

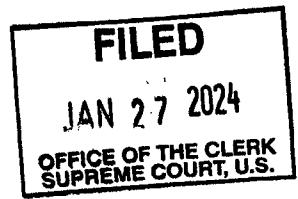
No.

23-6670

# ORIGINAL

IN THE

**SUPREME COURT OF THE UNITED STATES**



Catherine Fernandez — PETITIONER  
(Your Name)

vs.

Board of Ed of Pemberton Township — RESPONDENT(S)

**ON PETITION FOR A WRIT OF CERTIORARI TO**

**United States Court of Appeals for the Third Circuit**  
**(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)**

**PETITION FOR WRIT OF CERTIORARI**

Catherine Fernandez  
(Your Name)

**24 Carpenter Lane**  
**(Address)**

**Browns Mills, NJ 08015**  
(City, State, Zip Code)

6092485748  
(Phone Number)

### **QUESTION(S) PRESENTED**

Weather the Appeals Court 3rd Circuit erred by omitting new evidence that could re-establish the Statute of Limitation or grounds for tolling or excusable neglect in my complaint from their opinion? The appeals court denied a petition for rehearing in which the petitioner points out the omission of new evidence.

Weather the Appeals court erred by denying the petitioner the right to bring a timely breach of contract claim to federal court under 42 US Code~1983? Did the Appeals Court construe to deny the claim under 28 USC~1367(c)(3)?

Weather the Appeals Court 3rd Circuit is in conflict with decision with the Supreme Court, 4th Circuit, 9th Circuit, 11th Circuit Courts ruling in the Armstrong v. Rushing by denying the petitioner leave to amend the complaint for failing to state a claim?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Catherine Fernandez, plaintiff

vs.

P  
emberton Township Board of Education, Pemberton Township High School,  
defendants

N  
o: 22-3157 US Appeals Court  
Third Circuit Philadelphia, Pa  
Judgement entered on June 20,2023  
Rehearing was denied on October 30, 2023  
Mandate was issued on November 8, 2023

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4-9
REASONS FOR GRANTING THE WRIT .....	9-10
CONCLUSION.....	11

## INDEX TO APPENDICES

### APPENDIX A

Exhibits A, B, and C

### APPENDIX B

US Court of Appeals For the Third Circuit Opinion October 30, 2023

### APPENDIX C

US Court of Appeals For the Third Circuit Opinionso June 1, 2023 and December 16, 2021

### APPENDIX D

US District Court District of NJ Order Denying Relief November 3, 2022

### APPENDIX E

Catherine Fernandez Petion For Rehearing September 11, 2023

### APPENDIX F

Catherine Fernandez Motion For Reconsideration Novenber 7, 2023 and US No Action

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Armstrong v. Rushing 4th Circuit	10
Mitchell v. Fargass. 11th Circuit	10
Neitz v. Williams Supreme Court Ruling	10
City of Chicago et al. v. Internantional College of Surgeons et al.	10
Erikson v. Padrus	8

### STATUTES AND RULES

Rule 60 (b) New Facts  
Fed R app P 40; loc R 40 (a) & (b)  
Federal Rules of Evidence 1101, 28 USCA ~Rule 1101 (a)(b) /application of rules  
Federal Rules of Evidence 102, 28 USCA ~Rule 102/ purpose  
2A:14-21 Disabilities effecting limitatations  
Title II Comencing an action/ commencing an action  
551 US 89 (2007)

### OTHER

All you will ever need to know about rehearing and review petitions: A second look  
Author: William Robertson page 6b

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

reported at November 8, 2023; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

[ ] For cases from **state courts**:

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

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## **JURISDICTION**

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 20, 2023.

[ ] No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 30, 2023, and a copy of the order denying rehearing appears at Appendix B.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

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

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

[ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

**Constitutional and Statutory Provisions Involved**

**42 US Code ~ 1983**

**Fed R Civ P 60(b) and Fed R Civ P 60(b)(1)**

**Fed R Civ P 8(a)(2)**

**Local Civil Rule 7.1(i)**

**28 U.S.C.S. 1915(g)**

**Fed R app P 40; loc R 40 (a) & (b)**

**Federal Rules of Evidence 102, 28 USCA ~Rule 102/ purpose**

**2A:14-21 Disabilities effecting limitations**

**Fed R App P 40: Loc R 40(a) &(b)**

**Fed R Civ P 12(b)(6)**

## Statement of the case

"Fernandez states she is not being heard.." (opinion of the Appeals Court 3rd Circuit on June 1, 2023) My questions arose after the appeals court omitted new evidence (See Exhibits A and B Appendix A) from their opinion in my appeal. Additionally, the Appeals Court omitted the context from my appeal that are grounds for relief under Rule 60(b) for excusable neglect. The Appeals Court 3rd Circuit said, "On appeal, Catherine Fernandez continues to argue positions that we previously rejected," "Fernandez's petition of previously rejected arguments does not state grounds for relief, under Rule 60(b). The Appeals Court 3rd Circuit affirmed the District Courts Judgement. Denying me to further amend my complaint or remand jurisdiction back to the District Court. Even though, I pointed out the omission of new evidence in a petition for rehearing; the Appeals Court 3rd Circuit denied my petition for rehearing. The Appeals Court 3rd Circuit omitted important facts for giving a factual opinion.

I filed multiple motions against my claim being time-barred throughout the legal process for tolling, excusable neglect, new evidence.

In my appeal for relief from judgement filed on April, 12, 2021, the Appeals Court said on June 1, 2023 I didn't state any grounds for relief. From the context, one can infer that I sought relief from judgement for excusable neglect due to the Covid 19 shutdown and new evidence in my appeal. My second and third questions arise from the Appeals Court's opinion that I

continued to argue the same arguments they previously rejected in a previous appeal ( opinion on June 1, 2023) The previous positions I took remain questions of law. The Appeals Court construed to dismiss my case under the supplemental law. The supplemental law didn't apply to my case because I brought the timely claim under the fed law 1983. My final question arose from the Appeals Court dismissing my timely claim without leave to amend it. I was denied the Armstrong Protection as in other rulings such as Armstrong v. Rushing 4th Circuit, Mitchell v. Fargass 11th Circuit, and Neitz v. Williams Supreme Court Ruling.

To begin on August 8, 2020 in an amended complaint I was given a one time opportunity to amend my complaint. I brought claims under Federal 42~1983 for violations to my rights by the defendants for deliberate indifference, ect... My daughter is disabled. She had an IEP. She was diagnosed with ADHD. I filed claims on her behalf in 2017 after a favorable decision from the Office of Civil Rights. The Office of Civil Rights found the defendants were deliberately indifferent of reports involving physical assaults, disability harassment, and sexual harassment to my daughter around March of 2016. (Exhibit C) My claims arose against the defendant's for their deliberate indifference to my reports which lead to my daughter being lured to the back of the Pemberton Township High School were she was beaten, bitten, and sexually harassed. I suffered mental and emotional distress from the defendant's deliberate indifference. I filed claims on July 8, 2020.

I filed an appeal with Appeals Court 3rd Circuit because District Court District NJ denied my motions for reconsideration. The Appeals Court affirmed the District Court of NJ decision to dismiss my complaint. The District Court of NJ dismissed my claims as time-barred, failing to state a claim, and largely conclusory claims in my complaint. Then, the Appeals Court 3rd Circuit construed to dismiss a timely claim under 28 USC~1367(c)(3). The District Court of NJ did not allow me to amend my claim a second time because in their opinion it was futile for the reasons above. The District Court District NJ denied my motions for tolling, and pro-bono counsel. They said although I had some difficulties with my mental health I wasn't stopped from filing a claim on behalf my disabled daughter in the same time. My diagnosis and treatment was not grounds for tolling according to the District Court of NJ. It was the decision of the District Court of NJ to deny my motion for pro-bono counsel because my claims were time-barred. I filed two separate appeals with the appeals Court but from here out I will focus on the appeal for relief from judgement. I sought help from the NJ Legal Services in the middle of an appeal for rehearing with the Appeals Court 3rd Circuit. I found that I could file a Relief from Judgement under rule 60(b). I maintained my claims for tolling and excusable neglect in my context for grounds of relief under Rule 60(b). I was denied by the District Court of NJ for relief.

The District Court said I did not present new evidence nor did they have jurisdiction over my case since I previously filed an appeal to the Appeals Court. I appealed to the 3rd Circuit Court for the District Courts denial of Relief from judgement. New evidence was not available until I filed the appeal. I included the new evidence in my appeal to the Appeals Court 3rd Circuit. Initially, the District Court of NJ time-barred my claims 2 years after my daughter's graduation in June of 2018. In the District Court's opinion, it was assumed that I did not have further contact with defendants upon my daughter's graduation. But, the fact is the defendant's were still investing reports of HIB after my daughter graduated. (See Exhibit C) The defendants contacted me by mailing a document stating they found no HIB in their investigation in August of 2018. I filed an appeal with the 3rd Circuit Court asking to be remanded back to the district court with this new evidence.

The Appeals Court erred by omitting new evidence from my appeal. The District Courts standardized my abilities to file a complaint on my daughters behalf in 2017 with my ability to file in a timely manner in June of 2020. The District Court said I filed both complaints in the same time frame. This not a fair comparison. I was physically preparing for a high risk surgery, I was involved in a diagnosis and treatment for my mental health, and I found myself unprepared for a covid 19 shutdown in June of 2020. The Appeals Court response to my motion for tolling was "I may have had some mental problems," "Having some mental problems are not grounds

for tolling." "I didn't have trouble filing a complaint on my disabled daughters behalf." However, they omitted how much time passed from when I filed my disabled daughters claim to when I filed my own claim. They also omitted what circumstances changed in 2020 from 2017 in their opinions. In the appeal for relief from judgement the Appeals Court omitted new medical evidence that may have been grounds for tolling for me.

Both the District Court and the Appeals Court erred to liberally construe my motion for tolling due to Covid 19 Shutdown. The context is my appeals are clear to the District Court. The opinion of the District Court is that the motion for tolling is at most an excusable neglect. I did not have the full scope of the law. Neither Court construed my motion from being time-barred as in the case of Erikson v. Padrus for relief.: 551 US 89 (2007) In summary, the appeals courts said that I argued the same positions they previously rejected in other appeals and motions. However, I included new factual materials that they omitted in their opinion. Then I pointed out their omission in the a petition for rehearing but was denied a rehearing.

## Reasons for Granting the Petition

As a pro-se petitioner, I was denied at every claim, reconsideration, motion, and petition. The Appeals Court said I invoked the wrong law or I didn't ask. Then, I did ask but they had another law or reason for denying my claims. I could not get out of a perpetual motion of Civil Rule errors without a way to seek justice on my behalf. The Appeals Court said, I failed to state a claim. The Appeals Court used a supplemental law to dismiss that timely allegation even though I brought that claim under Fed 42-1983. Finally, in the my appeal for relief from judgement, the Appeals Court omitted important new evidence that re-establishes a new Statute of Limitations in my case. The new medical evidence may also be grounds for tolling for my mental health and surgical procedure in June of 2020.

The Federal rule of Evidence 102, 28 USCA~Rule 102(a)(b) purpose should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination. Under rule 60(b) relief from judgement could be granted with new evidence or excusable neglect. Appeals Court 3rd Circuit has erred in their opinion by omitting new evidence from my appeal that could re-establish statue of limitation or grounds for tolling, or excusable neglect.

The lower courts erred by dismissing a timely federal claim from district court by construing the claim under 28 USC~1337(c)(3) when this law does not apply to my case. The Supreme Court held that federal-question jurisdiction existed over state claims and supplemental jurisdiction could be exercised over state claims... in case of City of Chicago, et al. v. International College of Surgeons et al. This case nor the supplemental jurisdiction applies in my case. I brought the timely claim under 42 US Code ~1983.

The Appeals Court 3rd Circuit have expressed conflicting decisions with other Circuit Courts such as in Armstrong v. Rushing 4th Circuit Court, 9th, Mitchell v. Fargass 11th circuit court and Niezt v. Williams in the Supreme Court ruling for dismissing the petitioner's claim for failing to state a claim without giving leave to amend the complaint. The ruling are unified by the Armstrong Protection.

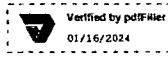
For the above reasons this court should grant the writ of certiorari keeping the lower courts unified, correcting lower court errs from omission of new evidence, dismissing federal claims by construing laws that don't apply in this case. Most important, defining the Armstrong Protection for the pro se petitioner by liberally construing claims, motions, and petitions.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Catherine Fernandez



Date: 01/27/2024