

**IN THE SUPREME COURT OF THE UNITED STATES**

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**Case No. 22-7072**

**MONTOYYA SIMS**  
**Petitioner**

**V.**

**FOX RIDGE APARTMENTS**  
**Defendant.**

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**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES**  
**SUPREME COURT FOR THE DISTRICT OF COLUMBIA FEDERAL**  
**DISTRICT**

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**PLAINTIFF-APPELLANT MOTION FOR RECONSIDERATION**

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Montoyya Sims In Pro per  
2220 Gull Road Apt H6  
Kalamazoo, MI 49048  
269-352-0486

## INTRODUCTION

Now comes, Plaintiff-Appellant Montoya Sims Pro Se, ask this Court to permit attorney fees under 42 U.S.C. § 1988, along with GVR requested previously in the plaintiffs filings with the United States Supreme Court, 42 U.S.C. § 1988 authorizes courts to award reasonable attorney fees to prevailing parties in civil rights litigation.

The Lower Court were the plaintiffs Constitutional rights were violated Kalamazoo, MI 8th District Civil Court, is a government entity, under 42 USC § 1983 " provides a cause of action for the constitution and laws by any person acting under color of any statute, ordinance, regulation, custom, or usage, of any state or territory." Gomez v Toledo, 446 US 635, 638 (1980)(internal Quotations Omitted).

In Gomez, the United States Supreme Court determined that only two elements must be pled to properly assert a cause of action under 42 USC § 1983. First the plaintiff must identify the constitutional right of which he or she was deprived. Id. at 640. Second, the plaintiff must assert that "the person who deprived him of that federal right acted under color of state or territorial law." Id.

In other words, the individual who deprived the plaintiff of the right must have been acting for or on behalf of a governmental entity at the time the right was denied. However, an agent of the government who is abusing his position or power conferred upon him is still acting under the "color of law" and is thus subject to §1983 actions. Monroe v Pape, 365 US 167, 172 (1960). There is no constitutional violation if the individual who denied the plaintiffs right as a private citizen unless that individual was working in conjunction with a governmental entity.

"Section 1983 is not itself a source of substantive rights but merely provides a method for vindicating federal rights elsewhere conferred." Alibright v Oliver, 510 US 266, 271, (1994). Thus, §1983 is merely the channel through which a plaintiff argues a violation of a constitutional right. The particular amendment which the plaintiff claims remains the source of the right, and any claim must assert a factual basis particular to that amendment. *Id* at 273.

procedurally , §1983 is a stand-alone action which does not require the exhaustion of all state claims before it may be brought. In this regard, the Supreme Court has stated that "the federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked." Monroe, *supra*, at 183. However, despite this holding, there is a significant body of both state and federal case law creating abstention doctrines, which require a plaintiff to pursue state-based claims prior to filing a §1983 action in certain situations. For example, a defendant in a criminal proceeding who has an illegal seizure defense available to him may be required to raise that defense in the state action before being allowed to proceed with his own independent §1983 claim. This case law is fact and should always be considered prior to filing any claim.

Here, the Plaintiff-Appellant has exhausted all state remedies, rules and guidelines to obtain relief, she has in return been and is currently being harassed by local officials, judges, police, Section 8 worker, her current apartment complex, Legal Aid and a few corporations for exercising her constitutional rights and advocating for herself. The "HONORABLE" Court of Claims has confirmed that the Plaintiff-Appellants claims are apparent and was not able to act due to lack of jurisdiction this courts Jurisdiction is invoked Under 28 U.S.C. § 1206 (1988 ed.) **"IN THE INTEREST OF JUSTICE."**

## **STATEMENT OF THE CASE AND FACTS**

Defendant filed the initial lawsuit against the Plaintiff alleging failure to comply with lease agreement in August of 2019 That turned out to be trespass to property and an unsubstantiated breach of the lease agreement between the two parties. The lower court ruled in the corporate parties favor disregarding the other parties cross claim and massive amount of evidence to support proof of claim. Plaintiff filed a motion for leave informing the 9th circuit Court of the violations to her 14th amendment right and other erroneous errors of the lower court. Petitionor motion was maliciously denied claiming lack of jurisdiction order entered on November 11,2021. On March 30, 2022 Plaintiff filed for leave to appeal with the Michigan Court of Appeals requesting De Novo with Affidavits to support her claim where she became plaintiff. The Court of Appeals Judges unfairly denied the plaintiffs appeal without giving any valid reason the order was entered on August 8, 2022. On September 9,2022 Plaintiff filed a timely leave to the Michigan Supreme Court where the Court unfairly denied all of the plaintiffs motions entry was entered by the Michigan Supreme Court in favor of the Court of Appeals order denying Sims review on November 30, 2022 and 1-31-2023. The Michigan Supreme Court's order was unreasonable, arbitrary, unconscionable, harsh and unfair. Plaintiff also filed a class claim with the Michigan Court Of Claims on September 9, 2022 where the case was adjudicated and dismissed for lack of jurisdiction while leaving the Plaintiffs- Apparent claims open for future litigation proceedings. The Plaintiff-Appellant timely appealed this case of substantial constitutional question to the United States Supreme Court. Plaintiff-Appellant received an entry from the United States Supreme Court in Washington DC entered on May 22,2023. The United States Supreme Court declined to accept jurisdiction of the appeal. Plaintiff-Appellant timely filed this Motion for Reconsideration because the case involves a question of public or great interest pursuant to Rule 4 (a)(4)(i)(vi). The Court's decision is a refusal to accept a jurisdictional from which reconsideration is permitted under Rule 38 (a)(b) Jury trial of right.

## Arguments

**THIS CASE PRESENTS A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS OF PUBLIC OR GREAT GENERAL INTEREST BECAUSE PLAINTIFF-APPELLANT RIGHTS WERE VIOLATED WHEN THE COURT OF APPEALS DID NOT APPLY THE SAME STANDARD TO PLAINTIFF-APPELLANT.**

In the State of Michigan, after a circuit court decides your appeal under MCR 7.202(6)(a)(i). This order ends the circuit court case, meaning that every claim, counterclaim, or crossclaim in the case has been decided in some way. This type of order will often include a statement that says it "resolves the last pending claim and closes the case" the plaintiff was not awarded a jury trial nor was her newly discovered evidence considered in her many attempts to present a crossclaim or counterclaim for relief from judgment in the lower federal court violation to the plaintiffs 14th Amendment and 6th Amendment. see Fed. R. Civ. P. 60(a); Advisory Committee Note to Fed. R. Civ. P. 60 (any Rule ground for relief may also be brought under Rule 59(e)), here the Michigan 9th Circuit Court stated it lacked jurisdiction leaving the Plaintiff-Appellant no choice but to file leave. In Michigan you can appeal to the Court of Appeals by filing a leave MCR 7.202(A)(1)(a). **Errors of Law or Fact in the Court's decision.** See also McDowell v Calderon, 197 F.3d 1253, 1255 n. 1 (9th Cir. 1999) (banc)(Rule 59(e) is available to "correct manifest errors of law or fact upon which the judgment is based."). A claim of appeal may be filed when the law gives you the right to appeal the order that you want to challenge. **Errors of Procedure or evidence.** See Browder v. Director, 434 U.S. 257, 266 (1978)(erroneous denial of hearing is a proper claim brought under Rule 59(e)). When you have an appeal of right, the Court has to accept your appeal as long as you comply with the rules. The Circuit Court Plaintiff filed a late Appeal within the 6 month timeframe pursuant to MCR 7.205(A)(4) with an extra statement and affidavit with her brief to support why the appeal was late.

## **THE DUE PROCESS DOCTRINE REQUIRES THAT LITIGANTS IN MICHIGAN ARE GIVEN A FAIR AND SPEEDY TRIAL.**

In the state of Michigan, A delayed application for Leave to Appeal may be filed 6 months of the order being appealed MCR 7.205(4).

Plaintiff-Appellant requested an oral argument for findings of fact for the lower courts abuse of discretion by choosing the outcome that is “outside the range of principled outcomes.” Maldonado v Ford Motor Co, 476 Mich 372, 388 (2006). Plaintiff also requested “De Novo” where she became plaintiff., When this standard applies, the Court of Appeals considers the case or issue independently—as if the trial court had not ruled and the issue was being decided for the first time by the Court of Appeals. This standard applies to legal issues, such as how a statute should be interpreted plaintiffs appeal was governed by Rule 7.205(A)(4)(a)(1)(b)(i)(ii)(B)(1) (2)(4)(a)(e). Rule 7. 212(A) requires that a Defendant may respond within 21 days after being served with the claim of appeal MCR 7.212(C), the appellee shall file an appearance (identifying the individual attorneys of record) in the Court of Appeals and in the court or tribunal from which the appeal is taken. An appellee who does not file a timely appearance is not entitled to notice of further proceedings until an appearance is filed.

Defendant- Appellee did not respond within the 14 days. The right to a speedy trial is enshrined in the Sixth Amendment of the United States Constitution. The precise contours of this constitutional right were interpreted by the U.S. Supreme Court in Baker v. Wingo, 407 U.S. 514 (1972), where the court determined that there was no “inflexible rule” regarding its abridgment. The Court specifically identified four factors undergirding its evaluation: the length of the delay, the reason for the delay, the defendant's assertion of the right, and the prejudice to the defendant.

The United States Supreme Court and Courts in Ohio have held that “a fair trial in fair tribunal is a basic requirement of due process.” Plaintiffs protected liberty interest was violated in the lower Court when the Judge denied the Plaintiffs motions and ruled in favor of the residential property Fox Ridge Apartments. The decision of the lower court was unreasonable, arbitrary, unconscionable, harsh and unfair. Plaintiff filed a motion for reconsideration, a motion to stay, motion for relief from judgment and new trial and a motion for disqualification motions and pleadings that were supported by affidavits, However the lower court ruled in Defendants favor. The Entry of the lower court is a violation of Plaintiff's due process which is a substantial right that she is entitled to under the due process Clause of the United States Constitution and the State of Michigan Constitution. Due Process Clause does not require “proof of actual bias.” Williams v. Pennsylvania, 136 S. Ct. 1899, 1905 (2016).

In Williams v. Pennsylvania, 136 S. Ct. 1899 (2016), the Supreme Court explained:

An insistence on the appearance of neutrality is not some artificial attempt to mask imperfection in the judicial process, but rather an essential means of ensuring the reality of a fair adjudication. Both the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncement and thus to the rule of law itself.

The ruling of the lower trial court is a violation of the Plaintiffs liberty interest. The liberty interest here is procedural due process which is a substantial right that the Plaintiff is entitled to under the United States Constitution and the Michigan Constitution. There was an abuse of discretion and obvious error in the lower trial court.

**THE UNITED STATES SUPREME COURT HAS APPELLATE JURISDICTION UNDER 28 U.S.C. § 1206 (1988 ed.) “IN THE INTEREST OF JUSTICE.” Amdt14.S1.3 Due Process Generally- Constitution Annotated.**

With certain limited exceptions, the Michigan court rule define the “final” decision in a case as “the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties.” MCR 7.202(6)(a)(i). “[t]o be final, that is, binding and determinative of litigation, a judgment must do more than indicate the judge’s opinion as to the outcome of an action and must be rendered.” 7A Michigan Pleading and Practice (2d ed), § 53:7. As explained in 3 Longhofer, Michigan Court Rules Practice, Tex (7th ed), § 2602.2:

[A] distinction exists between the court’s decision or opinion and the judgment entered thereon. An opinion announces the court’s decision and its reasons therefor, but the further entry of judgment is required to carry the decision into legal effect.

After the circuit court decides the appeal, a party may file for leave MCR 7.202(A)(1)(a). See also MCR 2.604(A).

The “HONORABLE” MICHIGAN COURT OF CLAIMS affirmed that the Plaintiff-Appellants claims are apparent and that the issues are still ongoing showing the plaintiff will suffer irreparable harm and the prejudice that will result if this court does not grant GVR. Plaintiff filed several motions for relief from judgment in the lower and appellate courts that was denied by the lower courts and 9th Circuit Appellate court. On March 30, 2022 Plaintiff filed a late Appeal within the 6 month time requirements and complied with the Michigan court of Appeal Rules were she became the plaintiff, Defendant did not respond within the time limits available to Appellees. On August 31, 2022 the Michigan Appellate Judges denied Appellant’s leave, the denial on August 31, 2022 was an abuse of discretion and violated Plaintiff’s Constitutional rights.

**THE MICHIGAN COURT OF APPEALS AUGUST 31, 2022 ORDER  
CONSTITUTES A FINAL ORDER**

A final order is one which disposes of the entire case or a distinct part. *Lantsberry v. Tilley Lamp Co., Ltd.*, 27 Ohio St. 2d 303, 306 (1971).

R.C. Section 2505.02 clarifies the definition of a final order.

R.C. Section 2505.02(B) provides in pertinent part that:

[a]n order is a final order that may be reviewed, affirmed, Modified, or reversed, without retrial, when it is one of the following:

- (1) An order that effects a substantial right in an action that in effect determines the action and prevents a judgment;
- (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;
- (3) An order that vacates or sets aside a judgment or grants a new trial;
- (4) An order that grants or denies a provisional remedy and to which both of the following apply:
  - (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.
  - (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

In this case, Plaintiff-Appellant's substantial rights were affected. The Michigan Court of Appeals August 31,2022 order affecting the Plaintiff-Appellants substantial rights were final because it determined the action and prevented a judgment in her favor, Therefore, this case constitutes a final order and the Supreme Court of the United States has jurisdiction pursuant to **Amdt14.S1.3 Due Process Generally- Constitution Annotated. Moreover, MCR 7.202(6)(a)(i).**

Clearly states that orders vacating or setting aside judgments are final appealable orders.

**THE ABUSE OF DISCRETION STANDARD OF REVIEW IS APPLICABLE BECAUSE THE LOWER COURT AND THE MICHIGAN APPELLATE COURT'S DECISIONS WERE ARBITRARY, UNREASONABLE, BIAS AND UNFAIR.**

Michigan Laws guarantee litigants the right to a neutral and detached or impartial judge. Judge James Robert Redford's decision was not detached or impartial but was bias and unfair. The lower court's decision was arbitrary, unjustifiable, unreasonable, harsh, unfair for Pro Se Plaintiff. It was also an abuse of discretion.

**CONCLUSION**

This Court should and must accept Plaintiff-Appellant's jurisdictional appeal because her constitutional rights were violated, there was abuse of discretion, the lower court did not apply the same standard to plaintiff-Appellant and it is a case of public or great interest.

Appellant further requests this court to order Defendants to pay Attorney fees from November 15,2019-June 3, 2023.

**Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001**

**Scott S. Harris  
Clerk of the Court  
(202) 479-3011**

May 22, 2023

Ms. Montoyya Sims  
2220 Gull Rd.  
Apartment #6  
Kalamazoo, MI 49048

Re: Montoyya Sims  
v. Fox Ridge Apartments  
No. 22-7072

Dear Ms. Sims:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



**Scott S. Harris, Clerk**