

ORIGINAL

24-1301

USSC NO.  
USCA8 NO.23-3161

Supreme Court, U.S.  
FILED

MAR 03 2025

OFFICE OF THE CLERK

In The  
**Supreme Court of the United States**

---

CALVIN ALLEN, SR. AND MARIXIA MALDONADO,

*Petitioners,*

v.

SETH A. GOMEZ, DOMONIC L. JORDON, AMANDA L. SIMRIN, RACHAEL E. SLOBIG, BAILEY D. STODDARD, BIPIN J. PATEL, LAXMI ENTERPRISES, INC, D/B/A, OZARK INN, CHIEF, PAUL F. WILLIAMS, DETECTIVE, KELLY PATTON, AND SPRINGFIELD POLICE DEPARTMENT,

*Respondents.*

---

On Petition for a Writ of Certiorari  
to the United States Court of  
Appeals for The Eighth Circuit

---

**PETITION FOR A WRIT OF CERTIORARI**

---

Calvin Allen, Sr., *Pro Se*  
Marixia Maldonado, *Pro Se*  
1230 N. National Avenue  
Springfield, MO 65802  
(417) 873-3498

## **QUESTIONS PRESENTED**

Whether Eighth Circuit erred in holding and affirming dismissal judgment overlooking District Court manifested errors and abuses of discretion entered dismissal order and judgment for failure state claim with prejudice on June 22, 2022, for City of Springfield respondents, when amended complaint pleads direct, circumstantial evidence of race-based discriminatory intent, use of racial-epitaphs-animus and *prima facie* and intentional discrimination, as such pleads claims under 42 USC 1981, 1983, 1985 and the state law public accommodation contract 210.00 RSMo claim?

Whether Eighth Circuit erred in holding and affirming dismissal judgment overlooking District Court manifested errors and abuses of discretion entered dismissal order and judgment for failure state claim with prejudice on June 22, 2022, for Patel, Laxmi Enterprises and Ozark Inn respondents, when amended complaint pleads direct, circumstantial evidence of race-based discriminatory intent, use of racial-epitaphs-animus and *prima facie* and intentional discrimination, as such pleads claims under 42 USC 1981, 1983, 1985 and the state law public accommodation contract 210.00 RSMo claim?

Whether Eighth Circuit erred in holding and affirming dismissal judgment overlooking District Court manifested errors and abuses of discretion entered dismissal order and judgment for failure state claim without prejudice on February 23, 2023, for respondent Seth Gomez, when amended complaint pleads direct, circumstantial evidence of race-based discriminatory intent, use of racial-epitaphs-animus and *prima facie* and intentional discrimination, as such pleads claims under 42 USC 1981, 1983, 1985 and the state law public accommodation contract 210.00 RSMo claim?

Whether Eighth Circuit erred in holding and affirming dismissal judgment overlooking District Court manifested errors and abuses of discretion entered *sua sponte* dismissal order and judgment for failure state claim without prejudice on August 7, 2023, for respondents Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel Slobig, when amended complaint pleads direct, circumstantial evidence of race-based discriminatory intent, and *prima facie* and intentional discrimination, as such pleads claims under 42 USC 1981, 1983, 1985 and the state law public accommodation contract 210.00 RSMo claim?

Whether the Eighth Circuit erred and abuse discretion affirming dismissal judgment overlooking District Court abuses of discretion, when arbitrarily entered *sua sponte* dismissal order for failure state claim in error on August 7, 2023, for respondents Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel Slobig notwithstanding dismissal order should have vacate and enter default judgments against respondents, as matter of law for failure to appear, answer or defend complaint timely?

## PARTIES TO THE PROCEEDINGS

**Petitioner(s)** Calvin Allen, Sr. and Marixia Maldonado (individually and collectively) were residents of Missouri and all times relevant hereto resided at: 1230 N. National, Springfield, Greene County, State of Missouri. were plaintiffs and appellants below.

**Respondents (s)** Seth A. Gomez Jacket No. 01362930, and petitioners effectuated service and process at Petosi Correctional Center, 11593 State HWY O, Mineral Point, MO 63660 was defendant and appellee below.

**Respondent(s)** Paul F. Williams, chief of police, state actor, and petitioners effectuated service and process at: 321 E. Chestnut Expressway, Springfield, MO 65802. was defendant and appellee below.

**Respondent(s)** Kelly Patton, lead detective, state actor, and petitioners effectuated service and process at: 321 E. Chestnut Expressway, Springfield, MO, 65802 was defendant and appellee below.

**Respondent(s)** City of Springfield Police Department, state actors and petitioners effectuated service and process at: 321 E. Chestnut Expressway, Springfield, MO 65802 was corporate defendant and appellee below.

**Respondent(s)** Bipin J. Patel, Laxmi Enterprise, Inc, and Ozark Inn in Springfield, Missouri, and petitioners effectuated service and process at: 4011 E. Casitas Del Rio Dr. Phoenix, AZ 85050 is corporation, were defendants and appellees below.

**Respondent(s)** Amanda L. Simrin, and petitioners effectuated service and process at: 737 N. Elder Ave., Springfield, MO 65802 was defendant and appellees below.

**Respondent(s)** Rachel E. Slobig and petitioners effectuated service and process at: 1017 E. Commercial St., Springfield, Mo 65803 was defendant and appellee below.

**Respondent(s)** Dominic L. Jordon and petitioners effectuated service and process at: 1633 S. Desswood Ave., Springfield, MO 65804 was defendant and appellee below.

**Respondent(s)** Baily D. Stoddard and petitioners effectuated service and process at: 2606 North East Ave., Springfield, MO 65802, was defendant and appellee below.

**RELATED PROCEEDINGS**

United States District Court ( W. D. Mo.):

Calvin Allen, Sr. et al v. Gomez et al, No. 22-3041cv-s-MDH (August 7, 2023)

United States Court of Appeals (8<sup>th</sup> Circuit):

Calvin Allen, Sr. et al v. Gomez et al, No. 23-3161 (December 3, 2024)

## TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDINGS .....	ii
RELATED PROCEEDINGS.....	iii
TABLE OF CONTENTS.....	iv
TABLE OF APPENDICES.....	vi
TABLE OF CITED AUTHORITIES .....	viii
PETITION FOR A WRIT OF CERTIORARI .....	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	1
STATEMENT OF THE CASE.....	2
REASONS FOR GRANTING THE PETITION.....	4
A. The Court of Appeals erred in holding and affirming dismissal judgment overlooking District Court manifested errors and abuses of discretion entered dismissal order and judgment for failure state claim with prejudice on June 22, 2022, for City of Springfield respondents, when amended complaint pleads direct, circumstantial evidence of race-based discriminatory intent, use of racial-epitaphs-animus and <i>prima facie</i> and intentional discrimination, as such pleads claims under 42 USC 1981, 1983, 1985 and the state law public accommodation contract.....	5
B. The Court of Appeals errors in holding and affirming dismissal judgment overlooking District Court manifested errors and abuses of discretion entered dismissal order and judgment for failure state claim with prejudice on June 22, 2022, for Patel, Laxmi Enterprises and Ozark Inn respondents, when amended complaint pleads direct, circumstantial evidence of race-based discriminatory intent, use of racial-epitaphs animus and <i>prima facie</i> and intentional discrimination, as such pleads claims under 42 USC 1981, 1983, 1985 and the state law public accommodation contract.....	5

*Table of Contents*

C.	The Court of Appeals erred in holding and affirming dismissal judgment overlooking District Court manifested errors and abuses of discretion entered dismissal order and judgment for failure state claim with prejudice on February 23, 2023, for respondent Seth Gomez, when amended complaint pleads direct, circumstantial evidence of race-based discriminatory intent, use of racial-epitaphs-animus and <i>prima facie</i> and intentional discrimination, as such pleads claims under 42 USC 1981, 1983, 1985 and the state law public accommodation contract.....	5
D.	The Court of Appeals erred in holding and affirming dismissal judgment overlooking District Court manifested errors and abuses of discretion entered <i>sua sponte</i> dismissal order and judgment for failure state claim with prejudice on August 7, 2023, for respondents Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel Slobig, when amended complaint pleads direct, circumstantial evidence of race-based discriminatory intent, and <i>prima facie</i> and intentional discrimination, as such pleads claims under 42 USC 1981, 1983, 1985 and the state law public accommodation contract 210.00 RSMo claim.....	7
E.	The Court of Appeals erred in holding and affirming dismissal judgment overlooking District Court abuses of discretion, when arbitrarily entered sua sponte dismissal order for failure state claim in error on August 7, 2023, for respondents Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel Slobig notwithstanding dismissal order should have vacate and enter default judgments against respondents, as matter of law for failure to appear, answer or defend complaint timely.....	13
	<b>CONCLUSION .....</b>	19

**TABLE OF APPENDICES**

APPENDIX A JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT FILED DECEMBER 3, 2024.....	1a
APPENDIX B-PER CURIAM OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT FILED DECEMBER 3, 2024.....	2a
APPENDIX C-MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT FILED JANUARY 22, 2025.....	3a
APPENDIX D-JUDGMENT DISMISSAL WITHOUT PREJUDICE OF THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI FOR SIMRIN, JORDON, STODDARD AND SLOBIG ON AUGUST 7, 2023.....	5a
APPENDIX D-ORDER AS TO DISMISSAL WITHOUT PREJUDICE OF THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI FOR SETH A. GOMEZ ON FEBRUARY 23, 2023.....	7a
APPENDIX E-ORDER AS TO DISMISSAL AND DEFAULT JUDGMENTS OF THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI FOR SIMRIN, STODDARD, JORDON AND SLOBIG ON AUGUST 7, 2023 .....	8a
APPENDIX D-JUDGMENT OF DISMISSAL WITH PREJUDICE OF THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI FOR CITY OF SPRINGFIELD DEFENDANTS'(SPRINGFIELD POLICE DEPARTMENT, PAUL WILLIAMS AND KELLY PATTON) AND JUDGMENT OF DISMISSAL WITHOUT PREJUDICE OF THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI FOR DEFENDANTS BIPIN PATEL, LAXMI ENTERPRISES AND OZARK INN ON JULY 19, 2022 AND JUNE 22, 2022.....	11a
APPENDIX E-ORDER OF DISMISSAL WITH PREJUDICE OF THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI FOR CITY OF SPRINGFIELD DEFENDANTS'(SPRINGFIELD POLICE DEPARTMENT, PAUL WILLIAMS AND KELLY PATTON).....	18a

*Table of Appendices*

APPENDIX F-ORDER OF DISMISSAL WITHOUT PREJUDICE OF THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MISSOURI FOR DEFENDANTS BIPIN PATEL, LAXMI ENTERPRISES AND OZARK INN.....	21a
APPENDIX G-PETITION OF PLAINTIFFS EXCERPTS OF SERVICE AND PROCESS CIVIL RIGHTS CLAIMS 42 USC 1981, EQUAL PROTECTION, 1983 DEPRIVATION AND 1985 CONSPIRACY TO DEPRIVE AND 210 RSMo, PUBLIC ACCOMODATION CLAIM.....	22a
APPENDIX H-FIRST AMENDED PETITION AND AVERMENTS PLEADING RACE-BASE DISCRIMINATORY INTENT AND RACE-BASED DISCRIMINATION OF PLAINTIFFS CIVIL RIGHTS CLAIMS 42 USC 1981, EQUAL PROTECTION, 1983 DEPRIVATION AND 1985 CONSPIRACY TO DEPRIVE AND 210.00 RSMo, PUBLIC ACCOMODATION CLAIM.....	26a
APPENDIX I-FIRST AMENDED PETITION AND AVERMENTS RACE-BASED DISCRIMINATORY INTENT.....	89a

## TABLE OF CITED AUTHORITIES

<u>CASES</u>	<u>Page(s)</u>
<i>Adickes v. S. H. Kress &amp; Co., supra</i> , at 152.....	16
<i>Ante</i> , at 941.....	16
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).....	16
<i>Austin v. Ford Models, Inc.</i> , 149 F. 3d 148, 152-153 (CA2 1998).....	5
<i>Back v. Hastings on Hudson Union Free School District</i> , 365 F.3d 107, 118 (2d Cir.2004).....	7
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544,555 (2007) .....	16
<i>Bennett v. Schmidt</i> , 153 F. 3d 516, 518 (CA7 1998).....	4
<i>Branum v. Clark</i> , 927 F.2d 698, 705 (2d Cir.1991).....	7
<i>Bretz v. Kelman</i> , 773 F.2d 1026, 1027 n. 1 (9th Cir.1985) (en banc).....	12
<i>Broughton v. Cutter Laboratories</i> , 622 F.2d 458, 460 (9th Cir.1980).....	12
<i>Burdine, supra</i> , at 252-253.....	6
<i>Burnett v. Short</i> , 441 F.2d 405, 406 (5th Cir.1971).....	10
<i>Cf. Braden v. Wal-Mart Stores, Inc.</i> , 588 F.3d 585, 594 (8th Cir. 2009).....	18
<i>Conley v. Gibson</i> , 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80 (1957).....	12
<i>Eldridge v. Block</i> , 832 F.2d 1132, 1135-36 (9th Cir.1987).....	12
<i>Eldridge</i> , 832 F.2d at 1136.....	12

*Table of Cited Authorities*

<i>Fisher v. Taylor</i> , 1 F.R.D. 448 (D.C. Tenn. 1940).....	18
<i>French v. 10*10Heyne</i> , 547 F. 2d 994, 996 (CA7 1976).....	13
<i>Gibson v. United States</i> , 781 F.2d 1334, 1338 (9th Cir.1986), <i>cert. denied</i> , U.S. 107 S.Ct. 928, 93 L.Ed.2d 979 (1987).....	9
<i>Glick v. Western Power Sports, Inc., supra</i> .....	17
<i>Glick v. Western Power Sports, Inc.</i> , 944 F.3d 714 (2019).....	17
<i>Griffith v. Wainwright</i> , 760 F.2d 1505 (11th Cir. 1985).....	9
<i>Griffin v. Breckenridge</i> , 403 U.S. 88, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971).....	12
<i>Griffin</i> , 403 U.S. at 102, 91 S.Ct. at 1798.....	12
<i>Glick v. W. Power Sports, Inc.</i> , 944 F.3d 714, 717- 18 (8th Cir. 2019).....	6
<i>Haines v. Kerner</i> , 404 U. S. 519, 520 (1972).....	7, 13
<i>Hughes v. Rowe, et al.</i> , 449 U.S. 5 (1980).....	13
<i>Jackson v. Beech</i> , 636 F.2d 831, 205 U.S. 84 (App. D.C. 1980).....	18
<i>Conerly v. Westinghouse Electric Corp.</i> , 623 F.2d 117, 119 (9th Cir.1980).....	9
<i>Gillespie v. Civiletti</i> , 629 F.2d 637, 641 (9th Cir.1980).....	11
<i>Jaco v. Bloechle</i> , 739 F.2d 239, 245 (6th Cir.1984).....	10
<i>Jones v. Bechtel</i> , 788 F.2d 571, 574 (9th Cir.1986).....	10
<i>Kern v. TXO Prod. Corp.</i> , 738 F.2d 968, 970 (8th Cir. 1984).....	3
<i>Kush v. Rutledge</i> , 460 U.S. 719, 726, 103 S.Ct. 1483, 1487, 75 L.Ed.2d 413 (1983).....	12
<i>Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit</i> , U.S., 113 S.Ct. 1160, 1162-63, 122 L.Ed.2d 517 (1993).....	7
<i>Maclin v. Paulson</i> , 627 F. 2d 83, 86 (CA7 1980).....	13

*Table of Cited Authorities*

<i>Mark v. Groff</i> , 521 F.2d 1376, 1378 (9th Cir.1975).....	12
<i>Marshall v. Baggett</i> , 616 F.3d 849, (8 <sup>th</sup> Cir. 2010).....	19
<i>Marshall</i> <i>supra</i> ... 616 F.3d at 852-53.....	19
<i>McDonnell Douglas</i> , <i>supra</i> , at 802.....	4
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792 (1973).....	4
<i>McDonnell Douglas</i> , 411 U. S., at 800.....	5
<i>McDonnell Douglas</i> , 450 U. S., at 255.....	6
<i>McDonald v. Santa Fe Trail Transp. Co.</i> , 427 U. S. 273, 283, n. 11 (1976).....	6,11
<i>Monell v. Dep't of Social Services</i> , 436 U.S. 658, 694, 98 S.Ct. 2018, 2037, 56 L.Ed.2d 611 (1978).....	10
<i>Noll</i> , 809 F.2d at 1448.....	9
<i>Norsyn, Inc. v. Desai</i> , 351 F.3d 825, 828 (8th Cir. 2003).....	19
<i>Parviz Karim-Panahi, v. Los Angeles Police Department, et al</i> , 839 F.2d 621 1988).....	8,10,11
<i>Richardson v. New York State Department of Correctional Service</i> , 180 F.3d at 441-42.....	4
<i>Ring v. First Interstate Mortgage, Inc.</i> , 984 F. 2d 924 (CA8 1993).....	4
<i>Saint Francis College v. Al-Khzraji</i> , 481 U.S. 604, 613, 107 S.Ct. 2022, 95 L.Ed.2d 582 (1987).....	7,10
<i>Scheuer v. Rhodes</i> , 416 U. S. 232, 236 (1974).....	6,12
<i>Shah v. County of Los Angeles</i> , 797 F.2d 743, 747 (9th Cir.1986).....	10
<i>Sparrow v. United Air Lines, Inc.</i> , 216 F. 3d 1111, 1114 (CADC 2000).....	4
<i>Spirit Lake tribe of Indians v. NCAA</i> , 715 F.3d 1089, 1092 (8th Cir. 2013).....	14,18
<i>Sterling Usher, v. City of Los Angeles, et al</i> , 828 F.2d 556 (1987).....	12

*Table of Cited Authorities*

<i>Swierkiewicz v. Sorema, N. A.</i> , 534 U.S. 506 (2002).....	4
<i>Tarshis v. Riese Organization</i> , 211 F. 3d 30, 35-36, 38 (CA2 2000).....	5
<i>Tolbert v. Queens College</i> , 242 F.3d 58, 69 (2d Cir.2001).....	7
<i>Tuaha Mian v. Donaldson, Lufkin &amp; Jenrette Securities Corporation, et al</i> , 7 F.3d 1085 (1993).....	6
<i>United States v. Price</i> , 383 U. S. 787, 794 (1966).....	16
<i>Village of Arlington Heights v. Metropolitan Housing Development Corp.</i> , 429 U.S. 227*227 252, 265, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977).....	7
<i>Western Reserve Oil &amp; Gas Co. v. New</i> , 765 F.2d 1428, 1430 (9th Cir.1985), <i>cert. denied</i> , 474 U.S. 1056, 106 S.Ct. 795, 88 L.Ed.2d 773 (1986).....	12

**FEDERAL ACTS AND STATUES**

28 U.S.C. § 1254(1).....	1
28 U.S.C. § 1291.....	9,16
42 U.S.C. § 1981.....	1,2,4,5,7,8,10,13,14,18
42 U.S.C. § 1983.....	1,3,4,5,7,8,9,10,13,18
42 U.S.C. § 1985.....	1,3,4,5,7,8,10,11,12,13,18
42 USC 2000 seq Title VII .....	6,7

**FEDERAL RULES**

Fed. Rule Civ. Proc. 8(a)(2).....	4
Fed.R.Civ.P. 12(b)(6).....	6,8,12,13,16,18
Fed. R. Civ. P. Rule 54.....	34,37

*Table of Cited Authorities***CONSTITUTIONAL PROVISIONS**

The Due Process Clause Fifth Amendment to the United States Constitution provides that no person shall be deprive of life, liberty, or property, without due process of law. U. S. Const. amend. V.....1

The Equal Protection Under Law Clause of Fourteenth Amendment to the United States Constitution provides that no person shall be deprive of life, liberty, or property, without due process of law. U. S. Const. amend. XIV .....1

**STATE STATUES**

RSMo. § 210.010.....1,3

RSMo. § 210.050.....5,8

## **PETITION FOR WRIT OF CERTIORARI**

Now, Petitioners, Calvin Allen, Sr. and Marixia Maldonado are residence of Springfield, Greene County, Missouri respectfully petition for a writ of certiorari to review the judgments and affirmations of the United States Court of Appeals for the Eighth Circuit.

### **OPINIONS BELOW**

The United States Court of Appeals for the Eighth Circuit Judgment, Per Curiam and Opinion entered on December 3, 2024. Unpublished and not reported are reprinted in the Appendices at (Pet.App. 1a-6a). The United States District Court for Western District of Missouri, Southern Division, Judgments and Orders unpublished and not reported are reprinted in the Appendices at (Pet. App.7a-31a.).

### **JURISDICTION**

The Eighth Circuit Court of Appeals entered its Judgment, Per Curiam and Opinion on December 3, 2024 are reprinted in the (Pet.App. 1a-6a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

### **STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED**

This action brought pursuant to the constitutional and civil rights protected by this section under color of law; 42 U.S.C. § 1981, breach public accommodation contracts and breach public contracts and constitutional rights to life, via egregious murder. 42 U.S.C. § 1983, deprivation of equal protection and constitutional due process rights to redress, life, via egregious murder.

42 U.S.C. § 1985 Conspiracy to deprive of civil rights to life, conspired and cause Petitioners, civil and constitutional due process rights to life, via egregious murder. That this action further brought pursuant to RSMo, § Section 210.010 breach public accommodation contracts and rights to due process, life, and due process via egregious murder.

The Fourteenth and Fifth Amendment to the United States Constitution provides: Amendment XIV Section 1. No state shall not make or enforce any law; nor shall any state deprive any person of life, liberty, or property, without due process of law or equal protection of the laws.

The Missouri Constitution Article I Bill of Rights section 10 of the, provides: Due process of law ...that no person shall be deprived of life, liberty or property without due process of law. Missouri Constitution of 1875, Art. II § 30.

## STATEMENMT OF THE CASE

Petitioners, Calvin Allen, Sr. and Marixia L. Maldonado filed this Civil Rights Complaint on March 1, 2022, in U.S. District Court, Western District of Missouri, Southern Division. The amended petition-complaint of race-based discrimination stems from egregious civil and constitutional rights violations of petitioners rights to life, Calvin Allen, Jr. due process rights of law. (Pet.App. 37a-148a). On March 1, 2019 around 1:00 pm respondents, Dominic Jordon, Amanda Simrin, Rachel Slobig, and Calvin Allen, Jr. arrived to socialize and party with friends. In a Springfield, Missouri Hotel, Ozark, Inn.

On February 25, 2019, Defendants Gomez prior to the murderous attack on March 1, 2019, by Gomez and coconspirators on Allen Jr. and Slobig, while sleeping in hotel. Over social media post because of race... "got that nigga up there with my woman that shot me"...can be construed pretext for race and criminally as hate crime (Pet.App. 37a-148a, at ¶¶1,3,297a-297b), as such the complaint plead race-based *animus and discriminatory intent*. Further, in the application of the conspiracy was the renting of the rooms and location of rooms, on different floors of the hotel, rented by Simrin and Slobig. (Pet.App. 37a-74a at ¶¶1-107).

Upon information Gomez, Stoddard, Jordon, Simrin, and Slobig, all were (CI's) confidential informants for state actors Springfield Police Department and agents. (Pet.App. 37a-148a, at ¶¶1,3,297a-297b). On March 1, 2019 Calvin Allen, Jr. was egregiously murdered, deprived of life. The amended petition pleads race-based *animus* and *disparate* and intentional discrimination against all respondents, private actors, Seth A. Gomez, Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel E. Slobig, Ozark, Inn, Bipin J. Patel, (Pet.App. 37a-54a), and state actors, detective, Kelly Patton, Springfield Police Department, and chief of police, Paul F Williams, as plead and cited in case caption. (Pet.App. 37a-148a).

However, petitioners were granted leave amend complaint by District court with excerpts in the writ appendices pleading *animus* and *disparate* intentional discrimination. (Pet.App. 149a-159a). As such, amended complaint pleading respondents misconduct. In concert Gomez and coconspirators on March 1, 2019, at 11:10pm executed the intentional, egregious, constitutional and civil rights violations of plaintiff's most sacred civil and constitutional rights of petitioners to life and due process. All respondents were served complaints pleading intentional and race-based discriminatory intent effectuated on April 18, 2022. (Pet.App. 37a-148a).

Whereas on August 23, 2023, in the final judgment and orders U.S. District Court erroneously held amended complaint failed to state claim, plead the race-based discriminatory intent which is an evidentry standard not pleading requirement. Even though amended complaint pleads intentional discrimination (Pet.App. 149a-159a). Because complaint state claims under 42 USC § 1981, with

state actors, conduct deprivation of life, equal protection and due process under 42 USC § 1983. Coupled with common law conspiracy to deprive of life and due process, under 42 USC § 1985. In conjunction with the state law public accommodation invitee claims, which state claims under RSMo, 210.00, upon which relief shall be granted. This case on appeal involved federal civil rights claims and RSMo, 210.005 § State law claim. (Pet.App. 37a-148a).

The 8<sup>th</sup> Circuit on December 3, 2024 affirmed District Court dismissals judgment with prejudice failure state claim for the City of Springfield; respondents entered on June 22, 2022. Affirmed dismissals judgment failure state claim for respondents, Patel, Laxmi Enterprises, d/b/a Ozark Inn entered on July 19, 2022. On December 3, 2024 8<sup>th</sup> Circuit affirmed dismissals judgment failure state claim for coconspirators respondents, Seth A. Gomez entered on February 20, 2023. (Pet.App. 1a-6a).

The 8<sup>th</sup> Circuit on December 3, 2024 affirmed *sua sponte* dismissal judgments failure state claim for respondents, Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel E. Slobig entered on August 23, 2023. (Pet.App. 1a-6a). As to writ of certiorari for legal redressing the egregious civil and constitutional rights violations of petitioner, Calvin R. Allen, Jr. rights to life, violations, as result permanently thwarted public accommodation contract. Including the misconduct of Patel, and Laxmi Enterprises, d/b/a Ozark Inn, via murder conspiracy with all respondents.

The petitioners pleading before this court seeking writ for redress of 8<sup>th</sup> Circuit judgment on December 3, 2024. Because the panel overlooked District Court manifest abuses of discretion; errors in judgment and the opinion in conflict with its own 8<sup>th</sup> Circuit precedent case laws. The Court standard review *de novo* an abuse of discretion can occur in three principal ways: *(1) when a court fails to consider a relevant factor that should have received significant weight; (2) when a court gives significant weight to an improper or irrelevant factor; or (3) when a court considers only appropriate factors.* (Pet.App. 37a-148a).

But the 8<sup>th</sup> Circuit and District court in weighing those factors commits a “clear error of judgment.” *Kern v. TXO Prod. Corp.*, 738 F.2d 968, 970 (8th Cir. 1984). (Pet.App. 1a-6a). Affirming District Court erroneous, abuses discretion, prejudicial dismissals orders and final judgments in part with prejudice. Moreover, the 8<sup>th</sup> Circuit overlooked averments of the petition and amended petition, as plead state claims which relief shall be granted. (Pet.App. 37a-148a).

Accordingly, Supreme Court shall find the 8<sup>th</sup> Circuit erroneously held and overlooked District Court manifested abuses of discretion and errors in Judgments. The Judgment on December 3, 2024 in conflict with 8<sup>th</sup> Circuit, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> Circuits Court of Appeals and U.S. Supreme Court precedent case laws. As such a petition for writ of certiorari shall be granted showing the 8<sup>th</sup> Circuit panel substantial conflicts in affirming District Court orders and Judgments. (Pet.App. 1a-

6a). Thus, Supreme Court shall grant petition for a writ of certiorari, reverse the panel judgment, per curiam issued December 3, 2024, and remand to do substantial justice.

### **REASONS FOR GRANTING THE PETITION**

This Court should grant the petition for writ of certiorari for several distinct reasons.

First, petitioners submit the 8<sup>th</sup> Circuit Court of Appeals Judgment on December 3, 2024 in conflict with 8<sup>th</sup> Circuit, other U.S. Court of Appeals and this U.S. Supreme Court precedent case laws, as to failure state claim. As such granting a petition for a writ of certiorari, warranted to resolved the conflicts, as results 8<sup>th</sup> Circuit substantial conflicts in the affirmation of District Court erroneous orders and judgments. (Pet.App. 1a-31a).

Secondly, the majority of Courts of Appeals, as to failure state claim have held that a plaintiff civil right claims need not plead race-based intent or a *prima facie* case of discrimination under *McDonnell Douglas Corp. v. Green*, 411 U. S. 792 (1973), in order to survive a motion to dismiss. See, e. g., *Sparrow v. United Air Lines, Inc.*, 216 F. 3d 1111, 1114 (CA DC 2000); *Bennett v. Schmidt*, 153 F. 3d 516, 518 (CA7 1998); *Ring v. First Interstate Mortgage, Inc.*, 984 F. 2d 924 (CA8 1993). Even though petitioners amended complaint pleads intentional race discrimination as such pleads race-based intent. (Pet.App. 149a-159a).

This case presents the similar question in the *Swierkiewicz v. Sorema, N. A.*, *supra* when amended complaint pleads direct, circumstantial evidence of race-based discriminatory intent. Likewise, this case presents same question whether a complaint in an employment or civil rights discrimination lawsuit must contain specific facts establishing a race-based discriminatory intent, as same for *prima facie* case of discrimination under the framework set forth by this Court in *McDonnell Douglas Corp. v. Green*, 411 U. S. 792 (1973). This Supreme court held that an employment or the same civil rights discrimination complaint need not include such facts and instead must contain only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2). *Swierkiewicz v. Sorema, N. A.*, 534 U.S. 506 (2002).

Petitioners amended complaint pleads respondents Gomez, Stoddard, Jordon, Simrin, and Slobig, all were (CI's) confidential informants for state actors Springfield Police Department and agents, pleading under 42 USC § 1981, 1983 and 1985. (Pet.App. 37a-148a, at ¶¶1,3,297a-297b), On March 1, 2019 petitioners Calvin Allen, Jr. was egregiously murdered because of race, deprived of life. The amended petition pleads race-based *animus* and *disparate* and intentional discrimination against all respondents, private actors, Seth A. Gomez, Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel E. Slobig, Ozark, Inn, Bipin J. Patel, (Pet.App.

37a-148a), and state actors, detective, Kelly Patton, Springfield Police Department, and chief of police, Paul F Williams, as plead and cited in complaint pleads circumstantial evidence of race-based discriminatory intent. (Pet.App. 37a-148a).

On February 25, 2019, Defendants Gomez prior to the murderous attack by Gomez and coconspirators on Allen Jr. and Slobig, while sleeping. Over social media because of race... “got that nigga up there with my woman that shot me”...can be construed as pretext for race and criminally as hate crime (Pet.App. 37a-148a, at ¶¶1,3,297a-297b), as such complaint plead race-based *animus* and discriminatory intent.

Further, in the application of the conspiracy was the renting of the rooms and location of rooms, on different floors of the hotel, rented by Simrin and Slobig. (Pet.App. 37a-148a). In pleading and establishing the state law public accommodation invitee claims, which state claims under RSMo, 210.00, upon which relief shall be granted. This case on writ involved federal civil rights claims and RSMo, 210.005 § State law claim, which District court decline jurisdiction. (Pet.App. 7a-31a).

**A. The Court of Appeals errors in holding and affirming dismissal judgment overlooking District Court manifested errors of judgment and abuses of discretion entered dismissal order and judgment for failure state claim with prejudice on June 22, 2022, for City of Springfield and August 7, 2023 all other respondents, Gomez, Jordon, Simrin, and Stoddard because amended complaint fail to pleads race-based discriminatory intent.**

Petitioners filed the complaint of race-based discrimination which stems from egregious civil and constitutional rights violations of petitioners rights to life, and due process rights of law and pleads intentional discrimination, as such pleads intent. (Pet.App. 149a-159a). The amended complaint state claims under 42 USC § 1981, with deprivation of invitee contract, life, equal protection and due process under 42 USC § 1983. (Pet.App. 37a-148a).

Coupled with common law conspiracy to deprive of invitee contract, life and due process, under 42 USC § 1985. (Pet.App. 7a-31a). In conjunction with the thwarted state law public accommodation invitee claims, which district court decline jurisdiction, state claims under RSMo, 210.00, upon which relief shall be granted because their race and national origin in violation of the civil rights statutes of discrimination. (Pet.App. 7a-31a).

The 8<sup>th</sup> Circuit Court of Appeals in error, holding and affirming judgment for failure state claim with prejudice on June 22, 2022, for City of Springfield and all other respondents, even when amended complaint pleads circumstantial evidence of race-based discriminatory intent in *McDonnell Douglas, supra, at 802*. See, e.g., *Tarshis v. Riese Organization*, 211 F. 3d 30, 35-36, 38 (CA2 2000); *Austin v. Ford*

Models, Inc., 149 F. 3d 148, 152-153 (CA2 1998). The Court of Appeals held having carefully reviewed the record and the parties' arguments on appeal; we find no basis for reversal. See Glick v. W. Power Sports, Inc., 944 F.3d 714, 717- 18 (8th Cir. 2019). (Pet.App. 7a-31a). Thus, Supreme Court shall granted certiorari, to resolve a split among the Courts of Appeals concerning the proper pleading, as to failure state claim standard for civil rights discrimination claims and shall reverse.

The race-based discriminatory intent or prima facie case under *McDonnell Douglas*, however, is an evidentiary standard, not a pleading requirement. In *McDonnell Douglas*, this Court made clear that "[t]he critical issue before court concern[ed] the order and allocation of proof in a private, non-class action challenging civil rights or employment discrimination." 411 U. S., at 800 (emphasis added). In subsequent cases, this Court has reiterated that the prima facie case relates to the burden of presenting evidence that raises an inference of discrimination. See Burdine, supra, at 252-253 ("In *[McDonnell Douglas]*, the court set forth the basic allocation of burdens and order of presentation of proof in a Title VII case alleging discriminatory treatment. First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination" (footnotes omitted)); 450 U. S., at 255, n. 8 ("This evidentiary relationship between the presumption created by a prima facie case and the consequential burden of production placed on the defendant is a traditional feature of the common law").

This Court has never indicated that the requirements for establishing intent or a prima facie case under *McDonnell Douglas*, also apply to the pleading standard that plaintiffs must satisfy in order to survive a motion to dismiss. For instance, the court has rejected the argument that a Title VII complaint requires greater "particularity," because this would "too narrowly constric[t] the role of the pleadings." McDonald v. Santa Fe Trail Transp. Co., 427 U. S. 273, 283, n. 11 (1976). Consequently, the ordinary rules for assessing the sufficiency of a complaint apply. See, e. g., Scheuer v. Rhodes, 416 U. S. 232, 236 (1974) ("When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims").

Petitioners submit the United States Court of Appeals, Second Circuit. In Tuaha Mian v. Donaldson, Lufkin & Jenrette Securities Corporation, et al., 7 F.3d 1085 (1993), the court held as to failure state claim on remand leaving the question whether Mian's pleading was sufficient to state a claim under Fed.R.Civ.P. 12(b)(6). The court thought initial complaint, at issue fails to adequately plead the essential elements of his causes of action. However, the court also thought the district court should not have dismissed Mian's complaint with prejudice, but should have given him the opportunity to amend his complaint in light of the policy to liberally construe civil rights complaints, see Leatherman v. Tarrant County Narcotics Intelligence and

Coordination Unit, U.S., 113 S.Ct. 1160, 1162-63, 122 L.Ed.2d 517 (1993), and especially because this complaint was filed by a *pro se* plaintiff. Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972) (per curiam); *see also Branum v. Clark*, 927 F.2d 698, 705 (2d Cir.1991) ("Certainly the court should not dismiss without leave to amend once when a liberal reading of the complaint gives any indication that a valid claim might be stated."). Likewise, in instant case district court should have not dismiss complaint against City of Springfield defendants with prejudice, without declaring junk petition. (Pet.App. 37a-148a).

Accordingly, the Court shall grant petition for a writ of certiorari, in conflict reverse the judgment of the Court of Appeals and the case be remanded for further proceedings.

**B. The Court of Appeals erred in holding and affirming dismissal judgment overlooking District Court manifested errors and abuses of discretion entered dismissal order and judgment for failure state claim under 42 USC § 1981, equal protection § 1983 and § 1985 with common law conspiracy with state actors, deprivation of life, and due process.**

Petitioners submit the 2<sup>nd</sup> Circuit Court of Appeals in holding, as to failure state claim. In certain circumstances a civil rights or Title VII claim may be established through proof of a defendant's mere negligence, without a showing or pleading of discriminatory intent, *see, e.g., Richardson v. New York State Department of Correctional Service*, 180 F.3d at 441-42 (employer subject to liability if negligent in responding appropriately to a complaint of racial harassment by co-workers). Whereas Petitioners, Allen and Maldonado complaints are replete with averments pleading all respondents egregious race-based negligence and intentional discrimination. (Pet.App. 37a-148a).

However, a plaintiff pursuing a claimed violation of § 1981 or denial of equal protection under § 1983 must show that the discrimination was indifference and intentional, *see Tolbert v. Queens College*, 242 F.3d 58, 69 (2d Cir.2001) (§ 1981); *Back v. Hastings on Hudson Union Free School District*, 365 F.3d 107, 118 (2d Cir.2004) (§ 1983); *see generally Saint Francis College v. Al-Khzraji*, 481 U.S. 604, 613, 107 S.Ct. 2022, 95 L.Ed.2d 582 (1987) (§ 1981); *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 227\*227 252, 265, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977) (§ 1983). As such, the court shall find petitioner complaint not required to plead race-based discriminatory intent because its' an evidentiary standard, and not a pleading requirement. (Pet.App. 37a-159a). However, amended complaint pleads intentional discrimination. See excerpts, (Pet.App. 149-159a),

Applying the relevant standard, petitioner's complaint easily satisfies the requirements of Rule 8(a) because it gives respondents fair notice of the basis for petitioner's claims. (Pet.App. 37a-148a). The race-based discriminatory conduct and

intentional discrimination, as plead private actors, Simrin, Slobig, Jordon, Stoddard, Bipin J. Patel, Ozark, Inn, and state actors detective, Kelly Patton, Springfield Police Department, and chief of police, Paul F Williams, were intentional because of race, after first 911 call. (Pet.App. 37a-159a).

On March 1, 2019, at 11:10 pm the respondents Patel conduct was intentional, directing police to wrong room and the police left the scene after 6 minutes of arrival, conduct was intentional, to let petitioner die. As such permanently thwarted public accommodation invitee contract of petitioner. (Pet.App. 32a-89a). Under 42 USC § 1981, with state actors, deprivation of life, equal protection and due process under 42 USC § 1983. (Pet.App. 32a-124a). Coupled with common law conspiracy to deprive of life and due process, under 42 USC § 1985. In conjunction with the state law public accommodation invitee claims, which state claims under RSMo, 210.50. This case on appeal involved federal civil rights claims and 210.005 § State law claim. (Pet.App. 37a-159a).

Accordingly, the Court shall grant petition for a writ of certiorari, reverse the judgment of the Court of Appeals and the case be remanded for further proceedings.

### **Writ Under 42 USC 1981, 1983 and 1985**

The Petitioners, Allen Sr. and Maldonado submit the 9th Circuit Court of Appeals holding in a civil rights claims, as to failure state claim, remanded by the Ninth Circuit. In *Parviz Karim-Panahi, v. Los Angeles Police Department, et al.*, 839 F.2d 621 1988). Petitioners arrived at Ozark Inn in Springfield, Missouri, in Simrin vehicle approximately 1:00 pm on 3/1/19, to socialized and party with friends pleads Slobig after arrival assisted Simrin renting and paid for two motel rooms, for invitee, Calvin R. Allen, Jr and Rachael Slobig in room #230 motel; (Pet.App. 37a-148a, at ¶¶ 10-24).

Amended complaint pleading Allen, Jr., invitee public accommodation contract establishment amended complaint pleading breach and fail train and to performed duty in accordance policies for wellness check. As such, respondent Patel accomplices in murder at 11:22 pm made the 911 emergency call referencing check a person. (Pet.App. 37a-48a). Directed Springfield PD to wrong room and/or dispatched advise officer to go to room #142, wellness “check a person”, which was room #142 for Jordon and Simrin. (Pet.App. 37a-159a). Respondent Springfield PD left the scene within 6 minutes of arrival, which was intentional because of race. Thus, amended petition complaint pleading invitee public accommodation contract establishment. (Pet.App. 37a-148a).

The District Court dismissed the amended complaint with prejudice on the ground that it failed to state a claim, upon which relief could be granted. Fed.R.Civ.P. 12(b)(6). The district court did not advise petitioners Allen, Sr. and Maldonado of the

deficiencies in the amended complaint. An order dismissing a complaint with prejudice is final and appealable. *Conerly v. Westinghouse Electric Corp.*, 623 F.2d 117, 119 (9th Cir. 1980). 8<sup>th</sup> Circuit Court of Appeals had jurisdiction over Allen, Sr. and Maldonado's timely appeal under 28 U.S.C. § 1291 (1982). (Pet.App. 7a-31a).

Also, such amended complaint pleads *prima facie claims* that plaintiff on March 1-2, 2019, to present date were victims of egregious racial and intentional discrimination against defendants, plaintiffs were member of protected class, and other similar situated white victims of egregious homicide and murders not subjected to further discrimination because of race (black) and national origin African American and Hispanic, as such violations of constitutional and civil rights to life and equal protection, redress of claims under law(Pet.App. 37a-148a, at ¶¶ 59,198,207,208,216).

Further, the 9th Circuit Court held as to failure state claim in civil rights cases. Where the plaintiff appears pro se, the court must construe the pleadings liberally and must afford plaintiff the benefit of any doubt. *Bretz v. Kelman*, 773 F.2d 1026, 1027 n. 1 (9th Cir. 1985) (en banc). "A pro se litigant must be given leave to amend his or her complaint unless it is 'absolutely clear that the deficiencies of the complaint could not be cured by amendment.'" *Noll*, 809 F.2d at 1448 (quoting *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir. 1980) (per curiam)); accord *Eldridge v. Block*, 832 F.2d 1132, 1135-36 (9th Cir. 1987). Moreover, before dismissing a pro se civil rights complaint for failure to state a claim, the district court must give the plaintiff a statement of the complaint's deficiencies. See *Eldridge*, 832 F.2d at 1136; *Noll*, 809 F.2d at 1448-49. "Without the benefit of a statement of deficiencies, the pro se litigant will likely repeat previous errors." *Noll*, 809 F.2d at 1448. (Pet.App. 32a-124a). Thus, the petitioners Allen, Sr. and Maldonado are pro se, not schooled in finer points of law, entitled to special consideration. (Pet.App. 7a-31a). See *Griffith v. Wainwright*, 760 F.2d 1505 (11th Cir. 1985).

The 9th Circuit Court held as to failure state claim section 1983 imposes liability upon any person who, acting under color of state law, deprives another of a federally protected right. 42 U.S.C. § 1983. "To make out a cause of action under section 1983, plaintiffs must plead that (1) the defendants acting under color of state law (2) deprived plaintiffs of rights secured by the Constitution or federal statutes." *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986), cert. denied, U.S. 107 S.Ct. 928, 93 L.Ed.2d 979 (1987).

Petitioners amended complaint pleads Defendant(s), Springfield Police Department on March 1, 2019, at the times of the incidents described herein the Springfield Police department lead detective and other peace officers dereliction of duty, at 11:22 pm on 3/1/19, after defendant, Patel made the 911 call to investigate suspicious and **check persons** and guns seen and gunshots in checking all hotel rooms. (Pet.App. 37a-148a). At the Ozark Inn on March 1, 2019, and death with PC,

probable cause statements and authorized to promulgate rules, polices to protect and served citizens and public rights; and formulate regulations for law enforcement investigations and execution of peace officers arrests in compliance with federal and state laws governing and customs under the color of state law. (Pet.App. 37a-57a).

Further, the 9th Circuit Court held as to failure state claim section 1983, on remand. As such 1983, imposes liability upon municipalities for constitutional deprivations resulting from actions taken pursuant to government policy or customs. Monell v. Dep't of Social Services, 436 U.S. 658, 694, 98 S.Ct. 2018, 2037, 56 L.Ed.2d 611 (1978). In this circuit, a claim of municipal liability under section 1983 is sufficient to withstand a motion to dismiss "even if the claim is based on nothing more than a bare allegation that the individual officers' conduct conformed to official policy, custom, or practice." Shah v. County of Los Angeles, 797 F.2d 743, 747 (9th Cir.1986). (Pet.App. 37a-68a).

The 9th Circuit Court held under 1981, on remand as to failure state claim in Parviz Karim-Panahi, v. Los Angeles Police Department, et al. 839 F.2d 621 1988) section 1981 forbids all racial discrimination in the making of both public and private contracts. Saint Francis College v. Al-Khzraji, U.S. 107 S.Ct. 2022, 2026, 95 L.Ed.2d 582 (1987). A claim under section 1981 is sufficient to withstand a motion to dismiss if it alleges that plaintiff suffered discrimination in employment on the basis of race. Jones v. Bechtel, 788 F.2d 571, 574 (9th Cir.1986). Which 8<sup>th</sup> Circuit overlooked public accommodation contract during the appeal, as did District Court. (Pet.App. 7a-31a).

Petitioners amended complaint pleads public accommodation contract...On March 1, 2019 around 1:00 pm respondents, Dominic Jordon, Amanda Simrin, Rachel Slobig, and Calvin Allen, Jr. arrived to socialize and party with friends. In a Springfield, Missouri Hotel, Ozark, Inn. Petitioners arrived at Ozark Inn in Springfield, Missouri, in Simrin vehicle approximately 1:00 pm on 3/1/19, to socialized and party with friends pleads Slobig after arrival assisted Simrin renting and paid for two motel rooms, for invitee, Calvin R. Allen, Jr and Rachael Slobig in room #230 motel. (Pet.App.32a-89 at ¶¶10,14, 23,24).

Accordingly, the Court shall liberally grant petition for a writ of certiorari, in conflict reverse the judgment of the Court of Appeals and the case be remanded for further proceedings.

The 9th Circuit Court held under 1985, on remand as to failure state claim in Parviz Karim-Panahi, v. Los Angeles Police Department, et al. 839 F.2d 621 1988). Section 1985 proscribes conspiracies to interfere with certain civil rights. A claim under this section must allege facts to support the allegation that defendants conspired together. A mere allegation of conspiracy without factual specificity is insufficient. Jaco v. Bloechle, 739 F.2d 239, 245 (6th Cir.1984); Burnett v. Short, 441

F.2d 405, 406 (5th Cir.1971). The amended petition pleads upon information Gomez, Stoddard, Jordon, Simrin, and Slobig, all were (CI's) and as confidential informants defendants conspired together with state actors Springfield Police Department and agents. On March 1, 2019 Calvin Allen, Jr. was egregiously murdered, deprived of life.

On February 25, 2019, Defendants Gomez prior to the murderous attack on March 1, 2019, by Gomez and coconspirators on Allen Jr. and Slobig, while sleeping in hotel. Over social media post because of race... "got that nigga up there with my woman that shot me" ...can be construed pretext for race and criminally as hate crime (Pet.App. 37a-148a , at ¶¶1,3,297a-297b), as such complaint plead race-based *animus and discriminatory intent*. Further, in the application of the conspiracy was the renting of the rooms and location of rooms, on different floors of the hotel, rented by Simrin and Slobig. (Pet.App. 37a-148a).

Petitioners amended complaint pleads conspiracy by respondents Gomez, Stoddard, Jordon, Simrin, and Slobig, all were (CI's) confidential informants for state actors Springfield Police Department and agents, pleading under 42 USC §§ 1981, 1983 and 1985. (Pet.App. 37a-148a, at ¶¶1,3,297a-297b). On March 1, 2019 petitioners Calvin Allen, Jr. was egregiously murdered because of race, deprived of life. The amended petition pleads race-based *animus* and *disparate* and intentional discrimination against all respondents, private actors, Seth A. Gomez, Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel E. Slobig, including Ozark, Inn, and Bipin J. Patel, (Pet.App. 37a-148a), and in concert with state actors, detective, Kelly Patton, Springfield Police Department, and chief of police, Paul F Williams, as plead and cited complaint pleads circumstantial evidence of race-based discriminatory intent. (Pet.App. 37a-148a).

The 9th Circuit Court held under 1985, on remand as to failure state claim in Parviz Karim-Panahi, v. Los Angeles Police Department, et al., 839 F.2d 621 1988). The district court should have advised Karim-Panahi of this deficiency. We cannot say that with such instruction Karim-Panahi will be unable to amend his complaint again to state a cause of action under section 1985. See Amended Complaint ¶ 30; Gillespie v. Civiletti, 629 F.2d 637, 641 (9th Cir.1980) (where pro se civil rights complaint under section 1985(3) failed to allege conspiracy or class-based animus but did allege that plaintiff "was denied medical and health needs at ten different holding facilities, and that he was a black prisoner," deficiencies in complaint could possibly be overcome by amendment).

Accordingly, the Court shall liberally grant petition for a writ of certiorari, in conflict reverse the judgment of the Court of Appeals and the case be remanded for further proceedings.

The 9th Circuit Court held and remanding, as to failure state claim under section 1985, conspiracy in *Sterling Usher, v. City of Los Angeles, et al.*, 828 F.2d 556 (1987). In his amended complaint, Usher also alleged causes of action under 42 U.S.C. § 1985(2) and (3) for a conspiracy to deprive him of the equal protection of the laws. Under the relevant clauses of these subsections, a properly pleaded claim must include an allegation of racial or class-based animus. *Kush v. Rutledge*, 460 U.S. 719, 726, 103 S.Ct. 1483, 1487, 75 L.Ed.2d 413 (1983).

Also with limiting holding of *Griffin v. Breckenridge*, 403 U.S. 88, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971), to first clause of section 1985(3); *Bretz v. Kelman*, 773 F.2d 1026, 1030 (9th Cir.1985) (en banc) (extending *Griffin* requirement to second clause of section 1985(2)). To establish racial or class-based animus, a plaintiff must show "invidiously discriminatory motivation ... behind the conspirators' action." *Griffin*, 403 U.S. at 102, 91 S.Ct. at 1798. The district court held that Usher's complaint did not allege racial animus.

On a motion to dismiss for failure to state a claim, the court must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the nonmoving party. *Western Reserve Oil & Gas Co. v. New*, 765 F.2d 1428, 1430 (9th Cir.1985), *cert. denied*, 474 U.S. 1056, 106 S.Ct. 795, 88 L.Ed.2d 773 (1986). On appeal, the court reviewing a grant of a motion to dismiss must also presume the truth of the allegations of the complaint. *Mark v. Groff*, 521 F.2d 1376, 1378 (9th Cir.1975). The issue is not whether the plaintiff ultimately will prevail, but whether he is entitled to offer evidence to support his claim. *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1974). The trial court may not grant a motion to dismiss for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80 (1957).

"The 9th Circuit Court held under this standard for dismissal of a complaint, the district court's holding was erroneous. Usher alleged that he was arrested without cause, held handcuffed for several hours and denied toilet privileges, and then prosecuted under contrived charges; he specifically alleged that in the course of his arrest he was called "nigger" and "coon." By pleading that racial slurs were directed against him, Usher has made an allegation of racial animus sufficient to survive a motion to dismiss under Fed.R.Civ.P. 12(b)(6). Therefore, Usher has adequately pleaded causes of action under 42 U.S.C. § 1985(2) and (3)".

Likewise, in the instant case before the court, Petitioners amended complaint pleading on February 25, 2019, Defendants Gomez prior to the murderous attack on March 1, 2019, by Gomez and coconspirators on Allen Jr. and Slobig, while sleeping in hotel. Over social media post because of race... "got that nigga up there with my woman that shot me"...can be construed pretext for race discrimination and criminally as federal hate crime (Pet. App. 37a-148a, at ¶¶1,3,297a-297b), as such

complaint plead race-based *animus and discriminatory intent*. Amended complaint pleading that racial slurs were directed against him, Allen, Jr. has made an allegation of racial animus sufficient to survive a motion to dismiss under Fed.R.Civ.P. 12(b)(6).

Petitioners amended complaint pleads conspiracy by respondents Gomez, Stoddard, Jordon, Simrin, and Slobig, all were (CI's) confidential informants for state actors. Springfield Police Department and agents, inferences of private actor communicating with each other, pleading under 42 USC §§ 1981, 1983 and 1985. (Pet.App. 37a-148a, at ¶¶1,3,297a-297b). Further, in the application of the conspiracy was the renting of the rooms and location of rooms, on different floors of the hotel, rented by Simrin and Slobig. (Pet.App. 37a-148a).

Accordingly, the Court shall liberally grant petition for a writ of certiorari, in conflict reverse the judgment of the Court of Appeals and the case be remanded for further proceedings.

**C. The Court of Appeals erred in holding and affirming dismissal judgment overlooking District Court abuses of discretion, when arbitrarily entered sua sponte dismissal order for failure state claim in error on August 7, 2023, for respondents Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel Slobig notwithstanding dismissal order should have vacate and enter default judgments against respondents, as matter of law for failure to appear, answer or defend complaint timely.**

The Supreme Court of United States held and remanded, as to failure to state a constitutional violation, in *Hughes v. Rowe, et al.*, 449 U.S. 5 (1980). On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit. Petitioner amended complaint pleads civil and constitutional violations under 42 USC 1981, 1983 and 1985.

The Supreme Court cited, Petitioner's complaint, like most pro se prisoner complaints filed in the Northern District of Illinois, was not prepared by counsel. It is settled law that the allegations of such a complaint, "however inartfully pleaded" are held "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U. S. 519, 520 (1972). See also *Maclin v. Paulson*, 627 F. 2d 83, 86 (CA7 1980); *French v. 10\*10Heyne*, 547 F. 2d 994, 996 (CA7 1976). Such a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Likewise, in instant case petitioners are pro se, not schooled in finer points of law, entitled to special consideration.

The Supreme Court cited in *Hughes supra*, the Court of Appeals seems to have overlooked the fact, likewise in instant case 8<sup>th</sup> Circuit overlooked material facts, and

averments pleading intentional race-based discrimination, as such pleads race based discriminatory intent. (Pet.App. 149a-159a). Clearly stated and plead in petitioner's amended complaint, which District Court manifestly error, misapprehension of race-based discriminatory intent of amended complaint, which state claims upon relief could be granted as plead by pro se litigants. (Pet.App. 149a-159a).

Petitioners submit the 8<sup>th</sup> Circuit Court of Appeals overlooked the U.S. District Court manifestly error, misapprehension of race-based discriminatory intent, in adjudging amended complaint, which is the product of the 8<sup>th</sup> Circuit affirmations of the erroneous dismissal orders and judgments. (Pet.App. 1a-7a). Amended complaint pleads Gomez, Jordon, Slobig, Stoddard, Simrin, (Pet.App. 37a-148a, at ¶¶ 1, 3, 78, 111, 297a-297b), as confidential informants for Springfield PD, as such effectuate "meeting of minds" and the other coconspirators begin planning egregious civil rights violation to life and murder.

On February 27, 2019, two days prior to the murderous attack by Gomez on Allen Jr. sleeping, because of race... "got that nigga up there with my woman that shot me" ... (Pet.App. 37a-148a, at ¶¶1-27) and (297a-297b). As such, on February 27, 2019, Gomez texted messages threads the use of racial epithaphs are direct evidence of race-based discriminatory intent and animus towards Allen, Jr. Clearly meeting of the third prong on the claim under § 1981.

The amended complaint pleads direct and circumstantial evidence of race-based discriminatory intent, pleading intentional discrimination as such state claim for which relief can be granted against the Gomez and all coconspirators. In the civil rights violation of life and murder in renting and location of rented rooms purports premeditation at Ozark Inn by Simrin and Slobig. (Pet.App. 37a-148a, at ¶¶ 3-5). The Court shall find plaintiffs amended complaint pleads elements of claim under § 1981, which divided into four parts for analysis: (1) membership in a protected class, (2) discriminatory intent on the part of the defendant, (3) engagement in a protected activity, and (4) interference with that activity by the defendant."

See. *Spirit Lake tribe of Indians v. NCAA*, 715 F.3d 1089, 1092 (8th Cir. 2013). Defendant does not contest that plaintiffs have appropriately alleged facts showing that plaintiffs satisfied element (1) but as stated above, there are replete facts setting forth legal liability under 1981 against Gomez and coconspirators. As such, plaintiffs complaint pleads direct evidence of racial-based animus, intent and discrimination by Gomez, and coconspirators. (Pet.App. 37a-148a, at ¶¶1, 3, 297a-297b).

The Complaint does allege direct evidence of racial-based animus and intentional discrimination by Gomez and coconspirators. Therefore plaintiffs will prove intent through circumstantial evidence. Importantly, plaintiffs must prove "discriminatory intent". (Pet.App. 149a-159a). On March 1, 2019, decedent, Calvin

Allen, Jr was in bed “unannounced entry” in room #230 at Ozark Inn Hotel. When defendant, Gomez attack Allen, Jr. at 11:07-11:22 pm while sleep with Slobig, with dagger knife (cutting and stabbing petitioner fifteen times, and discharged 9mm handgun (6) six shots striking and killing Calvin Allen, Jr. See (Pet.App. 37a-148a, at ¶¶ 47-49). As such, Gomez could not have committed this egregious murder of petitioner, Allen, Jr. alone because it's impossible to be using a dagger knife and hand-gun at the same time.

Leaving petitioner, Allen, Jr. laying on the balcony of hotel with deadly shot in back as Calvin Jr trying to escape death. Gomez, and coconspirators, on March 1, 2019, amended pleads injury in fact without cause or legal justification caused injuries and infliction of battery upon plaintiffs, Allen, Jr via “unannounced entry” into Ozark Inn hotel room #230, with dagger knife and 9mm handgun. See (Pet.App. 37a-148a, at ¶¶ 47-49). Petitioners a person who suffers a deprivation of rights to life, and privileges of public accommodation contract rights, and Gomez, Patel, Laxmi Enterprise, Inc. as Ozark Inn.

Petitioners' claims for violation of 42 U.S.C. 1983 should not be dismissed for failure to state a claim. Upon which relief can be granted because plaintiffs alleged their rights to make and enforce contracts for invitee, Allen, Jr. public accommodation contracts. Including violations by defendants, City of Springfield, state actors misconduct, including conspiracy to deprive plaintiffs action taken under the color of law, as required for a 42 U.S.C. 1981 and 1983 violation. (Pet.App. 37a-148a, at ¶¶ 12-27) at ¶¶ (297-322).

On 3/1/19 the misconduct of coconspirators, Bipin J. Patel, d/b/a, Ozark Inn, and Springfield PD on 3/1/19 responded to 911 calls and allegedly officer from dispatch 911 call advise officers investigated room #142, at Ozark Inn. (Pet.App. 37a-148a, at ¶¶ 310), pleads Springfield PD officers, discovered mask, and left the crime scene at Ozark Inn within (6) six minutes of arrival. This was Jordon and Simrin room number which Patel in first 911 call reporting wanted Springfield, PD to stop car. (Pet.App. 37a-148a, at ¶¶ 310).

Pleads on 3/1/19, Springfield PD officers, as result of 911 call at 11:30 pm reference wellness check “**check person**” had a duty “protect and served” all defendants, Springfield PD dispatch units had a direct duty in accordance with the policies wellness check “check every room” at Ozark Inn for wellness check and manpower to do so. (Pet.App. 37a-148a, at ¶¶ 311). On 3/2/19, Springfield PD officers are seen leaving the hotel at 11:36 pm., within (6) six minutes of arrival, purports race-based discriminatory intent.

After, coconspirators, Simrin, and Jordon's vehicle speedy out of Ozark Inn hotel parking lot minutes before defendant, Springfield PD officers arrived at the hotel at 11:30 pm. (Pet.App. 37a-148a, at ¶¶ 312). Pleads as a direct and proximate

result of all coconspirators on 3/2/19 Williams, Patton, Springfield PD and other officers' egregious collusion with...coconspirators deprived plaintiffs of civil rights to life, breach invitee contract and intentionally failing to find plaintiff, Allen, Jr. body on the second floor in front of room #230 in timely manner at 11:30 pm, on 3/1/2019. (Pet.App. 37a-148a, at ¶¶ 313).

Coconspirators, Gomez, Jordon, Simrin, Stoddard, Slobig, Patel, Laxmi Enterprise, and Ozark Inn, defendants as private persons, jointly engaged with state officials Springfield, PD. In the prohibited action, they are acting under color of law for purposes of the statute. To act under color of law does not require that the accused be an officer of the State. It is enough that Gomez, Jordon, Simrin, Stoddard and Slobig, Patel, Laxmi Enterprise, Inc. and Ozark Inn, were willful participants in a joint activity with the state actor, Springfield PD, officers and agents." Ante, at 941, quoting, Adickes v. S. H. Kress & Co., supra, at 152, in turn quoting United States v. Price, 383 U. S. 787, 794 (1966).

Amended complaint pleads on 3/1/19, coconspirators, Springfield PD officers capture by video surveillance of Ozark Inn leaving crime scene and wellness check in six minutes purports, intentional discrimination, conspiracy and collusion with the coconspirators, Jordon, Slobig, Stoddard and Simrin in Room #230, with Patel in 911 call reporting wanted Springfield, PD to stop car. (Pet.App. 37a-148a, at ¶¶ 325a-330a). Perfected the murder and loss of life conspiracy. See (Pet.App. 37a-148a, at ¶¶ 322-326), including Gomez, Jordon, Simrin Stoddard and Slobig, Springfield PD, and agents reached an understanding by misconduct to violate Allen, Jr.[his] rights to life and contract."

Accordingly, the Court shall liberally grant petition for a writ of certiorari, in conflict reverse the judgment of the Court of Appeals and the case be remanded for further proceedings.

In the United States Court of Appeals, Eighth Circuit held in Glick v. Western Power Sports, Inc., 944 F.3d 714 (2019). Motions to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) and denying Glick's motion for entry of default against WPS. Having jurisdiction pursuant to 28 U.S.C. § 1291, we affirm.

Further cited although detailed allegations are not required to survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, `to state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id.

Unlike the *Glick v. Western Power Sports, Inc., supra* here, petitioners, Allen, Sr. and Maldonado amended complaint pleads facial plausibility, when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Coconspirators, Simrin, Slobig, and Jordon in renting of hotel rooms on different floors at Ozark Inn on 3/1/2019 at 1:00 pm. Pleads on 3/1/19, Springfield PD officers, as result of 911 call at 11:30 pm reference wellness check "check person" had a duty "protect and served" all defendants, Springfield PD dispatch units had a direct duty in accordance with the policies wellness check "check every room" at Ozark Inn for wellness check and workforce to do so. (Pet.App. 37a-148a, at ¶¶ 211-325). On 3/2/19, Springfield PD officers are seen leaving the hotel at 11:36 pm., within (6) six minutes of arrival, which was intentional that purports race-based discriminatory intent.

Amended complaint Pleads on 3/1/19, Springfield PD officers, as result of 911 call at 11:30 pm reference wellness check "**check person**" had a duty "protect and served" all defendants, Springfield PD dispatch units had a direct duty in accordance with the policies wellness check "check every room" at Ozark Inn for wellness check and workforce to do so. (Pet.App. 37a-148a, at ¶¶ 211-311). On 3/2/19, Springfield PD officers are seen leaving the hotel at 11:36 pm., within (6) six minutes of arrival, purports race-based discriminatory intent.

On 3/1/19 the misconduct of coconspirators, Bipin J. Patel, d/b/a, Ozark Inn, and Springfield PD on 3/1/19 responded to 911 calls and allegedly officer from dispatch 911 call advise officers investigated room #142, at Ozark Inn. (Pet.App. 37a-148a, at ¶¶ 310), pleads Springfield PD officers, discovered mask, and left the crime scene at Ozark Inn within (6) six minutes of arrival. This was Jordon and Simrin room number which Patel in the first 911 call reporting wanted Springfield, PD to stop car. (Pet.App. 37a-148a, at ¶¶ 310).

After, coconspirators, Simrin, and Jordon's vehicle speedy out of Ozark Inn hotel parking lot three minutes before defendant, Springfield PD officers arrived. At the hotel at 11:30 pm. (Pet.App. 37a-148a, at ¶¶ 312). Pleads as a direct and proximate result of all coconspirators on 3/2/19 Williams, Patton, Springfield PD and other officers' egregious collusion with...coconspirators deprived plaintiffs of civil rights to life, breach invitee contract and intentionally failing to find plaintiff, Allen, Jr. body.

On 3/1/19 Gomez, Slobig, and Stoddard remain in hotel with decedent Allen, Jr. body lying in doorway of room #230, until 12:11 am, on 3/2/19, then Slobig and Stoddard left walking with dog, and Gomez. (Pet.App. 37a-148a, at ¶¶ 1-27). In the guise of night capture by camera leaving at 12:13 am, 3/2/19, with coconspirators, Bipin Patel witnesses, all of murders Gomez, Slobig, and Stoddard leaving hotel. This conduct was caught on camera before the second 911 call by another invitee, which

Springfield PD officers returned and arrived at 12:16 am.

Leavening petitioners body lying on the second floor balcony in front of room #230 in timely manner since 11:30 pm, on 3/1/2019. (Pet.App. 37a-148a, at ¶¶ 313). amended complaint pleads elements of claim under § 1981,1983 and 1985 which divided into four parts for analysis: (1) membership in a protected class, (2) discriminatory intent on the part of the defendant, (3) engagement in a protected activity, and (4) interference with that activity by the defendant." See. *Spirit Lake tribe of Indians v. NCAA*, 715 F.3d 1089, 1092 (8th Cir. 2013).

The Supreme Court shall disagree with the Eighth Circuit that where, as here, there are sufficient facts alleged in the complaint, the court need to address each individual claim to make a sufficiency determination on a 12(b)(6) motion to dismiss. Cf. *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009), as such ("[T]he complaint should be read as a whole, not parsed piece by piece to determine whether each allegation, in isolation, is plausible."). Accordingly, Supreme Court shall find that the amended complaint allege sufficient facts to state a claim for relief that is plausible on its face. Thus, the Eighth Circuit did err in affirming district court erroneous orders and judgment.

Next, on June 30, 2023, Maldonado and Allen pursuant to Fed. R. Civ. P. Rule 54, Judgments. Plaintiffs, request hearing Motions for Defaults Judgments against defendants, Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel E. Slobig and Seth Gomez. Motion request for leave to file vacate motion to defendant, Defendant, Gomez motion to dismiss or answer amended complaint out of time. Plaintiffs were not provided certificate service of motion to dismiss pleadings by defendant Gomez counsel in December of 2022, as mandated by the rules. As such, alleging civil rights violations of plaintiff's most sacred civil and constitutional rights to life and due process rights was served amended complaint on 4/18/22 on all defendants and had been in default since 5/18/22.

Where proper service was had defendant failed to make any defense within time provided by law, application for judgment by default could be referred to the clerk or presented again to the district court on filing of appropriate affidavit as to amount due from defendant to plaintiff. See *Fisher v. Taylor*, 1 F.R.D. 448 (D.C. Tenn. 1940). Once a defendant's fails to file a responsive answer, he is in default, and entry of default may be made by either clerk or judge. See *Jackson v. Beech*, 636 F.2d 831, 205 U.S. 84 (App. D.C. 1980). Thus, the court shall find affidavit as to amount due from defendant to plaintiff.

Also plaintiffs filed Joint Affidavit Ex-A annexed hereto and evaluation of claims for Court and Clerk granting Default Judgment as matter of law-Ex-B-B12 annexed hereto reference herein. Thus, the court shall find the defendants, Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel E. Slobig and Seth Gomez,

who all were in absolute default for failing to answer, defend or appear at said hearing to defend complaint in timely manner against the defendants, as a matter of law. Accordingly, district Court scheduled hearing date on August 3, 2023, as plaintiffs may be heard on submitting Default Judgments damages and on all pending written motions before the court.

#### **Appearances for Default Motion Hearing**

This Civil Rights complaint was filed by plaintiffs, Maldonado and Allen, Sr. on March 1, 2022, stems from alleging egregious civil and constitutional rights violations of plaintiffs right to life, equal protection and due process rights of law. The plaintiffs, Maldonado and Allen appeared in person for hearing on August 3, 2023. On motion hearing for Default Judgments against all mention defendants, coconspirators, Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel E. Slobig and Seth A. Gomez. All defendants fail to appear for hearing for default judgments. However, District Court denied motion for Default Judgments.

The court *sua sponte* dismissal orders and judgment of plaintiffs first amended petition on August 7, 2023; that after plaintiffs testimony on August 3, 2023, the court moved to taking case under advisement *sua sponte* literally and arbitrarily granted Motions to Dismiss for failure to state a claim on August 7, 2023, for defendants, Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel E. Slobig, when neither defendant filed a motion to dismiss.

Immediately, Maldonado and Allen appeal the district court erred in denying motion for entry of default against respondents, Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel E. Slobig and Seth A. Gomez. because respondents, failure to timely respond, answer, defend or appear said hearing on August 3, 2023. "The Eighth Circuit review the district court's denial of a motion for default judgment for an abuse of discretion." *Norsyn, Inc. v. Desai*, 351 F.3d 825, 828 (8th Cir. 2003). In denying Maldonado and Allen 's motion for entry of default, the Eighth Circuit held and cited district court denial properly relied on *Marshall v. Baggett*, 616 F.3d 849 (8th Cir. 2010).

In *Marshall supra*, 8<sup>th</sup> Circuit Court vacated the district court's entry of default judgment against a party who failed to file a timely answer because, notwithstanding the untimeliness of the answer, the complaint was insufficient to state a claim. 616 F.3d at 852-53. the Eighth Circuit explained that, while "it is of course appropriate for a district court to enter a default judgment when a party fails to appropriately respond in a timely manner[.]" it is nonetheless "incumbent upon the district court to ensure that the unchallenged facts constitute a legitimate cause of action prior to entering final judgment." Id. (internal quotation marks omitted).

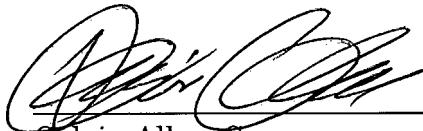
#### **CONCLUSION**

Petitioners respectfully submit the amended complaint filed on April 18, 2022. State claims upon which relief can be granted against above respondents, Seth Gomez, Baily D. Stoddard, Dominic L. Jordon, Amanda L. Simrin, Rachel E.

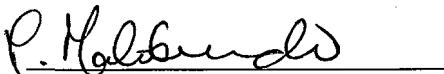
Slobig and Ozark, Inn, Bipin J. Patel, detective Kelly Patton, Springfield Police Department, and chief of police, Paul F Williams. As such Writ shall be granted.

WHEREFORE, Petitioners, Allen, Sr. and Maldonado prays Supreme Court grant petition for a writ of certiorari, reverse the December 3, 2024, and vacate the judgment and to do substantial justice and any other relief this Court deems fair and just.

Respectfully submitted,



Calvin Allen, Sr.  
1230 N. National Avenue  
Springfield, Missouri 65802  
417-873-3498



Marixia Maldonado.  
1230 N. National Avenue  
Springfield, Missouri 65802  
417-873-3498

June 14<sup>th</sup>, 2025.

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

---

No. 23-3161

---

Calvin Allen, Sr; Marixia Maldonado,

Plaintiffs-Appellants,

v.

Seth Gomez, Bipin J. Patel, Individual and Corporate Capacity;  
Laxmi Enterprises, Inc., Corporate Capacity,

Defendants-Appellees,

Ozark Inn,

Defendant,

Chief Paul F. Williams, Individual and Official Capacity; Detective Kelly Patton,  
Individual and Official Capacity; Springfield Police Department, Individual and  
Corporate Capacity; Amanda L. Simrin, Individual Capacity; Domonic L. Jordon,  
Individual Capacity; Baily D. Stoddard, Individual Capacity; Rachael E. Slobig,  
Individual Capacity,

Defendants-Appellees,

---

Appeal from U.S. District Court for Western District of Missouri-Springfield  
(6:22-cv-03041) MDH

---

**JUDGMENT**

Before SMITH, ERICKSON, and KOBES, Circuit Judges.

This appeal from the United States District Court was submitted on the  
record of the district court and briefs of the parties.