

No. 20-6490

IN THE
SUPREME COURT OF THE UNITED STATES

MARIO ALLAN MONTANO, APPLICANT,

v.

OAKLAND COUNTY CIRCUIT COURT JUDGE, RESPONDENT.

**EMERGENCY APPLICATION FOR A STAY OF EXECUTION PENDING THE
DISPOSITION OF THE PETITION FOR WRIT OF CERTIORARI**

To the HONORABLE BRETT M. KAVANAGH, Associate Justice of the Supreme Court
of the United States of America and Circuit Justice for the 6th Circuit:

Mario Allan Montano
Applicant, In Pro Se
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December 18, 2020

LIST OF PARTIES

Pursuant to SCt. Rule 14, the following is a list of all parties to the proceeding in the court whose judgment is sought to be reviewed:

1. APPLICANT - Mario Allan Montano, a man naturally born in the United States.
2. RESPONDENT - State of Michigan, Oakland County Circuit Court Judge, c/o Honorable Kameshia D. Gant.

LIST OF CASES

1. *Montano v. Montano*, 2012-802216-DO (6th Mich. Cir. Ct. March 28, 2013). Judgment entered on May 6, 2013.
2. *Wimmer v. Montano*, 2017-854298-PP (6th Mich. Cir. Ct. June 20, 2017). Judgment entered on June 20, 2017.
3. *In Re Montano*, 353802 (Mich. Ct. App. July 14, 2020). Order entered on July 14, 2020.
4. *In Re Montano*, 353957 (Mich. Ct. App. August 11, 2020). Order entered on August 11, 2020.
5. *In Re Montano*, 161475, 161670 (Mich. October 5, 2020). Order entered on October 5, 2020.
6. *In Re Montano*, 161622, 161848 (Mich. October 5, 2020). Order entered on October 5, 2020.

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Appendix B Decision of the Michigan Court of Appeals Dismissing No. 353957 on August 11, 2020.

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Appendix D Decision of the Michigan Supreme Court Dismissing No. 161622, 161848 on October 5, 2020.

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IN THE
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EMERGENCY APPLICATION FOR A STAY PENDING THE DISPOSITION OF A
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The Applicant prays that a stay of execution pending the disposition of the Petition for Writ of Certiorari be issued on the judgments below.

OPINIONS BELOW

The unpublished judgments of the Michigan Supreme Court (“**MSC**”), the court of last resort in the State of Michigan to be addressed are:

1. Decision dismissing case No. 161475, 161670 and issuing a filing injunction against the Applicant issued on October 5, 2020 (Appendix C).
2. Decision dismissing case No. 161662, 161848 and issuing a filing injunction against the Applicant issued on October 5, 2020 (Appendix D).

The unpublished judgments of the Michigan Court of Appeals (“**COA**”) to be addressed are:

1. Decision dismissing case No. 353802, sanctioning the Applicant \$750 and issuing a filing injunction against the Applicant on July 14, 2020 (Appendix A).
2. Decision dismissing case No. 353957, sanctioning the Applicant \$750 and issuing a filing injunction against the Applicant on August 11, 2020 (Appendix B).

STAY OF EXECUTION DENIED BY LOWER COURTS

The Applicant filed a motion seeking a stay of execution of the Michigan Court of Appeals (“**COA**”) decision in No. 353802 pending disposition of the Petition for Writ of Certiorari on December 6, 2020 (Appendix E at 2 ¶ B). The Applicant filed a motion seeking a stay of execution

of the COA decision in No. 353957 pending disposition of the Petition for Writ of Certiorari on December 6, 2020 (Appendix F at 2 ¶ B). The COA rejected both of the Applicant's motions on December 7, 2020 (Appendices, G, H). The COA provided no basis for the rejection of the motions. The COA denied the Applicant's petition for a stay of its orders pending petition for certiorari by its actions on December 7, 2020.

The Applicant filed a motion seeking a stay of execution of the Michigan Supreme Court ("MSC") decision in No. 161475, 161670 pending disposition of the Petition for Writ of Certiorari on December 7, 2020 (Appendix I). The motion sought a stay on both the order issued by the MSC in No. 161475, 161670 as well as the COA decision in No. 353802 (Appendix I at 5 ¶¶ B-C).

The Applicant filed a motion seeking a stay of execution of the MSC decision in No. 161622, 161848 pending disposition of the Petition for Writ of Certiorari on December 7, 2020 (Appendix J). The motion sought a stay on both the order issued by the MSC in No. 161622, 161848 as well as the COA decision in No. 353957 (Appendix J at 5 ¶¶ B-C).

The MSC rejected both motions stating that they were rejected for previous reasons stated. The previous reasons stated were that the Applicant had not paid the sanctions specified in the orders in Appendices C and D for which he sought a stay of execution. The MSC's actions denied the Applicant's petitions for a stay of execution.

All applicable lower courts have denied the Applicant's petitions for a stay of execution of the judgments pending disposition of the Petition for Writ of Certiorari for which the Applicant seeks a stay from this Court.

JURISDICTION

The Applicant filed a Petition for Writ of Certiorari appealing the orders of the MSC in case Nos. (161475, 161670), (161622, 161848) on November 11, 2020. The case of *Mario Allan Montano v. Oakland County Circuit Court Judge*¹ (“**this case**”) was docketed with the Court on December 1, 2020.

This Court may grant the requested stay of execution pursuant to SCt. Rule 23.1. This application is presented to this Court pursuant to SCt. Rule 23.2 and 28 U.S.C. §2101(f). The Applicant has shown his attempt and failure to obtain a stay from all lower courts who could grant such a stay meeting the expectations in SCt. Rule 23.3.

This Court has jurisdiction and all expectations have been met for this Court to issue a ruling on this application for a stay of execution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const. Amend. V.
2. U.S. Const. Amend. XIV § 1.

STATEMENT OF THE CASE

The Honorable Kameshia D. Gant (“**the Respondent**”) was assigned to the case of *Montano v. Montano*² (“2012-802216-DO”) and *Wimmer v. Montano*³ (“2017-854298-PP”) on May 4, 2019.

¹ *Mario Allan Montano v. Oakland County Circuit Court Judge*, No. 20-6490 (U.S.).

² *Montano v. Montano*, 2012-802216-DO (6th Mich. Cir. Ct. March 28, 2013).

³ *Wimmer v. Montano*, 2017-854298-PP (6th Mich. Cir. Ct. June 20, 2017).

APPLICANT IS INDIGENT ACCORDING TO THE MICHIGAN SUPREME COURT

Chief Justice Bridget M. McCormack of the MSC issued an order granting the Applicant a waiver of filing fees in the case of *Wimmer v. Montano*⁴ (“**No. 161121**”) on March 18, 2020. The fee to file a regular motion in the MSC is \$75 pursuant to MCL 600.244(1)(d). By issuing such an order, Chief Justice McCormack affirmed that the Applicant could not afford \$75 to pay for a motion fee.

ORDERS TO STAY IN THE MICHIGAN COURT OF APPEALS

Mario Allan Montano (“**the Applicant**”) filed a Complaint for Writ of Superintending Control of the Respondent and a Motion to Waive Fees with the COA on June 11, 2020. The case of *In Re Montano*⁵ (“**No. 353802**”) was initiated with the COA on June 11, 2020. The Record of No. 353802 is presented in Appendix M.⁶ The Applicant paid no fees for his filing. The Motion to Waive Fees contained the same evidence that Chief Justice McCormack had seen to grant the Applicant a fee waiver on March 18, 2020. The record shows that the Respondent has not filed a single document into No. 353802 since the day the case was initiated. No. 353802 is uncontested.

The Honorable Elizabeth L. Gleicher (“**Judge Gleicher**”) issued an order denying the Applicant’s motion to waive fees in No. 353802 on June 16, 2020. The order required the Applicant to pay the conditionally waived filing fees by July 7, 2020 (*Id.* at 1, Event 7). The Applicant appealed Judge Gleicher’s order by filing an interlocutory application for leave to appeal and a motion to waive fees with the MSC on June 16, 2020. The case of *In Re Montano*⁷ (“**No. 161475**”) was initiated with the MSC on June 16, 2020. The MSC obtained discretionary review

⁴ *Wimmer v. Montano*, 161121 (Mich. May 26, 2020).

⁵ *In Re Montano*, 353802 (Mich. Ct. App. July 14, 2020).

⁶ Michigan Supreme Court Events redacted, actions mentioned in this application are highlighted.

⁷ *In Re Montano*, 161475 (Mich. October 5, 2020).

jurisdiction over Judge Gleicher's order denying a fee waiver pursuant to MCR 7.303(B)(1). Judge Gleicher's order denying a fee waiver had not reached final disposition as of June 16, 2020.

The Applicant filed a Complaint for Writ of Superintending Control of the Respondent and a Motion to Waive Fees with the COA on June 25, 2020. The case of *In Re Montano*⁸ ("No. 353957") was initiated with the COA on June 25, 2020. The record of Case 353957 is presented in Appendix N.⁹ The Motion to Waive Fees contained the same evidence that Chief Justice McCormack had seen to grant the Applicant a fee waiver on March 18, 2020. The Applicant paid no fees for his filing. The record shows that the Respondent has not filed a single document into No. 353957 since the day the case was initiated. No. 353957 is uncontested.

The Honorable Christopher M. Murray ("Chief Judge Murray") issued an order dismissing uncontested case No. 353802 for the Applicant's failure to pay court fees on July 14, 2020 (Appendix A). The order sanctioned the Applicant \$750 and required that the Clerk reject all Applicant filings in non-criminal cases till the sanction was paid. The Applicant is indigent and cannot afford to pay the sanction as affirmed by the MSC on March 18, 2020.

The MSC had jurisdiction over the order regarding the fee waiver denial that Chief Judge Murray executed upon based on case No. 161475. Chief Judge Murray executed on a non-final order that the MSC had jurisdiction over. The Petition reveals that Chief Judge Murray had no legal basis for ordering sanctions or even issuing an order in No. 353802 on July 14, 2020. The Applicant has been deprived of his due process right to appeal or defend himself in non-criminal COA cases since July 14, 2020 based on an order issued against him without any jurisdiction.

Judge Gleicher issued an order denying the Applicant's motion to waive fees in No. 353957 on July 14, 2020 (Appendix N at 1, Event: 6). The order required the Applicant to pay the

⁸ *In Re Montano*, 353957 (Mich. Ct. App. August 11, 2020).

⁹ Michigan Supreme Court Events redacted, actions mentioned in this application are highlighted.

conditionally waived filing fees by August 4, 2020. The Applicant appealed Judge Gleicher's order by filing an interlocutory application for leave to appeal and a motion to waive fees with the MSC on July 15, 2020. The case of *In Re Montano*¹⁰ ("No. 161622") was initiated with the MSC on July 15, 2020. The MSC obtained discretionary review jurisdiction over Judge Gleicher's order denying a fee waiver pursuant to MCR 7.303(B)(1). Judge Gleicher's order denying a fee waiver had not reached final disposition as of July 15, 2020.

The Applicant appealed Chief Judge Murray's July 14, 2020 order in No. 353802 (Appendix A) by filing an Application for Leave to Appeal and a Motion to Waive Fees with the MSC on July 19, 2020. The case of *In Re Montano*¹¹ ("No. 161475, 161670") was initiated with the MSC on July 19, 2020. The record of No. 161475, 161670 is presented in Appendix O.¹²

Chief Judge Murray issued an order dismissing uncontested case No. 353957 for the Applicant's failure to pay court fees on August 11, 2020 (Appendix B). The order sanctioned the Applicant \$750 and requires that the Clerk reject all Applicant filings in non-criminal cases till the sanctions have been paid. The Applicant is indigent and cannot afford to pay the sanction according to the MSC.

The MSC had jurisdiction over the order regarding the denial of the fee waiver that Chief Judge Murray executed on based on case No. 161622. Chief Judge Murray executed on a non-final order that the MSC had jurisdiction over. The Petition reveals that Chief Judge Murray had no legal basis for ordering sanctions or even issuing an order in No. 353957 on August 11, 2020.

¹⁰ *In Re Montano*, 161622 (Mich. October 5, 2020).

¹¹ *In Re Montano*, 161475, 161670 (Mich. October 5, 2020).

¹² Michigan Court of Appeals Events redacted, actions mentioned in this application are highlighted.

ORDERS TO STAY IN THE MICHIGAN SUPREME COURT

The Applicant appealed Chief Judge Murray's August 11, 2020 order in No. 353957 by filing an Application for Leave to Appeal and a Motion to Waive Fees with the MSC on August 11, 2020. The case of *In Re Montano*¹³ ("No. 161622, 161848") was initiated with the MSC on August 11, 2020. The record of No. 161622, 161848 is presented in Appendix P.¹⁴

The records of No. 161475, 161670 (Appendix O) and No. 161622, 161848 (Appendix P) both reveal the following facts:

- The opposing party did not file a single document into the case and the case was uncontested.
- All filings fees for the Applicant were conditionally waived pending the MSC's decision on the motions to waive fees.
- The MSC failed to issue an order on the motions to waive fees.

The Applicant had not paid fees and the fees had not been waived in both MSC cases as of October 5, 2020. "A motion may not be decided or an order entered by the Court unless all required documents have been filed and the requisite fees have been paid." MCR 7.315(D). The MSC did not have jurisdiction in both cases to issue an order other than one deciding the motions to waive fees in either case as of October 5, 2020.

The MSC issued orders dismissing No. 161475, 161670 (Appendix C) and No. 161622, 161848 (Appendix D) on October 5, 2020. Both orders do not state any legal authority for the issuance of the order. Both orders state that the cases were dismissed because the Applicant did not pay the fees. Each order stated that the Applicant was required to pay sanctions totaling \$1500 in two other cases to avoid the clerk of the Court rejecting filings.

¹³ *In Re Montano*, 161475, 161670 (Mich. October 5, 2020).

¹⁴ Michigan Court of Appeals Events redacted, actions mentioned in this application are highlighted

The Applicant is indigent and cannot afford to pay \$1500 in sanctions to the Clerk of the MSC. As a result of the MSC's orders on October 5, 2020, the Applicant has been deprived of any ability to appeal or defend himself in any civil action with the MSC.

The MSC made an error of fact stating that the Applicant owed filing fees. The MSC had failed to rule on the motions to waive fees and did not have jurisdiction to issue either order. The MSC deprived the Applicant of his right to due process and equal protection under the law as stated in U.S. Const. Amend. XIV § 1 by dismissing his two cases. The Applicant has been deprived of his right to appeal and defend himself in the MSC based on the violations.

The actions by the COA in issuing the orders in Appendices A & B were in violation of the COA's jurisdiction to rule since the MSC had jurisdiction when the orders were issued. The COA wrongly sanctioned the Applicant a total of \$1500 violating the Applicant's right to not being deprived of property stated in U.S. Const. Amend. V. The orders by the COA also deprived the Applicant of equal protection under the law as stated in U.S. Const. Amend. XIV § 1. As a result, the Applicant has been deprived of any means to appeal to or defend himself in the COA.

REASONS FOR GRANTING THE APPLICATION

The Petition for Writ of Certiorari associated with this case is straightforward and shows two uncontested cases in both the COA and the MSC resulting in orders sanctioning the indigent Applicant \$1500 along with depriving the Applicant of any ability to appeal or defend himself in either court. Both the COA and the MSC violated jurisdiction and the Applicant's constitutional rights in issuing the orders. The Petition is uncontestable, and relief should just be granted.

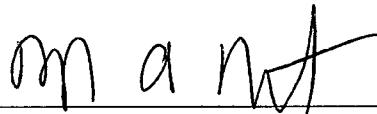
The deprivation of a poor citizen to even defend himself in any court of law is a travesty of justice and even more so with the appellate courts in the state of Michigan.

Justice requires this Court to issue a stay of execution of the orders in Appendices A-D.

CONCLUSION

The evidence, facts, impact and legal authority overwhelmingly require that a stay of execution of the decisions by the Michigan Supreme Court in Appendices C-D and the decisions by the Michigan Court of Appeals in Appendices A-B be stayed pending the disposition of the Petition for a Writ for Certiorari. The Applicant prays that this Court will grant him the needed and justified stay of execution.

Respectfully submitted,



Mario Allan Montano, Applicant
Date: December 18, 2020

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LIST OF PARTIES

Pursuant to SCt. Rule 14, the following is a list of all parties to the proceeding in the court whose judgment is sought to be reviewed:

1. APPLICANT - Mario Allan Montano, a man naturally born in the United States.
2. RESPONDENT - State of Michigan, Oakland County Circuit Court Judge, c/o Honorable Kameshia D. Gant.

LIST OF CASES

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2. *Wimmer v. Montano*, 2017-854298-PP (6th Mich. Cir. Ct. June 20, 2017). Judgment entered on June 20, 2017.
3. *In Re Montano*, 353802 (Mich. Ct. App. July 14, 2020). Order entered on July 14, 2020.
4. *In Re Montano*, 353957 (Mich. Ct. App. August 11, 2020). Order entered on August 11, 2020.
5. *In Re Montano*, 161475, 161670 (Mich. October 5, 2020). Order entered on October 5, 2020.
6. *In Re Montano*, 161622, 161848 (Mich. October 5, 2020). Order entered on October 5, 2020.

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OPINIONS BELOW

The unpublished judgments of the Michigan Supreme Court (“**MSC**”), the court of last resort in the State of Michigan to be addressed are:

1. Decision dismissing case No. 161475, 161670 and issuing a filing injunction against the Applicant issued on October 5, 2020 (Appendix C).
2. Decision dismissing case No. 161662, 161848 and issuing a filing injunction against the Applicant issued on October 5, 2020 (Appendix D).

The unpublished judgments of the Michigan Court of Appeals (“**COA**”) to be addressed are:

1. Decision dismissing case No. 353802, sanctioning the Applicant \$750 and issuing a filing injunction against the Applicant on July 14, 2020 (Appendix A).
2. Decision dismissing case No. 353957, sanctioning the Applicant \$750 and issuing a filing injunction against the Applicant on August 11, 2020 (Appendix B).

STAY OF EXECUTION DENIED BY LOWER COURTS

The Applicant filed a motion seeking a stay of execution of the Michigan Court of Appeals (“**COA**”) decision in No. 353802 pending disposition of the Petition for Writ of Certiorari on December 6, 2020 (Appendix E at 2 ¶ B). The Applicant filed a motion seeking a stay of execution

of the COA decision in No. 353957 pending disposition of the Petition for Writ of Certiorari on December 6, 2020 (Appendix F at 2 ¶ B). The COA rejected both of the Applicant's motions on December 7, 2020 (Appendices, G, H). The COA provided no basis for the rejection of the motions. The COA denied the Applicant's petition for a stay of its orders pending petition for certiorari by its actions on December 7, 2020.

The Applicant filed a motion seeking a stay of execution of the Michigan Supreme Court ("MSC") decision in No. 161475, 161670 pending disposition of the Petition for Writ of Certiorari on December 7, 2020 (Appendix I). The motion sought a stay on both the order issued by the MSC in No. 161475, 161670 as well as the COA decision in No. 353802 (Appendix I at 5 ¶¶ B-C).

The Applicant filed a motion seeking a stay of execution of the MSC decision in No. 161622, 161848 pending disposition of the Petition for Writ of Certiorari on December 7, 2020 (Appendix J). The motion sought a stay on both the order issued by the MSC in No. 161622, 161848 as well as the COA decision in No. 353957 (Appendix J at 5 ¶¶ B-C).

The MSC rejected both motions stating that they were rejected for previous reasons stated. The previous reasons stated were that the Applicant had not paid the sanctions specified in the orders in Appendices C and D for which he sought a stay of execution. The MSC's actions denied the Applicant's petitions for a stay of execution.

All applicable lower courts have denied the Applicant's petitions for a stay of execution of the judgments pending disposition of the Petition for Writ of Certiorari for which the Applicant seeks a stay from this Court.

JURISDICTION

The Applicant filed a Petition for Writ of Certiorari appealing the orders of the MSC in case Nos. (161475, 161670), (161622, 161848) on November 11, 2020. The case of *Mario Allan Montano v. Oakland County Circuit Court Judge*¹ (“**this case**”) was docketed with the Court on December 1, 2020.

This Court may grant the requested stay of execution pursuant to SCt. Rule 23.1. This application is presented to this Court pursuant to SCt. Rule 23.2 and 28 U.S.C. §2101(f). The Applicant has shown his attempt and failure to obtain a stay from all lower courts who could grant such a stay meeting the expectations in SCt. Rule 23.3.

This Court has jurisdiction and all expectations have been met for this Court to issue a ruling on this application for a stay of execution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const. Amend. V.
2. U.S. Const. Amend. XIV § 1.

STATEMENT OF THE CASE

The Honorable Kameshia D. Gant (“**the Respondent**”) was assigned to the case of *Montano v. Montano*² (“2012-802216-DO”) and *Wimmer v. Montano*³ (“2017-854298-PP”) on May 4, 2019.

¹ *Mario Allan Montano v. Oakland County Circuit Court Judge*, No. 20-6490 (U.S.).

² *Montano v. Montano*, 2012-802216-DO (6th Mich. Cir. Ct. March 28, 2013).

³ *Wimmer v. Montano*, 2017-854298-PP (6th Mich. Cir. Ct. June 20, 2017).

APPLICANT IS INDIGENT ACCORDING TO THE MICHIGAN SUPREME COURT

Chief Justice Bridget M. McCormack of the MSC issued an order granting the Applicant a waiver of filing fees in the case of *Wimmer v. Montano*⁴ (“**No. 161121**”) on March 18, 2020. The fee to file a regular motion in the MSC is \$75 pursuant to MCL 600.244(1)(d). By issuing such an order, Chief Justice McCormack affirmed that the Applicant could not afford \$75 to pay for a motion fee.

ORDERS TO STAY IN THE MICHIGAN COURT OF APPEALS

Mario Allan Montano (“**the Applicant**”) filed a Complaint for Writ of Superintending Control of the Respondent and a Motion to Waive Fees with the COA on June 11, 2020. The case of *In Re Montano*⁵ (“**No. 353802**”) was initiated with the COA on June 11, 2020. The Record of No. 353802 is presented in Appendix M.⁶ The Applicant paid no fees for his filing. The Motion to Waive Fees contained the same evidence that Chief Justice McCormack had seen to grant the Applicant a fee waiver on March 18, 2020. The record shows that the Respondent has not filed a single document into No. 353802 since the day the case was initiated. No. 353802 is uncontested.

The Honorable Elizabeth L. Gleicher (“**Judge Gleicher**”) issued an order denying the Applicant’s motion to waive fees in No. 353802 on June 16, 2020. The order required the Applicant to pay the conditionally waived filing fees by July 7, 2020 (*Id.* at 1, Event 7) . The Applicant appealed Judge Gleicher’s order by filing an interlocutory application for leave to appeal and a motion to waive fees with the MSC on June 16, 2020. The case of *In Re Montano*⁷ (“**No. 161475**”) was initiated with the MSC on June 16, 2020. The MSC obtained discretionary review

⁴ *Wimmer v. Montano*, 161121 (Mich. May 26, 2020).

⁵ *In Re Montano*, 353802 (Mich. Ct. App. July 14, 2020).

⁶ Michigan Supreme Court Events redacted, actions mentioned in this application are highlighted.

⁷ *In Re Montano*, 161475 (Mich. October 5, 2020).

jurisdiction over Judge Gleicher's order denying a fee waiver pursuant to MCR 7.303(B)(1). Judge Gleicher's order denying a fee waiver had not reached final disposition as of June 16, 2020.

The Applicant filed a Complaint for Writ of Superintending Control of the Respondent and a Motion to Waive Fees with the COA on June 25, 2020. The case of *In Re Montano*⁸ ("No. 353957") was initiated with the COA on June 25, 2020. The record of Case 353957 is presented in Appendix N.⁹ The Motion to Waive Fees contained the same evidence that Chief Justice McCormack had seen to grant the Applicant a fee waiver on March 18, 2020. The Applicant paid no fees for his filing. The record shows that the Respondent has not filed a single document into No. 353957 since the day the case was initiated. No. 353957 is uncontested.

The Honorable Christopher M. Murray ("Chief Judge Murray") issued an order dismissing uncontested case No. 353802 for the Applicant's failure to pay court fees on July 14, 2020 (Appendix A). The order sanctioned the Applicant \$750 and required that the Clerk reject all Applicant filings in non-criminal cases till the sanction was paid. The Applicant is indigent and cannot afford to pay the sanction as affirmed by the MSC on March 18, 2020.

The MSC had jurisdiction over the order regarding the fee waiver denial that Chief Judge Murray executed upon based on case No. 161475. Chief Judge Murray executed on a non-final order that the MSC had jurisdiction over. The Petition reveals that Chief Judge Murray had no legal basis for ordering sanctions or even issuing an order in No. 353802 on July 14, 2020. The Applicant has been deprived of his due process right to appeal or defend himself in non-criminal COA cases since July 14, 2020 based on an order issued against him without any jurisdiction.

Judge Gleicher issued an order denying the Applicant's motion to waive fees in No. 353957 on July 14, 2020 (Appendix N at 1, Event: 6). The order required the Applicant to pay the

⁸ *In Re Montano*, 353957 (Mich. Ct. App. August 11, 2020).

⁹ Michigan Supreme Court Events redacted, actions mentioned in this application are highlighted.

conditionally waived filing fees by August 4, 2020. The Applicant appealed Judge Gleicher's order by filing an interlocutory application for leave to appeal and a motion to waive fees with the MSC on July 15, 2020. The case of *In Re Montano*¹⁰ ("No. 161622") was initiated with the MSC on July 15, 2020. The MSC obtained discretionary review jurisdiction over Judge Gleicher's order denying a fee waiver pursuant to MCR 7.303(B)(1). Judge Gleicher's order denying a fee waiver had not reached final disposition as of July 15, 2020.

The Applicant appealed Chief Judge Murray's July 14, 2020 order in No. 353802 (Appendix A) by filing an Application for Leave to Appeal and a Motion to Waive Fees with the MSC on July 19, 2020. The case of *In Re Montano*¹¹ ("No. 161475, 161670") was initiated with the MSC on July 19, 2020. The record of No. 161475, 161670 is presented in Appendix O.¹²

Chief Judge Murray issued an order dismissing uncontested case No. 353957 for the Applicant's failure to pay court fees on August 11, 2020 (Appendix B). The order sanctioned the Applicant \$750 and requires that the Clerk reject all Applicant filings in non-criminal cases till the sanctions have been paid. The Applicant is indigent and cannot afford to pay the sanction according to the MSC.

The MSC had jurisdiction over the order regarding the denial of the fee waiver that Chief Judge Murray executed on based on case No. 161622. Chief Judge Murray executed on a non-final order that the MSC had jurisdiction over. The Petition reveals that Chief Judge Murray had no legal basis for ordering sanctions or even issuing an order in No. 353957 on August 11, 2020.

¹⁰ *In Re Montano*, 161622 (Mich. October 5, 2020).

¹¹ *In Re Montano*, 161475, 161670 (Mich. October 5, 2020).

¹² Michigan Court of Appeals Events redacted, actions mentioned in this application are highlighted.

ORDERS TO STAY IN THE MICHIGAN SUPREME COURT

The Applicant appealed Chief Judge Murray's August 11, 2020 order in No. 353957 by filing an Application for Leave to Appeal and a Motion to Waive Fees with the MSC on August 11, 2020. The case of *In Re Montano*¹³ ("No. 161622, 161848") was initiated with the MSC on August 11, 2020. The record of No. 161622, 161848 is presented in Appendix P.¹⁴

The records of No. 161475, 161670 (Appendix O) and No. 161622, 161848 (Appendix P) both reveal the following facts:

- The opposing party did not file a single document into the case and the case was uncontested.
- All filings fees for the Applicant were conditionally waived pending the MSC's decision on the motions to waive fees.
- The MSC failed to issue an order on the motions to waive fees.

The Applicant had not paid fees and the fees had not been waived in both MSC cases as of October 5, 2020. "A motion may not be decided or an order entered by the Court unless all required documents have been filed and the requisite fees have been paid." MCR 7.315(D). The MSC did not have jurisdiction in both cases to issue an order other than one deciding the motions to waive fees in either case as of October 5, 2020.

The MSC issued orders dismissing No. 161475, 161670 (Appendix C) and No. 161622, 161848 (Appendix D) on October 5, 2020. Both orders do not state any legal authority for the issuance of the order. Both orders state that the cases were dismissed because the Applicant did not pay the fees. Each order stated that the Applicant was required to pay sanctions totaling \$1500 in two other cases to avoid the clerk of the Court rejecting filings.

¹³ *In Re Montano*, 161475, 161670 (Mich. October 5, 2020).

¹⁴ Michigan Court of Appeals Events redacted, actions mentioned in this application are highlighted

The Applicant is indigent and cannot afford to pay \$1500 in sanctions to the Clerk of the MSC. As a result of the MSC's orders on October 5, 2020, the Applicant has been deprived of any ability to appeal or defend himself in any civil action with the MSC.

The MSC made an error of fact stating that the Applicant owed filing fees. The MSC had failed to rule on the motions to waive fees and did not have jurisdiction to issue either order. The MSC deprived the Applicant of his right to due process and equal protection under the law as stated in U.S. Const. Amend. XIV § 1 by dismissing his two cases. The Applicant has been deprived of his right to appeal and defend himself in the MSC based on the violations.

The actions by the COA in issuing the orders in Appendices A & B were in violation of the COA's jurisdiction to rule since the MSC had jurisdiction when the orders were issued. The COA wrongly sanctioned the Applicant a total of \$1500 violating the Applicant's right to not being deprived of property stated in U.S. Const. Amend. V. The orders by the COA also deprived the Applicant of equal protection under the law as stated in U.S. Const. Amend. XIV § 1. As a result, the Applicant has been deprived of any means to appeal to or defend himself in the COA.

REASONS FOR GRANTING THE APPLICATION

The Petition for Writ of Certiorari associated with this case is straightforward and shows two uncontested cases in both the COA and the MSC resulting in orders sanctioning the indigent Applicant \$1500 along with depriving the Applicant of any ability to appeal or defend himself in either court. Both the COA and the MSC violated jurisdiction and the Applicant's constitutional rights in issuing the orders. The Petition is uncontestable, and relief should just be granted.

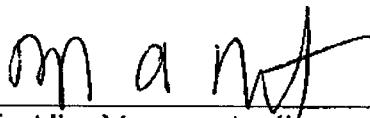
The deprivation of a poor citizen to even defend himself in any court of law is a travesty of justice and even more so with the appellate courts in the state of Michigan.

Justice requires this Court to issue a stay of execution of the orders in Appendices A-D.

CONCLUSION

The evidence, facts, impact and legal authority overwhelmingly require that a stay of execution of the decisions by the Michigan Supreme Court in Appendices C-D and the decisions by the Michigan Court of Appeals in Appendices A-B be stayed pending the disposition of the Petition for a Writ for Certiorari. The Applicant prays that this Court will grant him the needed and justified stay of execution.

Respectfully submitted,



Mario Allan Montano, Applicant
Date: December 18, 2020

No. 20-6490

IN THE
SUPREME COURT OF THE UNITED STATES

MARIO ALLAN MONTANO, APPLICANT,

v.

OAKLAND COUNTY CIRCUIT COURT JUDGE, RESPONDENT.

**EMERGENCY APPLICATION FOR A STAY OF EXECUTION PENDING THE
DISPOSITION OF THE PETITION FOR WRIT OF CERTIORARI**

To the HONORABLE BRETT M. KAVANAGH, Associate Justice of the Supreme Court
of the United States of America and Circuit Justice for the 6th Circuit:

Mario Allan Montano
Applicant, In Pro Se
3647 Springdale Dr.
Little River, SC 29566
(843) 582-7503
almontano29582@gmail.com

December 18, 2020

LIST OF PARTIES

Pursuant to SCt. Rule 14, the following is a list of all parties to the proceeding in the court whose judgment is sought to be reviewed:

1. APPLICANT - Mario Allan Montano, a man naturally born in the United States.
2. RESPONDENT - State of Michigan, Oakland County Circuit Court Judge, c/o Honorable Kameshia D. Gant.

LIST OF CASES

1. *Montano v. Montano*, 2012-802216-DO (6th Mich. Cir. Ct. March 28, 2013). Judgment entered on May 6, 2013.
2. *Wimmer v. Montano*, 2017-854298-PP (6th Mich. Cir. Ct. June 20, 2017). Judgment entered on June 20, 2017.
3. *In Re Montano*, 353802 (Mich. Ct. App. July 14, 2020). Order entered on July 14, 2020.
4. *In Re Montano*, 353957 (Mich. Ct. App. August 11, 2020). Order entered on August 11, 2020.
5. *In Re Montano*, 161475, 161670 (Mich. October 5, 2020). Order entered on October 5, 2020.
6. *In Re Montano*, 161622, 161848 (Mich. October 5, 2020). Order entered on October 5, 2020.

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Appendix B Decision of the Michigan Court of Appeals Dismissing No. 353957 on August 11, 2020.

Appendix C Decision of the Michigan Supreme Court Dismissing No. 161475, 161670 on October 5, 2020.

Appendix D Decision of the Michigan Supreme Court Dismissing No. 161622, 161848 on October 5, 2020.

Appendix E Applicant's Motion for a Stay of Execution in No. 353802 filed with the Michigan Court of Appeals on December 6, 2020.

Appendix F Applicant's Motion for a Stay of Execution in No. 353957 filed with the Michigan Court of Appeals on December 6, 2020.

Appendix G Michigan Court of Appeal's rejection of Applicant's Motion for a Stay in No. 353802 on December 7, 2020.

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Appendix J Applicant's Motion for a Stay of Execution in No. 161622, 161848 filed with the Michigan Supreme Court on December 7, 2020.

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Appendix M Record of Michigan Court of Appeals Case 353802

Appendix N Record of Michigan Court of Appeals Case 353957

Appendix O Record of Michigan Supreme Court Case 161475, 161670

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No. 20-6490

IN THE
SUPREME COURT OF THE UNITED STATES

**EMERGENCY APPLICATION FOR A STAY PENDING THE DISPOSITION OF A
PETITION FOR WRIT OF CERTIORARI**

The Applicant prays that a stay of execution pending the disposition of the Petition for Writ of Certiorari be issued on the judgments below.

OPINIONS BELOW

The unpublished judgments of the Michigan Supreme Court (“**MSC**”), the court of last resort in the State of Michigan to be addressed are:

1. Decision dismissing case No. 161475, 161670 and issuing a filing injunction against the Applicant issued on October 5, 2020 (Appendix C).
2. Decision dismissing case No. 161662, 161848 and issuing a filing injunction against the Applicant issued on October 5, 2020 (Appendix D).

The unpublished judgments of the Michigan Court of Appeals (“**COA**”) to be addressed are:

1. Decision dismissing case No. 353802, sanctioning the Applicant \$750 and issuing a filing injunction against the Applicant on July 14, 2020 (Appendix A).
2. Decision dismissing case No. 353957, sanctioning the Applicant \$750 and issuing a filing injunction against the Applicant on August 11, 2020 (Appendix B).

STAY OF EXECUTION DENIED BY LOWER COURTS

The Applicant filed a motion seeking a stay of execution of the Michigan Court of Appeals (“**COA**”) decision in No. 353802 pending disposition of the Petition for Writ of Certiorari on December 6, 2020 (Appendix E at 2 ¶ B). The Applicant filed a motion seeking a stay of execution

of the COA decision in No. 353957 pending disposition of the Petition for Writ of Certiorari on December 6, 2020 (Appendix F at 2 ¶ B). The COA rejected both of the Applicant's motions on December 7, 2020 (Appendices, G, H). The COA provided no basis for the rejection of the motions. The COA denied the Applicant's petition for a stay of its orders pending petition for certiorari by its actions on December 7, 2020.

The Applicant filed a motion seeking a stay of execution of the Michigan Supreme Court ("MSC") decision in No. 161475, 161670 pending disposition of the Petition for Writ of Certiorari on December 7, 2020 (Appendix I). The motion sought a stay on both the order issued by the MSC in No. 161475, 161670 as well as the COA decision in No. 353802 (Appendix I at 5 ¶¶ B-C).

The Applicant filed a motion seeking a stay of execution of the MSC decision in No. 161622, 161848 pending disposition of the Petition for Writ of Certiorari on December 7, 2020 (Appendix J). The motion sought a stay on both the order issued by the MSC in No. 161622, 161848 as well as the COA decision in No. 353957 (Appendix J at 5 ¶¶ B-C).

The MSC rejected both motions stating that they were rejected for previous reasons stated. The previous reasons stated were that the Applicant had not paid the sanctions specified in the orders in Appendices C and D for which he sought a stay of execution. The MSC's actions denied the Applicant's petitions for a stay of execution.

All applicable lower courts have denied the Applicant's petitions for a stay of execution of the judgments pending disposition of the Petition for Writ of Certiorari for which the Applicant seeks a stay from this Court.

JURISDICTION

The Applicant filed a Petition for Writ of Certiorari appealing the orders of the MSC in case Nos. (161475, 161670), (161622, 161848) on November 11, 2020. The case of *Mario Allan Montano v. Oakland County Circuit Court Judge*¹ (“this case”) was docketed with the Court on December 1, 2020.

This Court may grant the requested stay of execution pursuant to SCt. Rule 23.1. This application is presented to this Court pursuant to SCt. Rule 23.2 and 28 U.S.C. §2101(f). The Applicant has shown his attempt and failure to obtain a stay from all lower courts who could grant such a stay meeting the expectations in SCt. Rule 23.3.

This Court has jurisdiction and all expectations have been met for this Court to issue a ruling on this application for a stay of execution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const. Amend. V.
2. U.S. Const. Amend. XIV § 1.

STATEMENT OF THE CASE

The Honorable Kameshia D. Gant (“the Respondent”) was assigned to the case of *Montano v. Montano*² (“2012-802216-DO”) and *Wimmer v. Montano*³ (“2017-854298-PP”) on May 4, 2019.

¹ *Mario Allan Montano v. Oakland County Circuit Court Judge*, No. 20-6490 (U.S.).

² *Montano v. Montano*, 2012-802216-DO (6th Mich. Cir. Ct. March 28, 2013).

³ *Wimmer v. Montano*, 2017-854298-PP (6th Mich. Cir. Ct. June 20, 2017).

APPLICANT IS INDIGENT ACCORDING TO THE MICHIGAN SUPREME COURT

Chief Justice Bridget M. McCormack of the MSC issued an order granting the Applicant a waiver of filing fees in the case of *Wimmer v. Montano*⁴ (“**No. 161121**”) on March 18, 2020. The fee to file a regular motion in the MSC is \$75 pursuant to MCL 600.244(1)(d). By issuing such an order, Chief Justice McCormack affirmed that the Applicant could not afford \$75 to pay for a motion fee.

ORDERS TO STAY IN THE MICHIGAN COURT OF APPEALS

Mario Allan Montano (“**the Applicant**”) filed a Complaint for Writ of Superintending Control of the Respondent and a Motion to Waive Fees with the COA on June 11, 2020. The case of *In Re Montano*⁵ (“**No. 353802**”) was initiated with the COA on June 11, 2020. The Record of No. 353802 is presented in Appendix M.⁶ The Applicant paid no fees for his filing. The Motion to Waive Fees contained the same evidence that Chief Justice McCormack had seen to grant the Applicant a fee waiver on March 18, 2020. The record shows that the Respondent has not filed a single document into No. 353802 since the day the case was initiated. No. 353802 is uncontested.

The Honorable Elizabeth L. Gleicher (“**Judge Gleicher**”) issued an order denying the Applicant’s motion to waive fees in No. 353802 on June 16, 2020. The order required the Applicant to pay the conditionally waived filing fees by July 7, 2020 (*Id.* at 1, Event 7). The Applicant appealed Judge Gleicher’s order by filing an interlocutory application for leave to appeal and a motion to waive fees with the MSC on June 16, 2020. The case of *In Re Montano*⁷ (“**No. 161475**”) was initiated with the MSC on June 16, 2020. The MSC obtained discretionary review

⁴ *Wimmer v. Montano*, 161121 (Mich. May 26, 2020).

⁵ *In Re Montano*, 353802 (Mich. Ct. App. July 14, 2020).

⁶ Michigan Supreme Court Events redacted, actions mentioned in this application are highlighted.

⁷ *In Re Montano*, 161475 (Mich. October 5, 2020).

jurisdiction over Judge Gleicher's order denying a fee waiver pursuant to MCR 7.303(B)(1). Judge Gleicher's order denying a fee waiver had not reached final disposition as of June 16, 2020.

The Applicant filed a Complaint for Writ of Superintending Control of the Respondent and a Motion to Waive Fees with the COA on June 25, 2020. The case of *In Re Montano*⁸ ("No. 353957") was initiated with the COA on June 25, 2020. The record of Case 353957 is presented in Appendix N.⁹ The Motion to Waive Fees contained the same evidence that Chief Justice McCormack had seen to grant the Applicant a fee waiver on March 18, 2020. The Applicant paid no fees for his filing. The record shows that the Respondent has not filed a single document into No. 353957 since the day the case was initiated. No. 353957 is uncontested.

The Honorable Christopher M. Murray ("Chief Judge Murray") issued an order dismissing uncontested case No. 353802 for the Applicant's failure to pay court fees on July 14, 2020 (Appendix A). The order sanctioned the Applicant \$750 and required that the Clerk reject all Applicant filings in non-criminal cases till the sanction was paid. The Applicant is indigent and cannot afford to pay the sanction as affirmed by the MSC on March 18, 2020.

The MSC had jurisdiction over the order regarding the fee waiver denial that Chief Judge Murray executed upon based on case No. 161475. Chief Judge Murray executed on a non-final order that the MSC had jurisdiction over. The Petition reveals that Chief Judge Murray had no legal basis for ordering sanctions or even issuing an order in No. 353802 on July 14, 2020. The Applicant has been deprived of his due process right to appeal or defend himself in non-criminal COA cases since July 14, 2020 based on an order issued against him without any jurisdiction.

Judge Gleicher issued an order denying the Applicant's motion to waive fees in No. 353957 on July 14, 2020 (Appendix N at 1, Event: 6). The order required the Applicant to pay the

⁸ *In Re Montano*, 353957 (Mich. Ct. App. August 11, 2020).

⁹ Michigan Supreme Court Events redacted, actions mentioned in this application are highlighted.

conditionally waived filing fees by August 4, 2020. The Applicant appealed Judge Gleicher's order by filing an interlocutory application for leave to appeal and a motion to waive fees with the MSC on July 15, 2020. The case of *In Re Montano*¹⁰ ("No. 161622") was initiated with the MSC on July 15, 2020. The MSC obtained discretionary review jurisdiction over Judge Gleicher's order denying a fee waiver pursuant to MCR 7.303(B)(1). Judge Gleicher's order denying a fee waiver had not reached final disposition as of July 15, 2020.

The Applicant appealed Chief Judge Murray's July 14, 2020 order in No. 353802 (Appendix A) by filing an Application for Leave to Appeal and a Motion to Waive Fees with the MSC on July 19, 2020. The case of *In Re Montano*¹¹ ("No. 161475, 161670") was initiated with the MSC on July 19, 2020. The record of No. 161475, 161670 is presented in Appendix O.¹²

Chief Judge Murray issued an order dismissing uncontested case No. 353957 for the Applicant's failure to pay court fees on August 11, 2020 (Appendix B). The order sanctioned the Applicant \$750 and requires that the Clerk reject all Applicant filings in non-criminal cases till the sanctions have been paid. The Applicant is indigent and cannot afford to pay the sanction according to the MSC.

The MSC had jurisdiction over the order regarding the denial of the fee waiver that Chief Judge Murray executed on based on case No. 161622. Chief Judge Murray executed on a non-final order that the MSC had jurisdiction over. The Petition reveals that Chief Judge Murray had no legal basis for ordering sanctions or even issuing an order in No. 353957 on August 11, 2020.

¹⁰ *In Re Montano*, 161622 (Mich. October 5, 2020).

¹¹ *In Re Montano*, 161475, 161670 (Mich. October 5, 2020).

¹² Michigan Court of Appeals Events redacted, actions mentioned in this application are highlighted.

ORDERS TO STAY IN THE MICHIGAN SUPREME COURT

The Applicant appealed Chief Judge Murray's August 11, 2020 order in No. 353957 by filing an Application for Leave to Appeal and a Motion to Waive Fees with the MSC on August 11, 2020. The case of *In Re Montano*¹³ ("No. 161622, 161848") was initiated with the MSC on August 11, 2020. The record of No. 161622, 161848 is presented in Appendix P.¹⁴

The records of No. 161475, 161670 (Appendix O) and No. 161622, 161848 (Appendix P) both reveal the following facts:

- The opposing party did not file a single document into the case and the case was uncontested.
- All filings fees for the Applicant were conditionally waived pending the MSC's decision on the motions to waive fees.
- The MSC failed to issue an order on the motions to waive fees.

The Applicant had not paid fees and the fees had not been waived in both MSC cases as of October 5, 2020. "A motion may not be decided or an order entered by the Court unless all required documents have been filed and the requisite fees have been paid." MCR 7.315(D). The MSC did not have jurisdiction in both cases to issue an order other than one deciding the motions to waive fees in either case as of October 5, 2020.

The MSC issued orders dismissing No. 161475, 161670 (Appendix C) and No. 161622, 161848 (Appendix D) on October 5, 2020. Both orders do not state any legal authority for the issuance of the order. Both orders state that the cases were dismissed because the Applicant did not pay the fees. Each order stated that the Applicant was required to pay sanctions totaling \$1500 in two other cases to avoid the clerk of the Court rejecting filings.

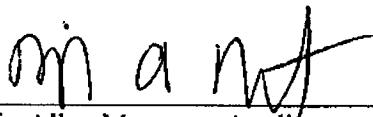
¹³ *In Re Montano*, 161475, 161670 (Mich. October 5, 2020).

¹⁴ Michigan Court of Appeals Events redacted, actions mentioned in this application are highlighted

CONCLUSION

The evidence, facts, impact and legal authority overwhelmingly require that a stay of execution of the decisions by the Michigan Supreme Court in Appendices C-D and the decisions by the Michigan Court of Appeals in Appendices A-B be stayed pending the disposition of the Petition for a Writ for Certiorari. The Applicant prays that this Court will grant him the needed and justified stay of execution.

Respectfully submitted,



Mario Allan Montano, Applicant
Date: December 18, 2020