

22-7347

No. _____

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF THE UNITED STATES

KIMBERLEY S. ELKINS,
Petitioner

v.

KATHY MILLER,
Respondent

FILED
APR 17 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

*On Petition for Writ of Certiorari to the
New Mexico Court of Appeals*

PETITION FOR WRIT OF CERTIORARI

Kimberley S. Elkins
774 Via Lanza
El Paso, Tx 79912
Phone: (302)-342-9271
Pro Se

Counsel for Petitioner

Kathy Miller
P.O. Box 102
Mayhill, NM 88339
Phone: (575)-921-2719
Pro Se

Counsel for Respondent

April 17, 2023.

RECEIVED
APR 21 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

- 1). Are all the reasons for New Mexico Court of Appeals dismissal of this case justified according to Petitioner's Civil Rights?
- 2). Is a more thorough examination of the issues listed below, warranted & fair, in light of New Mexico COA's strict & narrow assessment of the Appellant's "unusual circumstances"?
 - A. Excusable Neglect & Totality Of Circumstances
 - B. Limited Remand V. Review De Novo
 - C. Multiple Court Errors - Attorney, Magistrate & District Courts, & NMCOA
 - D. Jpec & Secret Advisory Committees-Potential for Judicial Bias
 - E. Judicial Bias As A Series Of Due Process Violations
 - F. Significant Social Issues: Vulnerable Litigants: Forced Evictions, Potential Homelessness & Long-term Financial Damage

PARTIES TO THE PROCEEDING

Brief History of the Parties:

All parties appear in this case on the cover page. The Petitioner is Kimberley S. Elkins who was a renter of property from the Respondent, Kathy Miller (& her husband, Jerry Miller) from 2011 to 2018 at an apartment building in Cloudcroft, N.M. Ms. Elkins worked intermittently for the Respondent doing special projects at their many properties in Otero County, N.M. from 2012 through 2017. The Respondents grossly underpaid Ms. Elkins for her work, to what amounted to much less than the minimum wage of New Mexico, which was approximately \$7.25 to \$7.50 per hour. Ms. Elkins had been in Graduate School through 2014 working on Master's Degrees in Psychology, Intelligence & National Security, & work toward a PhD in Forensic Anthropology. During this time, Ms. Elkins returned to work as an RN-BSN, after a 9 year hiatus during Graduate School. She also has a Master's Degree in Criminal Justice.

During Petitioner's time at this location, she endured numerous hardships that interfered with her Travel Nursing career; to wit: (1). Breast Cancer Scare: Discovered an infected wound on left breast & began a long & painful quest to obtain a proper biopsy from rural doctors who delayed treatment in favor of

multiple imaging tests, instead of biopsy. This lasted for several years. (2). During the Breast Cancer scare, Ms. Elkins was in a near-fatal car wreck with an 18-wheeler while enroute to a meeting with lawyers, to get help finding a doctor who would order the biopsy. This resulted in the loss of her vehicle, a concussion, bruised ribs, & a broken right arm, for which she never received surgery, a cast, nor physical therapy. (3). Accidentally worked for a Nursing Agency in N.M. owned & operated by three brothers who turned out to be convicted drug traffickers-dealers. Unknown to Ms. Elkins at the time, the owners blacklisted her after hiring her, & began a campaign of "retaliation", due to her prior work as a Police Officer in Texas; which appeared on her Resume. Afterward, this severely limited her work in New Mexico, due to ongoing hostilities from the owners. (4).

Knee Injury: While on assignment in Colorado, resulting in a Torn Meniscus in the Left Knee, requiring long term physical therapy & steroidal-injections. Surgery was promised, but never occurred due to possible conflict with her insurance. (5). Severe Food Poisoning episode that caused long term medical problems, including bleeding lesions on her skin & oral mucosa, gastrointestinal problems, & respiratory issues.

It was during these difficulties that the Millers took advantage of Petitioner &

recruited her to work for them. Having known the Millers for nearly 40 years, she trusted them to pay her fairly, which, they did not. To secure cheap labor, Respondents kept Petitioner in debt, that they eventually held against her. The Millers are wealthy & could have afforded to pay her fairly, but chose not to.

STATEMENT OF RELATED PROCEEDINGS

Otero County Magistrate Court, Alamogordo, New Mexico

In the matter of Kimberley S. Elkins, Plaintiff v. Kathy Miller & Jerry Miller, Defendants, Case No. M-38-CV-2018-00186 or restitution of Unpaid Wages, May, 2018. Case cancelled by Plaintiff due to ongoing Judicial Bias in Magistrate Court by Judges Ryan Suggs & Micki Vega.

New Mexico Department of Workforce Solutions

Wage Theft Case No. 20-CB-148: Investigator Charles Boylston is a former NM State Police Officer, as are Magistrate Judge Ryan Suggs & Magistrate Court Clerk Jessica Turner. After speaking at length with the Millers (but not with me, until after his conclusions), Mr. Bolyston found in favor of the Millers, by a slight-of-hand, re-definition of the legal term “employee”, to accommodate the Millers needs.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDING.....	ii
STATEMENT OF RELATED PROCEEDINGS.....	v
TABLE OF AUTHORITIES.....	vii
OPINION BELOW.....	1
STATEMENT OF JURISDICTION.....	1
RELEVANT CONSTITUTIONAL PROVISIONS.....	1
INTRODUCTION.....	2
STATEMENT OF THE CASE.....	5
BASIS FOR GRANTING THE WRIT	16
CONCLUSION.....	17
PETITION APPENDIX.....	18

TABLE OF AUTHORITIES

	PAGE(S)
NEW MEXICO CASES	
Trujillo v. Serrano (1994). 117 N.M. 273, 871 P. 2d. 369.....	8
Udall v. Colonial Penn Ins Co (1991) 112 N.M. 123, 128, 812, P. 2d. 777, 782.....	8
OTHER STATES CASES	
FTC v. Cement Institute (1948) 333, U.S. 683	15
Coen v. Georgia Department of Corrections (1996). 5:16-cv-00353.....	15
Withrow v. Larkin (1975) 421, U.S. 35.....	15
FEDERAL CASES	
Pioneer Investment Svc Co. v. Brunswick Assoc. Ltd. Partnership (1992) 507 U.S. 380, 395.....	6, 9
Newgen, LLC. v. Safe Cig, LLC, (9th Cir. 2016) 840 F.3d 606, 616.....	6
Rodriguez v. Village Green Realty, LLC, (2d. Cir. 2015) 788 F.3d 31, 47.....	6
(citing) Cargill, Inc. v. Sears Petroleum & Transp. Corp, (NDNY 2014) 334 F. Supp. 2d 197, 247.....	6
Ballinger v. Smith (In re Smith), (B.A.P. 6th Cir. Jan. 21, 2021) No. 20-8015, 2021 WL 212361.....	9

Chevron Corp. v. Naranjo, 2d Cir. (2012) 667 F.3d 232, 239.....	10
Atateks Foreign Trade Ltd. v. Private Label Sourcing, LLC, 2d Cir. (2010) 402 F. App'x 623, 625.....	10
Liljberg v. Health Services Acquixxxxxx (1988) DP 486 U.S. 847.....	15
Offutt v. United States (1954) DP 348, U.S. 11.....	15

FEDERAL STATUTES

Federal Rules of Bankruptcy Procedure Rule 8002.....	9
Federal Rules of Bankruptcy Procedure Rule 9006(b)(1).....	6
Federal Rule of Civil Procedure 6 (b) (1) (B).....	6
28 U.S.C.....	1

NEW MEXICO STATUTES

N.M. Landlord-Tenant Laws.....	3
NMRA 30-12-1 E. (3)	19

RULES

NMRA 12-201 E (1) (3)	12
NMRA 1-005 F.	7, 12, 22
NMRCP 2-114.....	21

ADDITIONAL AUTHORITIES

United States Constitution, 1st, Amendment.....	19
United States Constitution 14th Amendment.....	16
New Mexico State Constitution, Article IV, Section 2.....	17
Federalism Principle.....	17
JPEC - Judicial Assessment Tool.....	13

OPINIONS BELOW

This petition seeks review of the New Mexico Court of Appeals May 26, 2022 Memorandum Opinion. Appellant's Motion for Rehearing was denied on June 14, 2022. A Petition for Writ of Certiorari to the New Mexico Supreme Court was timely filed on August 24, 2022, after a Motion for Extension to File was granted. The Petition was denied by the New Mexico Supreme Court on October 12, 2022, followed by the denial of a timely filed Motion for Rehearing on November 16, 2022. New Mexico Court of Appeals Opinion attached.

STATEMENT OF JURISDICTION

After proceeding through the highest court system in the state of New Mexico, the Supreme Court of the United States has jurisdiction, pursuant to 28 U.S.C . 1257.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment to the United States Constitution provides in relevant part that “Congress shall make no law . . . abridging the freedom of speech.”

The Fourteenth Amendment to the United States Constitution provides in relevant part “nor shall any State deprive any person of life, liberty, or property, without due process of law

INTRODUCTION

Housing as a Basic Human Right, is a fundamental precept in a civilized society, and should be treated as such in adjudicating these matters before the courts. Malicious, forced homelessness is a violation of these rights, and, moreover, is unlawful on its face. Our Constitutional Rights are held to be sacrosanct, and should be protected in every step of the judicial system, including for disenfranchised litigants in civil cases, such as this. Violations of these rights can have a devastating, and long term impact on the targeted individuals, such as the Petitioner, and society at large; and, should never be taken lightly.

Public Defenders are needed in Tenant-Property Owner disputes, especially in the lower courts such as New Mexico's Magistrate Courts, where the qualifications for judges are set so low, that an 18 year old with a High School diploma can be appointed. Anything above that is considered "acceptable", but, not necessarily professionally adequate. As there there is no supervision & no formal assessment tools of these judges' effectiveness; & one of these judges could serve for life, if running unopposed in subsequent elections. This is particularly problematic in rural areas of the country. As a result, there are no checks &

balances in these courts, where even one Due Process violation can cause significant long term damage to a person's life. These types of cases must be taken seriously by the higher state & federal courts.

This case began in May of 2018, as a Property Owner-Tenant dispute in Otero County, NM, Magistrate Court, involving Wage Theft, Breach of Promise, & Breach of Contract by the Property Owners/Opposing Parties, Kathy (& Jerry) Miller; occurring between 2012-2018, culminating in the Millers' refusal to accept Rent payment from Elkins, by the deadline the Millers imposed. The case has been complicated by a series of Due Process violations, in part, as a result of preexisting, embedded legal bias against NM Tenants, originating with the New Mexico Landlord-Tenant Laws & carrying forth into the local judicial system. The difficulties in this case have been further compounded by subsequent Court Errors, Judicial Bias, & other factors, that also contributed in whole, or in part, to interfering with Appellant Elkins' Civil Rights under the Excusable Neglect Doctrine (among other rights), in filing the Appeal to New Mexico 12th District Court. The Appellant, Kim Elkins, seeks the Supreme Court of the United States review of important questions & points of fact, concerning the following: (1). Totality of Circumstances contributing to Excusable Neglect; (2). All Court Errors

of all Courts involved, including, but not limited to: (a). Appellant's Advisory Attorney (an Officer of the Court); (b). Otero County Magistrate Court: Judicial Bias; (c). 12th District Court: Court Clerks did not accept the Motion for Extension of Time to File Appeal that Appellant Elkins wrote & gave to them in August 2018; the Status Hearing in Spring 2019, wherein, the only 2 day late filing was not addressed by the Judge, nor the opposing party; multiple errors involving the Judge's handling of the deadline by the COA on the results of the Limited Remand, including taking 45 extra days after the October 15, 2021 deadline to issue his findings, while refusing this Petitioner more time to find corroborating evidence on the Motion for Extension of Time to file the Appeal from August 2018, & missing signatures & wrong dates on the Limited Remand Order by the District Judge in November, 2021; (d). N.M. COA: regarding the extremely narrow scope of the Limited Remand back to a Court of Errors; COA's leniency to the District Judge, when allowing an extra 45 days past the October 15, 2021 due date for the Judge to submit his conclusions to COA; COA's refusal to perform a Review de Novo of the topics in the Limited Remand, requested by the Petitioner, especially important, considering the timeline disparity & refusal by the COA to allow a Rehearing, to address these serious, ongoing issues.

STATEMENT OF THE CASE

A. EXCUSABLE NEGLECT & TOTALITY OF CIRCUMSTANCES, ETC.

The principles established with "excusable neglect" have been overlooked by the New Mexico Court of Appeals & reduced to a severely limited & misleading interpretation of the meaning of "unusual circumstances". The myriad of "unusual circumstances" Petitioner experienced that interfered with the timely filing have been carefully described, in detail, in the Docketing Statement, the Motion in Opposition, & Motion for Rehearing to the COA. [DS 2-3] [MIO 9-15].

Totality of Circumstances

The Totality of Circumstances of everything that interfered with timely filing, was completely overlooked by NM COA, in its restrictive narrowing of the "unusual circumstances" definition, down to merely 'magistrate court error'. Court error is but one possible unusual circumstance that can cause &/or contribute to excusable neglect. Petitioner Elkins' situation had multiple factors, which should be properly assessed. For example: Lack of Technology in the 12th District Court, 18 years into the 21st Century (in general) & how it effects the poor & disenfranchised of New Mexico; as well as others listed here & in the Docketing Statement & Motion in Opposition [DS 2-3] [MIO 9-15] [OLR 3]

Federal Rule 6

According to an article found on the American Bar Website, entitled, "Best Practices for Missing a Filing Deadline in Federal Court", 2018, by Attorney Daniel Cooper, of Cooper & Kurz, in Stamford, CT, "Federal Rule of Civil Procedure 6(b)(1)(B) provides that for any act that must be done by a party to a federal court proceeding within a specified time frame, the court may "for good cause, extend the time...after the time has expired if the party failed to act because of excusable neglect." Cooper emphasizes that "...the underlying premises of the excusable neglect doctrine is that it exists to prevent victories by default", citing *Newgen. v. Safe Cig*, 2016. The Court found that, "default judgments are ordinarily disfavored". Cooper continues, saying that it is a "principle of the federal civil procedure system that cases should, in the main, be decided on the merits, not on technicalities". This was also found to be true in *Rodriguez v. Village Green Realty*, 2015, (citing *Cargill, Inc. v. Sears Petroleum* 2014; which stated that there is a "strong preference for resolving disputes on the merits". Cooper further states, that, "In theory, a motion under Rule 6(b)(1)(B) may be filed at any time during the pendency of the proceeding". In *Pioneer v. Brunswick*, 1992, the U.S. Supreme Court explained excusable neglect as a "four-factor balancing test" under Rule 6, as follows:

- 1). Was the delay in filing within the reasonable control of the movant;
- 2). The length of the delay and potential impact on judicial proceedings;
- 3). The danger of prejudice to the non-moving party; and
- 4). Whether the movant acted in good faith

Cooper strongly recommends "filing the motion to reopen...as soon as possible...upon discovering that a deadline was missed...[&] have the paper that should have been filed by the deadline ready to go when you file your excusable neglect motion....[so there] will be no need for any further delay or extensions of time...". This is exactly what Appellant Elkins attempted to do when she filed her only 2-day late Notice of Appeal in August 2018, when the Court Clerks refused to accept the Motion, in direct violation of NMRA 1-005 F.

Car Break Down:

Although this was mentioned in COA's documents, this very important factor, which led to other interfering factors, was quickly & erroneously dismissed by COA. At every turn, the serious nature of all the issues that contributed to the only 2 day late filing of the Notice of Appeal, have been willfully negated & marginalized. Further & important details can be found in this document, the Docketing Statement, Motion in Opposition, & Motion for Rehearing [PSD] [OLR] [MO].

B. LIMITED REMAND & REVIEW DE NOVO

The "limited remand" as originally proposed, & later misinterpreted, was too limited in scope, thus controlling the extent to which the Petitioner could adequately prove her argument for "excusable neglect", especially where other circumstances contributed in whole &/or part. According to Trujillo v. Serrano, 1994, Excusable Neglect is not strictly, or necessarily a jurisdictional problem, if notice was late because of Court-related Errors; which the COA tightly restricted to be able to deny Elkins' request. Furthermore, Udall v. Colonial Penn, 1991, found that, "a court's decision not to excuse a party's failure to file a timely appeal will be reviewed by an appellate court applying an abuse of discretion standard"; which the COA violated when it sent the limited remand back to the very court who dismissed the case for late filing. Thus, severely prejudicing the proceedings. According to a Traison & Tersigni, 2021, article entitled 'Excusable Neglect: When Missing a Deadline May Not Be Fatal': "Courts sometimes exercise their equitable jurisdiction rather than follow the literal language of rules of procedure...we have highlighted the importance of equity and flexibility in administering justice...there are situations where courts accept late filings based

on a showing of “excusable neglect.” See Fed. R. Bankr. P. 9006(b)(1). See *Pioneer Inv. Servs...Ballinger v. Smith* (In re Smith, (2021), which involved lateness in filing a notice of appeal. The bankruptcy court declared the client's debts nondischargeable. The client failed to appeal the bankruptcy court's decision in the 14-day time period permitted under Federal Rules of Bankruptcy Procedure Rule 8002, because of a failure of his lawyers, who told him 13-days after the court issued the order, that they would not file an appeal on his behalf. They also gave him the wrong deadline & he had to find a new lawyer. These examples illustrate flexibility in assessing for excusable neglect across jurisdictions, & how multiple factors contribute to an excusable neglect delay.

Severe Limitations Of Scope & Definition Of Court Error

Additionally, limitations to restrict the circumstances of the excusable neglect, by limiting to only "court error" & a further restriction to be directed at only considering "magistrate court error", were far, far too narrow, having the effect of a choke hold on Appellants Due Process rights, that have been in peril since the original case began. A Review de Novo, is a way in which to accomplish a thorough assessment of all factors equitably [MO 6-15] [OLR 1-3]. Further, the extent of the restrictive evaluation by the COA, of the Judge's Remand decision,

as controlled by the extreme limitations set forth, & COA's refusal to review the Hearing evidence, also interfered with Appellant's ability to prove her case. [MO 1-4]. A limited remand back to very court system that Appellant states has violated her due process rights is inappropriate, & not the only option for an Appeals Court. A 'Review de Novo' would have been appropriate, & had a better chance of being fairly administered. I basically asked for this type of consideration, with my request to submit the total Remand Evidence of Excusable Neglect directly to COA. An appellate court uses the de novo standard of review when reviewing a lower court's conclusions of law (Chevron v. Naranjo, 2012); And, also generally reviews mixed questions of law and fact under a de novo standard of review (Atateks v. Private Label 2010) & [REQ 1-3].

C. MULTIPLE COURT ERRORS:

In the Memorandum Opinion, the COA claims Appellant claimed certain deficits & errors on the part of the court, but did not 'elaborate' specifically about these claims, nor explain how they related to errors from Magistrate court. This accusation from the COA, is both false & misleading; as they are the ones who narrowed the parameters so tightly, that Petirioner didn't stand a chance of pleasing the Court, due to the unnecessary & unrealistic misinterpretation of

appropriate application of excusable neglect factor(s); thus overlooking the complete picture of the myriad of unusual circumstances that contributed to the only 2 day delay in filing the Notice of Appeal. Petitioner did, in fact, provide multiple details about numerous court errors, including, but not limited to: Magistrate court in 2018, District court in 2018, District court in 2021, attorney errors in 2018; &, also described Judicial Bias & errors in previous documents submitted to COA for this case. [MO 1-4 [REQ 1-2] [MIO 9-15].

Restrictions on the amount of time Appellant was allowed to have for an extension of time (approximately 27 days) before the Limited Remand Hearing in October 2021, was too short a period of time to be well prepared enough to present adequate evidence, especially considering the severe restrictions the COA placed on the limited remand, both before & after evaluation. With more time, like maybe, 39+6 extra days (see District Judge section, below), I would have been able to show proof of the District Court's Clerks' refusal to accept my attempt to file a handwritten request for Extension to File Notice of Appeal, in 2018, that was given back to me by a district court clerk, after submitting it to them, on the very day I filed the notice of appeal, only 2 days after the deadline. This was discussed with Judge Bryant during the Hearing & he accepted into Evidence the

2 page Request for Extention to File Late Notice of Appeal Document that I found while preparing for the Hearing. If more time had been allowed (as was acceptable for the judge in his 39+6 days of lateness to submit his findings), I would have been able to locate the tape of that conversation with the court clerk & submit it for the Remand Hearing; thus addressing the concerns the COA described on page 2 of their Order of Limited Remand (OLR). See NMRA 12-201 E (1) (3) & also NMRA 1-005 F: "Clerk cannot refuse to accept for filing any paper for that purpose solely because it is not presented in proper form required by these rules or any rules or practice " & [EOT 1-2] & [OLR 2].

The district judge was given, &/or took, a large amount of extra time

Approximately 39 extra days were taken to reach his conclusion + 6 days, (before it was mailed); &/or extreme latitude was given him after he finished it, in late November 2021; long after the October 15, 2021, due date, for his decision on the Limited Remand. Particularly contradictory of both the District Court & the COA, especially considering the topic of discussion is of my "excusable neglect" of only 2 days late filing the notice of appeal [EOT 1-2]

The attorney I hired for legal advice is an Officer of the Court

More court error that was misinterpreted. He not only failed to give proper

advice, he also gave very bad advice, including, but not limited to: (a) Did not have me sign a signature sheet to be used by him to file the notice of appeal when I was in his office before the due date; (b) Abandoned me when I called for help when my car broke down during the 100 mile round trip to Court; (c) Gave me bad advice about the Bond I was led to believe I had to post before being allowed to file the Notice of Appeal, which lost valuable time; (d) Did not tell me I could file a Request for Extension to File the of Appeal in the interim, which I would have done that very day, while in his Alamogordo office, when I paid him for his advice. This aspect of court/attorney error was overlooked by COA in their strict narrowing of their definition of court error. As well as their misunderstanding of what constitutes "unusual circumstances" contributing to "excusable neglect" [OLR, 1-3] [MIO 12-13] [MO 1-4]

D. NEW MEXICO JPEC SYSTEM & SECRET ADVISORY COMMITTEES

The JPEC system in the New Mexico Courts has the effect of disenfranchising poor pro se litigants (although the other party is also pro se, they are very wealthy & can afford to hire an attorney of record anytime they wish). In addition to being able to vote in primaries & general elections, court clerks & lawyers are allowed an extra vote (that is not available to the general public), to

evaluate for, or against, the retention of duly elected judges across the state. Having the effect of instituting a 'popularity contest' among the rank & file, & reinforcing the good ol' boys & girls club, of which, I am not a member; but, rather, am an object to be bullied with legal maneuvering, tantamount to the court system serving as a de facto legal representative of the opposing party. Since I have been relatively poor during these proceedings, I cannot afford to hire an 'attorney of record' for the duration , & therefore lack the possibility of having a lawyer on my side, who has a say in the retention of the very judges who presided over this case. The court clerks' mistakes are conveniently overlooked by judges, for this same reason. Poor litigants are brushed aside at every step in the court system in New Mexico. How does the COA justify overlooking these egregious judicial errors, while tightening the parameters of Appellant's "excusable neglect" factors? [REQ 1-2]

E. DUE PROCESS VIOLATIONS

There have been many instances of both Procedural & Substantive Due Process violations of a Judicial Biase origin described here, that, the nature of which, have been found by numerous federal & state Case Law examples, to be a severe detriment to the outcomes for vulnerable litigants, such as Petitioner Elkins.

Liljeberg v. Health Services (1988), found that judicial bias can erode such things as “public confidence in the impartiality of the judiciary.” FTC v. Cement Institute (1948) found that previous judicial bias causes “prejudging of the issues...[the judge] was prejudiced & biased against” the litigants. Withrow v. Larkin (1975) & Cain v. Michigan DOC (1996) stated that, a biased judicial decision makes it “constitutionally unacceptable”. And, Offutt v. U.S. (1954) further stated that judicial bias “revealed an attitude hardly reflecting restraints of conventional judicial demeanor...demonstrating a bias...”

F. SIGNIFICANT SOCIAL ISSUES:

Vulnerable Litigants: Forced Evictions, Potential Homelessness & Long-term Financial Damage

These kinds of cases in the state lower court systems, involving predatory employers & landlords exploiting vulnerable workers & renters, are occurring all over our country, especially true these days. A trustworthy & unbiased Judiciary & court system are absolutely necessary for a strong society. Given that these lower courts have see the bulk of employee & renter cases, stronger supervision & professional assessment tools; as well as a Public Defender program for the vulnerable litigants, such as Petitioner Elkins, would be helpful. If there had been

these kinds of checks & balances in the Otero County Magistrate & 12th District Court systems, the outcome for Ms. Elkins would have been a positive one & her Due Process Rights would have been protected.

BASIS FOR GRANTING THE WRIT

If the COA opinion is allowed to stand, the fundamental nature of the "excusable neglect" structure will be forever altered for future state & federal cases. Why is the advisory committee to the COA only focusing on Magistrate Court Error? Because, it's a primary issue that was the most difficult to prove, as the Mag Court is not considered to be a "court of record" & therefore, easiest to use, to, once again, dismiss Appellants Due Process Rights in a highly political, rural section of New Mexico, run almost exclusively by people who depend on the popularity contest, known as JPEC, to maintain their judicial & political careers.

The Panel created a new exception (narrow interpretation) of Excusable Neglect, that ignores precedent, & misreads the Federal &/or State cases it relied on., thus, forever altering this important Case Law. Multiple errors, & oversights on the part of the entire court system, amounting to a series of Due Process violations (See E., above), have occurred throughout the life of this case, in total disregard for those Rights afforded by the 14th Amendment to the U.S.

Constitution; Article VI, Section 2 of the New Mexico Constitution; & the American Federalism Principles protected by both Constitutions. These violations have been continuously stacked against the Petitioner, rendering her defenseless in this ridiculously complicated civil case that has dragged on for nearly 5 years, interfering with every aspect of Petitioner's daily life, with ongoing, devastating financial consequences.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

Kimberly S. Elkins April 17, 2023.
Kimberley S. Elkins, Pro Se
774 Via Lanza
El Paso, Texas 79912
Cell Ph#: 302-342-9271
Email: kse2468@hotmail.com

APPENDICES

Denial Rehearing, Supreme Court of New Mexico November 16, 2022.....	A
Denial Petition for Writ of Certiorari, Supreme Court of New Mexico October 12, 2022.....	B
Denial Rehearing, New Mexico Court of Appeals, June 14, 2022.....	C
Final Memorandum Opinion, New Mexico Court of Appeals, May 26, 2022.....	D
Judge Bryants Order On Limited Remand, 12th District Court, N.M., November 23, 2021-45 Days Late.....	E
Request To Submit Evidence & Rebuttal (Review De Novo) April 4, 2023.....	F
Request 15 Day Waiver Of Time To File Appeal-12th District Court August 3, 2018.....	G
Docketing Statement, To New Mexico Court of Appeals, December 2, 2019.....	H

EXHIBITS

The following tapes have been located & contain the following information; however, Petitioner was not able to afford to have them professionally transcribed, & does not have access to the requisite technical equipment at this time, but, when necessary, will find resources to make professional transcripts available to the court, upon request.

Petitioner has researched numerous statutes & rules in both New Mexico & the Federal government, regarding legalities of taping before & after court; as well as in other public venues. While Petitioner has been vaguely told there might be a rule requiring permission to tape during Magistrate Court proceedings, there are no such rules about before court is convened, nor after court is adjourned. Given the nightmare that has become her life at the hands of the Millers, Petitioner Elkins prudently protected her First Amendment Rights by recording these conversations. To reiterate, these were recorded before court was convened; after court was adjourned; &, in a public lobby. Ms. Elkins' rights are further protected by 'One-Party' Rule, NMRA 30-12-1 E. (3), which states that only one-party to a conversation need be aware of the recording; & that one-party is Petitioner Elkins.

Exhibit #1

Tape: Judge Ryan Suggs: Otero County Magistrate Court: 06-18-2018

After the judge had been excused, & court was adjourned, Jerry Miller (Kathy Miller's husband & co-owner of the rental property) initiated a rant in Ex Parte fashion with the judge, which the judge willingly & knowingly participated in. During this conversation, Jerry carried on, complaining about the Excusal, stating, but 'you're our judge', as if he was in ownership of the judge. This went on for several minutes, to which Judge Suggs stated: If it were up to me, I'd put an end "to these games". To which I replied, "I'm not playing games". The conversation continued, with the judge telling Jerry that he (the judge), wasn't supposed to have a conversation like this, but continued to engage with the opposing party, anyway. This obvious bias in favor of the opposing party is why I had to move out (a constructive eviction) before the cases were settled, as I feared a loss would put an Eviction on my permanent record, that would follow me longer than criminal records do for felons.

Exhibit #2

Tape: Judge Micki Vega: Lincoln County Magistrate Court: 07-17-2018

Judge Micki Vega, from Lincoln County, also of the 12th District Court region,

was the substitute judge after Judge Suggs was excused. In the beginning of these two cases my request to join them for expediency was denied; but, when the Millers asked to join the cases, their request was immediately granted. However, Judge Vega changed this, in an apparent show of help for the Miller, when the following occurred:

On the day of court, both parties were told to wait in a back room behind the clerks' office are, in what appeared to be a file room, with a small table & chairs. I thought we were waiting for court to adjourn in the Courtroom before our case began. After a few minutes, Judge Vega entered, & before convening court, while we were waiting for the Courtroom, she stated that she was going to hear the Miller's' case first, since "the landlords" are entitled to have their property "returned in seven days". I was shocked by this, & by what followed.

Judge Vega then swore us in & convened court in the file room, without notice. We were there for 3 hours, & my case was not heard that day. Although, the Millers invited a 'guest' with them, the 'court' was, for all intent & purpose, a closed court to the general public, even though she claimed otherwise. There was no notice to the general public that we were back there, in violation of NMRCP 2-114, regarding courtroom closure. Upon this realization, I found it interesting

that the Millers brought a 'guest' with them to court. Also, during court, when I asked a question, or attempted to object to false or misleading statements by the Millers, the judge threatened me with Contempt & Jail. As a result of this obvious bias & mistreatment, I dropped my case soon thereafter to avoid further threats of incarceration (a constructive dismissal).

Exhibit #3

Tape: 12th District Court Clerks Office: Clerk Ian: 08-03-2018

While at the 12th District Court clerk office in Alamogordo, New Mexico to file the Notice of Appeal & the Motion for Extension to File Notice of Appeal, I attempted to turn in the Motion for Extension. I was told by Court Clerk Ian, that the handwritten Motion had to "be in proper format, with a cover sheet" to be accepted. They accepted the Notice of Appeal, with the \$132.00 cash fee, along with a note from me explaining that the information about an Appeal Bond I was told I had to post before being allowed to file a Notice of Appeal, was erroneous. But, they did not take the Motion for Extension, a copy of which is enclosed. Refusing to accept documents not in perfect format is in violation of NMRA 1-005 F, which states that clerks are required to accept documentation from litigants, even if it isn't in perfect format.