No. 22-7884

IN THE

SUPREME COURT OF THE UNITED STATES

THERESA MARSHALL
Petitioner

vs.

EDUCATIONAL CREDIT MANAGEMENT GROUP, et al.
Respondent

On Petition for a Writ of Certiorari
from the United States Court of Appeals
for the Eighth Circuit
No. 22-2460

PETITION FOR REHEARING

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES CITED

CASES **PAGE**

STATUTES AND RULES

PAGE

A. PETITION FOR REHEARING JURISDICTION

Pursuant to Supreme Court Rule 44.1, the petitioner, Theresa Marshall, respectfully files this petition for rehearing of the court's decision denying petition for writ of certiorari, October 2, 2023.

This petition is filed within 25 days after entry of this courts decision denying petition.

B. REASONS FOR GRANTING THE PETITION

Pursuit rule 60(b)(1) "mistake" which includes judge's errors of law. - *Kemp v. United States, No. 21-5726*

Exceptional circumstances and petitioner not having "full and fair opportunity to litigate." *Allen v. McCurry, 449 U.S. at 94 , (FRCP Rule 60(d))*

C. 8TH CIRCUIT COURT OF APPEALS "MISTAKES"

8th Circuit court of appeals, decision to affirm district courts ruling, *was a mistake.*

Court states de novo review dismissal for lack of subject matter jurisdiction.

Court states de novo review dismissal for failure to state a claim.

Court states 28 U.S.C. §1915(e) *which is proceedings in forma pauperis.*

Court decision is per curiam and unpublished.

Court decision was not titled and appears with (2) two different appellees names and case number. *(Case No. 22-2460) - (filed 1/24/23) - (Appendix A)* ***(Attached)***

Petitioner is not sure if appeals court was affirming district courts decision because it agreed that district court lacked overall or a particular subject matter jurisdiction, or that subject matter jurisdiction was lost.

Petitioner is not sure if appeals court was affirming district courts decision because it agreed that petitioner failed to state a claim that could proceed district court and case sited by appeals court did not relate to petitioners complaint claims.

Court affirmed both appeals in its ruling and consolidated petitioners complaint cases. *(Appendix Q)* - ***(Attached)***

Petitioner petitioned court for clarification. *(Case No. 22-2460) - (Amended rehearing en banc petition) - (filed 2/8/23) - (Appendix B)* - ***(Attached)***

Petitioner was deprived of appeals courts reasoning for affirming district courts decision, *with prejudice.*

"*For a party to argue on appeal that additional findings are necessary to enable meaningful review, the party need not necessarily preserve the issue by raising it in a motion for rehearing; the issue is often raised by the court itself.*"**[10]** - "Ornelas v. United States, 517 U.S. 690 (1996) (in Fourth Amendment context, "independent review is therefore necessary if appellate courts are to maintain control of, and to clarify, the legal principles"), and because it increases arbitrariness and the likelihood of error." See Jones v. Barnes, 463 U.S. 745, 756 n.1 (1983), Brennan, J., joined by Marshall, J., dissenting). "There are few, if any situations in our system of justice in which a single judge is given unreviewable discretion over matters concerning a person's liberty or *property* ..").

D. DISTRICT COURT "MISTAKES"

District courts ruling to dismiss petitioners complaint *with prejudice, "was a mistake".*

No violation of FRCP Rule 9 by petitioner.

No violation Rooker-Feldman doctrine. *(US Supreme Court) - (No. 22-7884) - (Appendix D) See (pg 1) - (No. 2) - See (pg 2) - (No. 2) - (last sen)* ***(Attached)***

Thus, analysis by district court of petitioners previous court rulings, bankruptcy, circuit court, and court of appeals 8th circuit, *was "a mistake" pursuit FRCP Rule 60 (b)(1). - See (US Supreme Court) - (No. 22-7884) - (Appendix D) - (pgs 5-7) (Appendix E) - (No. 2) - (pg 1-2) -* ***Attached*** *See Court of Appeals 8th Circuit) - (No. 22-2460) (Brief) - (pg 10-11) - (filed 9/14/22) - (Appendix F) -* ***(Attached)***

Marshall v. Educational Credit Management Co., (No. 60cv-10-5500 - (Cir. Ct. Pulaski Cty. 1 April 2011), analysis by district court "was *a mistake*". *(US Supreme Court) - (No. 22-7884) - (Appendix D) (No. 2) -* ***(Attached)***

Circuit court did not conclude "that Marshall's 1995 bankruptcy case did not discharge her debt to ECMC." - *(US Supreme Court) - (No. 22-7884) - (Appendix D) - See (pg 2) - (para 1) -* ***(Attached)***

Circuit court did not make any written conclusions before or after case dismissal. (*Allen v. McCurry, 449 U.S. at 94*

If bankruptcy *confirmed plan* rules apply to both debtors and creditors, which it does, then analysis by district court of petitioners 1995 bankruptcy "is a mistake". - *(11 U.S.C. § 1327) - (11 U.S.C. § 524) (a) (1)(2)(3) - (Effect of discharge)*

If district courts analysis is correct, petitioner would have been in her 1995 chapter 13 bankruptcy for almost (5) five years, making all agreed *confirmed plan payments* but, somehow would still owe *unsecured creditor*, which was not ECMC, additional moneys. - *(Confirmed plans are usually no more than (4) years). - (28 USC § 1331) - (federal question) - Osborn v. Bank of the United States, 22 U.S. 738 (1824) - (Appendix O) -* ***(Attached)***

If collateral estoppel and res judicata applies to both petitioners and respondents *which it does*, then analysis by district court "is a mistake" as it pertains to petitioners, 2002 and 2005 bankruptcy. - *(28 USC § 1331) - (federal question).*

The collateral estoppel bar is inapplicable when the claimant did not have a "full and fair opportunity to litigate" the issue decided by the state court. Id. at 101.

Thus, a claimant **can file a federal suit** to challenge the adequacy of state procedures. *(Allen v. McCurry, 449 U.S. at 94).*

Appointment of counsel motioned by petitioner so to consolidate her *related filed* cases and to aid petitioner legally moving forward was mooted by district court, *rather* than set for hearing or stating courts finding and conclusions of decision. - *(28 USC § 1331) - (federal question) - Osborn v. Bank of the United States, 22 U.S. 738 (1824) - (Appendix E) - (pg 4) - (Ref - Doc 17)*

"A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." - (City of Erie, 529 U.S. at 287) - *(4:21-cv-751-DPM) - (Doc 17) - (filed 2/7/22)*

E. BANKRUPTCY COURT *"MISTAKES"*

Subpoena to appear and testify not honored by bankruptcy court in petitioners 2018 bankruptcy. "Ornelas v. United States, 517 U.S. 690 (1996) (in *Fourth Amendment context, (Appendix M, N) -* ***(Attached)***

F. CIRCUIT COURT "MISTAKES"

Circuit court 2011 ruling *was clearly a "mistake" based on fraudulent deceit, by respondents, Educational Credit Management Group, et. al. - (28 USC § 1331) - (federal question) - There were no trial court judge's findings.*

Case was dismissed when petitioner stated to court that previous attorney, Niswanger was no longer her attorney, and that petitioner could not proceed without an attorney.

G. EXTRAORDINARY CIRCUMSTANCES

1) That district court dismissed petitioner case *with prejudice* with out allowing case complaint against attorney, Kimberly Wood, Tucker, to move forward.

2) *Conflict of interest, bankruptcy judge and respondents ECMC. Judge Richard Taylor recused in petitioners 2005 bankruptcy, and would not recuse in petitioners 2018 bankruptcy. See (US Supreme Court) - (No. 22-7884) - (Appendix N) - (pg 26) - (Appen P) -* ***(Attached)***

3) Petitioners right to move forward district court had already been determined by US BAPs 8th Circuit, which ruled *none* of bankruptcy courts 2018 rulings were final orders. - *(Violation 42 USC § 1983) - (14th amendment rights procedural, and substantive due process) - (US BAPs 8th Circuit) - (No 18-6025) - (filed 9/27/18) - (Appendix G) -* ***(Attached)***.

4) *US BAPs 8th Circuit ruling gave petitioner right to move forward district court against bankruptcy Judge, Trustee, and respondents, and rightfully so.*

5) *Petitioner was not aware of 8th Circuit BAPs ruling until months after judgment ruling, because foreclosure of home of (26) twenty-six years, and did not understand significance of ruling until months later.*

6) District court held petitioners complaint almost (1) year before ruling, thus, interfered with petitioners ability to timely amend complaint filings and contributed to any statute of limitation expiration.

7) District court failed to timely rule on petitioners motions, and although respondents were served by petitioner, court dismissed complaint *with prejudice, without respondents ever having to litigate. (4:21-cv-00751-DPM) - (Appendix E) -* ***(Attached)***

8) Court apologized to petitioner for delay in attending to Marshall's case. - *(4:21-cv-00751-DPM) - (Appendix E) -* ***(Attached)*** *- See (No. 1) - (last sen).*

H. PUBLIC INTEREST

ECMC continues to insert itself in the student loan arena and masking itself as guarantors, creditors, and in some cases owners of loans without any legal standing and courts are no more the wiser. Thus, altering the course of justice, while ECMC continues to profit from student loans that they have no legal right.

I. CLOSING

Given the substantial questions about petitioner being deprived of a "*full and fair opportunity to litigate*" *or fair hearings.* - (Allen v. McCurry, 449 U.S. at 94) and "*mistake*" in judge's errors of law FRCP Rules 60(b)(1)–(6), this Court should grant rehearing so that it may have the benefit of *full merits briefing by petitioner and respondents.* - See McWilliams v. Dunn, 137 S. Ct. 1790, 1807 (2017) - (Alito, J., dissenting), (admonishing majority for deciding issue without "receiving adversarial briefing, which in turn helps the Court reach sound decisions" (internal citations omitted).

J. Annotation
PRIMARY HOLDING

The term "mistake" in *FRCP 60(b)(1)*, which authorizes a court to reopen a final judgment, *includes* a judge's errors of law.

K. CONCLUSION

For the foregoing reasons, the petition for rehearing should be granted, and the order district court dismissing case *with prejudice* should be reversed and appointment of counsel mandated.

Respectfully submitted,
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CERTIFICATE OF COUNSEL

I, Theresa Marshall hereby certify that this petition for rehearing is presented in good faith and not for delay. The grounds are limited to intervening circumstances of substantial or controlling effect and other substantial grounds not previously presented.

/s/ Theresa Marshall, petitioner
Theresa Marshall