No. 21-

In the Supreme Court of the United States

WALTER P. VARGO, JR.,

Petitioner,

STEPHANIE B. MCCLOUD, ADMINISTRATOR, OHIO BUREAU OF WORKERS' COMPENSATION ORIGINALLY NAMED SARA MORISON,

V.

D & M TOURS, INC.; JOSE ROMAN; FEDEX CORPORATION; WILLIAM A. STAUFFER; L.T. HARNET TRUCKING, INC.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITION FOR A WRIT OF CERTIORARI

IRENE K. MAKRIDIS
Counsel of Record
155 S. Park Ave., Ste 160
Warren, Ohio 44481
(330) 394-1587
office@makridislaw.com

QUESTION PRESENTED

The question presented in this appeal is whether 28 U.S.C. §1631 means what it says: that "when a court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other court in which it could have been brought at the time it was first filed."

PARTIES TO THE PROCEEDING

Petitioner is Walter P. Vargo, Jr. He was the Plaintiff-Appellant in the Court of Appeals. Stephanie B. McCloud, Administrator, Ohio Bureau of Workers' Compensation, originally named as Sarah Morrison, was a Plaintiff in the District Court, but did not participate in the Court of Appeals.

Respondents are D & M Tours, Inc., Jose Roman, Fedex Corporation, William A. Stauffer and L.T. Harnet Trucking, Inc. However, L.T. Harnet Trucking, Inc. did not participate in the Court of Appeals.

RELATED PROCEEDINGS

U.S. Court of Appeals for the Sixth Circuit: *Walter P. Vargo, Jr. et al v. D & M Tours, Inc., et al,* No. 20-3380 (Dec. 31, 2020)

U.S. District Court, Northern District of Ohio: *Walter P. Vargo, Jr. et al v. D & M Tours, Inc., et al,* No. 4:18-cv-01297 (March 2, 2020)

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PETITION FOR A WRIT OF CERTIORARI

Walter P. Vargo, Jr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The two opinions of the district court are reproduced at A 1-14 and B 1-10.

The Court of Appeals is unpublished and is are reproduced at A C1-10.

JURISDICTION

The judgment of the Court of Appeals was entered on December 31, 2020. On March 19, 2020, the Court extended the deadline for filing certiorari petitions due on or after that date to 150 days from the date of the lower court judgment. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S. Code § 1631 - Transfer to cure want of jurisdiction, which provides as follows:

> Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court (or, for cases within the jurisdiction of the United States Tax Court, to that court) in which the action or appeal could have been brought at the

time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

INTRODUCTION

A federal court can see a misfiled case from afar, and far better than the litigants. When faced with such a case, 28 U.S.C. 1631 directs the court to transfer it to where it belongs. It even extends the statute of limitations to allow the transfer of the case to the proper court. Although this savings clause goes hand in hand with doing justice, some courts think differently and there is now a split in the circuits in the application of this remedial statute. This split is not only contrary to the clear language of the statute, but it is also contrary to the Supreme Court's holding in *Goldlawr, Inc. v. Heiman,* 369 U.S. 563 (1962), a case that sought to eliminate impediments to the disposition of cases on their merits.

As the shortest distance between two points is a straight line, the direct remedy for a misfiled case is its transfer to the proper court. Anything short of that would cause a delay in the resolution of the case on its merits -- the very reason why the parties came to the court in the first place. Moreover, procedural posturing runs afoul to the clear mandate of § 1631, the statute that speaks to this very issue. The Supreme Court should therefore grant this writ -- not only to harmonize the present split between the circuits -- but to also declare that the days of procedural impediments to the resolution of cases on their merits are over; no

vestige of the past obstacles to justice should remain. Faced with shrinking judicial resources, the compelling issues of technology, and the faster pace of life, there is no place anywhere for gamesmanship in modern jurisprudence.

STATEMENT

If 28 U.S.C. § 1631 means what it says, then when a court learns that a case before it does not belong there, it should transfer it to the court where it does belong -- or dismiss it if there is no such court.

This is the efficient way of doing things and the way we do things elsewhere. Thus, when people mistakenly come to our doorstep, we redirect them to where they should go. Why should we do differently with a case inadvertently filed in the wrong court when a remedial statute mandates that we shall transferred it to the "court in which it could have been brought at the time it was first filed."

The insanity of doing things differently is demonstrated by this case. Vargo, an Ohio resident, was involved in a Pennsylvania truck accident, and his lawyer mistakenly filed the case in the U.S. District Court for the Northern District of Ohio. The misfiling became apparent when key defendants filed motions to dismiss because the court did not have personal jurisdiction over them. And since the statute of limitations had run, the case could not be refiled in Pennsylvania where the truck accident occurred. This paralyzed plaintiff's counsel, and the court did not step in to offer any help. No motions to show cause or hearings were ever held on the case.

After it lingered on the docket in this posture for almost a year, the court dismissed it. Petitioner did not appeal the dismissal. Instead, he asked the court to vacate it for the purpose of transferring the case to the Eastern District of Pennsylvania where it should have been brought in the first place.

The case lingered on the docket in this posture for almost another year, after which the court again dismissed it. It found no reason to reconsider the interest of justice argument or to reconsider the complete loss of the case to the plaintiff because his lawyer did not engage the court after making an elementary mistake in filing it in the Northern District of Ohio.

Vargo is now 77-years who was injured on June 7, 2016 when a Fedex truck collided with the tanker truck he was driving and sent him off the roadway on Interstate Route 78 in Saucon Township, Pennsylvania. The Fedex truck was driven by William Stauffer, who was trying to avoid hitting a bus that was abruptly slowing down and changing lanes. The bus itself was owned by D & M Tours and was driven by Jose Roman.

At the time it was filed, this case could have been brought in the Eastern District of Pennsylvania where the accident occurred. After the court's dismissal on May 7, 2019, however, Vargo could not refile the case there because the statute of limitations for negligence in Pennsylvania as well as in New Jersey is two years. The district opinion states:

> Because this case was filed in a court that neither had personal jurisdiction over Defendants nor was the proper venue of this action, this Court is well

> within its discretion to dismiss this action in its entirety, rather than transfer the matter – particularly when Vargo has failed to respond or otherwise participate in the motion practice before this Court.

(App. A 14) Plaintiff's counsel did not move for transfer and did not oppose the defendants' motions to dismiss and/or transfer. As for the district court, it did not consider 28 U.S.C. §1631, or even mention the "interest of justice" in dismissing the case. This means that the court did not exercise its discretion, and failure to do so, in itself, is error because the court cannot properly exercise discretion when it does not even attempt to do so. In *Harrell v. Kepreos*, 175 Fed. Appx. 793, 794 (9th Cir. 2006), an abuse of discretion was found when the district court did not consider whether a § 1631 transfer was in the interest of justice.

On June 7, 2019, Petitioner filed a motion to vacate the dismissal and reopen the case for purposes of transfer to the District Court of Eastern Pennsylvania.

On March 2, 2020, some nine (9) months later, the District Court, again without a motion to show cause or hearing, denied Petitioner's motion to vacate the dismissal and reopen the case for purposes of transfer to the U.S. District Court of Eastern Pennsylvania. The opinion states:

> The choice to dismiss or transfer is within the sound discretion of this Court. *First of Mich. Corp. v. Bramlet,* 141 F.3d 260 262 (6th Cir. 1998). Notably, Vargo never requested that this

> Court transfer the matter until after the case was dismissed. Of course, this Court *could* have sua sponte transferred the case; however, because Vargo did not even once request transfer during the eleven months that this case pended, and frankly, never engaged in the motion practice pending before this Court whatsoever, there was no reason for this Court to presume that Vargo wanted the case transferred. See *Cosmichrome, Inc. v. Spectra Chrome, LLC*, 504 F. App'x 468, 472 (6th Cir. 2012) (finding that the district court did not abuse its discretion by declining to transfer a case when plaintiffs failed to seek transfer).

(App. B 7) With respect to 28 U.S.C. §1631, the district court gave this explanation:

> Upon determining that this Court lacked personal jurisdiction over the defendants and that this Court was the improper venue for the instant matter it was charged with dismissing the case, or, in the interest of justice, transferring the case to the court in which the matter could have properly been brought. 28 U.S.C. §1406(a); 28 U.S.C. §1631. The choice to dismiss or transfer this case was within the sound discretion of this court. *First of Mich. Corp. v. Bramblett*, 141 F.3d 260, 262 (6th Cir. 1998). (R.37, PageID 176)

However, *First of Mich. Corp.* did not deal with a transfer under 28 U.S.C. §1631, but rather with transfers under 28 U.S.C. §1406(a), and §1404 as they relate to 28 U.S.C. §1391(a). Indeed, no reference to

"28 U.S.C. §1631" appears anywhere in *First Mich. Corp.* And though §1406(a) and §1631 are both remedial statutes meant to salvage a misfiled case when the statute of limitations has run, the language of §1631 is mandatory. Under §1631, the district court "shall, if it is in the interest of justice, transfer."

Since the district court did not consider 28 U.S.C §1631, or even discuss it when it dismissed the case, Petitioner was correct in asking the court to reconsider and vacate the dismissal so the case could be reopened and be transferred to the Eastern District of Pennsylvania. Petitioner's motion laid the dire straits the dismissal had left him in because he could not refile his case anywhere else as it was time barred. Meanwhile, he has to deal not only with his physical problems from the accident, but also collection efforts of the Internal Revenue Service in its recoupment of the $42,438.06 paid by Medicare for his care. This amount is in addition to the $119,145.07 owed to the Ohio BWC. Moreover, Petitioner still owes $29,320 to Youngstown Orthopedics Associates for his surgeries. These are quantified losses sustained due to the negligence of Defendants and they reflect the gravity of the district court's dismissal and the extraordinary circumstances that support relief in the interest of justice.

"A compelling reason for transfer is that the plaintiff, whose case if transferred, is for statute of limitations purposes deemed by section 1631 to have been filed in the transferor court, e.g., *Edwards v. INS*, 59 F.3d 5, 6 (2d Cir. 1995), will be time-barred if his case is dismissed and thus has to be filed anew in the right court." *Phillips v. Seiter*, 173 F.3d 609, 610 (7th Cir.1999).

In light of the mandate of 28 U.S.C. §1631, "the court shall, if it is in the interest of justice, transfer," and "[a] motion to transfer is unnecessary because of the mandatory cast of section 1631's instructions." *In re McCauley*, 814 F.2d 1350, 1352 (9th Cir. 1987). The court had this to say in *Miller v. Hambrick*, 905 F.2d 259 (9th Cir. 1990), while citing *McCauley* supra:

> Although Miller did not move the district court to transfer the case, we have held that "[a] motion to transfer is unnecessary because of the mandatory cast of section 1631's instructions." *McCauley*, 814 F.2d at 1352. We review a district court's refusal to transfer a case under 1631 for an abuse of discretion. *Taylor v. Social Sec. Admin.*, 842 F.2d 232, 233 (9th Cir. 1988). A district court's failure to exercise discretion constitutes an abuse of discretion. *Id.* (*Miller*, 905 F.2d at 260).

In *Amity Rubberized Pen Co. v. Mkt. Quest Grp. Inc.*, 793 F.3d 991 (9th Cir. 2015), the Ninth Circuit explained in detail the *sua sponte* application of 28 U.S.C. §1631:

> To address situations where jurisdiction is lacking simply because a case was filed with the wrong court, Congress has granted federal courts the authority to transfer an action or appeal to a federal court of competent jurisdiction. ***
>
> By its mandatory language, the statute directs us to transfer a misfiled appeal as long as two requirements are met: (1) the court to which the appeal is to be transferred would have had jurisdiction at the time the appeal was filed; and (2) transfer is "in the interest of justice." *Id.* [§1631]; *Munns v. Kerry*, 782 F.3d 402, 414 (9th Cir. 2015).

> The obligation to address whether a case is transferrable lies with the court: "A motion to transfer is unnecessary because of the mandatory cast of section 1631's instructions." *Harris v. McCauley (In re McCauley),* 814 F.2d 1350, 1352 (9th Cir. 1987). Having determined that we lack jurisdiction, we must thus decide whether this "appeal could have been brought at the time it was filed" in the Federal Circuit and whether transfer would be "in the interest of justice." 28 U.S.C. § 1631. (*Amity Rubberized Pen Co.*, 793 F.3d at 994-995 (9th Cir. 2015).

See also *Peanut Farmers v. United States*, 409 F.3d 1370 Fed. Cir. 2005) where the Federal Circuit had this to say in a footnote:

> The Ninth and Second Circuits have held that a trial court must consider transfer as an alternative to dismissal for want of jurisdiction in cases in which transfer is authorized by section 1631, even in the absence of a request for transfer by the plaintiff. *See Cruz-Aguilera v. Immigration & Naturalization Serv.*, 245 F.3d 1070, 1074 (9th Cir.2001); *Paul v. Immigration & Naturalization Serv.*, 348 F.3d 43, 46 (2d Cir.2003). (*Tex. Peanut Farmers*, 409 F.3d at 1375 n.7).

In *Lummi Tribe of Lummi Reservation v. United States*, 2018-1720 (Fed. Cir. Oct. 9, 2019), the Federal Circuit again dealt squarely with the question of whether the trial court should consider *sua sponte* the transfer of a case under §1631 -- even when plaintiff does not ask the court to do so:

> Lummi contends that the Claims Court was required to consider *sua sponte* whether transfer of its dismissed claims was in the interest of justice,

> even though Lummi did not request such a transfer. Lummi relies on cases from the Sixth and Ninth Circuits, which have held that a trial court must consider transfer as an alternative to dismissal for lack of jurisdiction even if a request for transfer is not made. Appellant's Br. 14–16 (citing *Jackson v. L & F Martin Landscape*, 421 F. App'x 482, 484 (6th Cir. 2009) and *Taylor v. Soc. Sec. Admin.*, 842 F.2d 232, 233 (9th Cir. 1988)). Unlike our sister circuits, we have not yet decided this question. See *Tex. Peanut Farmers v. United States*, 409 F.3d 1370, 1375 n.7 (Fed. Cir. 2005). We conclude that on the record before us, the Claims Court should consider in the first instance whether to transfer Lummi's NAHASDA claim pursuant to § 1631. (Lummi, supra, 2018-1720, p. 8-9, (Fed. Cir. Oct. 9, 2019)

On April 1, 2020, Appellant filed his Notice of Appeal.

On December 31, 2020, the Sixth Circuit affirmed the dismissal citing *Stanifer v. Brannan*, 564 F.3rd 455 (6th Cir. 2009). (App. C) It did so even though there was no abuse of process, as was true in *Stanifer* where the lawyer intentionally filed in the wrong court to stall the statute of limitations and continue settlement negotiations.

This petition followed.

REASONS FOR GRANTING THE WRIT

I. The Circuits are split as to the proper interpretation of 28 U.S.C. § 1631's "interest of justice" language that should be settled by the Court to promote uniformity and fairness.

There is a stark disagreement between the 6th Circuit and at least six other Circuit Courts as to how the "interest of justice" clause in 28 U.S.C. § 1631 should be interpreted. Settling the issue in Vargo's favor, and in favor of the six Circuits who agree with his position, will create uniformity across the country on the issue, and justice for Vargo.

Rule 60(b)(1) can be invoked when there is either an "excusable litigation mistake" or the judge in the matter commits an error of law. In the instant case, both issues arose. Vargo's counsel filed in the wrong court, failed to ask for relief pursuant to 28 U.S.C. § 1631, and the district court committed an error of law by not invoking 28 U.S.C. § 1631 *sua sponte* as is required by the statute. Here, Vargo addresses only the district court's failure under the law to automatically invoke a transfer of the case.

First, the mandatory transfer language in the statute, *i.e.*, "the court shall," is invoked the moment the district court finds a lack of jurisdiction. The judge in the case should not have waited to see if Vargo was going to oppose the motion to dismiss, but should have invoked the transfer provision immediately upon the filing of the motion and review of the complaint. The district court stated as much when it pointed out that the original complaint was against Pennsylvania defendants for an accident that occurred in Pennsylvania and contained no language that indicated a connection to the State of Ohio. (R.33 Memorandum of Opinion and Order, Page ID# 146-159, supra.) Nothing in the statute requires Vargo to make such a request.

Other Circuits have concluded that no request need be put forward by plaintiffs for transfer to take place

pursuant to 28 U.S.C. § 1631, especially in cases of good faith mistake by a litigant. *LeBlanc v. Holder*, 784 F.3d 206, 209-10 (4th Cir. 2015); *Ruiz v. Mukasey*, 552 F.3d 269, 273 (2nd Cir. 2009). The notable difference between the approach of the 4th and 2nd Circuits versus the 6th in the instant case is twofold: (1) the 6th Circuit attributes no responsibility to the district court to recognize and invoke the transfer statute; and (2) the 4th and 2nd Circuits use the "interest of justice" requirement as inclusive and do not utilize the phrase to exclude transfer in a punitive manner.

A. The district court has a duty to recognize and invoke 28 U.S.C. § 1631 transfer.

The 1st Circuit has come down squarely on the side of transfer instead of dismissal. The use of "shall" meant that "Congress intended a presumption – albeit a rebuttable one – in favor of transfer." *Britell v. U.S.*, 318 F.3d 70, 73 (1st Cir. 2003). "The existence of the presumption is easily discerned. Congress's use of the phrase 'shall ... transfer' in § 1631 persuasively indicates that transfer, rather than dismissal, is the option of choice." *Britell*, at 73. Initially, "[a] district court that lacks personal jurisdiction must at least consider transfer" pursuant to 28 U.S.C. § 1631. *Danziger & DeLlano, LLP v. Morgan Verkamp, LLC*, 948 F.3d 124, 132 (3rd Cir. 2000); see also *Tex. Peanut Farmers v. United States*, 409 F.3d 1370, 1374-75 (Fed. Cir. 2005). Such consideration involves "case-specific scrutiny to ferret out instances in which the administration of justice would be better served by dismissal." *Britell*, at 74. Here, there is no evidence that in making its original decision on the motion to

dismiss, the district court considered transfer, pursuant to 28 U.S.C. § 1631. (R.33 Memorandum of Opinion and Order, Page ID# 146-159, supra.)

The 2nd and 4th Circuits both invoked 28 U.S.C. § 1631 to transfer back cases improvidently filed in the appeals courts. *LeBlanc v. Holder*, 784 F.3d 206, 209-10 (4th Cir. 2015); *Ruiz v. Mukasey*, 552 F.3d 269, 273 (2nd Cir. 2009). No request was made by either party and no request was deemed necessary. *Id.* They saw a mistake in jurisdiction and they acted according to the affirmative dictates of the statute. *Id.*

The district court in the instant case could not help but recognize the jurisdictional mistake made, as it was brought to the court's attention by the defendants. The district court acknowledges its awareness of the jurisdictional mistake, but instead of following the dictates of the statute and correcting the situation through transfer, it let the issue fester and poison the case to its death due to a thinly-veiled animus towards Vargo's counsel. (R.37 Memorandum of Opinion and Order, Page ID# 171-180) Unlike the district court's treatment of attorney error, "[S]ection 1631 protects litigants against both statutory imprecision and lawyers' errors. *Britell*, at 74. The 6th Circuit then endorsed that action by stating that Vargo had not requested a transfer, and therefore was not entitled to one. (R.41-2 Circuit Court Opinion) Nothing in the statute supports that view and other Circuit Courts of Appeal have disagreed with the same.

B. The Sixth Circuit is in conflict with the other Circuits to the extent it allows for punitive considerations in its interpretation of the "interest of justice" clause.

"Normally transfer will be in the interest of justice because normally dismissal of an action that could have been brought elsewhere is 'time-consuming and justice-defeating.' *Miller v. Hambrick*, 905 F.2d 257, 262 (9th Cir. 1990), citing and quoting *Goldlawr v. Heiman*, 369 U.S. 463, 467 (1962) (decided under 28 U.S.C. § 1406). "Section 1631 'serves to aid litigants who were confused about the proper forum for review.' *In re McCauley*, 814 F.2d 1350, 1352 (9th Cir. 1987) (quoting *American Beef Packers, Inc. v. ICC*, 711 F.2d 388, 390 (D.C.Cir.1983). A transfer is also in the interest of justice if the "failure to transfer would prejudice the litigant and . . . the litigant filed the original action in good faith." *Cruz-Aguilera v. INS*, 245 F.3d 1070, 1071 (9th Cir. 2001). The 11th Circuit stated, "We have held that a transfer is 'in the interest of justice' where the party filed a petition 'in the wrong court for very understandable reasons' and filing the petition in the appropriate court would now likely be time-barred. *Mokarram v. U.S. Attorney General*, No. 07-13660 (11th Cir. 3/2/2009) (11th Cir. 2009), quoting *ITT Base Servs. v. Hickson*, 155 F.3d 1272, 1276 (11th Cir. 1998) (citation and internal quotation marks omitted).

C. The Fourth and Second Circuits are in conflict with the Sixth Circuit on the issue of whether a statute of limitations constitutes a compelling reason for transfer that was in the "interest of justice."

The 4th and 2nd Circuits invoke 28 U.S.C. § 1631 to allow relief to litigants that would otherwise be deprived of a potentially legally justified remedy even

though no request was made by those litigants by citing the "interests of justice" language in the statute. "By its own language § 1631 extends to petitions for review and the statute serves to "remedy" a "good faith mistake…" *LeBlanc*, at 209-10, citing *Kopp v. Dir. Office of Workers' Comp. Programs*, 877 F.2d 307, 309 (4th Cir. 1989). The D.C., 2nd, 10th and 11th Circuit Courts have supported transfer rather than dismissal if a plaintiff would be prejudiced by filing a new action if it would cause her claims to be time barred. *e.g. Tex. Peanut Farmers v. United States*, 409 F.3d 1370, 1374 (Fed. Cir. 2005); *Ruiz v. Mukasey*, 552 F.3d 269, 276 (2nd Cir. 2009); *Haugh v. Booker*, 210 F.3d 1147, 1150 (10th Cir. 2000); *Bost v. Fed. Express Corp.*, 372 F.3d 1233, 1242 (11th Cir. 2004). Even the 6th Circuit has stated that expiration of the statute of limitations satisfies the "interest of justice" test. *Jackson v. L&F Martin Landscape*, 421 F.App'x 482, 484 (6th Cir. 2009) (quoting 14D Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3827, at 587 (3d ed. 2007)).

D. The First and Second Circuits are in conflict with the Sixth Circuit on whether transfer is required absent special circumstances making it not in the "interest of justice."

The 2nd Circuit, in harmony with the 1st Circuit's "presumption" analysis, states that transfer under 28 U.S.C. § 1631 is required "unless it [i]s not in the interest of justice to do so." *Paul v. INS*, 348 F.3d 43, 46 (2nd Cir. 2003). The Federal Circuit states that "in the interest of justice" refers to whether the claim is frivolous. See *Galloway Farms, Inc. v. United States*, 834 F.2d 998, 1000 (Fed. Cir. 1987) (citation omitted).

The Court should transfer the matter unless it finds that the case involves "legal points not arguable on the merits" or that the "disposition is obvious." *Galloway Farms*, at 1000-01. In the instant case, an automobile accident, it is very possible that Vargo will prevail and be entitled to damages should he be allowed to continue. (See R.1 Complaint, Page ID #1-6)

E. Punishing Vargo's counsel is not in the "interest of justice."

The district court was forced to consider transfer after Vargo's Rule 60(b) motion. (R.35 Motion to Vacate Dismissal and Reopen Case for Purposes of Transfer, Page ID# 161-165) "[S]ection 1631 protects litigants against both statutory imprecision and lawyers' errors." *Britell*, at 74. The district court did not consider the interest of justice for the litigant, "Vargo" (i.e. the loss of a potential remedy and/or the viability of his claims), but focused solely on what it considered to be the neglectful conduct of Vargo's counsel. (R.37 Memorandum of Opinion and Order, Page ID# 171-180) The district court used such phrases as "failure to diligently engage," "deliberate or careless," "reward their lack of diligence," and that the "mistake was obvious, elementary." (*Id.*) This treatment reveals an animus towards Vargo's counsel, and not an analysis of the "interest of justice" regarding Vargo's claims.

The district court's view was then endorsed by the 6th Circuit Court's decision, thereby ensconcing the idea of using denial of transfer under 28 U.S.C. § 1631 as a punitive measure rather than considering the interest of justice to the claimant. (R.41-2 Circuit Court Opinion) The 6th Circuit's reliance on its prior ruling in *Stanifer v. Brannan*, 564 F.3d 455 (6th Cir. 2009)

demonstrates how it established that unlawful principal. The *Stanifer* Court quoted a section from *Goldlawr v. Heiman*, 369 U.S. 463, 466-67 (1962) that stated, "The language of § 1406(a) is amply broad enough to authorize cases, however wrong the plaintiff may have been in filing his case as to venue.…When a lawsuit is filed, that filing shows a desire on the part of the plaintiff to begin his case and thereby toll whatever statute of limitations would otherwise apply." (Emphasis added), *Stanifer*, at 458. The *Stanifer* Court then cited *Goldlawr* dicta, not the holding, and upheld dismissal of a case that had been filed in the wrong court by plaintiff's counsel for the express reason of tolling the statute of limitations. *Stanifer*, at 459. The *Stanifer* Court expressed the reasons for its decision as being what it considered to be the dilatory conduct of plaintiff's counsel, i.e., it wanted to punish that behavior. *Stanifer*, at 459-60. In this way, the *Stanifer* Court defeated the principles set forth in *Goldlawr*.

II. The 6th Circuit's view of the meaning of the "interest of justice" pursuant to 28 U.S.C. § 1631 is at odds with the inclusive nature of that phrase as treated by several other Circuits where Vargo's claims would have been restored and his case would have been transferred to the proper district.

As set forth above, the D.C., 1st, 2nd, 4th, 9th, 10th, and 11th Circuit Courts of Appeal demonstrably fall into the camp of upholding the inclusiveness expressed in *Goldlawr*. In the instant case, however, the 6th Circuit has continued its unlawful punitive trend by turning the "interest of justice" clause on its

head and using it to castigate the litigant's counsel rather than making sure the litigant gets the proper benefits accorded by the justice system, i.e., to deny Vargo his day in Court rather than assure him of that right. (R.41-2 Circuit Court Opinion) Vargo's case must be reopened and transferred to the U.S. District Court for the Eastern District of Pennsylvania.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Irene K. Makridis
Irene K Makridis, 314320
155 S. Park Avenue
Suite 160
Warren, Ohio 44481
(330) 394-1587
office@makridislaw.com

CERTIFICATE OF SERVICE

I certify that on this 1st day of June 2021, a copy of the foregoing Petition for Writ of Certiorari was served via email upon the following:

Bradley K. Shafer
Mintzer Sarowitz Zeris Ledva & Meyers
48 Fourteenth Street, Suite 200
Wheeling, WV 26003

bshafer@defensecounsel.com
Counsel for Defendants D&M Tours and Jose Roman

Hunter S. Havens
Seeley Savidge Ebert & Gourash Co., LPA
26600 Detroit Road, Suite 300
Westlake, OH 44145
jmoeller@sseg-law.com
hhavens@sseg-law.com
Counsel for Defendants William Stauffer and
Fedex Corporation

Edward T. Saadi
Edward T. Saadi, LLC
As Special Counsel for the Ohio Attorney General
970 Windham Court, Suite 7
Boardman, OH 44512
EdwardSaadi@aol.com
Counsel for Plaintiff Stephanie B. McCloud,
Administrator Ohio Bureau of Workers
Compensation originally named as Sarah Morrison

and copy sent via Express U.S. Mail to:

Clerk, Supreme Court of the U.S.
1 First Street, NE,
Washington, DC 20543

/s/ Irene K. Makridis
Irene K Makridis, 314320
Counsel for Petitioner
Walter P. Vargo, Jr.