

No. 25-1108

IN THE

Supreme Court of the United States

**CORPORAL CHRISTOPHER ZOOK,
DEPUTY JACOB MARTINEZ,
DEPUTY LEONARDO GUZMAN,**

Petitioners,

v.

**SCOTT FUQUA, AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF JASON ROYBAL,**

Respondent.

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

**RESPONDENT'S BRIEF IN RESPONSE TO
SUPPLEMENTAL BRIEF FOR PETITIONERS
SUGGESTING MOOTNESS AND REQUESTING
VACATUR OF THE JUDGMENT BELOW**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
I. INTRODUCTION.....	1
II. ARGUMENT	1
a. The Judgment is unreviewable due to the acts of both parties	1
b. The video evidence would not have led to a different result.....	3
c. Equity determines the disposition after mootness.....	3
d. The public interest in judicial precedents militates against vacatur.	5
III.CONCLUSION	5

TABLE OF AUTHORITIES

Cases	Pages
<i>Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S.</i> <i>Philips Corporation</i> , 510 U.S. 27 (1993).....	5
<i>United States Bancorp Mortgage Company v.</i> <i>Bonner Mall Partnership</i> , 513 U.S. 18 (1994).....	3,4,5
<i>United States v. Munsingweuar, Inc.</i> , 340 U.S. 36 (1950).....	4
Statutes and Rules	
42 U.S.C. Section 1983.....	2
28 U.S.C. Section 2106.....	4
Rule 41, Federal Rules of Civil Procedure	2

RESPONDENT'S BRIEF IN RESPONSE TO SUPPLEMENTAL BRIEF

I. Introduction

This appeal is now moot because of the Order dismissing this case and remanding it to the First Judicial District of New Mexico.

The Petition in this Court for Certiorari is obviously and undeniably now moot. That does not automatically lead to vacatur of the Judgment in the Court of Appeals.

II. Argument

A. The Judgment is unreviewable due to the acts of both parties.

This Court should not vacate the judgment of the United States Court of Appeal for the Tenth Circuit. It was not the Respondent alone who made the judgment unreviewable. The case would not have been dismissed without the consent of the Defendant, the Petitioner in this Court. It is not equitable that the Defendant should receive the benefit of vacatur. Petitioners have already received all benefits which are fair from the dismissal of the Federal claim against them.

This is not like other cases on this subject in which one of the parties is seeking to prevent the other party from receiving an undeserved benefit. In this case, the very claim which was preserved by rulings both in the district court and in the 10th

Circuit has been voluntarily dismissed, but only with the consent of the Defendants/Petitioners. The potential damages which would not be subject to a cap and which could have been awarded on the Plaintiff's Civil Rights claim under 42 U.S.C § 1983 are now no longer a prospect, do not have to be defended against, and now present no risk to Defendants. The reason Plaintiffs/Respondents moved to dismiss the case or moved to dismiss the Federal claim was that the remedy provided by state law appeared to be adequate just as a practical matter, considering the length of time and delay occasioned by the Defendant/Petitioner's refusal to accept the law and precedent from the District Court in the appeal to the 10th Circuit, accept the result of the two Courts below who considered the case, and continue to look for every possible means to avoid having to actually defend the case on the merits. Defendants have still never even filed an Answer! Partly because they were such a legal pest with their continued appeals, Motions for Rehearing, and repetition of failed arguments, the Defendants/Petitioners got a break with the dismissal of the federal claim.

The case could not have been dismissed on the Motion filed in District Court without the consent of the Defendants/Petitioners. Rule 41 requires such consent. Although this is not a typical settlement, the Defendant/Petitioners received the benefit of dismissal — the ultimate benefit to them —which was possible under the Federal claim.

B. The video evidence would not have led to a different result.

Even if certiorari had been granted, and the Petitioners had somehow prevailed on their argument concerning consideration of the video evidence in a Motion to Dismiss, the victory would have been pyrrhic for this case. Both the District Court and the 10th Circuit opinions made clear that the consideration of video evidence in the Motion to Dismiss would have made no difference in the outcome because the evidence would not have blatantly contradicted the allegations of Plaintiff's Complaint. App. 15a-17a, 176a-181a. Neither would the attack on Plaintiff's pleadings and not just on the pleadings, but on Plaintiff's attorneys themselves, have made any difference. Plaintiff had already amended the Complaint, again with the consent of the Defendants, and the case was going to proceed regardless. This was therefore the amazing appeal without any point.

C. Equity determines the disposition after mootness.

The Courts dispose of moot cases and the matter most consonant to justice in the view of nature and character if the conditions which have caused the case to become moot. *United States Bancorp Mortgage Company v. Bonner Mall Partnership*, 513 U.S. 18 (1994). Although the Supreme Court may not consider the merits of a case in which judgment has become moot it may make such a disposition of the whole case as justice may require. Equity rules.

In *Bonner*, the Court had granted a petition for writ of certiorari in an appeal filed by Bancorp from the 9th Circuit Court of Appeals based on a decision involving a bankruptcy issue. The parties had already briefed the case on its merits in the Supreme Court.

The statute which provides power to vacate a judgment is 28 U.S.C. §2106. It provides that the Court may “remand the cause and direct the entry of such appropriate judgment, decree, or Order or require such further proceedings to be had as may be just under the circumstances.”

In the discussion in *Bonner* of the decision of the Court in *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), Justice Scalia pointed out that at least three cases had been dismissed for mootness without vacatur during the four terms preceding the *Munsingwear* decision. 513 U.S. 18, 23-24. This Court disposes of moot cases in view of the “nature and character of the conditions which have caused the case to become moot.” *Bonner*, 513 U.S. 18, 24. Vacatur is an extraordinary remedy and its use is based on equitable entitlement. *Id.* at 26.

The *Bonner* Court determined that the vacatur decision is determined case by case on equitable premises, because “exceptional circumstance” may sometimes entitle a party to vacatur or deprive a party of vacatur depending on those circumstances.

This is not a case in which vacatur is automatically, without further consideration, the correct action. Certiorari was not granted. The

dismissal of the Federal claim was not unilateral. Defendants have already benefited from the dismissal and will continue to benefit from it. The equities do not justify additional benefit to the Respondents by vacatur of the 10th Circuit judgment.

D. The public interest in judicial precedents militates against vacatur.

The public interest in judicial precedents which are “presumptively correct” are “valuable to the legal community as a whole.” These decisions are not the property of private litigants and “should stand unless a Court concludes that the public interest would be served by a vacatur.” *Bonner*, 513 U.S. 18, 26-27, quoting *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corporation*, 510 U.S. 27, 4 (1993). Otherwise, the remedy of vacatur can serve as a “refined form of collateral attack on the judgment”. *Id.* at 27. In the instant case, the precedents from the two reviewing courts should stand, both to honor their wisdom and to preserve their holdings and rationale.

III. Conclusion

None of the cases cited by Petitioners match this case. None involved benefits already received (as in a settlement) in a case dismissed with the Defendant’s consent, with an added bonus and benefit of vacatur provided then by this Court.

The Petitioner’s request for vacatur should be denied.

Respectfully submitted,

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