Plaintiff's demand for a consolidated trial was denied on 3-18-18.

substantive issues are waived as procedural requirements

would a failure to object. *Howard v. Secretary of Health Human Services*, 932

F.2d 505 (6th Cir. 1991). General objections to a magistrates report

that to a magistrates report does not satisfy the

requirement that an objection be filed. *Shopar v. Gorski*, Case No.

17-cv-13322 (E.D. Mich. Sep. 18, 2018). General or conclusory objections

are waived. *Warner v. Soc. Sec. Admin.*, NO. 1:18-cv-00028 (M.D. Tenn. Jun. 28, 2019)

Moreover, the filing of vague, general or conclusory objections does not meet the requirement of specific objections and is tantamount to a complete failure to object. *Zimmerman v. Cason*, 354 Fed. Appx. 228 (6th Cir. 2009)

Also, the defendant violated LR 7.2.1, FedRCivP72(2), the Magistrates instructions and case law. *Pearce v. Chrysler Grp.*

LLC, No. 17-1431 (6th Cir. Jun. 20, 2018), Therefore, defendants

objections to Report and Recommendation must be waived.

waived.

objections to Report and Recommendation must be

filed. 12-1431 (44 Fed. Cl. 30, 31-18). Therefore, defendants

the Magistrates instructions and case law. 12-1431 (44 Fed. Cl. 30, 31-18)

Also, the defendant violated FR 1.2.1. FedRCivP 12(2)

object. 12-1431 (44 Fed. Cl. 30, 31-18)

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12-1431 (44 Fed. Cl. 30, 31-18). General objections to a magistrates report

would a failure to object. 12-1431 (44 Fed. Cl. 30, 31-18)

The court erred in saying I did not attach a sum certain affidavit. On 5-21-18, I handed the clerk a default and had her date stamp the several copies of the default and the affidavit. I asked for her stapler. I put one together and handed it to her. I requested a default judgment. She told me she couldn't.

Pursuant to FedRCivP 55(a) a clerk is required to enter the defendant's when the default is established by affidavit or otherwise. *Elektra Entertainment Group Inc. v. Crawford*, 226 F.R.D. 388 (C.D. Cal.

2005) She was required to enter it, she refused to.

I was entitled to a default based on it's attached affidavit on 5-21-18. The clerk was required to enter it. In Electra, the court granted plaintiff's request for a default judgment, including statutory damages, attorney's

judgment including attorney's fees, and in Electric, the court granted plaintiff's request for a default judgment on 2-27-78. The clerk was required to enter it.

1. I was entitled to a default passed on it's attached
2002) She was required to enter it, she refused to
or otherwise. WELSH ENTERPRISES, LTD. v. WELSH, 338 F.2d 498 (D.C. Md.
the defendant's when the default is established by affidavit.

Pursuant to FedRCvP 22(a) a clerk is required to enter
 judgment. She told me she couldn't
 together and handed it to her. I requested a default
 and the affidavit. I asked for her staples. I put one
 her date stamp the several copies of the default
 affidavit. On 2-27-18, I handed the clerk a default and pad

The court erred in saying I did not attach a sum certain

fees and costs and injunctive relief based upon the plaintiff's application for a default judgment. Disney Enterprises, Inc.

v. Farmer, 427 F. Supp. 2d 807 (E.D. Tenn. 2006)

The 6th Circuit approved an application for late filing on this case from the defendants on 7-17-19. Proving they could in fact apply for and receive leave to file late, if they bothered to apply. The 6th Circuit then erred by accepting a brief that was printed on both sides of the page, entitled, "Brief for the United States Postal Service" filed 8-16-19, violating 6th Circuit FRAP 32 a(1)(A), Form of a Brief. Which states, "Only one side of the paper may be used." The entire brief should have been disregarded and stricken from the record as plaintiff requested. It wasn't. The 6th Circuit proceeded to brief a denial from it.

Plaintiff requests this case to be reversed and remanded with instructions to issue sum certain judgment to plaintiff.

OF NATIONAL IMPORTANCE

There is a serious conflict in the circuits and districts within the circuits concerning ECF who is and isn't allowed to participate. As pro-se, I still have an ECF application pending. Had the AG not personally told me she received my filings on 3-19-18, as a pending court approval training applicant. I'd have resort to Federal Rules Of Civil Procedure who say I have to serve a specific person, which is in conflict with the Eastern District of Michigan Court Sanctioned Handout called, " Service Documents To Be Submitted To The Clerk." The clerk refused my filings on 3-19-18, until they conformed with the exact information in the handout, (I sat there 15-20 minutes and had to

correct them) in direct conflict with FedRCivP 4, then the judge made specific person service, the basis of her denial. All methods are in conflict with each other and other circuits.

New York is in compliance with due process and equal protection. Michigan is in violation of *Brown v. Board of Education*, 347 U.S. 483 (1954). Michigan operates a separate unequal system concerning pro-se access to ECF, violates FedRCivP4 with mandatory clerk's instructions and yet dismisses cases for violation of FedRCivP4. New York requires all documents be filed electronically with the court. *Torres v. Ciele Partners L.P.*, 16 Civ. 8477 (KPF) (S.D.N.Y. June 26, 2017) Under local rules, service of the complaint is not required, the (sic) period runs from the date the complaint is made available through filing. *Murphy*

Brothers, Inc. v. Michetti Pipe Stringing, 526 U.S. 344 (1999) As recognized in this US Supreme Court case.

REASONS FOR GRANTING PETITION

This case defaulted 5-18-18. The lower courts don't acknowledge this. Judgment should have issued 5-21-18. Yet, the courts ignored at least 15 flagrant legal errors of defendant. The courts adjudicated substantive matters, illegally, as this case failed on procedural grounds. Still, the lower courts left a lot unadjudicated here. Motion(s) to correct a clerical error, a state Constitutional issue of Political Discrimination, a pro-se ECF application for access, etc. The court violates FedRCivP4 with conflicting mandatory clerk instructions coupled with ECF access, which also violates the due process and equal protection

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mandatory clerk instructions coupled with ECF access
access, etc. The court violates FedPCIV's with conflicting
Political Discrimination, a pro-se ECF application for
correct a clerical error, a state Constitutional issue of
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illegally, as this case failed on procedural grounds. Still
defendant. The courts adjudicated substantive matters,
yet the courts ignored at least 12 flagrant legal errors of
acknowledge this. Judgment should have issued 2-21-18.

This case defaulted 2-18-18. The lower courts don't

REASONS FOR GRANTING PETITION

US Supreme Court case.

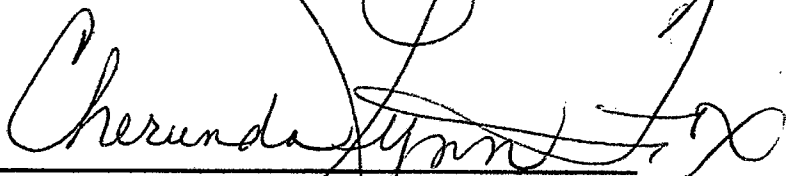
Griffin v. Wright, 135 S.Ct. 1293 (2015). As recognized in the

clauses of the 14th Am to the US Constitution, Brown, Id.
and creates a federal question of national importance.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,


Cherunda Lynn Fox

Date:

1-24-20