

20-6235

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
MARIO ALLAN MONTANO, PETITIONER

vs.

MICHIGAN COURT OF APPEALS, RESPONDENT

\_\_\_\_\_  
ON PETITION FOR A WRIT OF CERTIORARI TO

THE MICHIGAN SUPREME COURT

\_\_\_\_\_  
PETITION FOR WRIT OF CERTIORARI

Mario Allan Montano

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### **QUESTIONS PRESENTED**

1. Did the Michigan Supreme Court abuse its authority by sanctioning the indigent Petitioner \$1000 payable to the Clerk of the Court that it knew he could not afford to pay without cause or legal merit for doing so?
2. Did the Michigan Supreme Court abuse its authority by issuing orders depriving the indigent Petitioner of any ability to defend himself in the Michigan Supreme Court without cause or legal merit for doing so?

### **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:

### **RELATED CASES**

NONE

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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 \_\_\_\_\_ 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☐ is unpublished.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 United States district 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☐ is unpublished.

☒ For cases from **state courts**:

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

- ☐ reported at \_\_\_\_\_ ; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ unpublished.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,  
☐ unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_

- ☐ 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 \_\_\_\_\_.

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was August 13, 2020. A copy of that decision appears at Appendix A.

- ☒ A timely petition for rehearing was thereafter denied on the following date: September 12, 2020 and a copy of the order denying rehearing appears at Appendix B.
- ☐ 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**

1. U.S. Const. Amend XIV § 1 (Appendix C)



## STATEMENT OF THE CASE

Any litigant who petitions for a court fee waiver in any State of Michigan court who shows that they are a recipient of financial assistance under the Affordable Care Act is defined as indigent pursuant to Michigan statutes, court rules and operating procedures. All courts are required to grant such a litigant a waiver of court fees. The Petitioner has been receiving monthly financial assistance under the Affordable Care Act since January 1, 2020. Chief Justice Bridget M. McCormack of the Michigan Supreme Court (“MSC”) issued an order granting the Petitioner’s Motion to waive fees in the case of *Wimmer v. Montano*<sup>1</sup> on March 18, 2020. The MSC determined that the Petitioner was indigent on March 18, 2020 and could not afford filing fees of \$75 or more.

The Petitioner filed a Complaint for Superintending Control against the Michigan Court of Appeals (“Complaint”) and a Motion to Waive Fees (“Fee Mot.”) with the MSC on May 5, 2020. The case of *Montano v. Michigan Court of Appeals*<sup>2</sup> (“MSC Case”) was initiated with the MSC on May 5, 2020. The Fee Mot. provided evidence showing that the Petitioner received monthly financial assistance under the Affordable Care Act and was indigent. The MSC was required to grant a fee waiver to the Petitioner.

The record of the MSC Case shows the presence of a comment in association with the entry of the Complaint. The comment states, “Docketed so that the Court may determine if fileable.” The Clerk was unable to validate that that the MSC had jurisdiction over the MSC Case and had requested the MSC to review the Complaint to make a determination. The Clerk DID NOT OPEN the MSC Case on May 5, 2020. The Petitioner discovered an issue with his Complaint and filed a

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<sup>1</sup> *Wimmer v. Montano*, 161121 (Mich. May 26, 2020).

<sup>2</sup> *Montano v. Michigan Court of Appeals*, 161129 (Mich. August 13, 2020).

motion to dismiss the Complaint on June 3, 2020. The MSC Case was still not open as of June 3, 2020.

The MSC had failed to review the Complaint to ensure it was a valid filing as of August 13, 2020. The MSC had failed to review and issue an order regarding the Fee Mot. as of August 13, 2020. The MSC Case was still not open as of August 13, 2020. The Respondent has not filed a single document or mounted any defense in the MSC Case since the day it was initiated. The MSC issued an order dismissing the MSC Case (“Order Appealed”) on August 13, 2020 (Appendix A). The MSC Case went directly from NOT OPEN to CLOSED on August 13, 2020.

The order appealed sanctions the Petitioner \$1000 for filing a vexatious and frivolous complaint payable to the Clerk within 28 days (“\$1000 sanction”). The MSC knew that the Petitioner was indigent and could not afford the sanction it issued. There is no record that the MSC ever reviewed the Complaint. The MSC issued an order instructing the Clerk to reject all Petitioner filings in non-criminal matters till he paid the sanction (“Filing Injunction”). The MSC issued an order instructing the Clerk to deny the Petitioner his right to a conditional waiver of fees till a Motion to Waive Fees was decided (“Fee Waiver Injunction”). The MSC knew that the issuance of the Filing Injunction and Fee Waiver Injunction provided an insurmountable barrier to the Petitioner to defend himself or litigate in any non-criminal matter in the MSC. In fact, the Fee Waiver Injunction is a complete barrier to the Petitioner defending himself in a criminal case in the MSC. The order appealed DOES NOT have any impact on the Respondent since the Petitioner is not challenging the Dismissal.

Based on Michigan statutes and court rules, the MSC **did not have jurisdiction or authority** to issue any order in the MSC case due to its failure to review both the Complaint’s validity and rule on the Fee Mot. Based on the cited Michigan Court rule in the order appealed,

the sanction amount must be based on actual financial damages incurred by the Respondent who had not mounted any defense or filed a document. The MSC provided and had no legal authority to issue the Filing Injunction or Fee Waiver Injunction.

The Petitioner paid \$75 he could not afford and filed a motion for reconsideration with the MSC on August 15, 2020. The motion pointed out 6 palpable errors of law and was uncontested. The MSC issued an order denying the motion for reconsideration on September 12, 2020 (Appendix B). The MSC denied the motion simply stating that they were not persuaded that reconsideration was warranted.

The facts reveal that the indigent Petitioner was subjected to a \$1,000 sanction he cannot afford payable to the state of Michigan, and injunctions depriving him of any ability to defend himself in the MSC in any matter. The egregious harm caused to the indigent Petitioner was due to the MSC order appealed. The MSC order appealed was issued in an uncontested case that was not open and in which the MSC had absolutely no jurisdiction to issue an order.

The MSC clearly deprived the indigent Petitioner of property and equal protection under the laws by the issuance of a \$1,000 sanction, a Filing Injunction and a Fee Waiver Injunction. The MSC violated the indigent Petitioner's rights as stated in U.S. Const. Amend. XIV § 1 by issuing the order appealed.

The Petitioner seeks an order from this Court setting aside the \$1000 Sanction, Filing Injunction and Fee Waiver injunction issued by the MSC in the order appealed (Appendix A). The Petitioner seeks a refund of his cost of \$75 for having to pay for a motion for reconsideration.

## **REASONS FOR GRANTING THE PETITION**

The MSC took action against a poor Petitioner egregiously depriving him of money he can't afford and the ability to even defend himself in any matter in the MSC. The MSC has abused its power without basis or cause to punish a poor Petitioner with a fine and deprivation of justice. This matter does not involve the Respondent who has no stake in this matter.

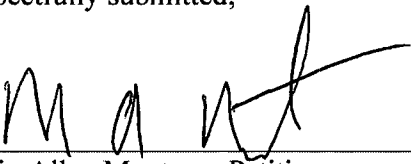
This Court is the last resort for this extreme travesty of injustice against a poor Petitioner for absolutely no reason. If this Court does not address the issue of unfettered abuse of a court against a poor litigant, who does?

The Petitioner fully realizes this is not the type of case of significance this Court normally addresses. The Petitioner expects this case to be easily disposed of without controversy since there is no cause for the Respondent to be involved. It is the Petitioner's prayer that this Court will correct the travesty of injustice so wrongfully harming one of the poor amongst the citizenry in this country.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_  
Mario Allan Montano, Petitioner

Date: October 21, 2020