

Case No. _____

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

IN RE ROSALIND HOLMES,

Petitioner,

Emergency Petition for Writ of Mandamus and/or Prohibition

To the Butler County Area III Court, West Chester Ohio

(Case No's CVG 2100651, CVF2001041, CVG 2100528 & CVG1901594)

To Ohio's Twelfth District Court of Appeal's

(Case No's CA-2020-04-0050, CA-2021-05-0046, 2021-09-0108 and CA-2021-09-0118)

To The Ohio Supreme Court

(Case No's 2022-0683, 2022-0662 & 2022-0793)

To The United States District Court for the Southern Division of Ohio

(Case No's:1:21-cv-00444, No.'s 1:21-cv-00505, No 1:20-cv-00825)

To the United States Court of Appeals for the Sixth Circuit

(Case No's 21-3791, No: 21-3715, No: 21-3731, No: 21-3206, 22-3652 & 22-3664)

Respondents

Rosalind Holmes
6673 Boxwood Lane Apt. C
Liberty Township, Ohio 45044
513-306-8837 (phone)
Pro Se

QUESTION PRESENTED

1. Whether the Butler County Area III Court, West Chester Ohio, clearly and indisputably abused its' discretion when it ordered a forcible entry and detainer action against petitioner, on March 4, 2020? (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: CVG 1901594, Butler County Area III Court, West Chester, Ohio), (Exhibit A, Attached)
2. Whether the Butler County Area III Court, West Chester Ohio, clearly and indisputably abused its' discretion and denied appellant due process of law and equal protection by denying appellants motion for Rule 60(b)(4)(5) relief from judgment, on August 23, 2021, and September 27, 2021? (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: CVG 1901594, Butler County Area III Court), (Appendix C)
3. Whether Ohio's Twelfth Appellate Court of Appeals clearly and indisputably abused its' discretion and denied appellant due process of law and equal protection by denying appellants motion for Rule 60(b)(4)(5) relief from judgment? (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: 2021-09-118, Ohio's Twelfth District Court of Appeals), (Appendix D)
4. Whether the Butler County Area III Court, located in West Chester, Ohio lacked subject-matter jurisdiction, violated Ohio Revised Code §§ 1907.03 and 1907.031, the Ohio Rules of Civil Procedure 12(H)(3) and 13(J) when they granted Lakefront at West Chester, LLC. forcible entry and detainer action against, Petitioner, Rosalind Holmes, on August 19, 2021? (*Lakefront v Holmes*, No: CVG 2100651, Butler County Area III Court, Appendix P)
5. Whether the Butler County Area III Court deprived petitioner of her legal rights under Title VIII, FHA Housing Discrimination, Ohio Revised Code § 4112, etc. and violated Petitioners' rights under the First and Fourteenth Amendments to the U.S. Constitution when they granted Lakefront at West Chester, LLC. forcible entry and detainer action against, Petitioner, Rosalind Holmes, on August 19, 2021? (*Lakefront v Holmes*, No: CVG 2100651, Butler County Area III Court, Appendix P)
6. Whether the Butler County Area III Court, West Chester Ohio, clearly and indisputably abused its' discretion, violated the Ohio Rules of Civil Procedure 12(H)(3) and 13(J) and O.R.C §§ 1907.03 and 1907.031, and failed to follow binding precedent including but not limited to the Ohio Supreme Court¹ case of *Pratts v. Hurley*, 102 Ohio St. 3d 81 (Ohio 2004) and the United States Supreme Court

¹ A court cannot create its own jurisdiction—it only has "such jurisdiction as may be provided by law." Ohio Constitution, Article IV, Section 3 (B)(2). In relevant part, the Butler County Area III Court's jurisdiction is codified in Ohio Revised Code 1907.031 and 1907.03. In relevant part, O.R.C 1907.031(A)(6), provides "Except as otherwise provided in section 1907.03 of the Revised Code... a county court has original jurisdiction within its district in all of the following actions or proceedings... in an action of forcible entry and detainer..." Pursuant to O.R.C. 1907.03(A) "county courts have exclusive original jurisdiction in civil actions for the recovery of sums not exceeding five hundred dollars and original jurisdiction in civil actions for the recovery of sums not exceeding fifteen thousand dollars. (B) If a counterclaim is filed in a civil action in a county court and the counterclaim exceeds fifteen thousand dollars, the county court shall certify the action to the court of common pleas. (C) If a civil action is certified to the court of common pleas pursuant to division (B) of this section, the clerk of the county court forthwith shall transmit to the court of common pleas the original papers and pleadings in the action and a certified transcript of the journal entries in it. The action then shall proceed in the court of common pleas as if it had been originally commenced in that court. The word shall imposes a mandatory requirement.

In *Pratts v. Hurley*, 102 Ohio St. 3d 81 (Ohio 2004), 102 Ohio St. 3d 81 (Ohio 2004), the Ohio Supreme Court explained, "[t]here is a distinction between a court that lacks subject-matter jurisdiction over a case and a court that improperly exercises that subject-matter jurisdiction once conferred upon it. "The term encompasses jurisdiction over the subject matter and over the person. *State v.*

case of *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83 (1998) by granting Lakefront at West Chester, LLC., a forcible entry and detainer against Petitioner, Rosalind Holmes, on August 19, 2021? (*Lakefront v Holmes*, No: CVG 2100651, Butler County Area III Court, Appendix P)

7. Whether Ohio's Twelfth Appellate Court of Appeals clearly and indisputably abused its' discretion, lacked subject-matter jurisdiction pursuant to O.R.C. §§ 1907.03 and 1907.031, violated Ohio Law, the Ohio Rules of Civil Procedure 12(H)(3) and 13(J), and ignored binding precedent including but not limited to the Ohio Supreme Court case of *Pratts v. Hurley*, 102 Ohio St. 3d 81 (Ohio 2004) and the United States Supreme Court² case of *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83 (1998), when it denied Petitioner's Motion to Void the Butler County Area III Court's forcible entry and detainer action and dismissed Petitioner's appeal as moot, on December 20, 2021 and May 10, 2022? (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals, Appendix Z)
8. Whether Ohio's Twelfth Appellate Court of Appeals deprived petitioner of her legal rights under Title VIII, FHA Housing Discrimination, Ohio Revised Code § 4112, etc. and violated Petitioners' rights under the First and Fourteenth Amendments to the U.S. Constitution when it denied Petitioner's Motion to Void the Butler County Area III Court's forcible entry and detainer action and dismissed Petitioner's appeal as moot, on December 20, 2021 and May 10, 2022? (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals, Appendix Z)
- 1) Whether the Ohio Supreme Court clearly and indisputably abused its' discretion, lacked subject-matter jurisdiction pursuant to O.R.C. §§ 1907.03 and 1907.031, violated the Ohio Rules of Civil Procedure 12(H)(3) and 13(J), Ohio law and ignored binding precedent including but not limited to the Ohio Supreme Court case of *Pratts v. Hurley*, 102 Ohio St. 3d 81 (Ohio 2004) and the United States Supreme Court³ case of *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83 (1998), by granting Respondent, Honorable Judge C. Caparella-Kraemer's Motion to Dismiss under Rule 12(b)(6) which was contrary to the merits and precedent set by the Ohio Supreme

Parker, [95 Ohio St.3d 524](#), 2002-Ohio-2833, [769 N.E.2d 846](#), ¶ 22 (Cook, J., dissenting). Because subject-matter jurisdiction goes to the power of the court to adjudicate the merits of a case, it can never be waived and may be challenged at any time. *United States v. Cotton* (2002), [535 U.S. 625, 630](#), [122 S.Ct. 1781](#), [152 L.Ed.2d 860](#); *State ex rel. Tubbs Jones v. Suster* (1998), [84 Ohio St.3d 70, 75](#), [701 N.E.2d 1002](#). It is a "condition precedent to the court's ability to hear the case. If a court acts without jurisdiction, then any proclamation by that court is void." *Id.*; *Patton v. Diemer* (1988), [35 Ohio St.3d 68](#), [518 N.E.2d 941](#), paragraph three of the syllabus.

² "It is true that the issue of subject-matter jurisdiction can be challenged at any time and that a court's lack of subject matter jurisdiction renders that court's judgment void *ab initio*. *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio- 1980, 806 N.E.2d 992. Subject-matter jurisdiction **cannot be waived and may be raised at any time**. *State ex rel. Bond v. Velotta Co.*, [91 Ohio St.3d 418, 419](#) (2001). Additionally, the United States Supreme Court has held, "Because **subject-matter jurisdiction involves a court's power to hear a case, it can never be forfeited or waived**. Thus, defects require correction regardless of whether the error was raised in district court and may be challenged at any time." *United States v. Cotton* (2002), 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860; See, e.g., *Louisville Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908).

In *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83 (1998) the United States Supreme Court determined that Article III generally requires a federal court to satisfy itself of its jurisdiction over the subject matter before it considers the merits of a case. Subject matter jurisdiction is a "threshold question that must be resolved ... before proceeding to the merits." "For a court to pronounce upon [the merits] when it has no jurisdiction to do so," *Steel Co.* declared, "is ... for a court to act ultra vires." [523 U.S. at 101-102](#). *Steel Co.* reasoned that subject-matter jurisdiction necessarily precedes a ruling on the merits. Accordingly, subject-matter delineations must be policed by the courts on their own initiative even at the highest level. See *Steel Co.*, [523 U.S. at 94-95](#); [Fed. Rule Civ. Proc. 12\(h\)\(3\)](#) ("Whenever it appears . . . that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."); [28 U.S.C. § 1447\(c\)](#) (1994 ed., Supp. III)

³ When a prohibition claim targets a statutorily created tribunal, the analysis must consider whether the General Assembly empowered the tribunal to proceed. *State ex rel. Natalina Food Co. v. Ohio Civ. Rights Comm.*, [55 Ohio St.3d 98, 100](#), [562 N.E.2d 1383](#) (1990). As a county court, the Butler County Area III Court is a statutory creation with "only limited jurisdiction, and may exercise only such powers as are directly conferred by legislative action." *State ex rel. Johnson v. Perry Cty. Court*, [25 Ohio St.3d 53, 54](#), [495 N.E.2d 16](#) (1986). A county court has statutory jurisdiction over, among other things, civil actions in which the sum sought for recovery does not exceed amounts prescribed by law, [R.C. 1907.03\(A\)](#); See also [R.C. 1907.031](#) (further specifying the scope of a county court's jurisdiction). *State ex rel. Fiser v. Kolesar*, 2020 Ohio 5483 (Ohio 2020)

- 2) Whether the Ohio Supreme Court deprived petitioner of her legal rights under Title VIII, FHA Housing Discrimination, Ohio Revised Code § 4112, etc. and violated Petitioners' rights under the First and Fourteenth Amendments to the U.S. Constitution by granting Respondent, Honorable Judge C. Caparella-Kraemer's Motion to Dismiss under Rule 12(b)(6) which was contrary to the merits and precedent set by the Ohio Supreme Court and the U.S. District Court? (*Holmes vs. The Honorable Judge Courtney Caparella-Kramer*, No: 2022-0683, Ohio Supreme Court, Appendix BB)
9. Whether the United States District Court for the Southern Division of Ohio clearly and indisputably abused its' discretion when they failed to follow binding precedent in the Sixth Circuit,⁴ the United States Supreme Court, deprived petitioner of her legal rights under Title VIII, FHA Housing Discrimination, Ohio Revised Code § 4112, etc. and violated Petitioners' rights under the First and Fifth Amendments to the U.S. Constitution? (*Lakefront vs. Holmes*, No:1:21-cv-00444, United States District Court, Appendix L & M)
- a.) Remanded Lakefront at West Chester LLC. eviction proceeding back to the Butler County Area III Court in the matter of *Lakefront vs. Holmes* Case No: 1:21-cv-00444, (*Lakefront vs. Holmes*, No:1:21-cv-00444, United States District Court, Appendix L & M)

⁴ Holmes' claims of housing discrimination filed pursuant to the Fair Housing Act ([42 U.S.C. §§ 3603\(a\) & \(b\) 3617](#)), the Civil Rights Act ([42 U.S.C. §§ 1981, 1982](#)), and [Ohio Rev. Code Ann. § 4112.02\(H\)\(1\)](#). The analysis of the Holmes' federal housing discrimination claims, as well as their state claim, is governed by the same legal framework. See *Selden Apartments v. U.S. Dep't of Hous. Urb. Dev.*, [785 F.2d 152, 159](#) (6th Cir. 1986); *Mitchell v. Toledo Hosp.*, [964 F.2d 577, 582](#) (6th Cir. 1992). Specifically, they turn on the three-part evidentiary standard first developed by the Supreme Court for employment discrimination cases in *McDonnell Douglas Corp. v. Green*, [411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668](#) (1973). *Mencer v. Princeton Sq. Apartments*, [228 F.3d 631, 634](#) (6th Cir. 2000)

The courts have uniformly held that a plaintiff establishes a *prima facie* case under either [42 U.S.C. § 1981, 1982](#) or [42 U.S.C. § 3601 et seq.](#) by proving: (1) That he or she is a member of a racial minority; (2) That he or she applied for and was qualified to rent or purchase certain property or housing; (3) That he or she was rejected; and (4) That the housing or rental property remained available thereafter. See *Mencer*, 228 F.3d at 634 (noting "[c]ourts have adapted [the McDonnell Douglas] test to fair housing claims by requiring the plaintiff to first establish a *prima facie* case of discrimination"). See, e.g., *Phiffer*, [648 F.2d at 551](#) (applying elements in § 1982 action); *12 Lofts Realty*, [610 F.2d at 1038](#) (applying elements in Title VIII, Fair Housing Action); *Sandford v. R.L. Coleman Realty Co., Inc.*, [573 F.2d 173, 175](#) (4th Cir. 1978) (elements same under both the Civil Rights Acts, [§§ 1981 and 1982](#), and Fair Housing Act of 1968, [42 U.S.C. § 3610\(a\)](#)); *Shaw*, [558 F. Supp. at 312](#) (applying elements in actions under [§§ 1981 and 1982](#) and [42 U.S.C. § 3601 et seq.](#)); *Hobson v. George Humphreys, Inc.*, [563 F. Supp. 344, 351](#) (W.D.Tenn. 1982) (applying same elements in actions pursuant to [§ 1982](#) and [42 U.S.C. § 3601 et seq.](#)); and *Davis v. Mansards*, [597 F. Supp. 334, 345](#) (N.D.Ind. 1984) (applying same elements in actions pursuant to [§ 1982](#) and [42 U.S.C. § 3601 et seq.](#))

To establish a *prima facie* case of unlawful retaliation, the plaintiff must demonstrate that: (1) he engaged in activity protected by Title VII; (2) this exercise of protected rights was known to the defendant; (3) the defendant thereafter took a materially adverse action against the plaintiff or subjected the plaintiff to severe and pervasive retaliatory harassment; and (4) there was a causal connection between the protected activity and the materially adverse action. *Evans v. Prospect Airport Servs., Inc.*, [286 Fed.Appx. 889, 894](#) (6th Cir. 2008). Additionally, the plaintiff must demonstrate, *inter alia*, a causal connection between the protected activity (like filing a complaint for unlawful discrimination) and the employer's materially adverse action (such as termination). *Id.* Causation is found where the plaintiff "proffer[s] evidence sufficient to raise the inference that [the] protected activity was the likely reason for the adverse action." *Michael v. Caterpillar Fin. Servs. Corp.*, [496 F.3d 584, 596](#) (6th Cir. 2007) (quoting *Dixon v. Gonzales*, [481 F.3d 324, 333](#) (6th Cir. 2007)). The significance of timing is most apparent in our decisions pertaining to the "causal connection" element for Title VII retaliation claims, which similarly employ a *McDonnell Douglas* burden-shifting scheme. See *Mickey v. Zeidler Tool Die Co.*, [516 F.3d 516, 523](#) (6th Cir. 2008).

Causation can be proven indirectly through circumstantial evidence such as suspicious timing. See *Mickey*, [516 F.3d at 523, 525](#). Specifically, this Court has found that temporal proximity between an assertion of Title VII rights and a materially adverse action, is sufficient to establish the causal connection element of a retaliation claim "[w]here an adverse employment action occurs *very close* in time after an employer learns of a protected activity." *Id.* at 525; see also *DiCarlo v. Potter*, [358 F.3d 408, 421](#) (6th Cir. 2004) ("[I]n certain distinct cases where temporal proximity between the protected activity and the adverse employment action is acutely near in time, [] close proximity is deemed indirect evidence such as to permit an inference of retaliation to arise."). Where the nexus is not "very close," we have declined to find a causal connection based on timing alone. See *Mickey*, [516 F.3d at 523](#); *Michael*, [496 F.3d at 596](#). Just as a reasonable juror may infer a plaintiff's undertaking of a protected activity was the likely reason for the defendant's adverse action when the temporal proximity is "very close" in retaliation cases, see *Mickey*, [516 F.3d at 523](#), so too could the juror infer discriminatory motives when the defendant refuses to consummate a purchase agreement for real property soon after discovering the racial identity of the prospective buyers. *Asmo v. Keane, Inc.*, [471 F.3d 588](#) (6th Cir. 2006)

Court and the U.S. District Court? (*Holmes vs. The Honorable Judge Courtney Caparella-Kramer*, No: 2022-0683, Ohio Supreme Court,
Appendix BB)

- b.) Failed to exercise authority under the exceptions to the doctrines of *Younger*, *Rooker-Feldman*, and the *Anti-Injunction Act* over Petitioner's Complaint of Landlord Discrimination under Title VIII in the matter of *Holmes vs. Lakefront*, Case No: 1:21-cv-00505, (*Holmes v Lakefront*, No:1:21-cv-00505, United States District Court, Appendix S & T)
- c.) Issued a filing injunction against Petitioner in the matter of *Holmes vs. Lakefront*, Case No: 1:21-cv-00505; (*Holmes v Lakefront*, No:1:21-cv-00505, United States District Court, Appendix S & T)
- d.) Dismissed petitioners' complaint for failure to state a claim in the matter of *Holmes vs. Lakefront*, Case No: 1:21-cv-00505; (*Holmes v Lakefront*, No:1:21-cv-00505, United States District Court, Appendix S & T)
- e.) Failed to grant petitioners' Motions for an Injunction or Stay and to Appoint Counsel in the matters of *Lakefront vs. Holmes* Case No: 1:21-cv-00444 and *Holmes vs. Lakefront*, Case No: 1:21-cv-00505. (*Lakefront vs. Holmes*, No:1:21-cv-00444, United States District Court, Appendix L & M) & (*Holmes v Lakefront*, No:1:21-cv-00505, United States District Court, Appendix S & T)
6. Whether the United States Court of Appeals for the Sixth Circuit clearly and indisputably abused its' discretion when they, failed to follow binding precedent established by the Sixth Circuit,⁵ the United States Supreme Court,⁶ deprived petitioner of her legal rights under Title VIII, FHA Housing Discrimination, Ohio Revised Code § 4112, etc. and violated petitioners' rights under the Fifth Amendments to the U.S. Constitution.
- a.) Remanded Lakefront at West Chester LLC. eviction proceeding back to the Butler County Area III Court in the matter of *Lakefront vs. Holmes* Case No: 21-3731; (*Lakefront vs. Holmes*, No: 21-3731, United States Court of Appeals for the Sixth Circuit, Appendix N & O)
- b.) Failed to exercise authority under the exceptions to the doctrines of *Younger*, *Rooker-Feldman*, and the *Anti-Injunction Act* over Petitioner's Complaint of Landlord Discrimination under Title VIII in the matter of *Holmes vs. Lakefront*, Case No: 21-3791; (*Holmes vs. Lakefront*, Case No: 21-3791, United States Court of Appeals for the Sixth Circuit, Appendix U)
- c.) Issued a filing injunction against petitioner in the matter of *Holmes vs. Lakefront*, Case No: 21-3791; (*Holmes vs. Lakefront*, Case No: 21-3791, United States Court of Appeals for the Sixth Circuit, Appendix U)

⁵ See footnote 4. *Younger v. Harris*, [401 U.S. 37](#), which held that unless "extraordinary circumstances" exist in which irreparable injury can be shown even in the absence of bad faith and harassment, a federal court must not intervene by way of granting injunctive or declaratory relief against a state court proceedings. On May 7, 2021, Holmes filed a Title VIII FHA Housing Discrimination in the Butler County Common Pleas Court, *Holmes vs Lakefront at West Chester, LLC* Case No: CV 2021-05-0639. Holmes argued that the Butler County Area III Court lacked of subject matter jurisdiction to hear Lakefront at West Chester, LLC., bad-faith, eviction actions filed to harass and prejudice Holmes, on May 14, 2021 *Lakefront at West Chester, LLC. vs Holmes* Case No: CVG 2100528 and June 16, 2021, *Lakefront at West Chester, LLC. vs Holmes* Case No: CVG 2100651. (paragraphs 34-36 of Holmes complaint *Holmes vs. Lakefront* Case No: 1-21-cv-00505, re-filed Aug. 5, 2021, in the U.S. District Court and Memo in Support of an Emergency Motion for a Stay, filed Aug. 25, 2021, Doc# 9, Page ID 1393 – 1396, *Lakefront vs. Holmes* Case No: 1-21-cv-00444, filed 06-30-2021 Obj. Mag. R&R, filed 07-30-2021, Doc# 24, Page ID 726-728), ([CM/ECF LIVE - U.S. District Court:OHSD \(uscourts.gov\)](#), (last accessed 09/03/2022),

Because Holmes' May 7, 2021, FHA Title VIII FHA Housing Discrimination Complaint divested the Butler County Area III Court of subject matter jurisdiction pursuant to O.R.C. 1907.03, the jurisdictional priority rule and Ohio Civil Rules of Procedure 12(H)(3) and 13(J). However, the Butler County Area III Court, failed to dismiss or certify the action over to the Butler County Common Pleas Court, in violation of O.R.C. 1907.03, the jurisdictional priority rule and Ohio Civil Rules of Procedure 12(H)(3) and 13(J). Despite Holmes' valid arguments of the Butler County Area III Court's lack of subject matter jurisdiction, and had failed to comply with Ohio Law, the United States District Court dismissed Holmes' complaint for failure to state a claim and applied the doctrines of *Younger*, *Rooker-Feldman*, and the *Anti-Injunction Act*. Even though, Holmes' argued and proved "extraordinary circumstances," existed that had caused irreparable injury.

⁶ See footnote 4 & 5. On every writ of error or appeal, **the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes**. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it. *M.C. L.M. Railway Co. v. Swan* 111 U.S. 379 (1884)

- d.) Dismissed petitioners' complaint for failure to state a claim in the matter of *Holmes vs. Lakefront*, Case No: 21-3791. (*Holmes vs. Lakefront*, Case No: 21-3791, United States Court of Appeals for the Sixth Circuit, Appendix U)
- 3) Failed to grant petitioners' Motions for an Injunction or Stay and to Appoint Counsel in the matters (*Holmes v Lakefront*, No: 21-3791, U. S. Court of Appeals Sixth Circuit), (Appendix U, Attached), (*Lakefront vs. Holmes*, No: 21-3731 & 21-3715, United States Court of Appeals for the Sixth Circuit), (Appendix, N & O) .

PARTIES TO THE PROCEEDING

1. Petitioner, Rosalind Holmes, is a resident of the State of Ohio 6673 Boxwood Lane Apt C Liberty Township, Ohio 45044.
2. Respondent, Judge C. Caparella-Kraemer, is a sitting Judge in the Butler County Area III Court, West Chester, Ohio, 9577 Beckett Rd # 300, West Chester Township, OH 45069
3. Respondent, Magistrate Judge Fred Miller, is a sitting Judge in the Butler County Area III Court, West Chester, Ohio, 9577 Beckett Rd # 300, West Chester Township, OH 45069
4. Respondent, Stephen W. Powell, is a sitting Presiding Judge in Ohio's Twelfth Appellate Court of Appeals Middletown, Ohio, 1001 Reinartz Blvd, Middletown, OH 45042.
5. Respondent, Michael E. Powell, is a sitting Presiding Judge in Ohio's Twelfth Appellate Court of Appeals Middletown, Ohio, 1001 Reinartz Blvd, Middletown, OH 45042.
6. Respondent, Robert A. Hendrickson, is a sitting Judge in Ohio's Twelfth Appellate Court of Appeals Middletown, Ohio, 1001 Reinartz Blvd, Middletown, OH 45042.
7. Respondent, Matthew R. Bryne, is a sitting Judge in Ohio's Twelfth Appellate Court of Appeals Middletown, Ohio, 1001 Reinartz Blvd, Middletown, OH 45042.
8. Respondent, Robin N. Piper, is a sitting Judge in Ohio's Twelfth Appellate Court of Appeals, Middletown, Ohio, 1001 Reinartz Blvd, Middletown, OH 45042.
9. Respondent, Maureen O'Connor, is a sitting Chief Justice in The Ohio Supreme Court, Columbus, Ohio, 65 S Front St, Columbus, OH 43215.
10. Respondent, Sharon L. Kennedy, is a sitting Chief Justice-Elect in The Ohio Supreme Court, Columbus, Ohio, 65 S Front St, Columbus, OH 43215.
11. Respondent, Patrick F. Fisher, is a sitting Justice in The Ohio Supreme Court, Columbus, Ohio, 65 S Front St, Columbus, OH 43215.
12. Respondent, R. Patrick DeWine, is a sitting Justice in The Ohio Supreme Court, Columbus, Ohio, 65 S Front St, Columbus, OH 43215.

13. Respondent, Michael P. Donnelly, is a sitting Justice in The Ohio Supreme Court, Columbus, Ohio, 65 S Front St, Columbus, OH 43215.
14. Respondent, Melody J. Stewart, is a sitting Justice in The Ohio Supreme Court, Columbus, Ohio, 65 S Front St, Columbus, OH 43215.
15. Respondent, Jennifer Brunner, is a sitting Justice in The Ohio Supreme Court, Columbus, Ohio, 65 S Front St, Columbus, OH 43215.
16. Respondent Karen L. Litkovitz is a sitting Magistrate in the United States District Court for the Southern Division of Ohio, Potter Stewart U.S. Courthouse, Room 103, 100 East Fifth Street, Cincinnati, Ohio 45202.
17. Respondent Susan J. Dlott is a sitting Judge in the United States District Court for the Southern Division of Ohio, Potter Stewart U.S. Courthouse, Room 103, 100 East Fifth Street, Cincinnati, Ohio 45202.
18. Respondent Stephanie K. Bowman is a sitting Magistrate in the United States District Court for the Southern Division of Ohio, Potter Stewart U.S. Courthouse, Room 103, 100 East Fifth Street, Cincinnati, Ohio 45202.
19. Respondent Timothy S. Black is a sitting Judge in the United States District Court for the Southern Division of Ohio, Potter Stewart U.S. Courthouse, Room 103, 100 East Fifth Street, Cincinnati, Ohio 45202.
20. Respondent Julia Smith Gibbons is a sitting Judge in the United States Court of Appeals for the Sixth Circuit, Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202.
21. Respondent Bernice B. Donald is a sitting Judge in the United States Court of Appeals for the Sixth Circuit, Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202.
22. Respondent Joan L. Larsen is a sitting Judge in the United States Court of Appeals for the Sixth Circuit, Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202.
23. Respondent Jeffrey S. Sutton is a sitting Chief Judge in the United States Court of Appeals for the Sixth Circuit, Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202.
24. Respondent Judge Ralph B. Guy, Jr. is a sitting Senior Judge in the United States Court of Appeals for the Sixth Circuit, Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202.
25. Respondent R. Guy Cole, Jr. is a sitting Judge in the United States Court of Appeals for the Sixth Circuit, Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202.
26. Respondent Judge Daniel E. Haughey is a sitting Judge in the Butler County Common Pleas Court, Government Services Center, 315 High Street, 3rd Floor, Hamilton, Ohio 45011.
27. Respondent Judge J. Gregory Howard is a sitting Judge in the Butler County Common Pleas Court, Government Services Center, 315 High Street, 3rd Floor, Hamilton, Ohio 45011.

28. The Landings at Beckett Ridge, 8251 Landings Blvd., West Chester Township, OH 45069.
29. Hill's Properties 4901 Hunt Rd., Suite 300, Cincinnati, OH 45242.
30. Columbia Debt Recovery LLC., DBA Genesis, PO BOX 3630, EVERETT, WA 98213.
31. Cincinnati Ohio Division of the Federal Bureau of Investigation 2012 Ronald Reagan Dr, Cincinnati, OH 45236.
32. The Office of Disciplinary Counsel of the Supreme Court of Ohio, 65 E State St Suite 1510, Columbus, OH 43215.
33. The Ohio Board of Professional Conduct, 65 South Front Street, Columbus, Ohio 43215-3431.
34. City of Cincinnati Law Department 801 Plum Street Suite 226, Cincinnati, Ohio 45202.
35. Attorney Amy Higgins Attorney Registration# 0080784, 3 East Fourth Street Suite 300 Cincinnati, OH 45202
36. Attorney Gregory Laux Attorney Registration# 0089493, 7750 Montgomery Road Suite 205 Cincinnati, OH 45236-4254
37. Premier Health – Atrium Medical Center One Medical Center Drive., Middletown, Oh 45005
38. Butler Behavioral Health Services, 1490 University Blvd A, Hamilton, OH 45011

STATEMENT OF RELATED PROCEEDINGS

This petition arises from the following matters:

Butler County Area III Court, West Chester, Ohio, Cases

The Landings at Beckett Ridge vs Rosalind Holmes, No: CVG 1901594, Butler County Area III Court.

Rosalind Holmes vs Lakefront at West Chester, LLC., Case No. CVF 2001041, Butler County Area III Court, West Chester, Ohio.

Lakefront at West Chester LLC vs Rosalind Holmes, Case No. CVG 2100528, Butler County Area III Court, West Chester, Ohio.

Lakefront at West Chester LLC vs Rosalind Holmes, Case No. CVG2100651, Butler County Area III Court West Chester, Ohio.

Ohio's Twelfth District Court of Appeals, Middletown, Ohio Cases

Rosalind Holmes vs Lakefront at West Chester, LLC., Case No. CA 2021-05-046, Ohio's Twelfth District Court of Appeals, Middletown Ohio.

The Landings at Beckett Ridge vs Rosalind Holmes, No: 2021-09-118, Ohio's Twelfth District Court of Appeals, Middletown Ohio.

Holmes vs Lakefront at West Chester, LLC., Case No. CA 2021-05-046, Ohio's Twelfth District Court of Appeals, Middletown Ohio.

Lakefront at West Chester LLC vs Rosalind Holmes, Case No. CA 2021-09-108, Ohio's Twelfth District Court of Appeals, Middletown Ohio.

Ohio Supreme Court, Columbus Ohio Case Cases

Landings at Beckett Ridge v. Holmes No: 2022-0662, Ohio Supreme Court, Ohio Supreme Court, Columbus, Ohio.

Lakefront of W. Chester, L.L.C. v. Holmes No: 2022-0793, Ohio Supreme Court

Rosalind Holmes v. Caparella-Kraemer, Case No. 2022-0683, Ohio Supreme Court, Columbus, Ohio.

U. S. District Court for the Southern District of Ohio, Cincinnati, Ohio Cases

Lakefront vs. Holmes, No:1:21-cv-00444, U. S. District Court S. D. of Ohio, Cincinnati, Ohio

Holmes vs Lakefront at West Chester, LLC., Case No. 1:21-cv-505, U. S. District Court S. D. of Ohio, Cincinnati, Ohio

Holmes vs U.S.A. et al., No 1:20-cv-00825, U. S. District Court S.D. of Ohio, Cincinnati, Ohio

U.S. Sixth Circuit Court of Appeals, Cincinnati, Ohio Cases

Lakefront vs. Holmes, No: 21-3731, U. S. Court of Appeals Sixth Circuit, Cincinnati, Ohio

Holmes vs. U.S.A. et. al., No: 21-3715, U. S. Court of Appeals Sixth Circuit, Cincinnati, Ohio

Rosalind Holmes vs Lakefront at West Chester, LLC., Case No. 21-3791, U. S. Court of Appeals Sixth Circuit, Cincinnati, Ohio

Holmes vs U.S.A. et.al., No: 21-3206, 21-3491 & 21-3521 U.S. Sixth Circuit Court of Appeals, Cincinnati, Ohio

In Re Rosalind Holmes Case No.'s 22-3652 & 22-3664, United States Court for the Sixth Circuit, Cincinnati, Ohio.

INTRODUCTION

This nearly twenty- year ongoing campaign of conspiratorial harassment, warrantless surveillance, discrimination, and otherwise illegal behavior involving David Clark, Former Executive Vice President of Macy's Inc., Thomas Cody, Former Vice Chair, Macy's Inc., Richard K. Jones, Bulter County Sheriff, Butler County, Ohio, Connie Rockey, Sergeant, Butler Cty. Ohio Sheriff, Honorable Jeffrey Schlessman, Assistant Prosecutor, Butler Cty. Ohio Area I Court, Michael Gmoser, Butler, Cty. Ohio Prosecutor, Butler Cty. Prosecutor Does, Debbie Bolser, Clerk, Butler Cty. Ohio Area I, II, & III Courts, Connie Miller, Assistant Clerk, Butler Cty. Ohio, Macy's Inc., Officials of the City of Cincinnati, Attorney Elizabeth Tuck, Freking, Myers, Reul LLC., Ohio Office of the Disciplinary Counsel, Cincinnati Division of the F.B.I., and many other co-conspirators.

The factual background included in Appendix KK summarizes approximately twenty years of the campaign of conspiratorial harassment involving defendants. As outlined in Appendix KK, Plaintiff was employed by Macy's Inc., formerly Federated Department Stores, from February 21, 2006 – September 29, 2006. Defendants secret conspiratorial campaign of discrimination, retaliation, harassment and otherwise unlawful actions and activities against Rosalind Holmes, began on April 24, 2006. It is important that the Court understands that the relentless campaign of conspiratorial discrimination, harassment, retaliation and other unlawful actions and activities resulted from plaintiff's April 24, 2006, criminal complaint filed against Christine Koper; plaintiff refusal to accept the employment separation agreements offered by Brian Cox, Director of Human Resources, at Macy's Inc.; Plaintiffs' June 27, 2006, complaint of race and religion discrimination and September 8, 2006, charge of retaliation filed with the OCRC and EEOC; and the September 29, 2006, false fraud accusations by Macy's management and their hired attorneys at Dinsmore & Shohl LLP. (Exhibits 48 & 49)

As a result, of plaintiff's employment discrimination litigation involving Macy's Inc., participation in a criminal investigation, mediation, and complaints against City police officers and detectives. The City of Cincinnati police force, City Solicitor's Office, Macy's Inc., David Clark and Thomas Cody, Macy's hired attorney's employed by Dinsmore and Shohl LLP., and many others held strong feelings of animosity, resentment, unlawfully and improperly shared the false fraud allegations about Rosalind Holmes, amongst many other attorneys, law enforcement, Macy's management, FBI-Cincy, State of Ohio and many other co-conspirators. The misinformation, and improper sharing of the false fraud allegations, anger, and resentment held by David Clark, SVP of HR, Thomas Cody, Former Vice Chair of Macy's Inc. and their hired counsel at Dinsmore & Shohl LLP., the City of Cincinnati Solicitors and law enforcement, the State of Ohio, the FBI-Cincy and many other co-conspirators significantly influenced the discriminatory treatment plaintiff was subjected to while employed by the City of Cincinnati. Thereby, continuing the conspiracy, bias, retaliation, abuse of power, resulting in violation of plaintiff's Constitutional rights. (*Holmes vs USA et.al.*, 1:20-cv-00825, US District Court S.D. of Ohio, Doc#109, Amended Complaint, paragraphs 95-130, Pg. 3371-3376)

The petition describes thirty-six adverse decisions by Judges in the Sixth Circuit Court of Appeals, U.S. District Court for the Southern Division of Ohio, and the State of Ohio. The Judges and Justices involved in the proceedings have caused petitioner to suffer discrimination, harassment, loss of income, career stagnation, isolation from society, financial instability, homelessness, wrongful evictions, deterioration of relationships with family and friends, inability to have any meaningful relationships, severe health problems, severe emotional distress, torment, loss of enjoyment and destruction of her quality of life. Moreover, the adverse judicial decisions made by the judges described in this petition have severely exacerbated the defendants ongoing conspiratorial retaliation, harassment, discrimination and violation to petitioners' legal rights.

Judges on the U.S. District Court and Sixth Circuit Court of Appeals, and many others have caused petitioner to suffer severe violations of her Constitutional Rights, which prompted this request for emergency intervention by the U.S. Supreme Court. Specifically, petitioners' requests include, among others, an emergency writ of mandamus, several federal, state and local judicial proceedings as outlined, in this Writ. An emergency appointment of an outside independent Court Monitor pursuant to Federal Rule of Civil Procedure 53, to oversee all issues in the matters of *Holmes v U.S.A. et. al.*, No:1:20-cv-00825. The Court Monitor shall report directly to Brett Kavanaugh, Sixth Circuit Justice who will supervise the case, ensure compliance with the Supreme Court's, U.S. District Court S.D. Ohio, U.S. Sixth Circuit injunction and orders, serve as a supervisor of the Court, resolve any conflicts as to discovery, admissible evidence, witnesses, expert witnesses, adverse orders (orders contrary to jurisdictional precedent), any other relevant matters etc. An emergency appointment of outside independent counsel in the matters of *Holmes v U.S.A. et. al.*, No:1:20-cv-00825. Petitioner has explained her reasons for requesting emergency intervention by the U.S. Supreme Court, in this petition.

American law relies heavily upon the precedential value established by prior cases, known as controlling or binding legal authority. The controlling or binding legal authority established by prior cases is considered when judges issue opinions or orders in subsequent cases with similar legal issues or facts. Decisions made by federal and state appellate courts establish the binding legal authority that must be followed by inferior courts, in their respective jurisdictions. All courts, federal and state, are bound by the decisions of the U.S. Supreme Court on U.S. Constitutional and other issues of federal law. In *Kimble v. Marvel Entertainment, LLC*, 576 U.S. (2015), the U.S. Supreme Court described the rationale behind stare decisis as "promoting the evenhanded, predictable, and consistent development of legal principles, fostering reliance on judicial decisions, and contributing to the actual and perceived integrity of the judicial process."

The reliance on binding legal authority established in prior cases with similar legal issues or facts, is well known in American law as the doctrine of *stare decisis*.¹ Judges must follow binding legal authority in their respective jurisdictions until overruled, restricted, limited or modified, by a

¹ Under the doctrine of stare decisis, a determination of a point of law by a court of last resort will be followed by inferior courts in subsequent cases presenting the same legal problem, even though different parties are involved in the subsequent case. *Battig v. Forshey* (1982), 7 Ohio App.3d 72, 454 N.E.2d 168.

body competent to do so.² In *Erie Railroad Co. v Tompkins* 304 U.S. 64 (1938), the U.S. Supreme Court held, "The highest court of the state is the final arbiter of what is state law. When it has spoken, its pronouncement is to be accepted by federal courts as defining state law unless it has later given clear and persuasive indication that its pronouncement will be modified, limited or restricted." The first Congress enacted § 34 of the Judiciary Act of 1789, which requires federal courts to apply state law in cases that did not involve federal law. This statute is now called the Rules of Decision Act ("RDA") codified at 28 U.S.C. § 1652.³ *Erie* itself simply extended the Rules of Decision Act to state judge-made law, so that a federal court was required to apply state law as pronounced not only by legislatures but also by state judges. The RDA instructs federal courts to apply federal law to the case if the legal issues or facts are governed by federal law, otherwise decide the case under the applicable state laws.

In *Bradley v. Fisher*, 13 Wall. 335 (1872), the United States Supreme Court held, "at common law, a judge enjoys absolute immunity from the consequences of judicial acts, premised upon the concern that if such immunity were not available, judges would constantly be the subject of lawsuits by unsuccessful or dissatisfied litigants, and that the risk of personal liability and the interference with a judicial function posed by the availability of such lawsuits would make it impossible either for judges to carry out their functions or to encourage persons to become judges in the first instance". ... the immunity does not disappear even if the judicial act "was in error, was done maliciously and corruptly, or was in excess of [the judge's] authority"; liability attaches only to acts taken in the "clear absence of all jurisdiction." *Id.* at 356-57, quoting *Bradley v. Fisher*, *supra*. A judge instead must "observe the utmost fairness," striving to be "perfectly and completely independent, with nothing to influence or control him but God and his conscience." Address of John Marshall, in Proceedings and Debates of the Virginia State Convention of 1829–1830, p. 616 (1830).

The doctrine of stare decisis is designed to provide continuity and predictability in our legal system. We adhere to stare decisis as a means of thwarting the arbitrary administration of justice as well as providing a clear rule of law by which the citizenry can organize their affairs. *Rocky River v. State Emp. Relations Bd.* (1989), [43 Ohio St.3d 1, 4-5, 539 N.E.2d 103](#). Those affected by the law come to rely upon its consistency. *Helvering v. Hallock* (1940), [309 U.S. 106, 119, 60 S.Ct. 444, 84 L.Ed. 604](#). Like the United States Supreme Court, we recognize that our precedents are not sacrosanct, for we have overruled prior decisions where the necessity and propriety of doing so has been established. But any departure from the doctrine of stare decisis demands special justification." *Wampler v. Higgins* (2001), [93 Ohio St.3d 111, 120, 752 N.E.2d 962](#)

The Court has often recognized the "fundamental importance" of *stare decisis*, the basic legal principle that commands judicial respect for a court's earlier decisions and the rules of law they embody. See *Harris v. United States*, [538 U.S. 545, 556-557](#) (2002) (plurality opinion) (citing numerous cases). The Court has pointed out that *stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *United States v. International Business Machines Corp.*, [517 U.S. 843, 856](#) (1996) (quoting *Payne v. Tennessee*, [501 U.S. 808, 827](#) (1991)). *Stare decisis* thereby avoids the instability and unfairness that accompany disruption of settled legal expectations. For this reason, the rule of law demands that adhering to our prior case law be the norm. Departure from precedent is exceptional and requires "special justification." *Arizona v. Rumsey*, [467 U.S. 203, 212](#) (1984).

² In Ohio, a prior decision of the Supreme Court may be overruled where (1) the decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create an undue hardship for those who have relied upon it. *Westfield Ins. Co. v. Galatis*, 100 Ohio St. 3d 216 (Ohio 2003)

The United States Supreme Court utilized a similar trifold stare decisis test in *Lawrence v. Texas* (2003), [539 U.S. _____, 123 S.Ct. 2472, 2482-2483](#). The test was synthesized by a dissenting justice: "Today's approach to *stare decisis* invites us to overrule an erroneously decided precedent * * * if: (1) its foundations have been 'eroded' by subsequent decisions, *ante*, at 2482; (2) it has been subject to 'substantial and continuing' criticism, *ibid.*; and (3) it has not induced 'individual or societal reliance' that counsels against overturning, *ante*, at 2483." *Id.* at 2489 (emphasis sic) (Scalia, J., dissenting).

³ The RDA, codified under 28 U.S.C. §1652, reads, "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as the rules of decisions in civil actions in the courts of the United States, in cases where they apply.

Most of the federal, state and local proceedings described in this petition occur simultaneously and there is no way to discuss the proceedings in chronological order. Therefore, petitioner request that this court be mindful of the overlapping and duplicate issues described in this petition. As petitioner did not intend to duplicate any of the court pleadings, complaints, motion etc., which was inevitably impossible because of the ongoing conspiracy. Petitioner, Rosalind Holmes, argues that her rights to due process and equal protection under the Fifth and/or Fourteenth Amendment to the U.S. Constitution were violated by the judges and/or justices involved in the proceedings. When they issued orders that were contrary to binding legal precedent and failed to follow applicable rules of procedure and evidence. The repeated adverse judgments issued by the judges involved in the proceedings described, in this petition, are in violation of the judicial code of conduct prescribed by the Ohio Supreme Court and the Judicial Conference of the United States. The evidence related to more than thirty-six adverse judgments indisputably and clearly indicates that the decisions by each judge were predetermined. It is not a coincidence, that every judge involved in the proceedings conspired with the defendants in the matter of *Holmes v USA et al.*, 1:20-cv-00825, U.S. Dist. Court S.D. of Ohio, and others to deprive this petitioner of her legal rights under state, federal and Constitution law.⁴ The judges involved in the proceedings, clearly, unambiguously and indisputably abused their discretion and/or lacked or exceeded their subject matter jurisdiction in violation of petitioners' legal rights and the Constitution of the United States of America. It is clear and indisputable that this petitioner has not and will not receive justice as guaranteed under the U.S. Constitution, state law and the laws of United States of America, unless the United States Supreme Court immediately intervenes to correct the adverse judicial decisions and disqualify the judges included in the proceedings.

With this petition for writ of mandamus petitioner is seeking to vacate the following judgments:

- 1) The Butler County Area III Court clearly abused its' discretion when Judge Dan Haughey issued his final appealable order stating, "accordingly, because Holmes is no longer living on the premises, there is no relief that this court can provide her. Her objections are hereby OVERRULED, and the Magistrate's Decision [of a forcible entry and detainer action] will stand as an order of the court," on

⁴ On October 20, 2020, Petitioner filed a federal lawsuit *Holmes vs U.S.A. et al.*, No 1:20-cv-00825, U. S. District Court S.D. of Ohio, pursuant to *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), and *Davis v. Passman*, 442 U.S. 228 (1979), (amended on 11/12/2020), Petitioner requested equitable tolling of the statute of limitation due to the Cincinnati Division of the Federal Bureau of Investigations, City of Cincinnati and State of Ohio Disciplinary Counsel's fraud and conspiracy. On February 8, 2021, U.S. Chief Magistrate Karen Litovitz intentionally misapplied the doctrine of equitable tolling, generally, and dismissed with prejudice counts I – XXIII of petitioners' amended complaint. Despite, petitioners' express request for equitable tolling due to defendants fraudulent concealment. On February 26, 2021, U.S. Judge Matthew McFarland, adopted the report and recommendation of U.S. Magistrate Litkovitz, despite petitioners' objections pursuant to Federal Rules of Civil Procedure 9(b) detailing the fraudulent conduct committed by the Cincinnati Division of the Federal Bureau of Investigations, City of Cincinnati and State of Ohio Disciplinary Counsel. (*Holmes vs U.S.A. et al.*, No 1:20-cv-00825, U. S. District Court S.D. of Ohio, Litkovitz R & R, RE 13, PAGEID 1409-1428), (Appendix CC, Attached) & (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, Entry and Order, RE18, PAGE ID 1467-1468), (Appendix DD, Attached)

From the period of February 8, 2021, to the present (Sept. 20, 2022), Magistrate Litkovitz and Judge McFarland have refused to issue a final appealable order pursuant to Rule 54(b), which would provide petitioner the legal right to appeal their dismissal. Petitioner filed the complaint approximately two to six years after the limitations period expired under Ohio Revised Code § 2305.09, four-year tort statute of limitations period applies to petitioners' constitutional claims. Ohio Revised Code § 2305.10, two-year personal injury statute of limitations applies to petitioners' claims for bodily injury or injury to personal property. Yet, Mag. Litkovitz and Judge McFarland, have failed to determine that there is no just cause for delay and grant petitioners' motion for a final appealable order pursuant to Rule 54(b). Mag. Litkovitz and Judge McFarland's judgments are contrary to binding legal authority as established by the U.S. Court of Appeals, Sixth Circuit and the United States Supreme Court.

March 4, 2020. (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: CVG 1901594, Butler County Area III Court), (Appendix A, Attached)

- 2) Ohio's Twelfth Appellate Court of Appeals lacked subject matter jurisdiction and clearly abused its' discretion when Judge Robert Hendrickson, Judge Stephen Powell and Judge Mike Powell, ordered that petitioners' appeal be "dismissed as moot as there is no longer an existing case or controversy for this court to resolve on appeal," on December 28, 2020. (*Landings at Beckett Ridge vs Rosalind Holmes*, No. CA-2020-04-0050, 12th District Court of Appeals, Middletown, Ohio), (Appendix B, Attached)
- 3) The Butler County Area III Court clearly, unambiguously and indisputably abused its' discretion and/or lacked or exceeded its' subject matter jurisdiction when Magistrate Judge Fred Miller and Judge Courtney Caperella-Kraemer, denied petitioners' motion for Ohio Rule 60(B)(4) or (5) Relief, on August 23, 2021, and September 27, 2021. (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: CVG 1901594, Butler County Area III Court), (Appendix C, Attached)
- 4) Ohio's Twelfth Appellate Court of Appeals clearly abused its' discretion when Judge Stephen W. Powell, Robert A. Hendrickson, and Judge Matthew R. Byrne affirmed the decision of the Butler County Area III Court, to deny petitioners' motion for Ohio Rule 60(B)(4) or (5) Relief, on April 18, 2022. (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: 2021-09-118, Ohio's Twelfth District Court of Appeals), (Appendix D, Attached)

The Ohio Supreme Court declined jurisdiction on August 16, 2022. (*Landings at Beckett Ridge v. Holmes*, No: 2022-0662, Ohio Supreme Court, App. No. CA2021-09-118, 12th District Court of Appeals, Middletown, Ohio.) (Appendix E, Attached)

- 5) The Butler County Area III Court clearly and indisputably abused its' discretion when Magistrate Judge Fred Miller, and Judge Jeff Bowling dismissed petitioners, complaint and stated, "petitioner failed to prove by a preponderance of evidence any of the allegations contained in her amended complaint," on March 5, 2021, and April 27, 2021, respectively. (*Holmes vs Lakefront*, No: CVF 2001041, Butler County Area III Court, West Chester, Ohio), (Appendix F, Attached) & (Appendix G, Attached)
- 6) Ohio's Twelfth District Court of Appeals clearly abused its' discretion when Judge Mike Powell, Judge Stephen Powell, Judge Robin N. Piper, denied petitioners' motion to supplement the records and failed to consolidate the cases, on December 27, 2021, and January 4, 2022. (*Rosalind Holmes vs Lakefront at West Chester*, CA 2021-05-046, 12th District Court of Appeals, Middletown, Ohio), (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix H, Attached)
- 7) Ohio's Twelfth District Court of Appeals clearly abused its' discretion when Judge Robin Piper, Judge Mike Powell and Judge Matthew R. Byrne affirmed the decision of the Butler County Area III Court, to dismiss petitioners' amended complaint for failure to state a claim on January 19, 2022, (*Holmes vs Lakefront* No: CA 2021-05-046, Ohio's Twelfth District Court of Appeals), (Appendix I, Attached) and

denied petitioners' motion for reconsideration, on April 12, 2022. (*Holmes vs Lakefront* No: CA 2021-05-046, Ohio's Twelfth District Court of Appeals), (Appendix J, Attached)

On August 30, 2022, the Supreme Court of Ohio declined jurisdiction. (*Lakefront of W. Chester, L.L.C. v. Holmes* No: 2022-0793), (Appendix K, Attached)

- 8) The United States District Court for the Southern Division of Ohio, clearly abused its' discretion when Magistrate Judge Karen Litkovitz, and Judge Susan Dlott, ignored petitioners' argument that the Butler County Area III Court lacked subject matter jurisdiction, dismissed her motion to remove Lakefront's eviction proceeding to federal Court, and remanded Lakefront's eviction action back to the Butler County Area III Court, on July 19, 2021, and August 3, 2021, respectively. (*Lakefront vs. Holmes*, No:1:21-cv-00444, U. S. District Court S. D. of Ohio, R & R, PAGEID 297-304), (Appendix L, Attached) & (*Lakefront vs. Holmes*, No:1:21-cv-00444, U. S. District Court S. D. of Ohio, Order, PAGEID 745-746), (Appendix M, Attached)
- 9) The United States Court of Appeals for the Sixth Circuit, clearly abused its' discretion when Chief Judge Jeffrey S. Sutton, Judge Julia Smith Gibbons, and Judge Bernice B. Donald, ignored petitioners' argument that the Butler County Area III Court lacked subject matter jurisdiction, dismissed her appeal for lack of subject matter jurisdiction, and denied her motion for a stay and to appoint counsel as moot, on August 17, 2021. (*Lakefront vs. Holmes*, No: 21-3731, U. S. Court of Appeals Sixth Circuit, RE 5-2, Page: 1-2), (Appendix N, Attached) and (*Holmes vs. U.S.A. et. al.*, No: 21-3715, U. S. Court of Appeals Sixth Circuit, RE 5-2, Page: 1-4), (Appendix O, Attached)
- 10) The Butler County Area III Court patently and unambiguously exceeded or lacked subject matter jurisdiction and clearly abused its' discretion when, Magistrate Judge Fred Miller and Judge C. Caparella-Kraemer issued a forcible entry and detainer action against petitioner, on August 19, 2021. (*Lakefront v Holmes*, No: CVG 2100651, Butler County Area III Court), (Appendix P, Attached)
- 11) The Butler County Area III Court clearly abused its' discretion when Judge Courtney Caparella-Kraemer denied petitioners' motion to set aside eviction, motion to reconsider setting aside eviction, and emergency motion for a stay pending appeal, on August 26, 2021, September 1, and September 3, 2021. (*Lakefront v Holmes* No: CVG 2100651, Butler County Area III Court), (Appendix Q, Attached) & (Appendix R, Attached)
- 12) The United States District Court for the Southern Division of Ohio, clearly abused its' discretion when Magistrate Judge Stephanie K. Bowman, and Judge Timothy S. Black, declined to interfere with pending state court proceedings pursuant to the doctrines of *Younger*, *Rocker-Feldman*, and the *Anti-Injunction Act*, even though this case fell into the statutory exceptions of each doctrine, failed to issue a temporary restraining order/injunction and failed to grant petitioners' motion to appoint counsel, on August 23 and August 26, 2021, respectively. (*Holmes v Lakefront*, No:1:21-cv-00505, U. S. District Court S.D. Ohio, Bowman R & R, PAGEID# 1386-1390), (Appendix

- S, Attached) & (*Holmes v Lakefront*, No:1:21-cv-00505, U. S. District Court S.D. Ohio, Black's Order, PAGEID# 1618-1623), (Appendix T, Attached)
- 13) The United States Court of Appeals for the Sixth Circuit, clearly abused its 'discretion when Judge Julia Smith Gibbons, and Judge Bernice B. Donald affirmed the decision of the District Court and failed to issue a temporary restraining order and/or stay, on September 7, 2021. (*Holmes v Lakefront*, No: 21-3791, U. S. Court of Appeals Sixth Circuit, RE 8-2, Page: 1-3), (Appendix U Attached)
- 14) The United States Court of Appeals for the Sixth Circuit, clearly abused its' discretion when Judge Joan Larsen determined that petitioners' case failed to state a claim for relief, denied petitioners' motion to proceed in forma pauperis and to appoint counsel, on June 21, 2022, (*Holmes vs Lakefront*, No: 21-3791, U.S. Sixth Circuit, RE 14-2, Page: 1-3), (Appendix V) and on rehearing Chief Judge Jeffrey S. Sutton, Senior Judge Ralph B. Guy, Jr., Judge R. Guy Cole, Jr., denied petitioners' motion for reconsideration because she did not show that the court overlooked or misapprehended any point of law or fact, on August 10, 2022. (*Holmes vs Lakefront*, No: 21-3791, U.S. Sixth Circuit, RE 16-2, Page: 1), (Appendix W, Attached)
- 15) Ohio's Twelfth Appellate Court of Appeals lacked subject matter jurisdiction and clearly abused its' discretion when Judge Robin N. Piper and Mike Powell, denied petitioners' emergency motion for a stay pending appeal, on September 3 and 7, 2021. (*Lakefront vs. Holmes*, No: 2021-09-108, 12th District Court, Middletown, Oh), (Appendix X, Attached)
- 16) Ohio's Twelfth District Court of Appeals patently and unambiguously exceeded or lacked subject matter jurisdiction and clearly abused its' discretion when Judge N. Robin Piper, Judge Stephen Powell, denied petitioners' motion for a stay pending appeal, on November 15, 2021(*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix Y, Attached) emergency motion to void, on December 20, 2021, (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix Z, Attached) and Judge Stephen W. Powell, Robert A. Hendrickson, Matthew R. Byrne, patently and unambiguously lacked subject matter jurisdiction to issue a final order to dismiss petitioners' appeal as moot on May 10, 2022, (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix AA, Attached)
- 17) The Ohio Supreme Court, clearly abused its' discretion and patently and unambiguously lacked subject matter jurisdiction when they granted Judge Courtney Caparella-Kraemer motion to dismiss petitioners' writ of prohibition, under Ohio Civil Rule 12(B)(6) on August 17, 2022. (*Holmes vs. The Honorable Judge Courtney Caparella-Kraemer*, No: 2022-0683, Ohio Supreme Court), (Appendix BB, Attached)
- 18) The United States District Court for the Southern Division of Ohio clearly abused its' discretion when Magistrate Judge Karen Litkovitz, and Judge Matthew McFarland, dismissed with prejudice, counts I-XXIII of petitioners' amended complaint pursuant to 28 U.S.C. §

- 1915(e)(2)(B) and denied petitioners' motion for equitable tolling due to defendants fraudulent concealment, breach of contract, injunctive relief (RE. 6) on February 8, 2021 and February 26, 2021, respectively. (*Holmes vs U.S.A. et al.*, No 1:20-cv-00825, U. S. District Court S.D. of Ohio, Litkovitz R & R, RE 13, PAGEID 1409-1428), (Appendix CC, Attached) & (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, Entry and Order, RE18, PAGE ID 1467-1468), (Appendix DD, Attached)
- 19) The United States Court of Appeals for the Sixth Circuit, clearly abused their discretion when Senior Judge Alan E. Norris, Judge John K. Bush, Senior Judge Helene N. White, Judge Bernice B. Donald and Judge Amul R. Thapar, clearly and indisputably abused their discretion when they dismissed petitioners' appeal for lack of appellate jurisdiction, on April 2, 2021, and July 12, 2021. (*Holmes vs U.S.A. et al.*, No: 21-3206, 21-3491 & 21-3521 U.S. Sixth Circuit Court of Appeals) (Appendix EE, Attached)
- 20) The United States District Court for the Southern Division of Ohio, clearly abused its' discretion when Magistrate Judge Karen Litkovitz, denied petitioners' motions to seal (RE. 11), for Rule 54(b) certification (RE. 23), (RE. 1 at PAGEID 10-14; and RE. 24), on April 15, 2021. (*Holmes vs U.S.A. et al.*, No 1:20-cv-00825, U. S. District Court S. D. of Ohio, Order, RE 27, PAGEID 1551-1554) (Appendix FF, Attached)
- 21) The United States District Court for the Southern Division of Ohio, clearly abused its' discretion when Magistrate Judge Karen Litkovitz, denied petitioners' second motion for a final appealable order (RE. 60), on May 10, 2021. (*Holmes vs USA et al.*, No 1:20-cv-00825, U. S. District Court S. D. of Ohio, Order RE 31, PAGEID 1581-83), (Appendix GG, Attached)
- 22) On December 14, 2021, Magistrate Karen Litkovitz, clearly abused her discretion when she denied petitioners' "Emergency Motion to File Under Seal" (RE. 43). (*Holmes vs USA et al.*, No 1:20-cv-00825, U. S. District Court S.D. Ohio, Litkovitz R & R, PAGEID# 2330-2337), (Appendix HH, Attached)
- 23) The United States District Court for the Southern Division of Ohio, clearly abused its discretion when Magistrate Judge McFarland adopted the report and recommendation of Magistrate Litkovitz and denied petitioners' "Emergency Motion to File Under Seal" (RE. 43), on May 31, 2022. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court S.D. of Ohio, Entry and Order, RE 75, PAGEID 2537-39), (Appendix II, Attached)
- 24) The United States District Court for the Southern Division of Ohio, clearly abused its' discretion when Magistrate Karen Litkovitz denied petitioners' motion for leave to proceed in forma pauperis on appeal (RE. 87), on July 13, 2022 (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Litkovitz R&R, RE 88, PAGEID# 3056-3058) (Appendix JJ, Attached)

Jurisdiction

This Honorable Court has jurisdiction over this action pursuant to 28 U.S.C. § 1651(a). The United States Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. A writ of mandamus and/or prohibition would be in aid of this Court's jurisdiction over the adverse judgment's petitioner has identified in which the judges and/or justices involved in the proceedings either lacked or exceeded their subject matter jurisdiction, and/or clearly and indisputably abused their discretion by ruling against binding legal authority in the respective jurisdictions. Mandamus is a "drastic and extraordinary remedy reserved for extraordinary causes.".... "Exceptional circumstances amounting to a judicial `usurpation of power,'" or where a "clear abuse of discretion will justify the invocation of this extraordinary remedy." *Cheney v. U.S. Dist. Ct. for the Dist. of Columbia*, 542 U.S. 367, 380, 124 S.Ct. 2576, 159 L.Ed.2d 459 (2004) In applying that standard, we consider, among other things, whether "the party seeking the writ has no other adequate means, such as direct appeal, to attain the relief desired"; whether "the petitioner will be damaged or prejudiced in a way not correctable on appeal"; whether the district court's order is plainly incorrect as a matter of law; whether the district court's order "manifests a persistent disregard of the federal rules" and whether "the district court's order raises new and important problems[.] Thus the relief Petitioner seeks is not available in any other court.

Additionally, the jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a) Final judgments or decrees rendered by the [highest court of a State](#) in which a decision could be had, may be reviewed by the Supreme Court.... On August 17, 2022, the Ohio Supreme Court granted Judge C. Caperella-Kraemer's, Motion to Dismiss under Rule 12(B)(6). (*Rosalind Holmes v. The Honorable, Judge C. Caparella- Kraemer* No. 2022-0683), (Appendix BB, Attached) Pursuant to 28 U. S.C. § 2101(f), 28 U.S. Code § 1292, U.S. Supreme Court Rules 22 & 23 and Federal Rules of Civil Procedure 65, petitioner request an emergency stay, temporary injunction and preliminary injunction, in the matter of *Holmes v. U.S.A.et al.*, No: 1:20-cv-00825. Pursuant to Federal Rule of Civil Procedure 53, petitioner request this Court to appoint a special master in the matter of *Holmes v. U.S.A.et al.*, No: 1:20-cv-00825 and *Holmes vs. Lakefront at West Chester*, No: 1:21-cv-00505.

Part One: The Landings at Beckett Ridge

On July 2, 2019, petitioner rented a two-bedroom, two-bathroom apartment from the Landings at Beckett Ridge ("Landings"). (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43-1, Exhibit P, Page ID 1795-1800) Landings is a multi-family apartment owned and managed by Hills Properties, ("Hills") located in Blue Ash, Ohio. On or around, July 8, 2019, petitioner discovered an illegal surveillance after a neighbor advised her that the office staff were watching her on the inside of her apartment. The neighbor advised petitioner that the Regional Manager of another property owned by Hills, who lived on the same floor as petitioner and staff members were reporting information about her into law enforcement. On July 10, 2019, and September 25, 2019, petitioner reported the discriminatory illegal surveillance being conducted by the F.B.I., City of Cincinnati, State of Ohio and others including Landings staff to Regina Bray, Regional Mgr. and Jenn Taylor, Prop. Mgr. (*Holmes v. U.S.A.*

et al., No: 1:20-cv-00825, MOTION for Leave, RE 43-1, Exhibit Q, PAGE ID 1802-1807) Petitioners' cell phone records from Sprint includes a breakdown of the dates and times of each call is shown below:

The Landings at Beckett Ridge and Hills Properties Call Log

Date	Phone number	Outgoing/ Incoming	Time	Person to whom plaintiff spoke	Description of Call	Notes:
7/10/2019	513-984-0300	Outgoing	9:17 AM	Regina Bray, Regional Manager	Made a Report to Regina regarding discriminatory illegal surveillance	See Exhibit Q
7/10/2019	513-984-0300	Outgoing	12:07 PM	Regina Bray, Regional Manager	Made a Report to Regina regarding discriminatory illegal surveillance	See Exhibit Q
7/10/2019	513-860-1771	Outgoing	2:12 PM	Jenn Taylor, Property Manager	Made a Report to Jenn Taylor regarding discriminatory illegal surveillance	See Exhibit Q
9/25/2019	513-984-0300	Outgoing	8:58 AM	Regina Bray, Regional Manager	Made a Report to Regina regarding discriminatory illegal surveillance	See Exhibit Q
9/25/2019	513-984-0300	Outgoing	1:09 PM	Regina Bray, Regional Manager	Made a Report to Regina regarding discriminatory illegal surveillance	See Exhibit Q
9/25/2019	513-860-1771	Incoming	1:25 PM	Jenn Taylor, Property Manager	Made a Report to Jenn Taylor regarding discriminatory illegal surveillance	See Exhibit Q

On November 26, 2019, petitioner wrote a letter to the U.S. Department of the Inspector General for the F.B.I. and Department of Commerce, and requested an investigation into the discriminatory harassment, attorney misconduct, wrongful terminations, illegal surveillance, etc. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43-1, Exhibit T, PAGEID# 1815-1817)

The Landings at Beckett Ridge vs Rosalind Holmes, No: CVG 1901594, Butler County Area III Court, filed December 15, 2019

On December 15, 2019, Landings and Hills, filed a complaint for forcible entry and detainer against petitioner, Rosalind Holmes, in the Butler County Area III Court. (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: CVG 1901594, Butler County Area III Court) The complaint sought restitution and recovery of said premises at, 4899 Destination Ct., Apt. #206, West Chester, Ohio 45069, and included a copy of the 3-day Notice to Leave the Premises with the complaint. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43-1, Exhibit S, PAGEID# 1811-1813)

On December 26, 2019, petitioner received an email from Jenn Taylor, Landings Property Manager, which stated the following:

“I am needing to follow up with you about the December rent. It is getting very late in the month, and I want to make sure you are aware of the late rent process in its entirety. At this time, the December balance and January rent will need to be paid in full to cancel the eviction process. The total balance and January rent will need to be paid in full to cancel the eviction process. The total balance is \$3,156.82 (\$1,721.82 December Balance + \$1,435 January Rent & Washer/Dryer) and will need to be paid in cashiers check or money order only. Do you have a date you plan on being able to pay the balance in full? Also if rent is not paid before January 6th, then the January late fee of \$150 will be added to the balance. Please keep in mind that eviction court is scheduled for January 8th. If the above balance is not paid before eviction court we will be unable to accept rent after that morning and will have to continue with the eviction process. Let us know if there are any questions you have and an intended date to pay rent.” (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43-1, Exhibit U, PAGEID# 1819)

An eviction hearing was originally scheduled on January 8, 2020, and rescheduled to January 15, 2020, because the trial judge granted petitioner a continuance after she provided documentation that she had been hospitalized and then referred to have gallbladder surgery. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43-1, Exhibit V, PAGEID# 1821-1824) On January 14, 2020, petitioner attempted to pay her rent by providing Landings with a cashier check in the amount of \$3,500.00 and Jenn Taylor refused to accept petitioners' check. (*Holmes v.*

U.S.A. et al., No: 1:20-cv-00825, MOTION for Leave, RE 43-1, Exhibit W, PAGEID# 1825) On January 15, 2020, petitioner was wrongfully evicted from the Landings because Jenn Taylor, Landings Property Manager refused to accept petitioners' rent payment of \$3,500 and withheld petitioners' complaint of Title VIII Landlord Discrimination regarding the illegal surveillance involving the F.B.I. and others from the trial court. On January 22, 2022, petitioner filed written objections to the Magistrate's decision and provided the court with a letter written to the U.S. Department of Commerce on November 21, 2019. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43, Exhibit AA, PAGEID# 1849-1854) Petitioner explained that the Landings had placed an illegal surveillance in her apartment and that she had reported the illegal surveillance being conducted in her apartment by the F.B.I. and others including Landings to the U.S. Department of Commerce, on November 26, 2019. Additionally, petitioner reported the illegal surveillance to Regina Bray, Regional Mgr. of Hills, and Jenn Taylor, Prop. Mgr. at the Landings, on July 10, 2019, and September 25, 2019. On February 14, 2020, petitioner attended the objection hearing and requested additional time to provide evidence of Landings' conspiratorial discrimination and harassment involving the F.B.I. and others. Relevant excerpts from the February 14, 2020, hearing are as follows:

Mr. Donnett: In response your Honor, two things. One is I think the objections are moot. We have executed on the writ, so Ms. Homes is no longer on the property. I would also mention the first time we heard about this {Rosalind's discriminatory surveillance complaints} was when we got the notice. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43, Exhibit Y, PAGEID# 1836-1839, Transcript, 02/14/2020, Pg. 3 Ln. 24-25, Pg. 4, Ln. 1-5)

Mr. Donnett: And we will point this out in writing, it appears that the complaint she has against – I mean against Landings is something about surveillance cameras being placed in her apartment and that just never occurred. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43, Exhibit Y, PAGEID# 1841, Transcript, 02/14/2020, Pg. 6 Ln. 4-9)

At the February 14, 2020, hearing, the Landings denied knowing anything about petitioners' reports of harassment and illegal surveillance made to U.S. Department of Inspector General for the Department of Commerce and F.B.I. Additional excerpts from the February 14, 2020, hearing are as follows:

Ms. Holmes: I have something else to say. I have additional information that I would like to submit... I have been harassed by the United States government for at least seven years. I have written the congressman. I have written the senator. I have contacted the U.S. Department of Justice. It all transpired after I filed a legitimate lawsuit for race discrimination against the City of Cincinnati. I have been tracked and monitored by the F.B.I., the City of Cincinnati and State of Ohio for at least seven years, not only in Ohio. I have traveled to other states where I have been tracked and monitored. And in another state, I did find a spy camera, okay, so this is something that really is going on, and I am prepared to present all my documentation. Some of the documentation may be irrelevant to Landings, but it will provide an overall explanation of why I did file a complaint against Landings with the Department of Commerce, and why I did contact Landings regarding the surveillance that was in my apartment." (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43, Exhibit Y, PAGEID# 1841-1842, Transcript, 02/14/2020, Pg. 6 Ln. 17-25, Pg. 7, Ln. 1-21)

The Court: Ma'am, with respect to the evidence that was presented, the trial has taken place, I'm not relitigating the case. I will read the transcript of the proceedings that was already conducted along with the objection filings and make a decision. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43, Exhibit Y, PAGEID# 1842-1843, Transcript, 02/14/2020, Pg. 7, Lns. 22-25 1-21, Pg. 8 Ln. 1-3)

Ms. Holmes: Okay. So, I can't offer any additional information? (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43, Exhibit Y, PAGEID# 1843, Transcript, 02/14/2020, Pg. 8, Ln. 5-6)

The Court: The evidence—I'm confined to the evidence that was presented at the trial. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43, Exhibit Y, PAGEID# 1843, Transcript, 02/14/2020 Pg. 8 Ln. 7-9)

The Butler County Area III Court, trial judge refused to permit petitioner additional time to provide the evidence and upheld the wrongful eviction. The illegal surveillance and harassment that petitioner reported to Landings, Hills Properties and the U.S. Department of the Inspector General was based upon discrimination. Housing Discrimination is a valid defense to a forcible entry and detainer action. Pursuant to O.R.C. § 1923.061, petitioner should have been capable of asserting any defense to a forcible entry and detainer action at trial. Had the trial court granted petitioner additional time to subpoena witnesses, obtain documents, directly question both Jenn Taylor and Regina Bray in Court, and others petitioner would have been capable of proving that Landings had knowledge of the unlawful surveillance taking place in her apartment. In *Willowbrook v. Olech*, 528 U.S. 562, 120 S.Ct. 1073, 145 L.Ed.2d 1060 (2000), the United States Supreme Court held that, "the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination [,]" so all that is needed to involve the Equal Protection Clause is that petitioner allege arbitrary treatment, as measured against others similarly situated. Due process requires adequate notice, a realistic opportunity to appear at a hearing or judicial sale, and the right to participate in a meaningful manner before one's rights are irretrievably altered.

On March 4, 2020, Judge Dan Haughey issued his final appealable order stating, "accordingly, because Holmes is no longer living on the premises, there is no relief that this court can provide her. Her objections are hereby OVERRULED, and the Magistrate's Decision will stand as an order of the court." (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: CVG 1901594, Butler County Area III Court), (Appendix A, Attached)

Appeal: Landings at Beckett Ridge vs Rosalind Holmes, No. CA-2020-04-0050, filed April 6, 2020

On April 6, 2020, petitioner filed an appeal in Ohio's Twelfth District Court of Appeals. (*Landings vs. Holmes*, No: CA 2020-04-0050, Ohio's Twelfth District Court, filed 05/12/2021)⁵ Petitioner argued that the Cincinnati Division of the F.B.I., City of Cincinnati, State of Ohio Disciplinary Counsel, The Landings and others were involved in conspiratorial harassment and discrimination and had placed an illegal surveillance in her apartment. Petitioner argued that the Landings had fraudulently concealed her complaints of Housing Discrimination and failed to accept the rent tendered, on January 14, 2020, in retaliation for her prior complaints of Housing Discrimination. Petitioner argued that the case presented the constitutional question of warrantless surveillance being placed in an apartment and should be considered an exception to the mootness doctrine. Petitioner argued that the judgment was against the manifest weight of the evidence. On October 20, 2020, petitioner filed a federal

⁵(*Landings at Beckett Ridge vs Rosalind Holmes*, No. CA-2020-04-0050, filed April 6, 2020) located at ([Case Details - Court View Justice Solutions \(butlercountyclerk.org\)](https://case-details-butlercounty.clerk.org)) (last accessed on 09/11/2022)

complaint pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* and *Davis vs Passman* and included the Landings at Beckett Ridge as a defendant.

On December 28, 2020, Honorable Robert Hendrickson, Honorable Stephen Powell and Honorable Mike Powell, ordered that petitioners' appeal be "dismissed as moot as there is no longer an existing case or controversy for this court to resolve on appeal." (*Landings at Beckett Ridge vs Rosalind Holmes*, No. CA-2020-04-0050, filed April 6, 2020), (Appendix B, Attached) In response to petitioners' assignment of error one, the Appeals Court stated, (*Landings at Beckett Ridge vs Rosalind Holmes*, No. CA-2020-04-0050, filed April 6, 2020), (Appendix B, Attached)

"Holmes claimed that Landings was retaliating against her because she had sent a letter to the U.S. Department of Commerce..... complaining that Landings had placed an illegal surveillance in her apartment and requesting an investigation. Holmes further claimed she sent the letter after Landings failed to address her complaints about the illegal surveillance. Holmes did not seek a stay on the writ of restitution and did not post a bond. A hearing on Holmes' objections was held on February 14, 2020. Holmes pressed her retaliation claim. Counsel for Landings advised the trial court that Landings was not served with a copy of Holmes's objections and that it had never heard about Holmes' complaint to the department of commerce. Counsel argued that Holmes' objections were moot because the writ of restitution had been executed and Holmes had vacated the premises.....Accordingly, the instant appeal is moot. Since Holmes' appeal is moot, we do not reach the merits on her first, third and fourth assignments of error."

On March 16, 2021, petitioner discovered a police report filed with the West Chester Ohio Police Department ("WCPD"). The report dated July 13, 2019, was filed by Kevin Saeks, Landings Business Manager and in part stated, Female called the office (Landings) and left a few messages the other night about possible F.B.I. surveillance and others spying on her. She sounded distressed." Kevin's July 13, 2019, report to the WCPD (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43, Exhibit R, PAGEID# 1809) coincides with petitioners' phone records (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43, Exhibit Q) As petitioners' cell phone records indicated that she contacted both Regina Bray from Hills Properties and Jen Taylor from The Landings, on July 10, 2019. The police report was made by Kevin Saeks, Landing's Business Manager, on July 13, 2019, just three days after petitioners' report of harassment. More importantly, petitioner discovered the police report on March 16, 2021, which was more than one year after the statutory deadline had passed for filing a Rule 60(B)(3) motion for fraud, misrepresentation or other misconduct of an adverse party.

Motion for Rule 60(B) (3), (4) & (5) Relief from Judgment filed in the Butler County Area III Court, July 9, and September 20, 2021

On July 9, and September 20, 2021, petitioner filed a Rule 60(B) (3), (4) & (5) motion for relief from judgment in the Butler County Area III Court. (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: CVG 1901594, Butler County Area III Court) In her motion for relief, petitioner explained that the delay between petitioners' March 16, 2021, discovery of the police report and her July 9, 2021, filing of her motion for relief was partly due to the Coronavirus which created a global health crisis in which Americans were cautioned against leaving their homes, traveling, entering public facilities on as needed basis, etc. As Rosalind Holmes is an indigent pro-se litigant who required the use of the library's resources such as computers, internet, etc., to conduct much of her legal research and compile her pleadings, due to COVID-19 restrictions, her use of the

library facilities was very limited. Petitioner could not have prevented and had no opportunity to foresee that the Landings had filed a police report on July 13, 2019, and the issues related to the global pandemic created by COVID-19.

On August 23, 2021, and September 27, 2021, Magistrate Fred Miller and Judge Courtney Caperella-Kraemer denied petitioners' motions. (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: CVG 1901594, Butler County Area III Court), (Appendix C, Attached) Judge Courtney Caperella-Kraemer overruled petitioners' objections for all of the reason's provided by Magistrate Miller. In addition, Judge Caperella-Kraemer stated, "the Court does not find that the COVID pandemic has prevented Holmes from obtaining documents and from timely filing a Rule 60(B) motion. The court takes judicial notice that Holmes has actively filed numerous complaints and motions and has actively participated throughout the pandemic, not only in this case, but in other cases in this court. See *Lakefront of West Chester, LLC v. Holmes*, Butler County Area III CVG2100651, appeal pending in CA 2021-09-108; *Holmes v Lakefront of West Chester*, Area III CVF2001 041, appeal pending in CA 2021-05-0046; and *Holmes v. Lakefront of West Chester*, Area III RE2000007."

However, the cases cited above by Judge Courtney Caparella-Kraemer are cases this petitioner was involved in before March 16, 2021. Judge Courtney Caparella-Kraemer failed to acknowledge that petitioner discovered the police report on March 16, 2021, which was more than one year after the statutory deadline had passed for filing a Rule 60(B)(3) motion for fraud. Even if petitioner had filed her Motion on March 17, 2021, it would have still been beyond the statutory deadline for filing under Rule 60(B)(3).

Appeal: Landings at Beckett Ridge vs Rosalind Holmes, No: 2021-09-118, Ohio's 12th District Court of Appeals September 29, 2021

On September 29, 2021, petitioner appealed Judge Courtney Caperella Kraemer's judgment to the Twelfth Appellate District Court of Ohio. She informed the Twelfth Appellate District of Ohio, that the cases cited by Judge Caperella-Kraemer are cases that petitioner actively participated in before March 16, 2021. Petitioner discovered the police report on March 16, 2021 and could not have filed her Rule 60(B)(3) motion within the one-year time frame as required. On April 18, 2022, Judge Stephen Powell, Robert A Hendrickson and Matthew Byrne affirmed the decision of the Butler County Area III Court. (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: 2021-09-118, Ohio's Twelfth District Court of Appeals), (Appendix D, Attached) The Twelfth District Court of Appeals basis for overruling petitioner's assignments of error are as follows. "Once a landlord has been restored to the property, the forcible entry and detainer action becomes moot because, having been restored to the premises, there is no further relief that can be granted." *Id.*, 2020-Ohio-6900 at ¶ 30, citing *Show Mgmt. Corp. v. Hazelbaker*, 12th Dist. Fayette No CA2006-01-004, 2006-Ohio-6356, ¶ 7. Therefore, finding no error in the trial court's decision denying Holmes' Civ R. 60(B) motion for relief from judgment, Holmes' first and second assignment of error lacks merit and is overruled."

On June 1, 2022, petitioner filed a memorandum in support of jurisdiction in the Ohio Supreme Court, the Ohio Supreme Court declined jurisdiction on August 16, 2022. (*Landings at Beckett Ridge v. Holmes*, No: 2022-0662. Ohio Supreme Court Butler App. No. CA2021-09-118, 2022-Ohio-1272.) (Appendix E, Attached)

REASONS FOR GRANTING THE WRIT OF MANDAMUS

"Where a public officer or agency is under a clear legal duty to perform an official act, and where there is no plain and adequate remedy in the ordinary course of the law, an action in mandamus will lie originally in the Supreme Court or in the Court of Appeals." *State ex rel. Pressley v. Indus. Comm'n*, 11 Ohio St.2d 141, 228 N.E.2d 631(1967) (paragraph one of the syllabus).

Respondent has a clear legal duty to follow binding authority as established by the Ohio Supreme Court

The decisions of the Butler County Area III Court and Ohio's Twelfth District Court of Appeals denying petitioners Rule 60(B)(4) and/or (5) motion for relief from judgment is contrary to binding precedent established by the Ohio Supreme Court. Ohio's trial and intermediate appellate courts, are bound to follow precedent set by the Supreme Court of Ohio and cannot issue a decision in conflict with a decision of the Supreme Court that has not been reversed or overruled." *State v. Tatom*, 10th Dist. No. 17AP-758, 2018-Ohio-5143, ¶ 24. All trial courts and intermediate courts of appeal are charged with accepting and enforcing the law as promulgated by the Supreme Court not changing, modifying or ignoring that law. Courts of appeal remain "bound by and must follow decisions of the Ohio Supreme Court." *Thacker v. Bd. of Trustees of Ohio State Univ.* (1971), 31 Ohio App.2d 17, 60 O.O.2d 65, 285 N.E.2d 380, paragraph one of the syllabus. Decisions of a court of last resort are to be regarded as law and should be followed by inferior courts, whatever the view of the latter may be as to their correctness, until they have been reversed or overruled. *Krause v. State* (1972), 31 Ohio St.2d 132, 148 (concurring opinion, per Corrigan, J.)

Ohio's Supreme Court's Three Prong Test

Regarding the moving party's obligations for a Civ. R. 60(B) motion, the Supreme Court of Ohio has held, "In order, for a party to prevail on a motion for relief from judgment under Civ.R. 60(B), the movant must demonstrate the following: (1)the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3)the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B) (1), (2), or (3), not more than one year after the judgment, order or proceeding was entered or taken." *GTE Automatic Elec. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, 1 O.O.3d 86, 351 N.E.2d 113, paragraph two of the syllabus. These requirements are independent and, in the conjunctive, not the disjunctive. *Universal Film Exchanges v. Lust* (C.A. 4, 1973), 479 F.2d 573. Applying the Ohio Supreme Court's three prong test, (1) the party has a meritorious defense or claim to present if relief is granted; and(2) the party is entitled to relief under one of the grounds stated in Civ.R.60(B) (1) through (5); and (3) the motion

is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B) (1), (2), or (3), not more than one year after the judgment, order.....

Petitioner Articulated a Meritorious Defense

In petitioner's motion she argued that her meritorious defense is FHA Housing Discrimination. As she explained, Landings and Hills Properties withheld her complaints of a conspiratorial discriminatory surveillance placed in her apartment by the Landings, so that she could be monitored by the City of Cincinnati, F.B.I. and others. They omitted this information to prevent petitioner from fairly and fully presenting her defense to their eviction. They lied to induce the trial and appellate court to act, and it did by rendering a forcible entry and detainer action and writ of restitution against her. Had the trial court granted petitioner additional time to subpoena witnesses, obtain documents, directly question both Jenn Taylor and Regina Bray in Court, and others petitioner would have been capable of proving that Landings had knowledge of the unlawful surveillance taking place in her apartment. Where timely relief is sought from a judgment and the movant has a meritorious defense, doubt, if any, should be resolved in favor of the motion to set aside the judgment so that cases may be decided on their merits. As a general statement of the proposition of law, this is, of course, true, and the courts have consistently applied the principle in appropriate cases. *Tozer v. Charles A. Krause Milling Co.* (C.A. 3, 1951), 189 F.2d 242; *Bridoux v. Eastern Air lines* (C.A.D.C., 1954), 214 F.2d 207; *Davis v. Parkhill-Goodloe Co.* (C.A. 5, 1962), 302 F.2d 489; *Tolson v. Hodge* (C.A. 4, 1969), 411 F.2d 123; 7 *Moore's Federal Practice* 232, Paragraph 60.19. It is equally well-settled that the disposition of a 60(B) motion lies within the sound discretion of the trial court; accordingly, the ruling on such a motion will not be reversed on appeal unless an abuse of that discretion can be shown. *Meslat v. Amster-Kirtz Co.*, 5th Dist. Nos. 2007 CA 00189 & 2007 CA 00190, 2008-Ohio-4058, at ¶26, quoting *Griffey v. Rajan* (1987), 33 Ohio St.3d 75, 77 * * *. Under a 60(B) analysis, an abuse of discretion occurs when the trial court exhibits an attitude that is unreasonable, arbitrary or unconscionable. *Cannell v. Robert L. Bates Co.* (Mar. 8, 2001), 10th Dist. Nos. 00AP-915, 00AP-916, & 00AP-917, 2001 Ohio App. LEXIS 835, at *4." *Natl. City Bank v. Graham*, 11th Dist. No. 2010-L-047, 2011-Ohio-2584, ¶15.

Petitioners' Motion was Timely

Turning to the facts of the instant motion, absent the Court's inherent or equitable powers to extend or toll the one-year time frame under Civ R. 60(B)(1), (2) & (3) petitioners' motion was untimely as to Civ. R. 60(B)(1) through (3). However, as to Civ R.60(B)(4) or (5) petitioners' motion was timely and she articulated a meritorious defense, of Housing Discrimination.

Ohio Rule of Civil Procedure 60(B)(4) & (5) states, in relevant part:

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons.....(4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been

reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment." Therefore, the sole remaining issue is whether petitioner demonstrated that she was entitled to relief under Civ. R. 60(B)(4) or (5). The Ohio Supreme Court has held that Civ. R. 60(B)(4) applies "to those who have been prospectively subjected to circumstances which they had no opportunity to foresee or control." *Knapp v. Knapp* (1986), 24 Ohio St.3d 141, 493 N.E.2d 1353, paragraph one of the syllabus. "Civ. R. 60(B)(4) was not meant to offer a party a means to negate a prior finding that the party could have reasonably prevented." *Cuyahoga Support Enforcement Agency v. Guthrie*, 84 Ohio St.3d 437, 443 N.E.2d 218, 1999-Ohio-362. By contrast, Civ. R. 60(B)(5) is intended as a catch-all provision reflecting the inherent power of a court to relieve a person from the unjust operation of a judgment, but it is not to be used as a substitute for any of the other more specific provisions of Civ. R. 60(B). The grounds for invoking Civ. R. 60(B)(5) should be substantial." *Caruso-Ciresi, Inc. v. Lohman* (1983), 5 Ohio St.3d 64, paragraphs one and two of the syllabus. *Adomeit v. Baltimore*, supra; *Antonopoulos v. Eisner* (1972), 30 Ohio App.2d 187 [59 O.O.2d 309].

With specific regard to "fraud upon the court," as used in regards to obtaining relief from judgment must be narrowly construed to embrace only that type of conduct which defiles the court itself, or fraud which is perpetrated by officers of the court so as to prevent the judicial system from functioning in a customary manner of deciding cases presented in an impartial manner, such as bribery of a judge or jury, fabrication of evidence by counsel, or **prevention of an opposing party from fairly presenting his case. To justify setting aside a final order on the ground of fraud, the acts of the adverse party "must be such as preventing the losing party from fully and fairly presenting his case or defense."** (*Atchison, Topeka and Santa Fe Railway Co. v. Barrett* (9 Cir. 1957) 246 F.2d 846, 849.) [F]raud upon the court constitutes grounds to vacate under Civ. R. 60(B)(5) whether perpetrated by a party or its attorneys." *In re Guardianship of Matyasek*, 159 Ohio App.3d 424, 2004-Ohio-7167, at ¶ 52.

Petitioner is entitled to relief under Rule 60(B)(4)

On or around, December 26, 2019, defendant was suffering from extreme pain in her chest and she was transported by ambulance to the Christ Hospital Emergency Room and diagnosed with acute pancreatitis. During the next few days defendant was scheduled for testing and follow up visits with Dr. Jeremy Bruce, Primary Care Physician to determine the cause of the pancreatitis. Dr. Jeremy Bruce discovered that defendant's pancreatic attack was caused by gallstones which were located in her gallbladder, and immediately referred her to a surgeon. On December 26, 2019, defendant received an email from Jenn Taylor, Landings Property Manager, which stated the following: (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43-1, Exhibit U)

"I am needing to follow up with you about the December rent. It is getting very late in the month, and I want to make sure you are aware of the late rent process in its entirety. At this time, the December balance and January rent will need to be paid in full to cancel the eviction process. The total balance and January rent will need to be paid in full to cancel the eviction process. The total balance is \$3,156.82 (\$1,721.82 December Balance + \$1,435 January Rent & Washer/Dryer) and will need to be paid in cashier's check or money

order only. Do you have a date you plan on being able to pay the balance in full? Also if rent is not paid before January 6th, then the January late fee of \$150 will be added to the balance. Please keep in mind that eviction court is scheduled for January 8th. If the above balance is not paid before eviction court, we will be unable to accept rent after that morning and will have to continue with the eviction process. Let us know if there are any questions you have and an intended date to pay rent.” (Holmes v. U.S.A. et al., No: 1:20-cv-00825, MOTION for Leave, RE 43, Exhibit U)

Because defendant was experiencing unforeseen health problems, she was granted a 7-day continuance above Lakefront's objections, ultimately the eviction hearing was rescheduled to January 15, 2020. Rosalind Holmes could not have prevented and had no opportunity to foresee or control her health problems. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43-1, Exhibit V)

On January 14, 2020, Holmes attempted to pay her rent by providing Landings with a cashier check in the amount of \$3,500.00 and they refused to accept her check. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43-1, Exhibit W) At the January 15, 2020, eviction hearing, Jenn Taylor testified, “we had sent an email on the 23rd of the month explaining how much was due before January 8th, the original court date and asked that it be paid before then.” (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, MOTION for Leave, RE 43-1, Transcript, 01/15/2020, Pg. 4 Ln. 13-21, Exhibit X) Rosalind Holmes never received a copy of the 23rd of the month email and Jenn Taylor did not provide a copy to the trial judge. The trial judge just accepted Jenn Taylor's testimony as truthful without requesting a copy of the 23rd of the month email and never asked defendant if she had received a copy of the email.

Furthermore, Landings' reason for not accepting Rosalind Holmes' January 14, 2020, rent check in the amount of \$3,500.00 is unbelievable. Landings' so-called email agreement sent by Jenn Taylor on the 23rd with a purported rent deadline of January 8, 2020, is the sole reason provided in support of their eviction. However, the trial court never confirmed Rosalind Holmes' receipt, knowledge or understanding of the email agreement. Jenn Taylor stated in relevant part, “Please keep in mind that eviction court is scheduled for January 8th. If the above balance is not paid before eviction court, we will be unable to accept rent after that morning and will have to continue with the eviction process.” Petitioner explained that eviction court was rescheduled to January 15, 2020, because of health-related issues that were outside of her control. The trial court and Landings refused to consider that defendant was sick and hospitalized and could not pay rent until January 14, 2020. If this is the Landings legitimate non-discriminatory reason it is a pretext to cover up illegal Housing Discrimination. Furthermore, given the circumstances surrounding Landing's deception and their fraudulent concealment of defendants housing discrimination complaints and illegal surveillance, this Court should not believe the Landings and immediately vacate the March 4, 2020, forcible entry and detainer action.

Petitioner is entitled to relief Under Civ. Rule 60(B)(5)

In the instant case, petitioner has provided substantial justification for why she is entitled to relief under Civ.R. 60(B)(4) or (5). On March 16, 2021, after requesting police reports for another case filed in the matter of, *Rosalind Holmes v Lakefront* (Case # CV 2021 05 0639, Butler County Common Pleas Court). Petitioner discovered a police report filed with the West Chester Police Department by Kevin Saeks, Landings

Business Manager, on July 13, 2019. Petitioner was never aware that Landings had filed a police report on July 13, 2019. The July 13, 2019, police report and petitioners cell phone records substantiate that petitioner reported discriminatory surveillance to the Landings, on July 10, 2019. The Landings deliberately withheld their knowledge of her reports of discrimination from the Area III Court. The act of deliberately concealing petitioners' complaints of conspiratorial harassment, and discriminatory surveillance is connected to the presentation of Landing's case and is defined as fraud upon the court. Jenn Taylor and Regina Bray's deliberate concealment prevented petitioner from fairly presenting her defense of FHA housing discrimination at trial.

The record reflects that petitioner discovered the police report, on March 16, 2021, and filed her motion for relief on July 9, 2021, which was within a reasonable amount of time. Petitioner exercised due diligence by attending all hearings and providing her phone records and other evidence at trial. In fact, petitioner requested that the trial court permit her to provide additional evidence such as witness testimony, etc., and the trial court denied her request. Jenn Taylor and Regina Bray's deliberate concealment prevented petitioner from fairly presenting her defense of FHA Housing Discrimination at trial. Regina Bray and Jenn Taylor's denial of petitioners' complaints of housing discrimination was done to induce the trial court to act and it did by rendering a wrongful forcible entry and detainer action against petitioner. The Ohio Supreme Court has defined the elements of fraud as follows:

"The elements of an action in actual fraud are: (a) a representation or, where there is a duty to disclose, concealment of a fact, (b) which is material to the transaction at hand, (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (d) with the intent of misleading another into relying upon it, (e) justifiable reliance upon the representation or concealment, and (f) a resulting injury proximately caused by the reliance." *Gaines v. Preterm-Cleveland Inc.* (1987), 33 Ohio St.3d 54, 55, 514 N.E.2d 709.

The power of the court to vacate a judgment for fraud is regarded as inherent and independent of statutory provisions authorizing the opening of a judgment; hence judgments obtained by fraud may be attacked at any time." *Kenworthy v. Kenworthy*, 180 Conn. 129, 131, 429 A.2d 837 (1980). The relief of setting aside a judgment claimed to have been based on fraud will only be granted ". . . if the unsuccessful party is not barred by any of the following restrictions: (1) There must have been no laches or unreasonable delay by the injured party after the fraud was discovered, (2) There must have been diligence in the original action, that is, diligence in trying to discover and expose the fraud, (3) There must be clear proof of the perjury or fraud, (4) There must be a substantial likelihood that the result of the new trial will be different." *Varley v. Varley*, 180 Conn. 1, 4, 428 A.2d 317 (1980) (underlining added). *Jucker v. Jucker*, 190 Conn. 674, 677, 461 A.2d 1384 (1980), *Cromwell Common Associates*, 17 Conn. App. 13, 16, 549 A.2d 677 (1988); see Rest. Second Judgments 70. "The existence of fraud for purposes of opening and vacating a judgment is a question of fact. See *Jucker v. Jucker*, 190 Conn. 674, 679, 461 A.2d 1384 (1983); *Jackson v. Jackson*, 2 Conn. App.

179, 195, 478 A.2d 1026, cert. denied 194 Conn. 805, 428 A.2d 710 (1984.)" *Cromwell Commons Associates, supra* 16-17 upon which the moving party has the burden of proof.

More importantly, the Ohio Supreme Court has said that courts have "inherent authority and the power to vacate * * * judgments for fraud. Without such right and power the courts would become impotent as the judicial branch of government. A corollary to the possession of such right and power is the duty to exercise such power. The procurement of a judgment by fraud is a fraud upon the court as well as upon the opposing litigant. A judgment so procured can be vacated by exercise of the inherent power of the court." *Jelm v. Jelm* (1951), 155 Ohio St. 226, 240-241, 44 O.O. 246, 98 N.E.2d 401. A "fraud upon the court" is "[a]ny fraud connected with the presentation of a case to a court[.]" *Coulson v. Coulson*, [5 Ohio St.3d 12](#), [448 N.E.2d 809](#) (1983), at 15. When a judgment was procured by fraud, it is void and is subject to collateral attack. *Lewis v. Reed*, 117 Ohio St. 152 (Ohio 1927). A party who can show a judgment is void need not meet the requirements of Civ.R. 60(B) and can rely on the trial court's inherent authority to vacate a void judgment. *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941 (1988), paragraph four of the syllabus.

Landings and Hills had an opportunity to disclose their knowledge of petitioners' Housing Discrimination complaints to both the trial and appellate courts, and they failed to do so. Landings and Hills knew or should have known the impact of their failure to disclose petitioners' reports of discriminatory surveillance and harassment complaints to the trial and appellate court. Landings and Hills omissions were deliberate and knowingly constitute fraud. Landings and Hills withheld material information about petitioners housing discrimination complaints and lied to induce the trial and appellate court to act, and it did by rendering a forcible entry and detainer action and writ of restitution against petitioner. If Landings and Hills had fully disclosed petitioners' reports of illegal surveillance and harassment, the trial and appellate court could have taken all evidence into consideration and rendered an equitable decision. Petitioner has been damaged and suffered injury due to Landings and Hills fraud. It would be unjust and inequitable not to grant petitioner relief from judgment obtained in this manner. As the judge said in the *Mitchell* case, "To do so would be an affront to our system of justice." *Willie A. Mitchell, Jr. v. Clara H. Mitchell*, 1987 WL 6545 (Ohio App. 8 Dist.)

Exceptions to the mootness doctrine issues raised are capable of repetition, yet evading review

One exception to the mootness doctrine arises when the issues raised in an appeal are "capable of repetition, yet evading review". " *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165, 166, 527 N.E.2d 807 (1988), quoting *S. Pacific Terminal Co. v. Interstate Commerce Comm.*, 219 U.S. 498, 515, 31 S.Ct. 279, 55 L.Ed. 310 (1911). The Ohio Supreme Court has declared this exception applies in exceptional circumstances, when two factors are present: "(1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231, 729 N.E.2d 1182 (2000).

With respect to the first element of the exception, most leases are for one year, and it is unlikely that the entire process of a trial court decision and appellate review could occur all within that one year. The time between when a tenant is wrongly evicted—even if a stay of the writ is granted—and when the tenant's lease expires will invariably be short. With respect to the second element of the exception, petitioner asserts that because of the ongoing conspiratorial harassment, warrantless surveillance and secretive conduct involving the F.B.I., and others she remains subject to the continued threat of being wrongfully evicted again. Petitioner argues that Landings at Beckett Ridge and Lakefront at West Chester, LLC., filed two separate eviction actions against her and because of the ongoing conspiratorial harassment, warrantless surveillance and secretive conduct involving the F.B.I, and others she was incapable of successfully asserting her Housing Discrimination claims and was wrongfully evicted twice. Petitioner asserts that Lakefront at West Chester, LLC., filed two eviction actions against her, on May 14, 2021, and June 16, 2021. (*Lakefront v Holmes*, No: CVG 2100528, Butler County Area III Court, filed 05/14/2021) & (*Lakefront v Holmes*, No: CVG 2100651, Butler County Area III Court, filed 07/07/2021) At the hearings, held in the Butler County Area III Court, petitioner informed the Court that Lakefront was involved in the ongoing conspiratorial harassment, retaliation and warrantless surveillance with the F.B.I, and others. On May 7, 2021, petitioner filed a lawsuit against Lakefront under Title VIII Housing Discrimination, in the Butler County Common Pleas Court. (*Holmes vs Lakefront* No: CV-2021-05-0639, Btr. Cty. Common Pleas Court filed 05/07/2021) However, the Butler County Area III Court refused to transfer Lakefront's eviction action to the Butler County Common Pleas Court for adjudication with her federal housing discrimination complaint.

Even though, the Butler County Area III Court lacked subject matter jurisdiction to adjudicate Lakefront's evictions, they failed to dismiss or certify and transfer the eviction to the Butler County Common Pleas Court as required, by Ohio Revised Code §§ 1907.03, 1907.031 & § 2305.01. Ultimately, petitioner was wrongfully evicted again by Lakefront on August 19, 2021, and prevented from adjudicating her housing discrimination claims in violation of the Fourteenth Amendment to the U.S. Constitution. Petitioner asserts she currently lives in an apartment managed by a different company but claims her current landlord Four Bridges owned by Towne Properties is involved with F.B.I, and others ongoing conspiratorial harassment, warrantless surveillance and secretive conduct. Petitioner has enclosed police reports that she has filed with the Butler County Sheriff's Office as evidence that her current landlord is involved in the ongoing conspiratorial harassment, warrantless surveillance and secretive conduct with the F.B.I., and others. (Exhibit 4, Attached) Therefore, it is imminent that petitioner may be subject to another wrongful forcible entry and detainer action.

This case presents a debatable constitutional question or matter of great public or general interest

Another exception to the mootness doctrine arises when a case presents a debatable constitutional question or matter of great public or general interest. *Franchise Developers, Inc. v. Cincinnati*, 30 Ohio St.3d 28, 31, 505 N.E.2d 966 (1987). Many federal, state and local laws provide

for its commitment to freedom of speech, freedom from discrimination, freedom from warrantless searches and seizures and the right to due process. The issues in this appeal are of great public interest and presents debatable constitutional questions, with the potential to affect every landlord, tenant, and property management company in Ohio and across America. The Fourth Amendment to the U.S. Constitution states:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Supreme Court issued its landmark privacy decision in *Carpenter v. United States*, 138 S. Ct. 2206 (2018), ruling that the government must get a warrant before accessing a person's sensitive cellphone location data. In *Alderman v. United States*, 394 U. S. 165, 176 (1969) the Court upheld defendants' contention that the Government could not introduce against them conversations between other people obtained by warrantless placement of electronic surveillance devices in their homes. The court recognizes that, as a general matter, the search of a citizen's home is a significant intrusion upon individual privacy. "At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). The Fourth Amendment also protects an individual's home from warrantless entry. *United States v. Walker*, 390 Fed.Appx. 854, 857 (11th Cir.2010). "In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home." *Payton v. New York*, 445 U.S. 573, 589, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). Our Constitution provides many important protections. Among them, the Fourth Amendment's prohibition on unreasonable searches and seizures embodies a particular concern about and constitutional protection against governmental intrusion into one's home. *United States v. Jones*, 565 U.S. 400, 405–07, 132 S.Ct. 945, 181 L.Ed.2d 911 (2012) (Scalia, J., explaining the historic roots of the Fourth Amendment in property rights and common law trespass); *Kentucky v. King*, 563 U.S. 452, 459, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011) "It is a basic principle of Fourth Amendment law, we have often said, that searches and seizures inside a home without a warrant are presumptively unreasonable."

Petitioner lacks a plain and adequate remedy

As previously stated, on June 1, 2022, petitioner filed a memorandum in support of jurisdiction in the Ohio Supreme Court. The Ohio Supreme Court declined jurisdiction, on August 16, 2022. (*Landings at Beckett Ridge v. Holmes* No: 2022-0662. Butler App. No. CA2021-09-118, 2022-Ohio-1272.) (Appendix E, Attached) It is a fact, that petitioner does not have an adequate remedy in the ordinary course of law.

Americans with rights and privileges that help guarantee their safety, freedoms and ability to live well. Unfortunately, these rights are often targeted by federal, state and local governments, police, politicians and other individuals and organizations every day. U.S. Congress is known

The Landings at Beckett Ridge has hired Columbia Debt Recovery LLC., DBA Genesis to initiate collection activities, on the March 4, 2021, wrongful eviction. (Exhibit 5, Attached) Additionally, Ohio's Twelfth District Court of Appeals and Ohio Attorney General's Office has initiated collection efforts. (Exhibit 8, Attached) Because an eviction damages an individual's credit and ability to obtain housing and this petitioner has been directly affected by this negative outcome of being wrongfully evicted. Petitioner respectfully request the following:

PETITIONERS' SPECIFIC REQUEST FOR A WRIT OF MANDAMUS

Petitioner respectfully request that the United States Supreme Court issue an order to the Butler County Area III Court, Ohio's Twelfth Appellate Court of Appeals and the Ohio Supreme Court to vacate and seal the following orders:

- 1.) On March 4, 2021, Judge Dan Haughey, clearly and indisputably abused his discretion when he ordered a forcible entry and detainer action. (The Landings at Beckett Ridge vs Rosalind Holmes, No: CVG 1901594, Butler County Area III Court), (order of eviction 05/04/2020) (Appendix A, Attached).
- 2.) On December 28, 2020, Judge Robert A. Hendrickson, Stephen W. Powell and Mike Powell clearly and indisputably abused their discretion when they dismissed petitioner's appeal as moot. (Appendix B, attached). (*Landings at Beckett Ridge vs Rosalind Holmes*, No. CA-2020-04-0050, Ohio's Twelfth District Court of Appeals, filed 04/06/2020), (appeal dismissed as moot, 12/28/2020)
- 3.) On August 23, 2021, and September 27, 2021, Magistrate Judge Fred Miller and Judge C. Caperella-Kraemer clearly and indisputably abused their discretion when they denied petitioners' Rule 60(B)(4) & (5) relief from judgment. (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: CVG 1901594, Butler County Area III Court), (Appendix C, Attached)
- 3.) On April 18, 2022, Judge Stephen W. Powell, Robert A. Hendrickson and Matthew R. Byrne, clearly and indisputably abused their discretion when they denied petitioners' Rule 60(B)(4) & (5) motions for relief from judgment. (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: 2021-09-118, Ohio's Twelfth District Court of Appeals), (Appendix D, attached).
- 4.) Petitioner respectfully request this Honorable Court to issue an order directing the Ohio Supreme Court to seal the matter of *Landings at Beckett Ridge v. Holmes* No: 2022-0662. The August 16, 2022, order declining jurisdiction by the Ohio Supreme Court (*Landings at Beckett Ridge v. Holmes* No: 2022-0662, Ohio Supreme Court, Butler App. No. CA2021-09-118), (Appendix E, Attached).
- 5.) Petitioner respectfully request this Honorable Court to issue an order to the United States District Court in the matter of *Holmes vs USA et al.*, No 1:20-cv-00825, directing the Court to permit petitioner time to amend her complaint to include additional causes of action against The Landings at Beckett Ridge including but not limited to for breach of contract (fraud, covenant of quiet enjoyment, and constructive eviction, etc.

Petitioner respectfully request that the United States Supreme Court issue an order directing The Landings at Beckett Ridge, Hills Properties, Columbia Debt Recovery LLC., DBA., Ohio's Twelfth Appellate Court of Appeals, the Ohio Supreme Court and the Ohio Attorney General to cease and desist all collection efforts:

6.) Cease and desist all collection efforts including but not limited to reporting adverse information about Rosalind Holmes to Equifax, Transunion, and Experian; remove any adverse information that was previously reported to the credit bureaus, prohibit the filing of a case against Rosalind Holmes in any Court in the United States of America for monetary relief and damages related to Judge Dan Haughey's, March 4, 2021, order of forcible entry and detainer action. (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: CVG 1901594, Butler County Area III Court), (order of eviction 05/04/2020), (Appendix A, attached)

Part Two: Lakefront at West Chester, LLC.

On May 19, 2020, petitioner rented a two-bedroom, two-bathroom apartment from Lakefront at West Chester, LLC. ("Lakefront"). (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Exhibit FF, PAGEID# 1888-1910) After moving into the apartment, petitioner spotted water bugs a.k.a. the oriental coach roach crawling on the floors and walls during the late evening and early morning hours. On May 27, 2020, petitioner informed Jessica Banks, Lakefront's Property Manager of this issue and requested to move out without being subject to the lease agreement and reimbursement for damages to her personal property. However, Lakefront Management refused to release petitioner from the lease and reimburse her for damage and loss of her personal property.

Holmes vs Lakefront at West Chester, LLC. CVF 2001041 Area III Court, CA 2021-05-046 Ohio's Twelfth District Court

On November 2, 2020, petitioner filed a complaint against Lakefront in the Butler County Area III Court, (*Holmes vs Lakefront*, No: CVF 2001041, Butler County Area III Court, West Chester, Ohio) under Ohio Revised Code for violations of Landlord Obligations, Common Law & Statutory Trespass, Breach of Contract, Implied Warranty of Habitability, Acts Prohibited by a Landlord, and Landlord Retaliation.⁶ Additionally, petitioner deposited her monthly rent payment, with the Butler County Area III Court. On December 1, 2020, Lakefront filed a motion to dismiss this case because the Butler County Area III Court lacked subject matter jurisdiction. Attorney Amy Higgins stated the following, in their motion to dismiss:

"Tenant's Complaint on its face request relief this Court is not authorized to grant. She request more than \$15,000 in damages and an injunction, neither of which can be granted by a county court in Ohio. R.C. 1907.03 limits the damages that can be sought in county courts, such as the Butler County Area III Court, to \$15,000. But Tenant request in her prayer for relief "an amount exceeding ten thousand dollars [and] an amount exceeding five thousand dollars" – putting her total demand above the jurisdictional limit of \$15,000

⁶ See, e.g., *Holmes v. Lakefront at West Chester*, No. CVF2001041, RE000007 (Butler Cty. Area III Ct. filed Nov. 2, 2020), (Motion to Dismiss filed Dec. 1, 2021), (Amended Complaint filed Dec. 4, 2021), (Hearing Dec. 30, 2020), (Bench Trial March 1, 2021), Magistrate Fred Miller decision filed March 5, 2021), (Pl. Obj. to Mag. Decision March 16, 2021), (Def. RE to Pl. Obj. March 24, 2021), (Pl. RE to Def. RE filed April 5, 2021) and (Final Order filed by J. Bowling March 27, 2021), (all Butler County Area III cases located at: <http://docket.bcareaocourts.org/>) (last accessed 08/23/2022) *appeal at CA-2021-05-0046* (Ohio 12th Dist. Ct. App. Filed May 12, 2022), (Brief of Petitioner June 23, 2021), (Motion to take Judicial Notice Dec. 17, 2021,) (Entry Denying Judicial Notice Dec 27, 2021), (Final Judgment Jan 19, 2022), (Motion to Vacate Final Judg. Feb. 8, 2022), (Final Judg. Reserved March 1, 2022), (Motion for Reconsideration March 14, 2022) and (Final Judg. Denying Reconsideration March 12, 2022) (located at <https://pa.butlercountyclerk.org/eservices/searchresults.page>) (last accessed 08/23/2022).

and therefore beyond the reach of this Court. Additionally, R.C. 2727.03 limits the granting of injunctions to “the supreme court or a judge thereof, the court of appeals or a judge thereof in his district, the court of common pleas or a judge thereof in his county, or the probate court, in cases pending therein.” Thus, this division of the county court is not authorized under the statute to grant such an injunction.” (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Ohio Supreme Court, Exhibit 9)

Magistrate Miller advised petitioner that he could not hear her case because it was out of his jurisdiction. Before, petitioner could proceed with her case in the Butler County Area III Court she had to amend the complaint to comply with the statutory jurisdiction, of the Butler County Area III Court. On December 4, 2020, petitioner filed an amended complaint in which she changed her prayer for relief pursuant to R.C. 1907.03 damage limitations of \$15,000.

With her amended complaint petitioner attached emails conversations with Jacque Keller, PLK Communities, Regional Manager, from July 14 through July 16, 2020, which stated in relevant part,

“Someone has been opening and closing the front door of my apartment and entering my apartment without my consent. I have been noticing this issue for some time....I believe it is illegal harassment....this has been an ongoing issue at every apartment community that I have lived in because the F.B.I., City of Cincinnati, and the State of Ohio are harassing me in retaliation for filing a legitimate federal discrimination lawsuit and complaint against an attorney who committed malpractice...I am demanding that you correct the issue with the apartment immediately and do not let anyone else enter this apartment except for the maintenance, exterminator, and in the event of an emergency.. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Exhibit GG & HH, PAGEID# 1911-1920)

This message is for Jackie who works in the corporate office. Yesterday during our conversation, you stated that the corporate office is not involved in a conspiracy with the F.B.I., City of Cincinnati. State of Ohio and others. I disagree and you have not performed an adequate investigation into your corporate office to come to this conclusion. You also advised that no one can obtain keys or change the locks to the property without the consent of the office. If this is true, how did the lock on my mailbox get changed mysteriously. The key to the mailbox that was provided when I moved into this apartment [May 20, 2020.] was working just fine and suddenly [on June 30, 2020] the lock on my mailbox lock was changed without any explanation. You really need to perform the proper investigation into the corporate office before you conclude that no one is working against me with the government and others. [Message sent on July 16, 2020] (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Exhibit GG & HH, PAGEID# 1911-1920)

Petitioners' amended complaint in relevant part stated the following:

In July 2014, petitioner was employed by the City of Cincinnati and filed a federal discrimination lawsuit against the City.⁷ As a result of petitioners' former attorney's misrepresentation, petitioner filed a complaint of attorney misconduct and requested equitable tolling in her lawsuit. At the time petitioner, was unaware that her former attorney, Elizabeth Tuck, had accused petitioner of supplying fraudulent emails to the United States District Court....the F.B.I., City of Cincinnati, State of Ohio, Freking, Myers Reul and Attorney Elizabeth Tuck had made an agreement to conspire against petitioner. As a result of the accusation of fraud, petitioner became a criminal suspect and was targeted by the Federal Bureau of Investigation [Cincinnati Division] and on October 20, 2020 petitioner filed a *Bivens* and Section 1963 complaint against the F.B.I., City of Cincinnati, State of Ohio and several others in the United States District Court for the Southern Division of Ohio⁸.....which included Lakefront at West Chester LLC., Jessica Banks, Property Manager and Jacque Keller, Regional Manager....

⁷ See, e.g., *Holmes vs. City of Cincinnati*, 1:14-cv-582 (S.D. Ohio July 15, 2014) (Barrett, J.; Litkovitz, M.J.) (Settlement Agreement and Joint Stipulation filed May 17, 2017) ([CM/ECF LIVE - U.S. District Court:OHSD-U.S. District Court \(uscourts.gov\)](https://cm/ecf-live-u.s.-district-court:ohsd-u.s.-district-court(uscourts.gov))) (last accessed 08/23/2022)

⁸ See, e.g., *Holmes v. U.S.A., et al.*, No. 1:20-cv-825 (S.D. Ohio filed Oct. 20, 2020), (Amended Nov. 12, 2020) (McFarland, J.; Litkovitz, M.J.)

Petitioners' amended complaint filed in the Butler County Area III Court involved three significant incidents: 1.) Jessica Banks, Lakefront Property Manager, September 19, 2020, telephone call made to petitioner threatening eviction action. 2.) The June 30, 2020, unauthorized change in petitioners' mailbox lock. 3.) The October 28, 2020, unauthorized change to petitioners' apartment door lock. Hearings were held on December 30, 2020, and March 1, 2020, in the Butler County Area III Court relevant excerpts are as follows:

1. Testimony Re: Jessica Banks, September 19, 2020, Threat of Eviction

At the hearing held on December 30, 2021, petitioner testified as follows:

Ms. Holmes: ...My furniture that I lost as a result of Jessica calling me on the phone and trying to force me out.... She called me on the phone without even filing a case in this court or without even getting the proper execution from this court...and told me that I had to get out.... that day. As a result of that—my furniture cost like \$10,000, that I lost. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 12/30/2021. Pg. 13, Ln. 24-25, Pg. 14, Ln. 1-10 & Ln. 21-22, Exhibit VV)

At the March 1, 2020, hearing petitioner questioned Jessica Banks regarding the September 19, 2020, telephone call. Relevant excerpts from the transcripts are as follows:

Ms. Holmes: So, do you remember the call that you placed in September where you instructed me that I had to leave immediately? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 34, Ln. 11-14, Exhibit NN)

Ms. Banks: Vaguely. If I go back to how that phone call was initiated, you gave us notice to vacate that you were leaving September 4th. You failed to vacate. I had rented your home. I was trying to let you know that we had rented your home, that we needed you to vacate. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 34, Ln. 15-20, Exhibit NN)

Ms. Holmes: Do you remember the call when you called me and you directed me that I have to leave and I had to leave immediately? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 34, Ln. 22-44, Exhibit NN)

Ms. Banks: I don't think I told you immediately, but I did inform you we rented your home, and that someone was scheduled to move in there. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 34, Ln. 25, Pg. 35, Ln. 1-3 Exhibit NN)

Additionally, Ms. Banks admitted that she vaguely remembered the September 19, 2020, call to petitioner threatening to force her to move out immediately. Under Evid. R. 804(3), her testimony is inadmissible due to her lack of memory regarding the September 19, 2020, call to petitioner.

2. Testimony Re: June 30, 2020, Unauthorized Change in Petitioners' Mailbox Lock

At the March 1, 2020, hearing, Attorney Amy Higgins improperly solicited witness testimony from Jessica Banks who did not have any personal knowledge of matters related to the unauthorized change of petitioners' mailbox and apartment door locks. Attorney Amy Higgins did not provide sufficient evidence in Court, to conclude that Jessica Banks had the requisite personal firsthand knowledge. Relevant excerpts from the March 1, 2021, hearing are as follows:

Attorney Higgins: Do you remember the incident with her mailbox key. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 48, Ln 13-14, Exhibit NN)

Jessica Banks: I do. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 48, Ln 15, Exhibit NN)

Attorney Higgins: What happened with her mailbox key? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 48, Ln 16, Exhibit NN)

Jessica Banks: Shortly after she moved in and with the mailbox key, she decided to retrieve mail, it was not working. Maintenance went out immediately to see what was going with it. The screw that holds the lock in place had come loose. Once that was tightened, they didn't have to change any type of key or anything out of there. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave,

RE 43-2, Transcript, 03/01/2021, Pg. 48, Ln 17- 24, Pg. 46 Exhibit NN)

Attorney Higgins: So, it wasn't that it had changed, it wasn't that it had been replaced? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 48, Ln 25, Pg. 49, Ln 1, Exhibit NN)

Jessica Banks: Exactly. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 49, Ln 2, Exhibit NN)

Attorney Higgins: Had anybody messed with the mailbox key? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 49, Ln 3-4, Exhibit NN)

Jessica Banks: No (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 49, Ln 5, Exhibit NN)

On redirect examination, petitioner questioned Jessica Banks about the unauthorized change in petitioners' mailbox lock. Relevant transcript excerpts are shown below:

Ms. Holmes: Going back to the mailbox, you said that there was some mechanical failure with the screw inside the mailbox. When I reported that my key was not working and maintenance came out and brought me a new key to the mailbox, What actually happened? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 53, Ln. 19-25 Exhibit NN).

Jessica Banks: I wasn't there. So, I can't even-- (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 54, Ln. 1 Exhibit NN).

Ms. Holmes: So, you don't know what happened? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 54, Ln. 2, Exhibit NN).

Jessica Banks: I was told that he did not have to change the lock. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 54, Ln. 3-5 Exhibit NN).

When Attorney Higgins questioned Jessica Banks about petitioners' mailbox lock, she responded that she remembered the incident. However, when petitioner questioned Jessica Banks about what happened with the mailbox, Jessica responded that she was not there and she did not have any personal knowledge. Furthermore, petitioner moved into the apartment at Lakefront on May 20, 2020. On June 30, 2020, Petitioner reported that her mailbox key was not working, that is a month after she moved into the Lakefront apartment. Jessica Banks testimony is clearly false, inconsistent, and contradictory, petitioner had used her mailbox key for over a month and suddenly the key would not work. Maintenance provided petitioner with a new key to open the mailbox and retrieve her mail, on June 30, 2020.

3. Testimony Re: October 28, 2020, Unauthorized Change in Petitioners' Apartment Lock

At the March 1, 2020, hearing, Attorney Amy Higgins did not provide sufficient evidence in Court, to conclude that Jessica Banks had the requisite personal firsthand knowledge as required under Evid.R.602. Relevant excerpts from the March 1, 2021, hearing are as follows:

Attorney Higgins: When you received the email [Petitioners' October 28, 2020, email], *Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Exhibit PP] from her about her door lock not working, what did you do? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 45, Ln 12- 14, Exhibit NN)

First, Attorney Amy Higgins failed to provide the Court with a copy of the October 28, 2020, email because it would have established that Jessica Banks, Lakefront Property Manager was not included in the conversation.

Jessica Banks: So, I was actually not in the office that day. My staff took care of it. They put in a work order. Maintenance went over there to see if anything was going on with the lock. To my assumption, they rekeyed the lock. In rekeying basically it's us putting a pin in there to rekey the lock. A lot of times with that quickset bolt, the pin slipped due to changes in the weather. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 45, Ln 15- 23, Exhibit NN)

Attorney Higgins: October 28th, was the weather changing about that time? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 45, Ln 24- 25, Exhibit NN)

Jessica Banks: Yes (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 1, Exhibit NN)

Attorney Higgins: Had anybody— (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 2, Exhibit NN)

The Court: Excuse me. We're in Cincinnati. The weather changes every day. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 3- 5, Exhibit NN)

Ms. Higgins: Correct... (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 6, Exhibit NN)

Attorney Higgins: So, October 28th would have been no different, correct? So, did they find that somebody had actively changed the lock prior to that maintenance? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 7-10, Exhibit NN)

Jessica Banks: No. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 11, Exhibit NN)

Jessica Banks never provided any reliable evidence such as maintenance records, testimony from an expert such as a locksmith, testimony from maintenance personnel, or testimony from Taylor Jones. Without reliable evidence to support Jessica Banks testimony, a reasonable person would conclude that her assumptions are false. If Jessica's assumptions were accurate and true, Lakefront would have provided the court with evidence to support them.

Attorney Higgins: They found that the problem was just a pin out of position? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 12-13, Exhibit NN)

Jessica Banks: Correct. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 14, Exhibit NN)

There was no evidence such as a maintenance report or testimony from maintenance provided to support Jessica's confirmation of Attorney Higgins statement that maintenance found that the problem was just a pin out of position. On direct examination petitioner questioned Jacque Keller regarding unauthorized access and entry to her apartment.

Ms. Holmes:In the month of June and July, I contacted you. Do you remember that? I spoke to you by phone and I sent...emails as well. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 28, Ln. 8-12, Exhibit NN).

Jacqueline Keller:I don't specifically remember a specific call in June or July. Could you tell me what those were regarding? We spoken on the phone a few different times. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 28, Ln. 15-19, Exhibit NN).

Ms. Holmes:one call was regarding someone entering the [petitioners'] apartment. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 28, Ln. 20-23, Exhibit NN).

Jacqueline Keller: I do recall that conversation.....And the only person that would have access...is the property management team..... (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 28, Ln. 15-19, Exhibit NN).

Therefore, Ms. Keller has confirmed that the only person with access to petitioners' apartment is the property management team. Based on this information, a reasonable person could infer that someone on Lakefront's property management team authorized the change in petitioners' apartment door lock on October 28, 2020, and mailbox lock on June 30, 2020.

On March 5, 2021, Magistrate Fred Miller issued an order dismissing petitioners' amended complaint in which he explained that petitioner had failed to prove by a preponderance of the evidence any of the allegations contained in her Amended Complaint (*Holmes vs Lakefront*, No: CVF 2001041, Butler County Area III Court, West Chester, Ohio), (Appendix F, Attached)

On March 16, 2021, petitioner filed written objections to Magistrate Miller's order and argued the following:

On March 1, 2021, Jessica Banks testified that she was not in the office on June 30, 2020, and October 28-29, 2020, when petitioner reported that her mailbox and door locks were changed, respectively. In addition, Ms. Banks testified that she vaguely remembered the September 19, 2020, call to petitioner forcing her to move out immediately. Ms. Banks speculated that Lakefront had rented petitioners' apartment because of her prior notice to vacate. Even though, Jacque Keller, Regional Mgr. had cancelled petitioners' prior notice to vacate. Ms. Banks speculated that the mailbox lock screw that held the lock in place became loose and once maintenance tightened the screw, they didn't have to change any type of key and the possibility of the door lock failing because a

change in weather may have caused a pin to slightly shift position. Ms. Banks testified that in her five years of experience, this sort of thing happened 25-30 times. However, Ms. Banks failed to provide evidence to support her stories and theory such as maintenance records, testimony from the in-house maintenance or from an expert such as a locksmith.

If Ms. Banks testimony were true, then the leasing records would reflect that Lakefront had rented petitioners' apartment and maintenance records would reflect that a screw became loose on petitioners' mailbox lock and a change in weather caused a pin to shift position on the door lock. However, Lakefront failed to provide any leasing records, maintenance testimony or records in support of Ms. Banks testimony. Furthermore, there is no indication that Jessica Banks possessed any personal knowledge to support this testimony as required by Evid.R. 602. Additionally, Ms. Banks admitted that she vaguely remembered her September 19, 2020, call to petitioner threatening to force her to move out immediately. Under Evid. R. 804(3), her testimony is inadmissible due to her lack of memory regarding the September 19, 2020, call to petitioner.

In fact, Ms. Banks testimony leaves no doubt that she lacked personal knowledge and memory required to testify as to petitioners' mailbox lock being changed, door lock failure and her threatening to evict petitioner. Petitioner did object and rebut this testimony at trial, it is clear upon review that the defendant's attorney improperly solicited from Ms. Banks testimony that was speculative and was established to be beyond her personal knowledge and memory. The trial court should not consider or accept Ms. Banks testimony as to what she thought had happened out of these circumstances. The Judge should be fully capable of drawing his own inferences from the evidence without the aid of Ms. Banks speculation.

Ms. Banks, testimony contradicts Taylor Jones, Assistant Manager response to petitioners' report of the lock being changed on October 28, 2020. When Ms. Jones, received petitioners' complaint, she obviously did not know why petitioners' lock mysteriously was changed and she stated that she would have to put a work order in for maintenance to check the lock. A landlord must have a court order to evict a tenant. If a landlord changes the locks, removes your belongings, or shuts off your utilities without a court order, this is called "Self-Help Eviction" and is illegal in Ohio.

Therefore, Magistrate Miller's decision to consider Jessica Bank's speculative testimony should be rejected. Jessica Banks, March 1, 2021, testimony as to her calling petitioner, on September 19, 2020, and telling her that she had to move out immediately because petitioner submitted a notice to vacate should be rejected because of her vague remembrance. Jessica Banks claims that she had rented the unit to another tenant should be rejected because of her vague memory and there was no evidence such as a leasing record provided. In addition, Attorney Amy Higgins testimony that Lakefront was being a nice and good landlord by permitting petitioner to stay in the apartment should be rejected as hearsay.

Furthermore, Jacque Keller testified that the only one who can change a tenant's locks is the property management team. Ms. Keller did not provide any information or documentation that an investigation into the change in petitioners' mailbox key, door lock failure or petitioners' complaints of conspiracy and discrimination were investigated. Based upon the foregoing, a reasonable person can conclude that someone from Lakefront Property Management Team authorized the change of petitioners' locks on her mailbox and door and that Lakefront is directly involved in the conspiracy with the F.B.I. and others because a prudent property management would have thoroughly investigated petitioners' concerns.

On March 25, 2021, petitioner received a letter from Lakefront stating the following:

PLK Communities has decided that we will not be renewing your lease as of May 20, 2021. The basis for this decision is that owner wants possession of the premises. The purpose of this notice is to give you notice in excess of one month to make appropriate arrangements to move. Please be advised that if you have not yet vacated the said premises by the date indicated above, we will be forced to commence an eviction action against you. Additionally, rent for the month of May must be paid on time and in full in order to remain in the premises for the month of May.

As this Court is already aware, petitioner filed a complaint in the United States District Court against Lakefront, PLK Communities, Jessica Banks, Jacque Keller, on October 20, 2020. Petitioners' federal complaint is filed pursuant to *Davis vs. Passman* which is a civil rights action alleging race and retaliatory discrimination under *Bivens*, Section 1983, and ORC 4112. If petitioner reasonably believes that her landlord is discriminating against her for impermissible reasons like race or for opposing Title VIII discrimination, as is the case here. Petitioner has a right to file a complaint of discrimination under federal and state law and request injunctive relief under Federal and State law. Just as the landlord has a right not to renew a tenant's lease and initiate eviction proceedings under R.C. 1923, as long as their decision is not based upon impermissible factors such as race, sex, familial status, retaliation, etc.....

On March 5, 2021, Magistrate Fred Miller, dismissed petitioners' complaint because he stated petitioner failed to prove by a preponderance of evidence any of the allegations contained in her Amended Complaint. (*Holmes vs Lakefront*, No: CVF 2001041, Butler County Area III Court, West Chester, Ohio), (Appendix F, Attached) On April 27, 2021, Judge Jeff Bowling adopted Magistrate Miller's recommendation and dismissed petitioners' Amended complaint. (*Holmes vs Lakefront*, No: CVF 2001041, Butler County Area III Court, West Chester, Ohio), (Appendix G, Attached)

Holmes vs. Lakefront, No: CA 2021-05-046, Ohio's Twelfth District Court, filed May 12, 2021

On May 12, 2021, petitioner filed an appeal in Ohio's Twelfth District Court of Appeals and argued that the trial court abused its' discretion in violation of Ohio Rule of Evidence 602, 804(3) and the judgment of the trial court is against the manifest weight of the evidence. It's important to note that Ohio's Twelfth District Court of Appeals decided this matter *Rosalind Holmes vs Lakefront at West Chester*, CA 2021-05-046, after petitioner filed her appeal of *Lakefront at West Chester LLC vs Rosalind Holmes* CA 2021-09-108, on September 2, 2021. On September 3, 2021, petitioner filed an emergency motion for a stay pending appeal in the matter *Lakefront at West Chester LLC vs Rosalind Holmes* CA 2021-09-108. In petitioners' motion she explained that she had filed a federal housing discrimination complaint against Lakefront on May 7, 2021, in the Butler County Common Pleas Court. (*Holmes vs. Lakefront*, No: CV-2021-05-0639) The May 7, 2021, housing discrimination complaint divested the Butler County Area III Court of subject matter jurisdiction. However, the Butler County Area III Court, continued to exercise jurisdiction over the eviction in violation of Ohio Revised Code §§ 1907.03, 1907.031 & § 2305.01. Ultimately, petitioner was wrongfully evicted because in bad-faith Lakefront procured a fraudulent and retaliatory eviction against petitioner, on August 19, 2021.

On December 9, & 17, 2021, petitioner filed a motion in the matters of *Lakefront at West Chester LLC vs Rosalind Holmes* CA 2021-09-108, filed on 09/02/2021 and *Rosalind Holmes vs Lakefront at West Chester*, CA 2021-05-046, filed 05/12/2021, requesting that Ohio's Twelfth District Court of Appeals to take judicial notice, consolidate the appeals and allow petitioner to supplement the record. Pursuant to O.R.C. § 1923.061 which permits a tenant to raise any valid defense to an eviction action. Even though the matter of *Rosalind Holmes vs Lakefront at West Chester*, CA 2021-05-046, was still pending and had not been decided. On December 27, 2021, and January 4, 2022, Judge Mike Powell, Judge Stephen Powell, Judge Robin N. Piper, knowing that petitioner had been wrongfully evicted because the Area III Court lacked subject matter jurisdiction, denied petitioners' motion to supplement the records and failed to consolidate the cases. (*Rosalind Holmes vs Lakefront at West Chester*, CA 2021-05-046, 12th District Court of Appeals, Middletown, Ohio), (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix H, Attached) Based upon the foregoing, at minimum, Ohio's Twelfth District Court of Appeals should have concluded that Lakefront was in violation of O.R.C § 5321.04(A)(2) Landlord Retaliation and O.R.C. § 5321.15(A) Acts Prohibited by a Landlord and reversed, remand, or weighed the evidence and render the decision that the Butler County Area III Court should have rendered under Ohio Appellate Rule

12(C)(1). Additionally, Ohio's Twelfth District Court of Appeals should have voided *Lakefront at West Chester LLC vs Rosalind Holmes* CA 2021-09-108, for lack of subject matter jurisdiction, on September 3, 2021, but they failed to do so. Where a court lacks subject-matter jurisdiction, it must announce its lack of jurisdiction and dismiss the matter; any other proclamation by a court lacking subject-matter jurisdiction is void. *Pratts v. Hurley*, 102 Ohio St. 3d 81 (Ohio 2004) at ¶ 11, quoting *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998). On January 19, 2022, Judge Robin N. Piper, Mike Powell, and Matthew R. Byrne, affirmed the decision of the Butler County Area III Court. (*Holmes vs Lakefront* No: CA 2021-05-046, Ohio's Twelfth District Court of Appeals), (Appendix I, Attached) Furthermore, Judge Robin N. Piper, Mike Powell and Matthew R. Byrne's failure to consolidate the matters of *Lakefront at West Chester LLC vs Rosalind Holmes* CA 2021-09-108 and *Rosalind Holmes vs Lakefront at West Chester*, CA 2021-05-046 before issuing a final order, is a violation of O.R.C. §§ 1907.03, 1907.031, § 2305.01 and § 1923.061, Ohio law and violates petitioners' right to due process and equal protection, under the Fourteenth Amendment to the U.S. Constitution.

On April 12, 2022, Judge Robin N. Piper, Mike Powell, and Matthew R. Byrne, denied petitioners' motion for reconsideration. (*Holmes vs Lakefront* No: CA 2021-05-046, Ohio's Twelfth District Court of Appeals), (Appendix J, Attached) On April 12, 2022, Ohio's Twelfth District Court of Appeals stated, Holmes presented no evidence of retaliation or any other improper attempt to evict Holmes. The magistrate noted that Lakefront in fact decided to allow Holmes to stay in the apartment even though Holmes had previously indicated she would move out, and that she was still living in the apartment at the time of trial. The magistrate found that Holmes had not met her burden to prove retaliation."

Petitioners' August 3, 2020, email notification stated, " ... I will be vacating the apartment on September 4, 2020. It's obvious that you cannot get rid of the roaches." On August 3, 2020, Lakefront responded, "we will put you on notice for you to move out on 09/04/2020."

Furthermore, on August 11, 2020, petitioner sent an email to Jacqueline Keller which stated, "under Ohio law it is a requirement that the Landlord keeps the property in a fit and habitable condition I am left with no other recourse but to pursue legal action against Lakefront." On August 11, 2020, Jacqueline Keller responded, "Rosalind, per their investigations, we are not seeing any live activity in the home. Are you still seeing bugs? ... We would love to get it taken care of if there is an ongoing issue." Previously, petitioner explained that Jacque Keller and Taylor Jones had notified her that they would take care of the roaches and permitted her to stay in her apartment, thereby cancelling petitioners prior notice to vacate on August 11, 2020. Despite, the email reflecting that the notice to vacate had been resolved, Magistrate Miller found that Holmes had not met her burden to prove retaliation."

Magistrate Fred Miller, Judge Jeff Bowling, Judge Robin N. Piper, Mike Powell, and Matthew R. Byrne, continued to totally ignore (gross indifference) the fact that on August 19, 2021, Lakefront had procured a fraudulent eviction against petitioner knowing that the Butler County Area III Court lacked subject matter jurisdiction. The actions on the part of Judge Robin N. Piper, Mike Powell, and Matthew R. Byrne,

demonstrate willful and wanton gross negligence, as their actions of gross indifference to petitioner rights in the exercise of their judicial duties. This is a clear violation of the judicial code of conduct as prescribed by the Ohio Supreme Court.

REASONS FOR GRANTING THE WRIT

Magistrate Fred Miller, Judge Jeff Bowling, Judge Robin N. Piper, Mike Powell and Matthew R. Byrne decision to dismiss petitioners' amended complaint and their consideration of Jessica Banks testimony fails to follow the Ohio Rules of Evidence 602 and 804(3) and binding authority set forth by the Ohio Supreme Court and the Twelfth District Court of Appeals.

MANDAMUS LIES TO ORDER RESPONDENT TO FOLLOW OHIO LAW AND BINDING LEGAL PRECEDENT

Where a public officer or agency is under a clear legal duty to perform an official act, and where there is no plain and adequate remedy, in the ordinary course of the law, an action in mandamus will lie originally in the Supreme Court or in the Court of Appeals." *State ex rel. Pressley v. Indus. Comm'n*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967) (paragraph one of the syllabus).

Respondent has a clear legal duty to follow binding authority as established by the Ohio Supreme Court, and the Twelfth District Court of Appeals

The decisions of the Butler County Area III Court and Ohio's Twelfth District Court of Appeals dismissing petitioners' complaint for failure to state a claim, is contrary to binding legal authority, violates the Ohio Rules of Civil Procedure 12(B)(6) and Ohio Rules of Evidence 602, 804(3). Ohio's trial and intermediate appellate courts, are bound to follow precedent set by the Supreme Court of Ohio and cannot issue a decision in conflict with a decision of the Supreme Court that has not been reversed or overruled." *State v. Tatom*, 10th Dist. No. 17AP-758, 2018-Ohio-5143, ¶ 24. All trial courts and intermediate courts of appeal are charged with accepting and enforcing the law as promulgated by the Supreme Court not changing, modifying or ignoring that law. Courts of appeal remain "bound by and must follow [its' own decisions] and the decisions of the Ohio Supreme Court." *Thacker v. Bd. of Trustees of Ohio State Univ.* (1971), 31 Ohio App.2d 17, 60 O.O.2d 65, 285 N.E.2d 380, paragraph one of the syllabus. Decisions of a court of last resort are to be regarded as law and should be followed by inferior courts, whatever the view of the latter may be as to their correctness, until they have been reversed or overruled. *Krause v. State* (1972), 31 Ohio St.2d 132, 148 (concurring opinion, per Corrigan, J.)

Petitioner lacks a plain and adequate remedy

On June 24, 2022, petitioner filed a jurisdictional appeal with the Ohio Supreme Court, and on August 30, 2022, the Supreme Court of Ohio declined jurisdiction. (*Lakefront of W. Chester, L.L.C. v. Holmes* No: 2022-0793), (Appendix K, Attached) Because the Ohio Supreme Court has declined jurisdiction, petitioner lacks any remedy in the ordinary course of law.

Law and Analysis

"The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been." *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, 140, O.Jur 3d Appellate Review §§ 508, 510, App. R. 26, construed.

"In a civil case, in which the burden of persuasion is only by a preponderance of the evidence, rather than beyond a reasonable doubt, evidence must exist on each element (sufficiency) and the evidence on each element must satisfy the burden of persuasion (weight)." *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 19. Sufficiency is a test of adequacy, meaning whether the evidence is legally sufficient to sustain a judgment, whereas weight of the evidence concerns the inclination of the greater amount of credible evidence offered in a trial to support one side of the issue rather than the other. *Id.* at ¶ 11-12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 678 N.E.2d 541 (1997). Whether the evidence is sufficient is a question of law. *Id.* at ¶ 11, citing *Thompkins*. Our review of the sufficiency of the evidence requires us to determine whether some evidence exists on each element. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, "When reviewing the manifest weight of the evidence * * *, The [reviewing] court * * * weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered. *Thompkins*, 78 Ohio St.3d at 387, We must determine whether the trial court's judgment was supported by the greater amount of credible evidence and whether the petitioner met their burden of persuasion, which is by a preponderance of the evidence." *Risch v. Samuel*, 1st Dist. Hamilton No. C-190159, 2020-Ohio-1094, ¶ 21, citing *Eastley* at ¶ 19. In doing so, "[w]e are mindful that, in a bench trial, 'the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.'" *Id.*, citing *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 777, 80, 461 N.E.2d 1273 (1984). When a trial judge, rather than a jury, has acted as the factfinder in a civil case, however, App.R. 12(C) provides that two of the three appellate judges may reverse the judgment based on the manifest weight of the evidence, but that a judgment may be reversed only once for this reason.

Ohio's Twelfth District Court Failed to Consider Petitioners' Objections which were timely filed on March 16, 2021

The Twelfth District Court of Appeals failed to consider petitioners objections filed in the Butler County Area III Court, on March 16, 2021, where petitioner stated in relevant part the following:

"Petitioner objects to the magistrate's decision to consider Jessica Banks testimony Jessica Banks did not have any first-hand knowledge of the incidents, as she admitted she was not at the property. Jessica did not provide any evidence to prove that the lock failed because of the weather as no maintenance records or testimony from maintenance was submitted to the Court. Therefore, Jessica Banks testimony, should

not be considered and the Court should have rejected her speculative explanation regarding the June 30, 2020, mailbox lock failure due to a loose screw and the October 28, 2020, apartment lock failure due to a change in the weather.

Ohio Rules of Evidence 602

Testimony Re: June 30, 2020, Unauthorized Change in Petitioners' Mailbox Lock

At the March 1, 2020, hearing, Attorney Amy Higgins improperly solicited witness testimony from Jessica Banks, who did not have any personal knowledge of matters related to the unauthorized change of petitioners' mailbox and apartment door locks. Attorney Amy Higgins did not provide sufficient evidence in Court, to conclude that Jessica Banks had the requisite personal firsthand knowledge. Relevant excerpts from the March 1, 2021, hearing are as follows:

Attorney Higgins: Do you remember the incident with her mailbox key. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 48, Ln 13-14, Exhibit NN)

Jessica Banks: I do. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 48, Ln 15, Exhibit NN)

Attorney Higgins: What happened with her mailbox key? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 48, Ln 16, Exhibit NN)

Jessica Banks: Shortly after she moved in and with the mailbox key, she decided to retrieve mail, it was not working. Maintenance went out immediately to see what was going with it. The screw that holds the lock in place had come loose. Once that was tightened, they didn't have to change any type of key or anything out of there. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 48, Ln 17- 24, Pg. 46 Exhibit NN)

Attorney Higgins: So, it wasn't that it had changed, it wasn't that it had been replaced? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 48, Ln 25, Pg. 49, Ln 1, Exhibit NN)

Jessica Banks: Exactly. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 49, Ln 2, Exhibit NN)

Attorney Higgins: Had anybody messed with the mailbox key? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 49, Ln 3-4, Exhibit NN)

Jessica Banks: No (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 49, Ln 5, Exhibit NN)

On redirect examination, petitioner questioned Jessica Banks about the unauthorized change in petitioners' mailbox lock. Relevant transcript excerpts are shown below:

Ms. Holmes: Going back to the mailbox, you said that there was some mechanical failure with the screw inside the mailbox. When I reported that my key was not working and maintenance came out and brought me a new key to the mailbox, What actually happened? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 53, Ln. 19-25 Exhibit NN).

Jessica Banks: I wasn't there. So, I can't even-- (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 54, Ln. 1 Exhibit NN).

Ms. Holmes: So, you don't know what happened? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 54, Ln. 2, Exhibit NN).

Jessica Banks: I was told that he did not have to change the lock. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 54, Ln. 3-5 Exhibit NN).

By her own testimony, Jessica Banks admits that she did not have any personal knowledge regarding the June 30, 2020, mailbox lock failure. Although, she states that he did not have to change the lock, she did not provide any maintenance records or testimony from the person who told her that they did not have to change the lock. If her story was true then Lakefront would have provided evidence to the Court.

Testimony Re: October 28, 2020, Unauthorized Change in Petitioners' Apartment Door Lock

At the March 1, 2020, hearing, Attorney Amy Higgins did not provide sufficient evidence in Court, to conclude that Jessica Banks had the requisite personal firsthand knowledge as required under Evid. R. 602. Relevant excerpts from the March 1, 2021, hearing are as follows:

Attorney Higgins: When you received the email [Petitioner's October 28, 2020, email], *Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Exhibit PP] from her about her door lock not working, what did you do? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 45, Ln 12- 14, Exhibit NN)

First, Attorney Amy Higgins failed to provide the Court with a copy of the October 28, 2020, email because it would have established that Jessica Banks, Lakefront Property Manager was not included in the conversation.

Jessica Banks: So, I was actually not in the office that day. My staff took care of it. They put in a work order. Maintenance went over there to see if anything was going on with the lock. To my assumption, they rekeyed the lock. In rekeying basically it's us putting a pin in there to rekey the lock. A lot of times with that quickset bolt, the pin slipped due to changes in the weather. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 45, Ln 15- 23, Exhibit NN)

Attorney Higgins: October 28th, was the weather changing about that time? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 45, Ln 24- 25, Exhibit NN)

Jessica Banks: Yes (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 1, Exhibit NN)

Attorney Higgins: Had anybody— (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 2, Exhibit NN)

The Court: Excuse me. We're in Cincinnati. The weather changes every day. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 3- 5, Exhibit NN)

Ms. Higgins: Correct... (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 6, Exhibit NN)

Attorney Higgins: So, October 28th would have been no different, correct? So, did they find that somebody had actively changed the lock prior to that maintenance? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 7-10, Exhibit NN)

Jessica Banks: No. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 11, Exhibit NN)

Jessica Banks never provided any reliable evidence such as maintenance records, testimony from an expert such as a locksmith, testimony from maintenance personnel, or testimony from Taylor Jones. Without reliable evidence to support Jessica Banks testimony, a reasonable person would conclude that her assumptions are false. If Jessica's assumptions were accurate and true, Lakefront would have provided the court with evidence to support them.

Attorney Higgins: They found that the problem was just a pin out of position? (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 12-13, Exhibit NN)

Jessica Banks: Correct. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 46, Ln 14, Exhibit NN)

There was no evidence such as a maintenance report or testimony from maintenance provided to support Jessica's confirmation of Attorney Higgins statement that maintenance found that the problem was just a pin out of position. On direct examination petitioner questioned Jacque Keller regarding unauthorized access and entry to her apartment.

Ms. Holmes:In the month of June and July, I contacted you. Do you remember that? I spoke to you by phone and I sent...emails as well. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 28, Ln. 8-12, Exhibit NN).

Jacqueline Keller:I don't specifically remember a specific call in June or July. Could you tell me what those were regarding? We spoken on the phone a few different times. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 28, Ln. 15-19, Exhibit NN).

Ms. Holmes:one call was regarding someone entering the [petitioners] apartment. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 28, Ln. 20-23, Exhibit NN).

Jacqueline Keller: I do recall that conversation.....And the only person that would have access...is the property management team..... (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for Leave, RE 43-2, Transcript, 03/01/2021, Pg. 28, Ln. 15-19, Exhibit NN).

The Twelfth District Court of Appeals stated, "Moreover, Banks was Holmes' witness, and it was Holmes who first elicited the testimony she now challenges when she asked Banks whether she recalled there being an issue with the door key." Petitioner elicited testimony from Jessica Banks regarding an issue with the door key that occurred in the month of May 2020, the testimony elicited was not about Jessica Bank's completely speculative testimony regarding the apartment door lock failure due to the weather on October 28, 2020. The specific excerpt from the March 1, 2021, hearing is as follows:

Rosalind Holmes Question. okay. I have a couple more questions for you, Jessica. Do you remember when I first moved into the apartment there was a problem with the door key, do you remember that?

Jessica Bank Answer. Vaguely.

Rosalind Holmes Question: Do you remember coming out to my apartment and rekeying - at least that's the terminology. I'm not familiar with what rekeying is. so do you remember when you came out and you stuck the key in the door and rekeyed it?

The purpose of asking this question was to gain an understanding of how rekeying was conducted because petitioner was unfamiliar with the process. This issue was separate from Jessica Banks speculative testimony regarding the October 28, 2020, apartment door lock failure due to the weather. It is quite a stretch for the Twelfth District to conclude that petitioner first elicited testimony that she is now challenging. It is clear from the record that petitioner questioned Jessica about the process of rekeying and not about Jessica Bank's completely speculative testimony regarding the apartment lock failure due to the weather, on October 28, 2020.

Pursuant to Evid. R. 602, a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Further, Evid.R. 103 provides that error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party has been affected, and **in the case where the ruling is one that admits evidence the party objecting to the evidence makes a timely objection to the evidence, stating the specific ground of the objection if the specific ground was not apparent from the context. See Evid. R. 103(A)(1).** In *State v. Foster*, 109 Ohio St. 3d 1 (Ohio 2006), the Ohio Supreme Court concluded, it should apply its ordinary prudential doctrines, and a defendant could not raise a constitutional challenge under *Blakely* unless he had raised the constitutionality of his sentence in the trial court. Additionally, Evid.R. 602 lack of personal knowledge requires that a witness not testify to any matter "unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter." Evid.R. 602 *State v. Kehoe*, 133 Ohio App.3d 591, 603 (12th Dist.1999). Generally, failure to object to the introduction of evidence at trial constitutes a waiver of any challenge to the evidence. *State v. Roberts*, 156 Ohio App.3d 352, 356, 2004-Ohio-962. Since petitioner filed timely objections to Magistrate Fred Miller's order she has not waived Evidence Rule 602.

Landlord Retaliation O.R.C. 5321.02(A)(1) & (2) and Acts Prohibited by a Landlord O.R.C 5321.15

Additionally, petitioner stated the following in her timely filed March 16, 2021, written objections:

Emails attached to petitioners' amended complaint indicate that complaints were made to management about roaches and illegal conspiratorial surveillance and harassment involving the F.B.I., State of Ohio, City of Cincinnati, Lakefront and others. Lakefront was aware of petitioners' complaints. Despite this fact, Lakefront engaged in several retaliatory actions against petitioner. Petitioners' retaliation claim was based upon R. C. 5321.02(A)(1) & (2), which prohibits a landlord's retaliatory conduct against a tenant by increasing the tenant's rent, decreasing services that are due to the tenant, or bringing or threatening to bring an action for possession of the tenant's premises because a tenant has complained either to the landlord or to an appropriate government agency of a violation that materially affects health and safety and/or any violation of section 5321.04 of the Revised Code. If a landlord acts in violation of division (A) of this section, the tenant may recover from the landlord any actual damages together with reasonable attorneys' fees.

First, on June 30, 2020, Lakefront authorized the change to petitioners' mailbox lock without providing her prior notice, explanation or obtaining her consent. (Decrease in services) Second, on September 19, 2020, Jessica Banks called petitioner on the telephone and threatened to evict her if she did not move out immediately. Petitioner lost \$10,000 worth of furniture as a direct result of Jessica Banks threatened eviction action. The motivating factor for Jessica Banks, September 19, 2020, threat of eviction were petitioners' complaints of unlawful entry and conspiratorial retaliation, warrantless surveillance, roaches, theft, common law trespass, etc., and her communication of these complaints to WCPO news. Third, on October 28, 2020, Lakefront authorized the change to petitioners' lock to her apartment door without providing prior notice, explanation or obtaining her consent.

In addition, petitioner cited Ohio Revised Code § 5321.15 in her written objections which states the following:

A. No landlord of residential premises shall initiate any act, including termination of utilities or services, exclusion from the premises or threat of any unlawful act, against a tenant, or a tenant whose right to possession has terminated, for the purpose of recovering possession of residential premises, other than as provided in Chapters 1923, 5303 and 5321 of the Revised Code.

B. No landlord of residential premises shall seize the furnishings or possessions of a tenant or of a tenant whose right to possession has terminated, for the purpose of recovering rent payments, other than in accordance with an order issued by a court of competent jurisdiction.

C. A landlord who violates this section is liable in a civil action for all damages caused to a tenant, or to a tenant whose right to possession has terminated, together with reasonable attorney's fees."

Additionally, R.C. 5321.15(A) provides that landlords may only evict residential tenants by following the procedures set forth in R.C. Chapters 1923, 5303, and 5321. Such actions are governed by R.C. Chapter 1923, and a landlord who seeks to expel a tenant from possession of leased premises must proceed in accordance with the statutory provisions. R.C. 5321.15 expressly prohibits 'self-help,' wherein a landlord attempts to evict a residential tenant without resort to legal procedure. "It's not just the bringing of an eviction action in response to protected conduct which is prohibited. The landlord must also not increase rent, decrease services, or threaten an eviction in retaliation for the tenant's protected activities.

Changing the locks to the premises and removing a tenant's possessions from the premises are both unlawful acts, which a landlord may not threaten to do or actually do to recover possession of the premises. See R.C. 5321.15(A); *Amba Invests., LLC v. Clark*, 12th Dist. Butler No. CA2021-02-016, ¶ 33-34. R.C. Chapter 5321, Ohio's Landlord-Tenant Act, regulates the relationship between residential landlords and their tenants. In Ohio, an eviction proceeding is known as a forcible entry and detainer action. A forcible entry and detainer action is intended to serve as an expedited mechanism by which an aggrieved landlord may recover possession of real property." *Id.*, quoting *Miele v. Ribovich*, 90 Ohio St.3d 439, 441-442, 739 N.E.2d 333 (2000), *Show Mgt. Corp. v. Mountjoy*, 2020-Ohio-2772, 154 N.E.3d 141, ¶ 15 (12th Dist.). Forcible entry and detainer actions decide the right to immediate possession of the property "and nothing else." *Seventh Urban, Inc., v. University Circle*, 67 Ohio St. 2d 19 (Ohio 1981) Therefore, a landlord must have a court order to evict a tenant. If a landlord changes the locks, removes your [a tenant's] belongings, or shuts off a tenant's utilities without a court order, this is called "Self-Help Eviction"- and is illegal in Ohio.

Although, petitioner first raised R.C. 5321.15 as a theory of relief, in her March 16, 2021, written objections to the magistrate's decision. Civ.R. 8(A) requires only that a pleading contain a short and plain statement of the circumstances entitling the party to relief sought. A party is not required to plead the legal theory of recovery. *Illinois Controls, Inc. v. Langham*, 70 Ohio St.3d 512,526,639 N.E.2d 771 (1994). The language in petitioners' complaint is sufficient to state a claim under R.C. 5321.15 and Lakefront violated both R.C. 5321.02(A)(1) & (2) (Landlord Retaliation), & R.C. 5321.15 (Acts Prohibited by a Landlord). If the tenant is successful in convincing the judge that the landlord or his rental managers have engaged in prohibited conduct under Ohio Revised Code Section 5321.02(A)(1) & (2), the tenant can recover his actual damages (if any) and attorney's fees. Under Ohio Revised Code 5321.15(C) the tenant can recover all damages caused plus reasonable attorney's fees.

Ohio Evidence Rule 804

At the March 1, 2020, hearing petitioner questioned Jessica Banks regarding the September 19, 2020, telephone call. Relevant excerpts from the transcripts are as follows:

Ms. Holmes: So, do you remember the call that you placed in September where you instructed me that I had to leave immediately? (*Holmes vs USA et al.*, No 1:20-cv-00825, Transcript, 03/01/2021, Pg. 34, Ln. 11-14, Exhibit NN)

Ms. Banks: Vaguely.... If I go back to how that phone call was initiated, you gave us notice to vacate that you were leaving September 4th. You failed to vacate. I had rented your home. I was trying to let you know that we had rented your home, that we needed you to vacate. (*Holmes vs USA et al.*, No 1:20-cv-00825, Transcript, 03/01/2021, Pg. 34, Ln. 15-20, Exhibit NN) (Transcript, 03/01/2021, Pg. 34, Ln. 15-20, Exhibit NN)

Ms. Holmes: Do you remember the call when you called me and you directed me that I have to leave and I had to leave immediately? (*Holmes vs USA et al.*, No 1:20-cv-00825, Transcript, 03/01/2021, Pg. 34, Ln. 22-44, Exhibit NN)

Ms. Banks: I don't think I told you immediately... but I did inform you we rented your home, and that someone was scheduled to move in there. (*Holmes vs USA et al.*, No 1:20-cv-00825, Transcript, 03/01/2021, Pg. 34, Ln. 25, Pg. 35, Ln. 1-3 Exhibit NN)

In *State v. Keairns* (1984), 9 Ohio St.3d 228, the Supreme Court of Ohio held that: "A showing of unavailability under Evid.R. 804 must be based on testimony of witnesses rather than hearsay not under oath unless unavailability is conceded by the party against whom the statement is being offered." quoting *State v. Keairns*, 9 Ohio St.3d 228, 460 N.E.2d 245 (1984), paragraph three of the syllabus. Since Jessica Banks testified that

she vaguely remembered her September 19, 2021, telephone call forcing tenant to move out immediately her testimony should have been inadmissible and not considered under Evid. R. 804(A)3.

Jessica Banks testimony should not be considered because it is clear by her own admission that her memory was vague and she lacked personal knowledge of the matter.

Common Law Trespass

One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally* **enters land in the possession of the other or causes a thing or a third person to do so. "A property owner must prove two essential elements to state a cause of action sounding in trespass: (1) an unauthorized intentional act, (2) resulting in an intrusion that interferes with the owner's right of exclusive possession of the property. *Merino v. The Salem Hunting Club*, Columbiana App. No. 07CO16, 2008-Ohio-6366, paragraph 41. Petitioner provided pictures of the damages done to her personal property which were attached to her amended complaint and presented in court. The cost of the damages can only be estimated as petitioner did not have any receipts. Petitioner has estimated her damages to be approximately \$230 dollars.

Ohio's Twelfth District Court of Appeals stated that petitioner could not prevail because she had not established damages. In *Schultz v. Barberton Glass Co.* (1983), 4 Ohio St.3d 131, 136, the Ohio Supreme Court held recovery for emotional distress unaccompanied by a contemporaneous physical injury has been allowed under special circumstances. See *Columbus Finance v. Howard* (1975), 42 Ohio St.2d 178 [71 O.O.2d 174] * ** (malice on the part of the wrongdoer); *Housh v. Peth* (1956), 165 Ohio St. 35 [59 O.O. 60] * ** (right of privacy invaded) Actual malice was defined in one punitive damages case as "that state of mind under which a person's conduct is characterized by hatred or ill will, a spirit of revenge, retaliation, or a determination to vent his feelings upon other persons." *Pickle v. Swinehart*, supra, at 443 (quoting 35 Ohio Jurisprudence 2d 142, Malicious Prosecution, Section 22). It is an established principle of law in this state that punitive damages may be awarded in tort cases involving fraud, insult or malice. *Roberts v. Mason* (1859), 10 Ohio St. 277; *Saberton v. Greenwald* (1946), 146 Ohio St. 414, 66 N.E.2d 224.

According to the Ohio Supreme Court, "Intentional conduct is an element of trespass." *Baker v. Shymkiv*, 6 Ohio St.3d 151, 153 (1983). An intentional tort occurs when the actor desires to cause consequences of his act or believes that the consequences are substantially certain to result from it." *Harasyn v. Normandy Metals, Inc.*, 49 Ohio St.3d 173, 175 (1990). "This definition encompasses two different levels of intent." One level occurs when "the actor does something which brings about the exact result desired." The other level occurs when "the actor does something which he believes is substantially certain to cause a particular result, even if the actor does not desire that result. *Harasyn v. Normandy Metals, Inc.*, 49 Ohio St.3d 173, 175 (1990)

Moreover, as trier of fact, the trial court is clearly permitted to make reasonable inferences that naturally and logically follow from the evidence before it. See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, superseded by state constitutional amendment on other grounds as stated in *State v. Smith* (1997), 80 Ohio St.3d 89, 684 N.E.2d 668. Applying jurisprudence from this Court and the Ohio Supreme Court, "Was there an unauthorized intentional act? The issue is whether Lakefront intended to bring about the exact result. That is, changing petitioners' lock directly causing her to be locked out of her apartment. (direct intent) Or whether Lakefront believed it to be substantially certain that rekeying petitioners' apartment lock would cause petitioner to be locked out. As noted by this Court, "Holmes testified that in October 2020, as she was leaving her apartment, she found that her door key did not work, and she could not unlock her door. She contacted Lakefront and the assistant property manager gave her a new key. Because her door key did not work upon her exiting the apartment, Holmes reasonably believed that a Lakefront employee had changed her lock while she was sleeping. Also noted by this Court, Keller testified that the only persons with access to the key to Holmes' apartment were the members of the property management team. Although, Jessica Banks testified that the lock failed due to the weather. Her testimony cannot be considered by this court because she lacked the personal knowledge of the matters as required by Evid. R 602. In addition, no evidence was provided from the maintenance staff as to the maintenance work order placed to prove Jessica Banks speculative testimony regarding the apartment door lock failure, on October 28, 2020. No evidence was provided as to the maintenance work order placed on June 30, 2020, regarding the unauthorized change in petitioners' mailbox lock. Jessica Bank's entire testimony should have been impeached based upon her defective memory, specific contradictions, inconsistent statements, misrepresentation, hearsay, and lack of personal knowledge. Petitioner addressed the defective memory, specific contradictions, inconsistent statements, misrepresentation, hearsay and lack of personal knowledge in her Brief filed in Ohio Twelfth District Court of Appeals.

Based upon the direct testimonial evidence of Jacque Keller it was reasonable for petitioner to believe that a Lakefront employee entered her apartment and changed the lock without her authorization. Therefore, petitioner, has proven the first element of trespass. Did the unauthorized act result in an intrusion that interfered with petitioners' right of exclusive possession to the property? Petitioner testified that she could not unlock her door and had to wait until Lakefront provided her with a new key in order to open her apartment door which occurred in the late afternoon on October 29, 2020. This is an intrusion that interfered with petitioners' right of exclusive possession to the property. Petitioner has proven the second element of trespass. Because Lakefront procured a fraudulent eviction intentionally, knowing that the Butler County Area III Court lacked subject matter jurisdiction none of Lakefront's testimony or stories should be accepted. By and through Attorney Amy Higgins, Lakefront's attorney who is an officer of the Court, Lakefront conspired with the Butler Court Area III Court, Ohio's Twelfth Appellate Court of Appeals, the F.B. I., City of Cincinnati, State of Ohio, the Landings, Lakefront and many others to deprive petitioner of her legal rights. The Ohio Supreme Court has said that courts have "inherent authority and the power to vacate judgments for lack of subject matter jurisdiction and those procured

by fraud. The procurement of a judgment by fraud is a fraud upon the court as well as upon the opposing litigant. A judgment so procured can be vacated by exercise of the inherent power of the court." *Jelm v. Jelm* (1951), 155 Ohio St. 226, 240-241, 44 O.O. 246, 98 N.E.2d 401.

PETITIONERS' SPECIFIC REQUEST FOR A WRIT OF MANDAMUS

Based on the foregoing, petitioner respectfully request that the United States Supreme Court issue a writ of mandamus directing Respondents Magistrate Fred Miller, Judge Jeff Bowling, Judge Robin N. Piper, Judge Mike Powell and Judge Matthew R. Byrne to vacate and seal the following orders:

- 1.) On March 5, 2021, Magistrate Fred Miller, clearly and indisputably abused his discretion when he dismissed petitioners' amended complaint. (*Holmes vs Lakefront*, No: CVF 2001041, Butler County Area III Court, West Chester, Ohio), (Appendix F, Attached)
- 2.) On April 27, 2021, Judge Jeff Bowling clearly and indisputably abused his discretion when he dismissed petitioners, amended complaint. (*Holmes vs Lakefront*, No: CVF 2001041, Butler County Area III Court, West Chester, Ohio), (Appendix G, Attached)
- 3.) On December 27, 2021, and January 4, 2021, Judge Mike Powell, Stephen Powell and Robin Piper clearly and indisputably abused their discretion when they denied petitioners' motion to supplement the records. (*Rosalind Holmes vs Lakefront at West Chester, CA 2021-05-046*, 12th District Court of Appeals, Middletown, Ohio), (Appendix H, Attached)
- 4.) On January 19, 2022, Judge Robin Piper, Judge Mike Powell and Judge Matthew R. Byrne, clearly and indisputably abused their discretion when they affirmed the decision of the Butler County Area III Court to dismiss petitioners' complaint. (*Holmes vs Lakefront* No: CA 2021-05-046, Ohio's Twelfth District Court of Appeals), (Appendix I, Attached)
- 5.) On April 12, 2022, Judge Robin N. Piper, Mike Powell, and Matthew R. Byrne, clearly and indisputably abused their discretion when they denied petitioners' motion for reconsideration. (*Holmes vs Lakefront* No: CA 2021-05-046, Ohio's Twelfth District Court of Appeals), (Appendix J, Attached)
- 6.) On August 30, 2022, the Supreme Court of Ohio declined jurisdiction. Petitioner respectfully request this Honorable Court to issue an order directing the Ohio Supreme Court to seal the records. (*Lakefront of W. Chester, L.L.C. v. Holmes* No: 2022-0793), (Appendix K, Attached)

Petitioner request that the United States Supreme Court issue a writ of mandamus directing respondent to do the following:

- 7.) Order Magistrate Fred Miller, Judge Jeff Bowling, Judge Robin N. Piper, Judge Mike Powell and Judge Matthew R. Byrne to issue judgment against Lakefront in the amount of \$10,000 for petitioners' loss of furniture, violations of trespass, acts prohibited by a landlord, and landlord retaliation. Additionally, issue an order to the U. S. District Court for the S. D. of Ohio in the matter of *Holmes vs U.S.A. et al.*, No 1:20-cv-00825, to permit petitioner time to amend her complaint to include additional causes of action for Title VIII Housing discrimination, breach of contract, civil conspiracy and fraud, etc.

8.) Order Magistrate Butler County Area III Court, 12th District Court of Appeals Ohio, the Supreme Court of Ohio to seal the records in the matters of (*Holmes vs Lakefront*, No: CVF 2001041, Butler County Area III Court, West Chester, Ohio), (Appendix G, Attached) & (*Rosalind Holmes vs Lakefront at West Chester*, CA 2021-05-046, 12th District Court of Appeals, Middletown, Ohio), (Appendix H, Attached) (*Lakefront of W. Chester, L.L.C. v. Holmes* No: 2022-0793, Ohio Supreme Court), (Appendix K, Attached)

9.) Cease and desist order directing the Butler County Area III Court, 12th District Court of Appeals Ohio, the Supreme Court of Ohio and the Ohio Attorney General to cease and desist all collection efforts including but not limited to reporting adverse information about Rosalind Holmes to Equifax, Transunion, and Experian; remove any adverse information that was previously reported to the credit bureaus, prohibit the filing of a case against Rosalind Holmes in any Court in the United States of America for monetary relief and damages related to Magistrate Fred Miller, Judge Jeff Bowling, Judge Robin N. Piper, Judge Mike Powell and Judge Matthew R. Byrne in the matters of *Holmes vs Lakefront*, No: CVF 2001041, Butler County Area III Court, West Chester, Ohio, *Rosalind Holmes vs Lakefront at West Chester*, CA 2021-05-046, 12th District Court of Appeals, Middletown, Ohio and *Lakefront of W. Chester, L.L.C. v. Holmes* No: 2022-0793. (Appendix F, G, H, I and K)

Part Three: *Holmes v Lakefront CV-2021-05-0639*, Butler County Common Plea's Court

On May 7, 2021, petitioner filed a complaint of FHA landlord discrimination and retaliation against Lakefront at West Chester LLC., ("Lakefront") under Title VIII and ORC 4112, in the Butler County Common Plea's Court. *Holmes v Lakefront CV-2021-05-0639*⁹. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Ohio Supreme Court, Exhibit BB)

Additionally, petitioner filed a motion for a temporary restraining order, motion to appoint counsel and motion for preliminary injunctive relief on May 7, 2021. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Ohio Supreme Court, Exhibit 2) Petitioner provided Attorney Amy Higgins, Lakefront's Attorney, a copy of the complaint and motions via email on Friday, May 7, 2021, and the Butler County Clerk of Courts issued a summons, on May 12, 2021. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Ohio Supreme Court, Exhibit BB)

⁹ *Holmes v. Lakefront at West Chester*, No. CV 2021-05-0638 (Butler Cty. Ct. Com. Pl. filed May 7, 2021) (located at <https://pa.butlercountyclerk.org/eservices/searchresults.page>), (last accessed 8/24/2022)

Gmail

Rosalind Holmes <holmesrrh48@gmail.com>

Complaint - Butler County Common Pleas Court

1 message

Rosalind Holmes <holmesrrh48@gmail.com>
 To: amy@grblaw.com

Fri, May 7, 2021 at 4:24 PM

Hi Amy,

Attached please find the Complaint filed in the Butler County Common Pleas Court.

Thanks,

Rosalind Holmes

 **Complaint Filed in Butler County Common Pleas 1.pdf**
 7302K

In paragraph 29, of petitioners' Housing Discrimination Complaint she stated the following:

“On March 22, 2021, I [Petitioner] received a letter stating that PLK Communities [Lakefront] has decided that we will not be renewing your lease, as of May 20, 2021. (Holmes vs. The Honorable, Judge C. Caparella-Kraemer No: 22-0683, Ohio Supreme Court, Exhibit 4) The basis for this decision is that owner wants possession of the premises. The purpose of this notice is to give you notice in excess of one month to make appropriate arrangements to move. Please be advised that if you have not yet vacated the said premises by the date indicated above, we will be forced to commence an eviction action against you. Additionally, rent for the month of May must be paid on time and in full in order to remain in the premises for the month of May.”

In paragraph 35 count one of petitioners' housing discrimination complaint, Discrimination under 42 U.S.C. 3601 et seq. & ORC 4112, she stated the following:

Defendant, [Lakefront] violated this prohibition by, inter alia, refusing to renew petitioners' lease agreement, allowing others to enter petitioners' apartment to sabotage and cause damage/loss to her personal property, by engaging in discriminatory harassment against petitioner, and by interfering with petitioners' quiet enjoyment in breach of the landlord lease/contract.

In addition, reference to Lakefront's letter of termination of tenancy was included in counts I-VI of petitioners' complaint of housing discrimination.

Petitioners' complaint and motion for the temporary restraining order included a request that the Butler County Common Pleas Court prevent Lakefront from unlawfully evicting her in retaliation for exercising her constitutionally protected rights.¹⁰ (Holmes vs. The Honorable, Judge C. Caparella-Kraemer No: 22-0683, Ohio Supreme Court, Exhibit 7)

¹⁰ On May 10, 2021, petitioner notified her landlord that she requested the assistance of SELF, which is the Butler County Community Action Agency. Petitioner was unemployed and requested the services of the Butler County Community Action Agency who agreed to pay petitioners' rent through August 2021. However, Lakefront declined to complete the forms required to obtain that assistance. (Holmes vs. The Honorable, Judge C. Caparella-Kraemer No: 22-0683, Ohio Supreme Court, Exhibit 5) Instead, Lakefront completed the forms requesting rent for April and May alone. Despite petitioners' filing of the complaint, motion for a temporary restraining order and request for assistance from the Butler County Community Action Agency.

BUTLER COUNTY COMMON PLEAS COURT
BUTLER COUNTY, OHIO

ROSALIND HOLMES)	CASE NUMBER: TO BE ASSIGNED
Plaintiff)	
vs)	
LAKEFRONT AT WEST CHESTER)	
Defendants)	

Summary

Now comes, Plaintiff, Rosalind Holmes, pursuant to the Ohio Rules of Civil Procedure 65(A) & (B)(1) respectfully requesting that this Court issue an emergency temporary restraining order and/or preliminary injunctive relief against defendants to include the following prohibitions and declarations:

- Prohibition preventing defendant from unlawfully evicting plaintiff and refusing to renew her lease agreement.

First Eviction: Lakefront vs Holmes No: CVG 2100528, Butler County Area III Court, filed May 14, 2021

In bad faith, Lakefront initiated eviction proceedings in the matter of *Lakefront vs Holmes*, No: CVG 2100528, Butler County Area III Court, West Chester, Ohio, against this petitioner, on May 14, 2021, in the Butler County Area III Court instead of the Butler County Common Pleas Court. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Ohio Supreme Court, Exhibit 6)

On May 18, 2021, petitioner filed an answer and motion to consolidate or dismiss Lakefront's eviction and provided the above background and facts to the Butler County Area III Court. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer*, No: 22-0683, Ohio Supreme Court, Exhibit 7) Additionally, petitioner filed her Housing Discrimination Complaint, Motion to Appoint Counsel and Motion for a Temporary Restraining Order and Injunctive Relief, in the Butler County Area III Court.

Petitioners' Housing Discrimination Complaint included the following prayer for relief:

WHEREFORE, Petitioner demands judgment against the Defendant in an amount exceeding twenty thousand dollars together with pre-judgment interest, interest, costs herein expended, renewal of her lease agreement, compensatory damages, punitive damages in an amount exceeding fifty thousand dollars, reasonable attorney fees, the cost of this action, and such other relief as the Court deems just and proper.

As the party seeking to avoid the exercise of jurisdiction by the Butler County Area III Court, it was petitioners' responsibility to provide the court with sufficient evidence to establish that the Butler County Common Pleas Court had previously exercised jurisdiction. On May 26, 2021, a hearing was held, and Judge Miller stated that he did not have the authority to consolidate Lakefront's eviction and requested that petitioner provide him some authority to consolidate Lakefront's eviction with her Housing Discrimination complaint, filed in the Butler County Common Pleas Court. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Ohio Supreme Court, Exhibit 8)

Magistrate Judge Miller stated, "But you need to provide me with some authority that I have to consolidate your case with a different court. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Ohio Supreme Court, T.P. 05/26/2021, Pg. 3 LNS 3-8, Exhibit 8)

Additionally, Magistrate Miller stated, "Apparently she [petitioner] has sued Lakefront in Common Pleas Court and she is asking for this eviction case to be consolidated with the Common Pleas case. Is that accurate Ms. Holmes? (Holmes vs. The Honorable, Judge C. Caparella-Kraemer No: 22-0683, Ohio Supreme Court, T.P. 05/26/2021, Pg. 3, Ln 25 Pg. 4, 1-2, 4-7 LNS 3-8, Exhibit 8)
Petitioner responded, "Yes, I have and I am prepared to ask for it in this case..... (Holmes vs. The Honorable, Judge C. Caparella-Kraemer No: 22-0683, Ohio Supreme Court, T.P. 05/26/2021, Pg.4, Lns 14-15, Exhibit 8)

Accordingly, when jurisdictional facts are challenged, the party claiming jurisdiction bears the burden of demonstrating that the court has jurisdiction over the subject matter. *Marysville Exempted Village School Dist. Bd. of Edn. v. Union Cty. Bd. of Revision*, 136 Ohio St.3d 146, 2013-Ohio-3077, 991 N.E.2d 1134, quoting *Ohio Natl. Life Ins. Co. v. United States*, 922 F.2d 320, 324 (6th Cir.1990) ¶ 10. Magistrate Judge Miller never requested that Lakefront provide him with any authority to support that the Butler County Area III Court exercised subject matter jurisdiction over their forcible entry and detainer action.

More importantly, Magistrate Judge Miller knew that Lakefront's eviction should have been dismissed or certified over to the Butler County Court of Common Pleas. As previously stated, in the matter of *Rosalind Holmes v. Lakefront at West Chester, LLC.*, Butler County Area III Court, case number CVF 2001041, Attorney Higgins filed a motion on December 1, 2020, which cited O.R.C 1907.03 and O.R.C. 2727.03.

"R.C. 1907.03 limits the damages that can be sought in county courts, such as the Butler County Area III Court, to \$15,000. But Tenant requests in her prayer for relief "an amount exceeding ten thousand dollars [and] an amount exceeding five thousand dollars" - putting her total demand above the jurisdictional limit of \$15,000 and therefore beyond the reach of this Court. Additionally, R.C. 2727.03 limits the granting of injunctions to "the supreme court or a judge thereof, the court of appeals or a judge thereof in his district, the court of common pleas or a judge thereof in his county, or the probate court, in cases pending therein." Thus, this division of the county court is not authorized under the statute to grant such an injunction. Because the Area III Court cannot grant Tenant the relief she requests, it must dismiss her Complaint." (Holmes vs. The Honorable, Judge C. Caparella-Kraemer No: 22-0683, Ohio Supreme Court, Exhibit 9)

This proves that both Attorney Higgins and Magistrate Judge Miller knew the correct application of O.R.C. 1907.03 and the Ohio Rules of Civil Procedure 12(H)(3), "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Additionally, Ohio Rules of Civil Procedure 13(J) states, "In the event that a counterclaim, cross-claim, or third-party claim exceeds the jurisdiction of the court, the court shall certify the proceedings in the case to the court of common pleas.

On June 1, 2021, petitioner filed a Motion to Consolidate Dismiss or Transfer in the matter of *Holmes v Lakefront CV-2021-05-0639*, Butler County Common Plea's Court. Petitioners' motion stated the following:

According to the Ohio Rules of Civil Procedure 42(A)(1), Generally, if actions before the court involve a common question of law or fact, the court may (a) join for hearing or trial any or all matters at issue in the actions;(b) consolidate the actions; or (c) issue any other orders to avoid unnecessary cost or delay. Petitioner respectfully request that case# CVG2100528 in the Butler County Area III Court be consolidated, and/or transferred and or removed from the Area III Court in West Chester, Ohio. Additionally, Petitioner request that case CVG 2100528 is consolidated and/or transferred with her current case in the Butler County Common Pleas Court (Case # CV 2021 05 0639). Petitioner believes that the Butler County Common Pleas Court is authorized to consolidate the cases, but the matter is not free from doubt. As petitioner is a pro-se litigant and has no practical legal experience, education and is incapable of fully understanding the Ohio Rules and Local Rules of Procedure. Therefore, Petitioner respectfully requests an expeditious determination of whether the Butler County Common Pleas Court has the authority to consolidate the cases by June 10, 2021. (Holmes vs. The Honorable, Judge C. Caparella-Kraemer No: 22-0683, Exhibit 10)

However, the Butler County Common Pleas Court failed to issue an order as requested by petitioner. On June 11, 2021, Lakefront voluntarily dismissed its eviction action in the matter of *Holmes v Lakefront* CV-2021-05-0639, Butler County Common Pleas Court. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 11)

Second Eviction: Lakefront v Holmes, No: CVG 2100651, Butler County Area III Court, filed June 16, 2021

On June 16, 2021, Lakefront refiled its' eviction action and in paragraphs 2-4 of Lakefront's complaint stated the following:

Lakefront served Defendant [Rosalind Holmes] with a written notice of termination of tenancy on March 22, 2021, to vacate by May 20, 2021. Said notice is attached hereto as Exhibit "A". Defendant [Rosalind Holmes] failed to vacate the Premises on or before May 20, 2021. As a result, Lakefront served Defendant [Rosalind Holmes] with a notice, in writing, to vacate for holding over term, a copy of which is attached hereto as "Exhibit B", on June 5, 2021. That said tenancy expired on June 8, 2021, and from said time Defendant [Rosalind Holmes] has unlawfully and forcibly detained Lakefront from possession of the said Premises. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 12)

The written notice of termination of tenancy that Lakefront is referring to in their complaint is the same letter that petitioner referred to in paragraph 29, and counts I-VI, of her May 7, 2021, complaint of housing discrimination, filed in the Butler County Common Pleas Court. (*Holmes v. Lakefront at West Chester*, No. CV 2021-05-0638)

In this instance, petitioner provided the Butler County Area III Court with a motion to consolidate or dismiss, including an explanation that she filed her complaint of housing discrimination, in the matter of *Holmes v Lakefront*, No: CV-2021-05-0639, Butler County Common Pleas Court, on May 7, 2021. Petitioner filed the Housing discrimination complaint, along with the Motion to Appoint Counsel and Motion for Temporary Restraining Order and/or Preliminary injunction in the Butler County Area III Court.

On June 30, 2021, petitioner tried to explain to the Area III Court that Lakefront had violated the jurisdictional priority rule and that her housing discrimination complaint filed in the Butler County Common Pleas Court divested the Butler County Area III Court of subject matter jurisdiction.

At the June 30, 2021, hearing held before Magistrate Fred Miller, in the Butler County Area III Court petitioner stated the following:

Okay. Lake Front knows that I [petitioner] have a case filed [on May 7, 2021] against them, [in the Butler County Common Pleas Court] They know it, and they came to this court despite that [fact] (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Transcript 06/30/2021, Lns. 12-19 Pg. 9, Exhibit 13)

On July 7, 2021, another hearing was held before Magistrate Fred Miller, relevant excerpts from the transcript are as follows:

THE COURT: Ms. Holmes, do you want to be heard regarding any of this?

THE DEFENDANT: I do, and I'm not an attorney and all I can go by is what I see in the court cases. Is it possible for someone to answer this question? Does this court have to go by the Ohio Rules of Civil Procedure?

THE COURT: This court follows all Ohio law. It follows Ohio Revised Code... rules of evidence and rules of procedure.

THE DEFENDANT: Okay. Okay. Because what's unclear to me, and you might be able to answer this question.... I have already filed a federal discrimination lawsuit in the Butler County Common Pleas Court.

THE COURT: Yeah, you've told me that.

THE DEFENDANT: Okay. And LakeFront came to this court and filed their answer and counterclaim....

(*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, T.P. 07/07/2021, Pg. 5, Lns. 1-25, Exhibit 14)

THE COURT: They filed an answer and counterclaim in this court?

THE DEFENDANT: Yes.

THE COURT: Not that I've seen. Ms. Holmes, the issue today is the eviction....

THE DEFENDANT: Okay. I understand.

THE COURT: Ma'am, ma'am, my turn to talk, my turn to talk. The issue today is the eviction....

THE DEFENDANT: Okay. Are you allowed to hear improperly filed counterclaims that should be joined with another lawsuit? (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, T.P. 07/07/2021, Pg. 6, Lns. 1-25, Exhibit 14)

THE COURT: I will hear whatever case is kept properly before me.

THE DEFENDANT: Okay. Because I don't believe that this case is.

THE COURT: Ma'am, this eviction was filed by Lake Front.....

THE DEFENDANT: Okay, I think that you could at least hear me out, okay?

THE DEFENDANT: I don't think this case should be heard at all in this court.

THE COURT: While we're not there...

(*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, T.P. 07/07/2021, Pg. 7, Lns. 1-25, Exhibit 14)

THE DEFENDANT: I want to make sure that you hear me out on this point, on this point, and this point only, okay? And it relates to the complaint that is filed in this court, okay? In paragraph 2 of Lake Front's eviction action, they stated -- the plaintiff served defendant with the written notice of termination of tenancy on March 22nd, 2021, okay? In paragraph 29 of my complaint that is now before the Butler County Common Pleas Court, I'm referring to that same letter, okay? Ohio Rule of Civil (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, T.P. 07/07/2021, Pg. 8, Lns. 13-25, Exhibit 14)

THE DEFENDANT: What I'm saying to you is that this claim that they brought before this Court is not properly [before this Court] (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, T.P. 07/07/2021, Pg. 9, Lns. 23-25, Exhibit 14)

Despite petitioners' challenges to the Area III Court's lack of subject matter jurisdiction, at no time did Lakefront or the Butler County Area III Court dismiss or certify the eviction action over to the Butler County Common Pleas Court as required, by O.R.C. §§ 1907.03 & 1907.031, the jurisdictional priority rule and Ohio Civil Rule 12(H) & 13(J). This proves that Magistrate Judge Fred Miller and Judge C. Caparella-Kraemer, repeatedly showed extreme bias, gross indifference against Petitioner by granting Lakefront more freedom to make legal arguments and their failure to adjudicate the case in accordance with binding legal precedent and as the law and merits dictated. Again, their failure to dismiss or certify the eviction proceeding as required by law is a direct violation of petitioners' Fourteenth Amendment right to equal protection and due process as guaranteed by the U.S. Constitution.

Because Lakefront and the Butler County Area III Court acted in bad-faith and gross indifference by failing to dismiss or certify the eviction action for lack of subject matter jurisdiction, petitioner could not pursue her housing discrimination claims. At the time, petitioner was denied Counsel and totally unaware that she could have filed an extraordinary writ of prohibition and mandamus against the Butler County Area III Court in the Twelfth District Court of Appeals. Therefore, she was left with no option to remedy this clear and indisputable abuse of the Butler County Area III Courts statutory authority, as codified in O.R.C. §§ 1907.03 & 1907.031.¹¹ Petitioner was incapable of asserting her Housing Discrimination

¹¹ Ohio Revised Code §§ 1907.03 & 1907.031 (A) Under the restrictions and limitations of this chapter, county courts have exclusive original jurisdiction in civil actions for the recovery of sums not exceeding five hundred dollars and original jurisdiction in civil actions for the recovery of sums not exceeding fifteen thousand dollars.(B) If a counterclaim is filed in a civil action in a county court and the counterclaim exceeds fifteen thousand dollars, the county court shall certify the action to the court of common pleas.(C) If a civil action is certified to the court of common pleas pursuant to division (B) of this section, the clerk of the county court forthwith shall transmit to the court of common pleas the original papers and pleadings in the action and a certified transcript of the journal entries in it. The action then shall proceed in the court of common pleas as if it had been originally commenced in that court.

In relevant part, Ohio Revised Code § 1907.031, provides, (A) Except as otherwise provided in section 1907.03 of the Revised Code..... a county court has original jurisdiction within its district in all of the following actions or proceedings and to perform all of the following functions..... (6) In an action of forcible entry and detainer.

claims in the Area III Court because the amount of relief requested exceeded the Butler County Area III Court's monetary jurisdiction threshold of \$15,000 and the Butler County Area III Court did not have injunctive relief authority. Since, the Butler County Area III Court and the Butler County Common Pleas Court failed to dismiss, consolidate, or transfer the case over to the Butler County Common Pleas Court and failed to grant petitioner Counsel as she requested. Petitioner had to act as her own attorney to remedy the Butler County Area III Court's abuse of authority by pursuing the following legal actions:

Removal to the U.S. District Court for the S.D. Ohio, No:1:21-cv-00444, *Lakefront at West Chester, LLC vs Rosalind Holmes*, Butler County Area III, No: CVG 2100651

On June 30, 2021, petitioner filed a Notice of Removal¹² in the United States District Court for the Southern Division of Ohio, *Lakefront at West Chester, LLC. vs Rosalind Holmes*, No: 1:21-CV-00444, pursuant to 28 U.S.C. §1331 and 1367. Petitioner attempted to remove Lakefront's forcible entry and detainer action to federal court because the Butler County Area III Court failed to dismiss or certify Lakefront's eviction to the Butler County Court of Common Pleas.

On July 7, 2021, petitioner filed a Motion in Opposition of Remand and argued the United State District Court should exercise jurisdiction, "Under 28 U.S.C. § 1331 the district courts "have original jurisdiction, exclusive of the courts of the States.... of any civil action involving Title VIII Housing Discrimination, 1.) Lakefront, "attempted to avoid federal jurisdiction by filing independent eviction actions in the Butler County Area III Court, without ever mentioning Rosalind Holmes' related complaint of Title VIII housing discrimination. Under the artful-pleading doctrine, Lakefront "may not avoid removal jurisdiction by artfully casting their essentially federal law claims as state-law claims." . . . Where it appears that the petitioner may have carefully crafted her complaint to circumvent federal jurisdiction, "we consider whether the facts alleged in the complaint actually implicate a federal cause of action." On July 22, 2021, petitioner filed an amended motion in opposition of remand, and argued: 1.) In relevant part, a suit arises under federal law only if the complaint, "pleads state claims depending on a substantial and disputed federal question. Lakefront cannot avoid federal jurisdiction by filing independent eviction actions without mentioning Rosalind Holmes' related complaint of Title VIII Housing Discrimination.

On July 19, 2021, Magistrate Karen Litkovitz rejected petitioners' argument that Lakefront attempted to avoid federal jurisdiction by failing to mention her Title VIII, Housing discrimination complaint and Lakefront's defenses. Additionally, Magistrate Karen Litkovitz ignored petitioners' explanation that the Butler County Area III Court lacked subject matter jurisdiction and issued a report and recommendation that, "Accordingly, the Court lacks subject matter jurisdiction over this action. Ms. Holmes's motion to remove a state court civil action to the United States District

¹² *Lakefront at West Chester, LLC v. Holmes* No:1:21-cv-00444-SJD-KLL (Susan J. Diott, presiding Karen L. Litkovitz, referral), appeal *Lakefront at West Chester, LLC v. Holmes* No: 21-3731 filed Aug. 16, 2021

Court (Doc. 1-2; Doc. 8) and "motion in opposition of remand" (Doc. 12) be **DENIED**. Petitioners' motions to file under seal (Doc. 3), to appoint counsel (Docs. 4, 11), and to authorize electronic filing privileges (Doc. 9) and Lakefront's motion for bond under Ohio Rev. Code § 1923.08 (Doc. 14) be **DENIED** as moot. This matter be **DISMISSED** from the docket of the Court for lack of subject matter jurisdiction. This matter be **REMANDED** to the state court." See 28 U.S.C. § 1447(c). (*Lakefront vs. Holmes*, No:1:21-cv-00444, U. S. District Court S. D. of Ohio, R & R, PAGEID 297-304), (Appendix L, Attached)

On July 21, 2021, petitioner voluntarily dismissed her May 7, 2021, Housing Discrimination complaint from the Butler County Common Pleas Court. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 15) Subsequently, petitioner refiled her Housing Discrimination complaint in the U.S. District Court case *Lakefront at West Chester, LLC. vs Rosalind Holmes*, No: 1:21-CV-00444, and Magistrate Judge Litkovitz and Judge Susan Dlott, ignored her complaint.

On July 30, 2021, petitioner filed amended objections to the Magistrate Litkovitz's recommendations she explained the following to Judge Susan Dlott and Magistrate Judge Karen Litkovitz in the matter of *Lakefront at West Chester, LLC. vs Rosalind Holmes*, No: 1:21-CV-00444:

"On May 7, 2021, Defendant [Rosalind Holmes] filed a complaint of Housing Discrimination under Title VIII and ORC 4112, in the Butler County Common Plea's Court (*Holmes vs Lakefront Case # CV 2021 05 0639*). Defendant's [Rosalind Holmes'] lawsuit included allegations that Lakefront at West Chester, LLC., ("Lakefront or Petitioner") had terminated her tenancy in violation of Title VIII, 42 U.S.C. §§ 3601 et. seq., 3617 and O.R.C. § 4112, Housing Discrimination. Defendant's [Rosalind Holmes'] lawsuit requested monetary relief exceeding \$20,000, a Motion for Injunctive Relief and Motion to Appoint Counsel. On May 14, 2021, in bad-faith Plaintiff [Lakefront]-initiated an independent eviction action against Rosalind Holmes in the Butler County Area III Court, Case no. CVG 2100528. On or around, May 19, 2021, by [written] motion, Rosalind Holmes informed the Butler County Area III Court that Plaintiff [Lakefront] filed the eviction action in bad faith, after being served with her complaint of Housing Discrimination under Title VIII and O.R.C. 4112 [*Holmes vs Lakefront Case # CV 2021 05 0639*]. Defendant [Rosalind Holmes] provided the Butler County Area III Court with a copy of the complaint and motions filed and requested the court to dismiss or consolidate the eviction action with her prior complaint, filed in the Butler County Common Pleas Court. Subsequently, by [written] motion defendant informed the Butler County Common Pleas Court of Plaintiff's [Lakefronts'] bad faith filing and requested the Court to dismiss, consolidate or transfer the eviction action. On June 11, 2021, Plaintiff [Lakefront] voluntarily dismissed their eviction action. On June 16, 2021, Plaintiff [Lakefront] refiled the eviction action, in the Butler County Area III Court, Case no. CVG 2100651, against Rosalind Holmes. Again, Rosalind Holmes informed the Butler County Area III Court that Lakefront filed the eviction action in bad faith, after being served with her complaint of Housing Discrimination under Title VIII and O.R.C. 4112. Defendant's [Rosalind Holmes'] May 7, 2021, Housing Discrimination complaint filed in the Butler County Common Pleas Court, divested the Butler County Area III Court with subject matter jurisdiction over Lakefront's eviction action. Moreover, the Butler County Area III Court lacked subject matter jurisdiction to hear Lakefront's eviction action. Nevertheless, to date the Butler County Area III Court has failed to dismiss Lakefront's eviction action for lack of subject matter jurisdiction."

On August 3, 2021, Judge Susan J. Dlott, adopted Magistrate Litkovitz's report and recommendation and stated, "Lakefront's motion to remand this matter to the Butler County, Ohio Area III Court (Doc. 2) is **GRANTED**. Holmes's motions to file under seal (Doc. 3), to appoint counsel (Doc. 4), to authorize electronic filing privileges (Doc. 9), and to withdraw notice of removal (Doc. 17), as well as her amended motion for removal to federal court (Doc. 19) are **DENIED** as moot. This matter is **DISMISSED** from the docket of the Court for lack of subject matter jurisdiction. (*Lakefront vs. Holmes*, No:1:21-cv-00444, U. S. District Court S. D. of Ohio, Order, PAGEID 745-746), (Appendix M, Attached)

The decisions by Magistrate Karen Litkovitz and Judge Susan J. Dlott, in the matter of *Lakefront vs. Holmes*, No: 1:21-cv-00444, United States District Court, ignoring petitioners' Title VIII Housing Discrimination Complaint, and denying petitioners' motions for a stay or temporary restraining order, as moot are contrary to the law and binding legal precedent. Additionally, Magistrate Judge Karen Litkovitz and Judge Susan Dlott lacked subject matter jurisdiction to remand the case back to the Butler County Area III Court.

At minimum, Magistrate Karen Litkovitz and Judge Susan J. Dlott were required by federal and state law to correct the deficiency of the Butler County Area III Court's lack of subject matter jurisdiction and to remand the case to the Butler County Common Pleas Court. Instead, Magistrate Karen Litkovitz and Judge Susan J. Dlott never mentioned petitioners' challenge to the Butler County Area III Courts, lack of subject matter jurisdiction. The proper court to decide or hear Lakefronts' forcible entry and detainer action according to O.R.C. §§ 1907.03, 1907.031,¹³ & 2305.01, was the Butler County Common Pleas Court. Therefore, Magistrate Karen Litkovitz and Judge Susan J. Dlott, failed to exercise their authority to resolve the deficiency related to the Butler County Area III Court's, lack of subject matter jurisdiction, failed to apply O.R.C. §§ 1907.03, 1907.031,¹⁴ & 2305.01¹⁵ and failed to follow binding legal precedent as established by the Ohio Supreme Court, U.S. Court of Appeals for the Sixth Circuit and the U.S. Supreme Court. Their failure to apply relevant state and federal law to resolve the deficiency related to the Butler County Area III Court's lack of subject matter jurisdiction and decision to remand the case back to the Butler County Area III Court, despite their lack of subject matter jurisdiction is a violation of Ohio law and petitioners' Fifth Amendment rights as guaranteed by the U. S. Constitution. On August 15, 2021, petitioner contacted Jessica Banks, Lakefront Property Mgr., by email and stated, "Please stop the harassment through the air conditioning vents. I have been smelling foul odors and I believe the air conditioning vents and air conditioning is set-up or booby trapped to allow foul odors of cat pee, dog poop, smoke and other fous odors to circulate through the air conditioning vents. I have experienced unexplained vomiting, coughing, sneezing and upper respiratory issues due to this illegal harassment." (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 20). Lakefront intentionally circulated cat pee a.k.a. ammonia, dog poop, smoke, etc., throughout the

¹³ Ohio Revised Code §§ 1907.03 & 1907.031 (A) Under the restrictions and limitations of this chapter, county courts have exclusive original jurisdiction in civil actions for the recovery of sums not exceeding five hundred dollars and original jurisdiction in civil actions for the recovery of sums not exceeding fifteen thousand dollars.(B) If a counterclaim is filed in a civil action in a county court and the counterclaim exceeds fifteen thousand dollars, the county court shall certify the action to the court of common pleas.(C) If a civil action is certified to the court of common pleas pursuant to division (B) of this section, the clerk of the county court forthwith shall transmit to the court of common pleas the original papers and pleadings in the action and a certified transcript of the journal entries in it. The action then shall proceed in the court of common pleas as if it had been originally commenced in that court. In relevant part, Ohio Revised Code § 1907.031, provides, (A) Except as otherwise provided in section 1907.03 of the Revised Code..... a county court has original jurisdiction within its district in all of the following actions or proceedings and to perform all of the following functions..... (6) In an action of forcible entry and detainer...

¹⁴ Ohio Revised Code §§ 1907.03 & 1907.031 (A) Under the restrictions and lmitations of this chapter, county courts have exclusive original jurisdiction in civil actions for the recovery of sums not exceeding five hundred dollars and original jurisdiction in civil actions for the recovery of sums not exceeding fifteen thousand dollars.(B) If a counterclaim is filed in a civil action in a county court and the counterclaim exceeds fifteen thousand dollars, the county court shall certify the action to the court of common pleas.(C) If a civil action is certified to the court of common pleas pursuant to division (B) of this section, the clerk of the county court forthwith shall transmit to the court of common pleas the original papers and pleadings in the action and a certified transcript of the journal entries in it. The action then shall proceed in the court of common pleas as if it had been originally commenced in that court. In relevant part, Ohio Revised Code § 1907.031, provides, (A) Except as otherwise provided in section 1907.03 of the Revised Code..... a county court has original jurisdiction within its district in all of the following actions or proceedings and to perform all of the following functions..... (6) In an action of forcible entry and detainer...

¹⁵ In pertinent part O.R.C. § 2305.01, the court of common pleas has original jurisdiction in all civil cases in which the sum or matter in dispute exceeds the exclusive original jurisdiction of county courts***."

vents and the ducts of petitioners' apartment to cause physical harm and/or death and to ensure petitioner would be incapable of attending the eviction hearing held, in the Butler County Area III Court on August 18, 2021.

On August 16, 2021, petitioner filed an appeal in the matter of *Lakefront at West Chester, LLC. v. Rosalind Holmes* No: 21-3731, U.S. Court of Appeals Sixth Circuit and submitted a motion for an emergency stay of the August 18, 2021, eviction proceeding against her and requested injunctive relief. In the matter of *Holmes vs. U.S.A., et. al.* No.: 21-3715, U.S. Court of Appeals Sixth Circuit petitioner filed for an emergency stay of the August 18, 2021, eviction proceeding against her and requested injunctive relief. In both matters, petitioner argued that the Butler County Area III Court lacked subject matter jurisdiction, that Lakefront retaliated against her for exercising her constitutional rights, that Lakefront prevented her from attending the eviction hearing by circulating chemicals and foul odors that caused her to contract an upper respiratory infection and chemical pneumatosis. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 22 & 24) Despite petitioners' repeated challenges to Butler County Area III Court's lack of subject matter jurisdiction the U.S. Court of Appeals for the Sixth Circuit denied petitioners' motion for a stay.

On August 17, 2021, Chief Judge Jeffrey S. Sutton, Judge Julia Smith Gibbons and Judge Bernice B. Donald ignored petitioners' challenge to the Butler County Area III Court's lack of subject matter jurisdiction and denied petitioners' motion to stay and motion to seal as moot. (*Lakefront vs. Holmes*, No: 21-3731, U. S. Court of Appeals Sixth Circuit), (Appendix N, Attached), (*Holmes vs. U.S.A. et. al.*, No: 21-3715, U. S. Court of Appeals Sixth Circuit, RE 5-2, Page: 1-4), (Appendix O, Attached)

Chief Judge Jeffrey S. Sutton, Judge Julia Smith Gibbons and Judge Bernice B. Donald stated the following:

Holmes moves, as she does in appeal No. 21-3715, for an emergency stay of the August 18, 2021, eviction proceeding against her, and requests related injunctive relief. She also moves to seal her motion to stay, as it refers to her confidential medical records; however, she has already filed her motion in redacted form. We have appellate jurisdiction over "final decisions of the district courts." 28 U.S.C. § 1291; *Rowland v. S. Health Partners, Inc.*, 4 F.4th 422, 425 (6th Cir. 2021). "A final decision is one that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Rowland*, 4 F.4th at 425 (quoting *Catlin vs. United States*, 324 U.S. 229, 233(1945)). "A remand order based on the lack of subject matter jurisdiction is not a final judgment for the purposes of 28 U.S.C. § 1291." *Am. Mar. Officers v. Marine Eng'rs Beneficial Ass'n, Dist. No. 1*, 503 F.3d 532, 535 (6th Cir. 2007); see *Baldrige v. Ky.-Ohio Transp., Inc.*, 983 F.2d 1341, 1343 (6th Cir. 1993). Despite Holmes's repeated assertions that her housing discrimination defense suffices to establish a federal question in this eviction proceeding, the district court properly remanded the matter to the state court for lack of subject-matter jurisdiction. See *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002). Accordingly, the appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. The motions to stay and to seal are DENIED AS MOOT. (*Holmes vs. U.S.A. et. al.*, No: 21-3715, U. S. Court of Appeals Sixth Circuit, RE 5-2, Page: 1-4), (Appendix N, Attached)

The decisions by Chief Judge Jeffrey S. Sutton, Judge Julia Smith Gibbons and Judge Bernice B. Donald in the matters of *Lakefront at West Chester, LLC., vs. Rosalind Holmes* No: 21-3731, U.S. Court of Appeals Sixth Circuit and *Holmes vs. U.S.A., et. al.* No.: 21-3715, U.S. Court of Appeals Sixth Circuit, to deny petitioners' emergency motions for a stay as moot are contrary to the law and binding legal precedent. The U.S. Court of Appeals for the Sixth Circuit failed to exercise their authority to resolve the deficiency related to the Butler County Area III Court's, lack of subject matter jurisdiction, failed to apply O.R.C. §§ 1907.03 & 1907.031 and 2305.01. At minimum, Chief Judge Jeffrey S. Sutton, Judge

Julia Smith Gibbons and Judge Bernice B. Donald were required by federal and state law to correct the deficiency of the Butler County Area III Court's lack of subject matter jurisdiction and to remand the case to the Butler County Common Pleas Court. Instead, Chief Judge Jeffrey S. Sutton, Judge Julia Smith Gibbons and Judge Bernice B. Donald never mentioned petitioners' challenge to the Butler County Area III Courts, lack of subject matter jurisdiction. The proper court to decide or hear Lakefronts' forcible entry and detainer action according to O.R.C. §§ 1907.03, 1907.031,¹⁶ & 2305.01, was the Butler County Common Pleas Court. Their failure to apply relevant state and federal law to resolve the deficiency related to the Butler County Area III Court's lack of subject matter jurisdiction and to issue an emergency stay of Lakefront's August 18, 2021 eviction, is a violation of petitioners' Fifth Amendment rights as guaranteed by the U. S. Constitution.

August 18, 2021, Lakefront at West Chester, LLC vs. Rosalind Holmes, Case No. CVG 2100651, Eviction Hearing

On August 18, 2021, the day of the eviction hearing, petitioner was incapable of attending the eviction hearing because according to Urgent Care she suffered from an upper respiratory infection (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 22) Additionally, petitioner went to the Christ Hospital and was diagnosed with Chemical Pneumonitis, as a direct result of breathing the contaminated air in her apartment. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 24) This is another example of Lakefront's bad-faith, deceptive and extreme tactics to constructively evict petitioner.

On August 18, 2021, petitioner contacted the Butler County Area III Court by phone and explained that she was experiencing upper respiratory symptoms vomiting, etc. and incapable of attending the hearing. Petitioner spoke directly to the Butler County Area III Clerk's office and advised that she was sick with upper respiratory symptoms and could not attend the eviction hearing scheduled at 9:00am.

According to the transcript of the hearing held before Magistrate Fred Miller, on August 18, 2021, Attorney Higgins stated, (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 21)

"I think my only concern, again, given her strategic knowledge of the system, I wonder if she failed to appear today so that she can raise an objection of her failure to appear, so maybe something about, again, having waited as long as you did, the law allows proceedings without the presence of the tenant. Again, I don't want her to be able to use her absence against us somehow in her strategic shenanigans." (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, T.P. 08/18/2021, Pg. 13, Lns. 18-25 & Pg. 14, Lns 5-7, Exhibit 21)

Attorney Higgins claims that petitioner has strategic knowledge of the system and that she is concerned that petitioner will use her absence against them somehow is without merit. As explained above, both Attorney Amy Higgins and Magistrate Judge Miller knew the correct application

¹⁶ Ohio Revised Code §§ 1907.03 & 1907.031 (A) Under the restrictions and limitations of this chapter, county courts have exclusive original jurisdiction in civil actions for the recovery of sums not exceeding five hundred dollars and original jurisdiction in civil actions for the recovery of sums not exceeding fifteen thousand dollars.(B) If a counterclaim is filed in a civil action in a county court and the counterclaim exceeds fifteen thousand dollars, the county court shall certify the action to the court of common pleas.(C) If a civil action is certified to the court of common pleas pursuant to division (B) of this section, the clerk of the county court forthwith shall transmit to the court of common pleas the original papers and pleadings in the action and a certified transcript of the journal entries in it. The action then shall proceed in the court of common pleas as if it had been originally commenced in that court. In relevant part, Ohio Revised Code § 1907.031, provides, (A) Except as otherwise provided in section 1907.03 of the Revised Code..... a county court has original jurisdiction within its district in all of the following actions or proceedings and to perform all of the following functions..... (6) In an action of forcible entry and detainer...

of O.R.C. §§ 1907.03, 1907.031 & § 2305.01 the Ohio Civil Rules of Procedure 12(H)(3) & 13(J) and intentionally failed to follow law and procedure to prejudice this petitioner. Clearly Attorney Higgins has strategic knowledge of the system, and she used her strategic knowledge of the system to procure a fraudulent eviction against this petitioner in violation of the law and the Attorney Code Ethics as prescribed by the Ohio Supreme Court. Thereby depriving petitioner of her legal rights in violation of the Fourteenth and Fifteenth Amendment.

On August 18, 2021, Magistrate Judge Fred Miller ordered a forcible entry and detainer action against petitioner. On August 19, 2021, Judge C. Caperella-Kraemer adopted Magistrate Miller's report and recommendation. Judge C. Caperella-Kraemers' and Magistrate Fred Miller's clearly and indisputably abused their discretion and lacked subject matter jurisdiction when they ordered a forcible entry and detainer action against petitioner on August 18, and August 19, 2021, respectively. (*Lakefront v Holmes*, No: CVG 2100651, Butler County Area III Court), (Appendix P Attached) Their actions demonstrate their bias and gross indifference against petitioner, and violation of petitioners' rights to equal protection and due process under the Fourteenth Amendment as guaranteed by the U.S. and Ohio Constitution. Despite petitioner's repeated challenges to the subject matter jurisdiction of the Butler County Area III Court's lack of subject matter jurisdiction.

On August 24, and August 30, 2021, petitioner filed a motion to set aside, and motion for reconsideration to set aside the order of forcible entry and detainer action ordered by Magistrate Judge Fred Miller and Judge C. Caparella-Kraemer, on August 19, 2021. (*Lakefront at West Chester LLC., vs Rosalind Holmes* No. CVG 2100651, Area III Court) Petitioner supplied a doctors' note stating that she suffered from an Acute upper respiratory infection with note to return-to-work date, of August 21, 2021, her phone records to the Butler County Area III Court indicating that she contacted the Court at approximately 8:43a.m. and 10:33a.m., on August 18, 2021. As this Court understands, because of the prior COVID-19 protocols, individuals suffering from an upper respiratory infection were not permitted to enter the Court. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 23)

Once again, petitioner notified the Butler County Area III Court, of their lack of subject matter jurisdiction and failure to comply with O.R.C. §§ 1907.03, 1907.031 & § 2305.01 the jurisdictional priority rules, and the Ohio Rules of Civil Procedure. Judge C. Caperella-Kraemer ignored petitioners' notification of the Courts' lack of subject matter jurisdiction.

On August 26, 2021, and September 1, 2021, Judge C. Caperella-Kraemer denied petitioners' motion to set aside and reconsider setting aside the August 19, 2021, eviction. *Lakefront v Holmes* No: CVG 2100651, Butler County Area III Court), (Appendix Q, Attached) & (Appendix R, Attached)

Judge C. Caperella-Kraemer stated, "Holmes has had ample opportunity to oppose the eviction and has succeeded in delaying it for three months. The Court is not convinced that she was ill and could not attend the August 18 hearing. Accordingly, Holmes' request to set aside the eviction is hereby DENIED." Judge C. Caperella-Kraemers' judgment denying petitioners' motion to set aside and motion to reconsider setting

aside the eviction proves her gross indifference and bias against petitioner is contrary to the merits dictated and contrary to precedent set forth by the Ohio Supreme Court.

Holmes vs Lakefront, No: 1:21-cv-00505, U.S. District Court, for the Southern Division of Ohio

On August 5, 2021, petitioner refiled her Title VIII Housing Discrimination complaint in Federal District Court.¹⁷ (Holmes v Lakefront, No:1:21-cv-00505, U. S. District Court S.D. Ohio) Petitioner notified the Court that the case was related to *Holmes vs USA et.al.*, No: 1-20-cv-00825, and the District failed to join or consolidate the two cases. In paragraph thirty-six of petitioners' Title VIII housing discrimination complaint filed she explained that the Butler County Area III Court lacked subject matter jurisdiction over Lakefront's eviction and was in violation of O.R.C. 1907.03, the jurisdictional priority rule, and the Ohio Rules of Civil Procedure. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 16)

Subsequently, petitioner filed a motion for a stay of the eviction proceedings in the Butler County Area III Court. (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 17) However, Honorable Judge Timothy Black and Magistrate Stephanie Bowman refused to interfere with the pending state court litigation. They cited the doctrines of *Younger*, *Rocker-Feldman* and the *Anti-Injunction Act* as their reasons for not interfering in the state court proceedings and not issuing a stay.

On August 23, 2021, Magistrate Judge Stephanie K. Bowman issued an order dismissing petitioners' complaint for failure to state a claim under Federal Rules of Civil Procedure 12(b)(6) and denied her motions to appoint counsel and for a stay and/or preliminary injunctive relief. (*Holmes v Lakefront*, No:1:21-cv-00505, U. S. District Court S.D. Ohio, Bowman R & R, PAGEID# 1386-1390), (Appendix S Attached)

Magistrate Judge Stephanie K. Bowman stated the following:

"Petitioners' complaint arises out of her eviction from defendant's property...the court will not interfere with any pending state eviction proceedings. A federal court must decline to interfere with pending state proceedings involving important state interests **unless extraordinary circumstances are present.** Abstention is appropriate if: 1) state proceedings are ongoing 2.) the state proceedings implicate important state interests; and 3) the state proceedings afford an adequate opportunity to raise federal questions. *Middlesex County Ethics Comm. V Garden State Bar Ass'n*, 457 US 423,432 (1982)

To the extent eviction or other state proceedings are pending against the petitioner in connection with her ownership or occupancy of property, all three factors supporting abstention exist. The matter presented in the petitioners' complaint implicate important state interests...and there is

¹⁷ *Holmes vs. Lakefront at West Chester, LLC*. No.1:21-cv-00525 (S.D. Ohio Aug. 5, 2021)

no indication the petitioner could not raise valid federal concerns in the context of an ongoing state proceeding." (*Holmes v Lakefront*, No:1:21-cv-00505, U. S. District Court S.D. Ohio, Bowman R & R, PAGEID# 1386-1390), (Appendix S Attached)

Magistrate Bowman ignored petitioner explanation involving the Butler County Area III lack of subject matter jurisdiction and their failure to dismiss or certify the eviction action to the Butler County Court of Common Pleas. Thereby violating O.R.C 1907.03, 1907.031 and the Ohio Civil Rules of Procedure 12(H)(3) and 13(J). Judge Stephanie K. Bowman's failure to consider petitioners' challenge to the Butler County Area III Court's lack of subject matter jurisdiction as an extraordinary factor is another example of the United States District Court's extreme bias and gross indifference against petitioner, and their failure to adjudicate the case in accordance with the law and as the merits dictated. Finally, Stephanie K. Bowman clearly and indisputably abused her discretion by issuing the order dismissing petitioners' complaint for failure to state a claim under Federal Rules of Civil Procedure 12(b)(6), denying her motions to appoint counsel, and for a stay and/or preliminary injunctive relief is a direct violation of petitioners' Fifth Amendment rights to equal protection and due process as guaranteed by the U.S. Constitution.

On August 26, 2021, Judge Timothy Black adopted the report and recommendation of Magistrate Stephanie K. Bowman. (*Holmes v Lakefront*, No:1:21-cv-00505, U. S. District Court S.D. Ohio, Black's Order, PAGEID# 1618-1623), (Appendix T, Attached) Judge Timothy Black clearly and indisputably abused his discretion when he dismissed petitioners' complaint for failure to state a claim pursuant to *Rooker-Feldman*, denied petitioners' motion for a stay pursuant to the *Anti-Injunction Act* and issued an injunction against petitioner imposing pre-filing restrictions because of her history of repetitive or vexatious litigation.

Judge Timothy Black stated the following:

"To the extent her eviction proceedings have not concluded, her primary request for relief – an injunction and stay of her eviction proceedings – is prohibited by the *Anti-Injunction Act*. See 28 U.S.C. § 2283 ("A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."); see also *Wells v. DLJ Mortg. Capitol Inc.*, No. 1:14-CV-767, 2014 WL 5587561, at *2 (S.D. Ohio Nov. 3, 2014) (request to stay state court eviction proceeding prohibited pursuant to *Anti-Injunction Act*); *E3A v. Bank of Am., N.A.*, No. 13–10277, 2013 WL 784339 (E.D. Mich. Mar.1, 2013) (request to stay writ of eviction prohibited pursuant to the *Anti-Injunction Act*) (citing *Cragin v. Comerica Mortgage Co.*, No. 94–2246, 1995 WL 626292 (6th Cir. Oct. 24, 1995) (finding that the *Anti-Injunction Act* "generally precludes federal injunctions that would stay pending foreclosure proceedings in the state courts."), (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 17)

Judge Timothy Black explained:

"Finally, a facial reading of petitioners' complaint indicates that she is asking this Court to grant her relief from injuries caused in her state court proceedings, including her now-concluded eviction proceeding. The *Rooker-Feldman* doctrine prohibits federal courts, other than the United

States Supreme Court, from performing appellate review of state court rulings. *Lawrence v. Welch*, 531 F.3d 364, 368 (6th Cir. 2008); see also *Givens v. Homecomings Fin.*, 278 F. App'x 607, 609 (6th Cir.2008) (affirming dismissal under *Rooker-Feldman* where the primary relief that petitioner requested was a temporary injunction that would "enjoin Defendants from physically entering onto petitioner[']s property" and that would "dispos[e] ... of any other civil or procedural action regarding the subject property"), (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 17)

Lastly, Judge Timothy Black explained:

"Furthermore, while the Court gives some deference to *pro se* litigants, it will not permit any litigant to use the Court's resources to address filings clearly designed to harass the Court, opposing counsel, or the opposing party. Federal courts have both the inherent power and constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions. See, e.g., *Hiles v. Nova Star Mortg.*, No. 1:12-cv-392, 2016 WL 454895 (S.D. Ohio Feb. 5, 2016). There is "nothing unusual about imposing pre-filing restrictions in matters with a history of repetitive or vexatious litigation." *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998). To achieve these ends, the Sixth Circuit has approved enjoining vexatious and harassing litigants by requiring them to obtain leave of court before submitting additional filings. *Filipas v. Lemons*, 835 F.2d 1145, 1146 (6th Cir. 1987).

Petitioner has already filed two motions for emergency relief in this case alone, requesting the undersigned to stay her eviction proceedings. She has also filed notices of appeal in her other two federal court cases, requesting that the Sixth Circuit stay her eviction. See *Holmes v. Lakefront at West Chester*, 1:21-cv-444 (S.D. Ohio Aug. 3, 2021), *appeal dismissed at* No. 21-3731 (6th Cir. Aug. 17, 2021); *Holmes v. U.S.A., et al.*, No. 1:20-cv-825 (S.D. Ohio), *appeal dismissed at* No. 21-3715 (6th Cir. Aug. 17, 2021). Based on these repetitive tactics, petitioner must seek leave of Court before submitting any additional filings in this case." (*Holmes vs. The Honorable, Judge C. Caparella-Kraemer* No: 22-0683, Exhibit 19)

Holmes v Lakefront, No: 21-3791, U. S. Court of Appeals Sixth Circuit

On September 1, 2021, petitioner filed an appeal to Judge Black and Magistrate Stephanie K. Bowman's orders and emergency motion for a stay of the Butler County Area III Court's No: CVG 2100651, August 19, 2021, order of eviction pending appeal. Petitioner explained that the Butler County Area III Court lacked subject matter jurisdiction pursuant to Ohio Revised Code §§ 1907.03, 1907.031 & § 2305.01. Despite petitioners' good faith efforts to obtain a stay of the eviction proceedings, the U.S. Court of Appeals Sixth Circuit denied her emergency motion. On September 7, 2021, Judge Julia Gibbons and Judge Bernice B. Donald, clearly and indisputably abused their discretion when they denied petitioners' emergency motion for a stay. (*Holmes v Lakefront*, No: 21-3791, U. S. Court of Appeals Sixth Circuit, RE 8-2, Page: 1-3), (Appendix U Attached) Their repeated adverse judgments demonstrate their partiality, prejudice, discrimination, retaliation gross indifference and bias

against petitioner are contrary to binding legal authority as established by the U. S. Court of Appeals Sixth Circuit Court, the Ohio Supreme Court and the U.S. Supreme Court and violates the judicial code of conduct for U.S. judges. Their actions as described are in direct violation of petitioners' right to equal protection and due process guaranteed under the Fifth Amendment to the U.S. Constitution.

Courts should apply the four traditional stay factors in considering whether to stay a return order: " '(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.' *Nken v. Holder*, 556 U.S. 418, 434, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987)). *Northeast Ohio, supra*, 467 F.3d at 1009; see also *Rios, supra*, 345 F. Supp. 2d at 835. *Washington v. Reno*, 35 F.3d1093 (6th Cir. 1994). These factors are not prerequisites to the grant or denial of injunctive relief, but factors that must be carefully balanced by the district court in exercising its equitable powers. A trial court is required to make specific findings concerning each of the four factors unless fewer factors are dispositive of the issue. See *In re DeLorean Motor Co.*, 755 F.2d 1223, 1228 (6th Cir. 1985).

Petitioner explained in her motion for an emergency stay that she had a strong likelihood of success on the merits of her claims because the Butler County Area III Court lacked subject matter jurisdiction to issue an order of forcible entry and detainer action. That Lakefront had engaged in conspiratorial retaliation involving the F.B.I. State of Ohio Disciplinary Counsel, City of Cincinnati, The Landings, and others in violation of petitioners' constitutionally protected rights. Petitioner explained that absent the Court granting a stay she would suffer homelessness, be incapable of obtaining suitable housing, and lose all of her personal belongings. Petitioner explained that the parties involved in the proceedings would not suffer any substantial harm and that the public interest would be served by exposing and deterring housing discrimination and violations of federal and state law.

On June 21, 2022, Judge Joan Larsen clearly and indisputably abused her discretion when she denied petitioners' motion in forma pauper and dismissed petitioners' appeal for failure to state a claim. (*Holmes vs Lakefront*, No: 21-3791, U.S. Sixth Circuit, RE 14-2, Page: 1-3), (Appendix V, Attached) Her orders are contrary to binding legal authority as established by the U. S. Court of Appeals Sixth Circuit and the U.S. Supreme Court and in direct violation of petitioners' right to equal protection and due process guaranteed under the Fifth Amendment to the U.S. Constitution. Her actions as described demonstrate her partiality, prejudice, discrimination, retaliation gross indifference and bias against petitioner and are a direct violation of the judicial code of conduct for United States Judges. Judge Joan Larsen stated the following:

"Holmes's complaint failed to state a plausible claim for relief. Holmes's complaint asserts three claims under federal law, each premised on Lakefront's alleged racially discriminatory actions with respect to her lease. But the complaint includes no factual allegations creating a reasonable inference that Lakefront acted in a discriminatory manner. *Iqbal*, 556 U.S. at 678. Holmes alleges that Lakefront failed to perform

certain maintenance in her apartment, entered her apartment without permission, retaliated against her for making complaints, and harassed her in the eviction proceedings, but she never alleges that Lakefront took any of those actions based on racial animus. *HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 613-14 (6th Cir. 2012) See *id.* at 681 ([B]road and conclusory allegations of discrimination cannot be the basis of a complaint. With the federal claims dismissed, the district court need not exercise supplemental jurisdiction over Holmes's two remaining state-law claims. 28 U.S.C § 1367(c)(3). An appeal in this case would be frivolous. See *Neitzke*, 490 U.S. at 325. Accordingly, the motions to proceed in forma pauperis and to appoint counsel are DENIED. Unless Holmes pays the \$505 filing fee to the district court within thirty days of the entry of this order, this appeal will be dismissed for want of prosecution.

On June 23, 2021, petitioner filed a motion for reconsideration of Judge Joan Larsen's decision, and stated the following:

The analysis of Holmes' federal housing discrimination claims, as well as her state claims, are governed by the same legal framework. See *Selden Apartments v. U.S. Dep't of Hous. Urb. Dev.*, 785 F.2d 152, 159 (6th Cir. 1986); *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 582 (6th Cir. 1992). The Sixth Circuit analyzes disparate treatment claims by utilizing the burden shifting test first described in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). See *Mencer v. Princeton Square Apts.*, 228 F.3d 631, 634 (6th Cir. 2000)

The Sixth Circuit explained in *Mencer*:

A prima facie housing discrimination case is shown when the petitioner proves: (1) that he or she is a member of a [protected class], (2) that he or she applied for and was qualified to rent or purchase certain property or housing, (3) that he or she was rejected, and (4) that the housing or rental property remained available thereafter. *Mencer*, 228 F.3d at 634-35

1) Paragraph 1 of petitioner's complaint states, "This complaint is filed by Petitioner, Rosalind Holmes, an African American." (Proves that petitioner is a member of a protected class) 2) Petitioner was qualified to rent the property 3) Paragraph 30, of petitioners' complaint states On March 22, 2021, petitioner received a letter of non-renewal from Lakefront. Defendants attached the same exhibit and made direct reference to this letter in Paragraph 2 of their forcible entry and detainer action in which they plead:

"Defendant served petitioner with a written notice of termination of tenancy on March 22, 2021. PLK Communities has decided that we will not be renewing your lease as of May 20, 2021. The basis for this decision is that owner wants possession of the premises. The purpose of this notice is to give you notice in excess of one month to make appropriate arrangements to move. Please be advised that if you have not yet vacated the said premises by the date indicated above, we will be forced to commence an eviction action against you. Additionally, rent for the month of May must be paid on time and in full in order to remain in the premises for the month of May."

4) Lakefront continued to rent the property out to other similarly situated individuals. Based on the above information petitioner has articulated a prima facie case of housing discrimination.

The Sixth Circuit has held that, to establish prima facie claim of retaliation under Title VIII, a petitioner must show the following:

(1) [the complainant] engaged in activity protected by Title VIII; (2) this exercise of protected rights was known to the defendant; (3) the defendant thereafter took an adverse employment action against the petitioner; and (4) there was a causal connection between the protected activity and the adverse employment action.

1) Paragraph 10 of petitioners' complaint states, "On July 14, 2020, petitioner reported harassment to Lakefront at West Chester and in her email she stated that, "The conspiratorial harassment involves Lakefront, PLK Communities individuals of the F.B.I, City of Cincinnati, State of Ohio and others who are retaliating against petitioner for filing a legitimate federal discrimination lawsuit.. Paragraph 11 of petitioner's complaint states, On July 15, 2020, petitioner contacted Jacqueline Keller, PLK Regional Manager, and petitioner discussed investigation into the harassment and conspiracy with the F.B.I., City of Cincinnati, State of Ohio and others, reimbursement for damages to her personal property, an investigation into the mysterious change of her mailbox lock without explanation, Paragraph 15 of Petitioner's complaint states, "On September 18, 2020, petitioner contacted WCPO and requested an investigation into the unlawful behavior of Lakefront, PLK, the government and others, by WCPO's I-Team." Paragraph 17, of Petitioner's complaint states, "On October 20, 2020, petitioner amended her federal civil right lawsuit *Holmes v. U.S.A, et al*, No: 1:20-cv-825, to include Jessica Banks, Jacqueline Keller, Lakefront and PLK." Paragraph 19, of Petitioners' complaint states, "On October 28, 2020, petitioner reported to Lakefront that her lock to her apartment door had been changed without her consent. Taylor Jones, Assistant Manager, responded and stated that she would have maintenance "see what's going on." On October 29, 2020, Taylor Jones provided petitioner with a new key to her apartment. Although petitioners' key was working fine and then suddenly stopped working." Lakefront was aware of petitioners' protected activities and Lakefront took adverse actions against petitioner by failing to renew her lease agreement, permitting others to enter her apartment, changing the locks on her mailbox and apartment door without notification, intentionally distributing cat pee, a.k.a ammonia, etc., throughout the ventilation system in Holmes' apartment and ultimately evicting her on August 19, 2021. Paragraph 30, of petitioners' complaint states on March 22, 2021, petitioner received a letter of non-renewal from Lakefront. Defendants attached the same exhibit and made direct reference to this letter in Paragraph 2 of their forcible entry and detainer action in which they plead "Defendant served petitioner with a written notice of termination of tenancy on March 22, 2021. (*Holmes vs. The Honorable Judge Courtney Caparella-Kraemer*, No: 2022-0683, Ohio Supreme Court, Exhibit 4) The written letter of non-renewal or as Lakefront plead, "written notice of termination of tenancy," states the following: "PLK Communities has decided that we will not be renewing your lease as of May 20, 2021. The basis for this decision is that owner wants possession of the premises. The purpose of this notice is to give you notice in excess of one month to make appropriate arrangements to move. Please be advised that if you have not yet vacated the said premises by the date indicated above, we will be forced to commence an eviction action against you. Additionally, rent for the month of May must be paid on time and in full in order to remain in the premises for the month of May." There was a causal connection between the protected activity and the adverse employment action.

Paragraph 31, of petitioners' complaint states, "This notice of non-renewal is in direct retaliation for petitioners' filing of the *Bivens* action *Holmes v. U.S.A. et al.*, No: 1:20-CV-00825, alleging conspiratorial discrimination against Lakefront, the F.B.I., State of Ohio, City of Cincinnati and others on October 20, 2020.

Based on the forgoing, petitioner has articulated a prima facie case of housing discrimination and retaliation. Lakefront may rebut this prima facie case by articulating a "legitimate, nondiscriminatory reason" for the adverse employment action. If a defendant articulates such a reason, the petitioner must produce credible evidence proving the asserted reason is pretextual. Such evidence must show either "(1) that the proffered reasons had no basis in fact, (2) that the proffered reasons did not actually motivate his discharge, or (3) that they were insufficient to motivate discharge."

Lakefront has not answered Holmes' complaint and has not articulated a legitimate, nondiscriminatory reason for the adverse housing actions of failing to renew Holmes' lease, permitting others to enter her apartment and steal from her, changing the locks on her mailbox and door, intentionally distributing cat pee, a.k.a ammonia, etc through the ventilation system in Holmes' apartment and ultimately pursued and procured a retaliatory eviction against Holmes in bad faith on August 19, 2021.

On August 10, 2022, Chief Judge Jeffrey S. Sutton, Senior Judge Ralph B. Guy, Jr., Judge R. Guy Cole, Jr., issued an order denying petitioners' motions in forma pauper and to appoint counsel and dismissed petitioners' housing discrimination complaint for failure to state a claim. (*Holmes vs Lakefront*, No: 21-3791, U.S. Sixth Circuit, RE 16-2, Page: 1), (Appendix W, Attached) Their orders are contrary to binding legal authority as established by the U. S. Court of Appeals Sixth Circuit and the U.S. Supreme Court and are a direct violation of petitioners' right to equal protection and due process under the Fifth Amendment to the U.S. Constitution. Their repeated adverse judgments demonstrate their partiality, prejudice, discrimination, retaliation, gross indifference and bias against petitioner and violates the judicial code of ethics for United States Judges.

Appeal in Ohio's Twelfth District Court *Lakefront vs. Holmes*, No: 2021-09-108, 12th District Court, Middletown, Oh.

On September 2, 2021, petitioner filed an appeal of the Butler County Area III Court's, August 19, 2021, order of a forcible entry and detainer action. On September 3, 2021, and October 29, 2021, petitioner filed an emergency motion for a stay pending appeal and she explained that the Butler County Area III Court lacked subject matter jurisdiction pursuant to Ohio Revised Code §§ 1907.03, 1907.031 & § 2305.01. Despite petitioners' emergency motions notifying Ohio's Twelfth District Court of Appeals that the Butler County Area III Court lacked subject matter jurisdiction, they denied petitioners' emergency motions. (*Lakefront vs. Holmes*, No: 2021-09-108, 12th District Court, Middletown, OH).

On September 3, 2021, Judge Robin N. Piper, and Mike Powell denied petitioners' emergency motion for a stay pending appeal. (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix X, Attached) Again, Judge Robin N. Piper, Mike Powell and

Stephen Powell's orders denying petitioners' emergency motions for a stay pending appeal is a violation of Ohio Revised Code §§ 1907.03, 1907.031 & § 2305.01, and petitioners' constitutional right to equal protection, and due process as guaranteed by the Fourteenth Amendment to the U.S. Constitution. Additionally, Judge Robin N. Piper and Mike Powell failed to follow binding legal authority as established by the Ohio Supreme Court and the U.S. Supreme Court.

On November 15, 2021, Judge Robin N. Piper and Stephen Powell, denied petitioners' second emergency motion for a stay and/or temporary restraining order. (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix Y, Attached) Judge Robin N. Piper and Stephen Powell stated the following:

In her second emergency motion for stay, petitioner essentially seeks reconsideration of the denial of her first emergency motion for stay, contending that the Butler County Area III Court did not have jurisdiction over her case. Petitioner states; that she "refiled" a Title VIII housing discrimination complaint in Federal District Court on August 6, 2021. However, it appears that the complaint has been dismissed and filing restrictions imposed upon petitioner due to her history of repetitive, vexatious litigation. Petitioner has presented no basis for granting an emergency motion to stay her eviction, or any resulting consequences thereof. Her second emergency motion for a stay and/or temporary restraining order is DENIED.

Again, Judge Robin N. Piper and Stephen Powell's repeated orders denying petitioners' emergency motions demonstrated their partiality, prejudice, discrimination, retaliation, gross indifference and bias against petitioner. Thus, their repeated adverse orders are contrary to binding legal precedent as established by the Ohio Supreme Court and the U.S. Supreme Court. Their adverse judgments are a direct violation of petitioners' right to equal protection and due process under the Fourteenth Amendment to the U.S. Constitution.

On December 6, 2021, petitioner filed an emergency motion to void the judgment and explained that Ohio Revised Code §§ 1907.03, 1907.031 & § 2305.01 and the Ohio Rules of Civil Procedure 12(H)(3), & 13(J) required the Butler County Area III Court to dismiss or certify the action to the Butler County Common Pleas Court.

On December 20, 2021, Judge Stephen W. Powell and Robin N. Piper denied petitioners' emergency motion to void, and stated the following,

"Since filing her notice of appeal on September 10, 2021, petitioner has filed two emergency motions for stay pending appeal in this court which have both been I denied. In her current emergency motion, petitioner asks this court to reconsider denial of her second motion for stay and/or temporary restraining order. The basis for petitioners' request is apparently that the eviction action should have been transferred to the common pleas court because, after the eviction complaint was filed against her, petitioner filed a complaint against appellee alleging landlord discrimination and retaliation under Title VIII and RC. 4112 in the Butler County Court of Common Pleas See *Holmes v. Lakefront at West Chester*, Butler CP No. CV 2021-05-0639. It appears from the docket that this issue was addressed by the Area III Court and petitioners' motion to transfer the eviction action was denied. The Area III Court concluded that it had jurisdiction. (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix Z, Attached)

Although jurisdiction may be raised at any time, including on appeal, such is not a basis to reconsider denial of petitioners' second emergency motion for stay and/or temporary restraining order. Further, the additional relief requested by petitioner in her December 6 emergency motion, i.e., void the judgment of the Butler County Area III Court, issue a writ of prohibition, and seal the records of the case, is not properly before the court at this time. Petitioner has been evicted. Her eviction has not been overturned. She has not successfully shown that the Area III Court lacked jurisdiction to issue the order of eviction." (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix Z, Attached)

Petitioner was wrongfully evicted from Lakefront on August 19, 2021, and on December 9, & 17, 2021, petitioner filed a motion in the matters of *Lakefront at West Chester LLC vs Rosalind Holmes*, CA 2021-09-108, filed on 09/02/2021 and *Rosalind Holmes vs Lakefront*, CA 2021-05-046, filed 05/12/2021, requesting that Ohio's Twelfth District Court of Appeal take judicial notice, consolidate the appeals and allow petitioner to supplement the record. Even though the matter of *Rosalind Holmes vs Lakefront*, CA 2021-05-046, was still pending and had not been decided. On December 27, 2021, and January 4, 2022, Judge Mike Powell, Judge Stephen Powell, Judge Robin N. Piper denied petitioners' motion to supplement the records and failed to consolidate the cases. (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix H, Attached) Judge Mike Powell, Judge Stephen Powell, Judge Robin N. Piper failure to consolidate the matters before issuing a final order, is a violation of O.R.C. 1923.061, Ohio law and violates petitioners' right to due process and equal protection, under the Fourteenth Amendment to the U.S. Constitution.

Judge Robin N. Piper and Stephen Powell lacked subject matter jurisdiction to deny petitioners' emergency motion to void, their actions demonstrate a clear and indisputable abuse of discretion and are contrary to binding legal authority as established by the Ohio Supreme Court and the U.S. Supreme Court. Their repeated adverse judgments demonstrate their partiality, prejudice, discrimination, retaliation gross indifference, and bias against petitioner and are a direct violation of petitioners' right to equal protection and due process guaranteed under the Fourteenth Amendment to the U.S. Constitution.

On May 10, 2022, Judge Stephen Powell, Robert A. Hendrickson and Judge Matthew R. Byrne dismissed petitioners' appeal as moot. (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix AA, Attached) The Court stated the following:

“Because Holmes vacated the premises and Lakefront retook possession, the forcible entry and detainer portion of Lakefront's complaint is now moot. Landings, 2020-Ohio-6900 at ¶ 15. Accord Landings at Beckett Ridge v. Holmes, 12th Dist. Butler No. CA2021-09-118, 2022-Ohio-1272, ¶ 21; Tenancy, L.L.C. v. Roth, 5th Dist. Stark No. 2019 CA 00034, 2019-Ohio-4042, ¶¶29-30 (holding that when tenant filed Civ.R. 60[B] motion for relief from judgment challenging trial court's grant of writ of restitution to landlord, the case was moot because the tenant had moved out of the rented premises).We therefore decline to address Holmes' three assignments of error and dismiss this appeal as moot.”

Judge Stephen Powell, Robert A. Hendrickson and Judge Matthew R. Byrne lacked subject matter jurisdiction to dismiss petitioners' appeal pursuant to the mootness doctrine, and clearly and indisputably abused their discretion by issuing an order that is contrary to binding legal authority as established by the Ohio Supreme Court and the U.S. Supreme Court. More importantly, O.R.C. § 1923.061 permits a tenant to raise any valid defense to an eviction action and their failure to consolidate her claims with the forcible entry and detainer action are a violation of the law and a clear, indisputable abuse of discretion. Their repeated adverse judgments demonstrate their partiality, prejudice, discrimination, retaliation, gross indifference and bias against petitioner and are a direct violation of petitioners' right to equal protection and due process under the Fourteenth Amendment to the U.S. Constitution.

Writ of Prohibition, Rosalind Holmes v. The Honorable, Judge C. Caparella- Kraemer, No. 2022-0683, Ohio Supreme Court.

On June 6, 2022, petitioner filed a Petition for a Writ of Prohibition,¹⁸ in the Ohio Supreme Court, *Rosalind Holmes v. The Honorable, Judge C. Caparella- Kraemer* No. 2022-0683. Petitioner, explained to the Ohio Supreme Court that the Butler County Area III Court lacked subject matter jurisdiction pursuant to Ohio Revised Code §§ 1907.03, 1907.031 & § 2305.01, virtually the same legal arguments included throughout this petition.

On June 28, 2022, Respondent, Judge C. Caperella-Kraemer, filed a motion to dismiss under Rule 12(B)(6), and argued that, 1.) petitioners' writ of prohibition was moot, 2.) even if the action is not moot there is no basis for the writ of prohibition, because Judge C. Caperella-Kraemer's orders were authorized by law as evidence she cited, Ohio Revised Code Section 1907.031, " ... a county court has original jurisdiction within its district in all of the following actions or proceedings ... an action of forcible entry and detainer." (R.C. 1907.031). "Original jurisdiction is '[a] court's power to hear and decide a matter before any other court can review the matter.'" (*Johns v. Univ. of Cincinnati Med. Assoc., Inc.*, 2004-Ohio-824), 3.) Since petitioner, Rosalind Holmes, had an adequate remedy in the ordinary course of the law which was the opportunity to appeal the decision. In fact, petitioner did appeal...the Ohio's Twelfth District dismissed the appeal in *Lakefront at West Chester, L.L.C. v. Holmes* as moot. (*Rosalind Holmes v. The Honorable, Judge C. Caparella- Kraemer* No. 2022-0683)

On June 29, 2022, petitioner filed a motion in opposition to Respondent, Judge C. Caparella-Kraemer and argued, 1.) Judge C. Caperella-Kraemer lacked subject matter jurisdiction to issue a forcible entry and detainer action against petitioner pursuant to Ohio Revised Code §§ 1907.03, 1907.031 & § 2305.01. In relevant part, O.R.C 1907.031(A)(6), provides "Except as otherwise provided in section 1907.03 of the Revised Code... a county court has original jurisdiction within its district in all of the following actions or proceedings.... in an action of forcible entry and detainer..." Pursuant to O.R.C. 1907.03(A) "county courts have exclusive original jurisdiction in civil actions for the recovery of sums not exceeding five hundred dollars and original jurisdiction in civil actions for the recovery of sums not exceeding fifteen thousand dollars. (B) If a counterclaim is filed in a civil action in a county court and the counterclaim exceeds fifteen thousand dollars, the county court shall certify the action to the court of common pleas. Ohio's common pleas courts are endowed with "original jurisdiction over all justiciable matters * * * as may be provided by law." Article IV, Section 4(B), Ohio Constitution. Jurisdiction has been "provided by law" in R.C. 2305.01, which states that courts of common pleas have "original jurisdiction in all civil cases in which the sum or matter in dispute exceeds the exclusive original jurisdiction of county courts." This court has long held that the court of common pleas is a court of general jurisdiction, with subject-matter jurisdiction that extends to "all matters at law and in equity that are not denied to it." *Saxton v. Seiberling*, 48 Ohio St. 554, 558-559, 29 N.E. 179 (1891). 2.) that the mootness doctrine was inapplicable to this case because subject matter jurisdiction is a prerequisite to the mootness doctrine, "Subject

¹⁸ *Rosalind Holmes v. The Honorable, Judge C. Caparella- Kraemer* No. 2022-0683. (Ohio Supreme Court, filed June 6, 2022), (Respondent's Motion to Dismiss under Rule 12(B)(6), filed June 28, 2022), (Motion in Opposition to Respondent, filed June 29, 2022), (Respondent's Motion to Dismiss, Granted Aug. 17, 2022. See announcement at [2022-Ohio-2788](https://www.supremecourt.ohio.gov/Clerk/Jecms/#!/caseinfo/2022/0683).), (located at <https://www.supremecourt.ohio.gov/Clerk/Jecms/#!/caseinfo/2022/0683> last accessed on 08/27/2022)

matter jurisdiction goes to the power of a court to adjudicate the merits of a case and is a "condition precedent to the court's ability to hear a case. If a court acts without jurisdiction, then any proclamation by that court is void." *Pratts* at ¶ 11 3.) that even if the doctrine of mootness was applicable the case presents the substantial constitutional question regarding warrantless surveillance, due process and equal protection under the Fourteenth Amendment and is capable of repetition but evading review. 4.) that petitioner had proven all three elements required for a writ of prohibition to issue against Judge C. Caperella-Kraemer. (*Rosalind Holmes v. The Honorable, Judge C. Caparella- Kraemer* No. 2022-0683) On August 17, 2022, the Ohio Supreme Court granted Judge C. Caperella-Kraemer's, Motion to Dismiss under Rule 12(B)(6). (*Rosalind Holmes v. The Honorable, Judge C. Caparella- Kraemer* No. 2022-0683), (Appendix BB, Attached) The Ohio Supreme Court lacked subject matter jurisdiction to dismiss petitioners' writ of prohibition, their order to dismiss demonstrated a clear and indisputable abuse of discretion, and they failed to follow binding legal authority as established in the Ohio Supreme Court and the U.S. Supreme Court. Their adverse judgment dismissing petitioners' writ under Rule 12(B)(6) demonstrated their partiality, prejudice, discrimination, retaliation, gross indifference and bias against petitioner and is a direct violation of petitioners' right to equal protection and due process guaranteed under the Fourteenth Amendment to the U.S. Constitution. A court adhering to the principle of horizontal stare decisis must follow its own prior decisions absent exceptional circumstances.

On August 11, 2022, petitioner filed a writ of prohibition and mandamus in the U.S. Court of Appeals for the Sixth Circuit regarding the exact same legal facts and issues presented in this petition. Pursuant to *Erie Railroad vs Thompkins* federal judges are bound by the decisions of the Ohio Supreme Court. The Ohio Supreme Court's August 17, 2022, decision to dismiss petitioners' writ of prohibition created binding legal authority that the Sixth Circuit must follow. Therefore, the Sixth Circuit would be required by stare decisis to dismiss petitioners' writ of prohibition and mandamus filed in the matter of *Holmes vs. The Honorable Magistrate Stephanie K. Bowman, Judge Timothy Black, Magistrate Judge Litkovitz and Judge McFarland*.

Finally, the Ohio Supreme Court is the court of last resort and pursuant to Article IV § 5, of the Ohio Constitution the Court has superintendent authority over all courts in the state, as they are responsible for ensuring that the judicial process is fair and impartial. More importantly, they prescribe the rules governing practice and procedure in all courts of the state, including the enforcement and disciplinary actions pursuant to the Ohio Judicial Code of Conduct and Ohio Rules of Professional Conduct for Attorneys, the chief justice or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof. When a state supreme court fails to follow its' own legally binding precedent and violates its' own judicial code of conduct, clearly and indisputably indicates that petitioner cannot trust that she will receive fair and impartial justice in the state judicial system. This is a significant, clear, indisputable abuse of judicial discretion and judicial misconduct that requires immediate action and must be remedied by the United States Supreme Court.

On March 18, 2022, with the assistance of petitioners' ex-husband, Joseph Arthur, signing the lease agreement she moved into an apartment community called Four Bridges in Liberty, Township Ohio which is owned by Towne Properties. Upon moving into Four Bridges, the F.B.I. and others have continued their conspiratorial campaign of retaliation and discriminatory harassment. She is currently being harassed and has made several reports to Four Bridges property management and the Butler County Sheriff's office about people entering her apartment stealing, sabotaging her personal belongings, going into her purse and stealing, circulating foul odors throughout the air, such as cat pee, dog poop, and chemicals that irritate her upper respiratory system, etc. To date, Four Bridges and Towne Properties have failed to alleviate any of the issues. On June 21, 2022, Four Bridges wrote petitioner a letter stating, "After performing careful inspections and doing this work, we cannot find anything wrong with your apartment or any reason that you would be experiencing unusual or unpleasant odors. We believe we had done all we reasonably can regarding these complaints. Since you are still unsatisfied with your apartment, we have offered to allow you to terminate your lease without penalty." (Exhibit 4, 6, Attached) Petitioner cannot just move out of Four Bridges because she will not be capable of obtaining another apartment on her own because of the wrongful evictions by Lakefront at West Chester, LLC. and the Landings at Beckett Ridge, LLC. The F.B.I., City of Cincinnati, State of Ohio and others have conspired with every property management company to harass this petitioner and make her appear to be crazy which is totally untruthful, hurtful and demonstrates the continual conspiratorial campaign of harassment, retaliation, discrimination against this petitioner. On June 17, 2022, right after petitioner filed her complaint for a writ of prohibition against Judge C. Caparella-Kraemer she was fired off her job and has been incapable of obtaining employment in which she will continue to be capable of meeting her financial obligations and being self-sufficient.

REASONS FOR GRANTING THE WRIT

The federal, state and local judges involved in the proceedings arbitrarily and unambiguously lacked subject matter jurisdiction and/or clearly and indisputably abused their discretion, violated the judicial code of ethics by engaging in a conspiratorial and retaliatory campaign involving the F.B.I., City Cincinnati, State of Ohio Disciplinary Counsel, Landings, Lakefront and many others to deprive petitioner of her legal rights. The judges involved in the proceedings repeatedly made adverse rulings against plaintiff that were contrary to what the merits dictated, did not adjudicate petitioners' submissions in a timely manner in accordance with binding legal authority, petitioners' motions and submissions were routinely ignored or denied. The judges involved in the proceedings engaged in conspiratorial harassment involving the F.B.I., City of Cincinnati, State of Ohio and many others to ensure the outcome of every proceeding described in this petition was predetermined and that petitioner never had a fair chance of succeeding. As a direct result of their willful, wanton and gross indifference, plaintiff suffered wrongful eviction, retaliation, discrimination, homelessness, loss of personal property and significant mental anguish, physical and psychological distress, humiliation, shame

and suffering. Clearly petitioners' rights to equal protection and due process have and will continue to be violated as she was not afforded fair and impartial judges in the federal, state and local courts as explained in this petition.

Nevertheless, the judges involved in the proceedings required plaintiff to continue to represent herself while they conspired with the F.B.I., City of Cincinnati, State of Ohio Disciplinary Counsel, Lakefront, Landings and many others to ensure that she was homeless, jobless, incapable of accessing legal resources, internet resources, and suffering from severe medical issues, etc. Thereby, leaving her alone to fight through conspiratorial bias, partial, discriminatory and retaliatory court systems, causing her extreme emotional and financial distress, homelessness, embarrassment, health problems, and loss of enjoyment of life. Not to mention the lack of judicial economy, abuse of the judicial system and the unnecessary cost and delay of filing several unnecessary pleadings within the federal, state and local Courts.

MANDAMUS LIES TO ORDER RESPONDENTS TO FOLLOW OHIO LAW AND BINDING LEGAL PRECEDENT AND TO PREVENT JUDGE

C. CAPERELLA-KRAEMER AUGUST 19, 2021, ORDER OF A FORCIBLE ENTRY AND DETAINER ACTION AGAINST PETITIONER FROM BEING UPHELD AND LEGALLY ENFORCEABLE

Where a public officer or agency is under a clear legal duty to perform an official act, and where there is no plain and adequate remedy, in the ordinary course of the law, an action in mandamus will lie originally in the Supreme Court or in the Court of Appeals." *State ex rel. Pressley v. Indus. Comm'n*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1967) (paragraph one of the syllabus). Mandamus is a "drastic and extraordinary remedy reserved for extraordinary causes." *Cheney v. U.S. Dist. Ct. for the Dist. of Columbia*, 542 U.S. 367, 380, 124 S.Ct. 2576, 159 L.Ed.2d 459 (2004) Because the writ of mandamus "is one of the most potent weapons in the judicial arsenal, three conditions must be satisfied before it may issue." *Id.* First, a petitioner must "have no other adequate means to attain the relief [it] desires—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process." *Id.* at 380-81, 124 S.Ct. 2576. Second, a petitioner must show a "clear and indisputable" right to the relief sought. *Id.* at 381, 124 S.Ct. 2576 Finally, a petitioner must show that issuing the writ is otherwise "appropriate under the circumstances." *Id.*; see also *In re Pros. Direct Ins. Co.*, 578 F.3d 432, 437 (6th Cir. 2009) (listing five balancing factors to consider when deciding whether to issue the writ). In evaluating whether to issue a writ of mandamus, we consider five factors:(1) whether the party seeking the writ has no other adequate means, such as direct appeal, to attain the relief desired; (2) whether the petitioner will be damaged or prejudiced in a way not correctable on appeal after a final judgment; (3) whether the district court's order is clearly erroneous as a matter of law; (4) whether the district court's order contains an oft-repeated error, or manifests a persistent disregard of the federal rules; (5) whether the district court's order raises new and important problems, or legal issues of first impression. *John B. v. Goetz*, 531 F.3d 448, 457 (6th Cir. 2008).

For a writ of prohibition to be granted, petitioner must show that "(1) [Respondent] has exercised or is about to exercise judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the

ordinary course of law." *State ex rel. Durrani v. Ruehlman*, Slip Op. No. 2015-2080, 2016-Ohio-7740, ¶ 13. "The last requirement is waived if the lack of jurisdiction is patent and unambiguous." *Id.*, ¶ 13. In addition, a writ of prohibition "tests and determines 'solely and only' the subject matter jurisdiction" of the lower court. *State ex rel. Eaton Corp. v. Lancaster* (1988), 40 Ohio St.3d 404, 409, 534 N.E.2d 46, 52; *State ex rel. Staton v. Franklin Cty. Common Pleas Court* (1965), 5 Ohio St.2d 17, 21, 34 O.O.2d 10, 13, 213 N.E.2d 164, 167.

Respondents have a clear legal duty to follow binding authority as established by the Ohio Supreme Court, Twelfth District Court of Appeals, U.S. Sixth Circuit Court of Appeals and U.S. Supreme Court

Ohio's trial and intermediate appellate courts, are bound to follow precedent set by the Supreme Court of Ohio and cannot issue a decision in conflict with a decision of the Supreme Court that has not been reversed or overruled." *State v. Tatom*, 10th Dist. No. 17AP-758, 2018-Ohio-5143, ¶ 24. All trial courts and intermediate courts of appeal are charged with accepting and enforcing the law as promulgated by the Supreme Court not changing, modifying or ignoring that law. Courts of appeal remain "bound by and must follow [its' own decisions] and the decisions of the Ohio Supreme Court." *Thacker v. Bd. of Trustees of Ohio State Univ.* (1971), 31 Ohio App.2d 17, 60 O.O.2d 65, 285 N.E.2d 380, paragraph one of the syllabus. Decisions of a court of last resort are to be regarded as law and should be followed by inferior courts, whatever the view of the latter may be as to their correctness, until they have been reversed or overruled. *Krause v. State* (1972), 31 Ohio St.2d 132, 148 (concurring opinion, per Corrigan, J.) Federal district courts and circuit courts are bound to adhere to the controlling decisions of the Supreme Court. *Hutto v. Davis*, [454 U.S. 370, 375] (1982) Justice Rehnquist emphasized the importance of precedent when he observed that 'unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.' *Davis*, [454 U.S. at 375]. See Also, *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, [460 U.S. 533, 535] (1983) (the Supreme Court, in a per curiam decision, recently stated: 'Needless to say, only this Court may overrule one of its precedents')." 705 F.2d, at 1532. Furthermore, a district court is only bound by the decisions of the Circuit Court of Appeals in which it sits. See *Cochran v. Trans-General Life Ins. Co.*, 60 F.Supp.2d 693, 698 (E.D. Mich.1999).

Petitioner lacks a plain and adequate remedy

On June 6, 2022, petitioner filed a Petition for a Writ of Prohibition in the Ohio Supreme Court, *Rosalind Holmes v. The Honorable, Judge C. Caparella- Kraemer* No. 2022-0683. On August 17, 2022, the Ohio Supreme Court wrongfully granted Respondent Judge Courtney Caparella-Kraemers,' motion to dismiss under Ohio Rule of Civil Procedure 12(B)(6). (*Holmes vs. The Honorable Judge Courtney Caparella-Kraemer*, No: 2022-0683, Ohio Supreme Court), (Appendix BB, Attached) On June 24, 2022, petitioner filed a memorandum in support of jurisdiction in the Ohio Supreme Court. On August 30, 2022, the Supreme Court of Ohio declined jurisdiction. (*Lakefront of W. Chester, L.L.C. v. Holmes* No: 2022-0793), (Appendix K, Attached) Because the Ohio Supreme Court wrongfully dismissed petitioners' writ of prohibition and declined

jurisdiction in the matter of *Lakefront at West Chester, L.L.C. v. Holmes* No: 2022-0793. Petitioner lacks any remedy in the ordinary course of law. On August 10, 2022, the U.S. Court of Appeals for the Sixth Circuit, dismissed the matter of *Holmes v Lakefront*, No: 21-3791, explaining, "Holmes's motion does not show that the court "overlooked or misapprehended" any point of law or fact" when it issued its order. See Fed. R. App. P. 40(a)(2). The motion for reconsideration, judicial notice, relief from judgment, and a stay is DENIED." Finally, on August 11, 2022, petitioner filed a writ of prohibition and mandamus in the U.S. Court of Appeals for the Sixth Circuit regarding the exact same legal facts and issues presented in this petition. (*In re: Rosalind Holmes*, No: 22-3652, & No: 22-3664 Sixth Circuit Court of Appeals) However, the U.S. Court of Appeals for the Sixth Circuit opened two cases *In re: Rosalind Holmes*, No: 22-3652, & No: 22-3664 and has not issued a final decision on the emergency writ of mandamus and prohibition. Pursuant to *Erie Railroad vs Thompkins* federal judges are bound by the decisions of the Ohio Supreme Court. The Ohio Supreme Court's August 17, 2022, decision to dismiss petitioners' writ of prohibition created binding legal authority that the Sixth Circuit must follow. Additionally, the obvious conflict of interest between the judges and defendants involved in the proceedings with the Ohio Disciplinary Counsel and Ohio Board of Professional Practice is indicative of their lack of impartiality and presents and overwhelming appearance of impropriety. Therefore, it is more likely than not, that the Sixth Circuit would dismiss petitioners' writ of prohibition and mandamus filed in the matters of *In re: Rosalind Holmes*, No: 22-3652, & No: 22-3664 Sixth Circuit Court of Appeals.

Law and Analysis

In *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83 (1998) the United States Supreme Court Case held, "Article III generally requires a federal court to satisfy itself of its jurisdiction over the subject matter before it considers the merits of a case. Subject matter jurisdiction is a "threshold question that must be resolved ... before proceeding to the merits." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 88–89, 118 S.Ct. 1003, For a court to pronounce upon [the merits] when it has no jurisdiction to do so," *Steel Co.* declared, "is . . . for a court to act ultra vires." [523 U.S., at 101-102](#). *Steel Co.* reasoned that subject-matter jurisdiction necessarily precedes a ruling on the merits. Accordingly, subject-matter delineations must be policed by the courts on their own initiative even at the highest level. See *Steel Co.*, [523 U.S., at 94-95](#); [Fed. Rule Civ. Proc. 12\(h\)\(3\)](#) ("Whenever it appears . . . that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."); [28 U.S.C. § 1447\(c\)](#) (1994 ed., Supp. III) ("If at any time before final judgment [in a removed case] it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."). "The absence of subject matter jurisdiction is non-waivable; before deciding any case we are required to assure ourselves that the case is properly within our subject matter jurisdiction." *Consol. Edison Co. of N.Y. v. UGI Utils.*, [423 F.3d 90, 103](#) (2d Cir.2005) (quoting *Wynn v. AC Rochester*, [273 F.3d 153, 157](#) (2d Cir.2001)

In *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, the Ohio Supreme Court held, "Because subject-matter jurisdiction involves a court's power to hear a case, the issue can never be waived or forfeited and may be raised at any time. When a trial court lacks subject matter

jurisdiction, its judgment is void." Consequently, the authority to vacate a void judgment is not derived from Civ. R. 60(B), but rather constitutes an inherent power possessed by Ohio courts. See Staff Notes to Civ. R. 60(B); *Lincoln Tavern, Inc. v. Snader* (1956), 165 Ohio St. 61, 59 O.O. 74, 133 N.E.2d 606, paragraph one of the syllabus; *Westmoreland v. Valley Homes Corp.* (1975), 42 Ohio St.2d 291, 294, 71 O.O. 2d 262, 264, 328 N.E.2d 406, 409. The Supreme Court has recognized that federal courts have inherent equitable power to vacate judgments obtained by fraud on the court. See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244-45 (1944). It was neither incumbent upon Holmes to establish a basis for relief under Civ. R. 60(B) nor was it necessary for the judges in the Butler County Area III Court, Ohio's Twelfth District Court of Appeals, and the Supreme Court of Ohio to derive its authority therefrom. Rather, the "judgment" sought to be vacated constituted a nullity. It was therefore within the inherent power of the trial court to vacate the August 19, 2021, judgment... *Patton v. Diemer*, 35 Ohio St. 3d 68 (Ohio 1988) A defect in subject-matter jurisdiction requires correction whether or not it was raised in the trial court and cannot be waived because it goes to the heart of the trial court's power to adjudicate a case on the merits. See *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, ¶ 45, quoting *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶ 11. The state court's possession of personal and subject-matter jurisdiction over the controversy is an essential prerequisite to removal. This is because the federal court cannot acquire, through removal, jurisdiction that the state court never had. See, e.g., *Compton v. Carter Oil Co.* (C.A.8, 1922), 283 F. 22, 22; *Borkowski v. Abood*, 117 Ohio St. 3d 347 (Ohio 2008) The issue of subject matter jurisdiction is never waived; neither the court nor the parties can confer jurisdiction where none existed originally. *Patton v. Diemer* (1988), 35 Ohio St.3d 68 **The U. S. Supreme Court has held, "Because subject-matter jurisdiction involves a court's power to hear a case, it can never be forfeited or waived. Thus, defects require correction regardless of whether the error was raised in district court and may be challenged at any time." *United States v. Cotton* (2002), 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860; See, e.g., *Louisville Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908). Where a Court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other Court. But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal, in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers. *Elliott v. Peirsol*, 26 U.S. 328 (1828)**

But almost a century ago, in *Lambert Run Coal Co.*, the Supreme Court explained that "[t]he jurisdiction of the federal court on removal is, in a limited sense, a derivative jurisdiction. If the state court lacks jurisdiction of the subject-matter or of the parties, the federal court acquires none, although it might in a like suit originally brought there have had jurisdiction." *Lambert Co. v. Balt. Ohio R.R. Co.*, [258 U.S. at 382](#), [42 S.Ct. 349](#). The complaint in that case, which was filed in state court and then removed to federal court, sought to challenge and set aside an order of the

Interstate Commerce Commission. Because federal courts had exclusive jurisdiction over such claims, and because the United States had not consented to be sued in state courts, the Supreme Court held that the state court did not have subject-matter jurisdiction to entertain the complaint. And so, when the case was removed to federal court, that court also lacked subject-matter jurisdiction. See *id.* ("As the state court was without jurisdiction over either the subject-matter or the United States, the District Court could not acquire jurisdiction over them by the removal."). The Supreme Court has kept the doctrine of derivative jurisdiction alive over the years by sporadically applying it or discussing it. See, e.g., *Gen. Inv. Co. v. Lake Shore & M.S. Ry. Co.*, 260 U.S. 261, 288, 43 S.Ct. 106, 67 L.Ed. 244 (1922) ("When a cause is removed from a state court into a federal court, the latter takes it as it stood in the former. A want of jurisdiction in the state court is not cured by the removal, but may be asserted after it is consummated."); *Minnesota v. United States*, 305 U.S. 382, 389, 59 S.Ct. 292, 83 L.Ed. 235 (1939) (applying the doctrine of derivative jurisdiction to dismiss an action because the state court lacked subject-matter jurisdiction); *Freeman v. Bee Machine Co. Inc.*, 319 U.S. 448, 449–51, 63 S.Ct. 1146, 87 L.Ed. 1509 (1943) (discussing the doctrine of derivative jurisdiction and refusing to extend it to bar the post-removal amendment of the complaint); *Arizona v. Manypenny*, 451 U.S. 232, 242 n.17, 101 S.Ct. 1657, 68 L.Ed.2d 58 (1981) (describing the doctrine of derivative jurisdiction as well-settled). In *Freeman*, the Supreme Court acknowledged that *Lambert Run Coal Co.* held that district courts have the power to cure or fix whatever jurisdictional defects existed. 319 U.S. at 452, 63 S.Ct. 1146. The *Lambert Co.* case and those which preceded and followed it merely held that defects in the jurisdiction of the state court either as respects the subject matter or the parties were not cured by removal but could thereafter be challenged in the federal court." *Id.* at 451, 63 S.Ct. 1146. The Court held that, although removal "does not cure jurisdictional defects present in the state court action," federal courts have "the full arsenal of authority with which they have been endowed." *Id.* at 452, 63 S.Ct. 1146.

A court cannot create its own jurisdiction—it only has "such jurisdiction as may be provided by law." Ohio Constitution, Article IV, Section 3 (B)(2). More importantly, this case involves a constitutionally created common pleas court. Ohio's common pleas courts are endowed with "original jurisdiction over all justiciable matters * * * as may be provided by law." Article IV, Section 4(B), Ohio Constitution. Jurisdiction has been "provided by law" in R.C. 2305.01, which states that courts of common pleas have "original jurisdiction in all civil cases in which the sum or matter in dispute exceeds the exclusive original jurisdiction of county courts." This court has long held that the court of common pleas is a court of general jurisdiction, with subject-matter jurisdiction that extends to "all matters at law and in equity that are not denied to it." *Saxton v. Seiberling*, 48 Ohio St. 554, 558-559, 29 N.E. 179 (1891).

When a prohibition claim targets a statutorily created tribunal, the analysis must consider whether the General Assembly empowered the tribunal to proceed. *State ex rel. Natalina Food Co. v. Ohio Civ. Rights Comm.*, [55 Ohio St.3d 98, 100](#), [562 N.E.2d 1383](#) (1990). As a county court, the Butler County Area III Court is statutorily created with "only limited jurisdiction and may exercise only such powers as are directly conferred by

legislative action." *State ex rel. Johnson v. Perry Cty. Court*, [25 Ohio St.3d 53, 54, 495 N.E.2d 16](#) (1986). A county court has statutory jurisdiction over, among other things, civil actions in which the sum sought for recovery does not exceed amounts prescribed by law, [R.C. 1907.03\(A\)](#); See also [R.C. 1907.031](#) (further specifying the scope of a county court's jurisdiction). *State ex rel. Fiser v. Kolesar*, 2020 Ohio 5483 (Ohio 2020) In relevant part, Butler County Area III Court's jurisdiction is codified in Ohio Revised Code §§ 1907.031 and 1907.03. In relevant part, O.R.C 1907.031(A)(6), provides "**Except as otherwise provided in section 1907.03 of the Revised Code...** a county court has original jurisdiction within its district in all of the following actions or proceedings.... in an action of forcible entry and detainer..." Pursuant to **O.R.C. 1907.03(A) "county courts have exclusive original jurisdiction in civil actions for the recovery of sums not exceeding five hundred dollars and original jurisdiction in civil actions for the recovery of sums not exceeding fifteen thousand dollars. (B) If a counterclaim is filed in a civil action in a county court and the counterclaim exceeds fifteen thousand dollars, the county court shall certify the action to the court of common pleas. (C) If a civil action is certified to the court of common pleas pursuant to division (B) of this section, the clerk of the county court forthwith shall transmit to the court of common pleas the original papers and pleadings in the action and a certified transcript of the journal entries in it. The action then shall proceed in the court of common pleas as if it had been originally commenced in that court.** The word shall means that the Butler County Area III Court was required to certify the action to the Butler County Court of Common Pleas if a counterclaim exceeded fifteen thousand dollars as evident here.¹⁹

Stare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. See *Vasquez v. Hillery*, [474 U.S. 254, 265-266](#) (1986). Considerations in favor of *stare decisis* are at their acme in cases involving property and contract rights, where reliance interests are involved, see *Swift Co. v. Wickham*, 382 U.S. 111, 116 (1965); *Oregon ex rel. State Land Bd. v. Corvallis Sand Gravel Co.*, 429 U.S. 363 (1977); *Burnet v. Coronado Oil Gas Co.*, supra, at 405-411 (Brandeis, J., dissenting) *Stare decisis* has been a fundamental part of our jurisprudence since the founding, and it is an important doctrine. But, as we have said many times, it is not an "inexorable command." *Payne*, 501 U.S. at 828, 111 S.Ct. 2597; *Gamble v. United States*, 587 U.S. at 139 S.Ct. 1960, 204 L.Ed.2d 322 (2019)., at 1969–1970 (slip op., at 11–12). There are circumstances when past decisions must be overturned, but we begin with the presumption that we will follow precedent, and therefore when the Court decides to overrule, it has an obligation to provide an explanation for its decision. *Ramos v. Louisiana*, 140 S. Ct. 1390

¹⁹ *Holmes v. Lakefront at West Chester*, No. CV 2021-05-0638 (Butler County Court Common Pleas, filed May 7, 2021), Petitioners' prayer for relief stated the following: "Plaintiff demands judgment against the Defendant in an amount exceeding twenty thousand dollars together with pre-judgment interest, interest, costs herein expended, renewal of her lease agreement, compensatory damages, punitive damages in an amount exceeding fifty thousand dollars, reasonable attorney fees, the cost of this action, and such other relief as the Court deems just and proper." (located at <https://pa.butlercountyclerk.org/eservices/searchresults.page>) (last accessed 8/24/2022)

(2020) Under the legal doctrine of stare decisis, courts follow controlling precedent, thereby creating stability and predictability in our legal system. *State ex rel. Davis v. Pub. Emps. Retirement Bd.*, 120 Ohio St.3d 386, 2008-Ohio-6254, ¶ 38. The Supreme Court of Ohio adheres to stare decisis as a means of thwarting the arbitrary administration of justice as well as providing a clear rule of law by which the citizenry can organize their affairs. *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, ¶ 43, citing *State ex rel. Rocky River v. State Emp. Relations Bd.*, 43 Ohio St.3d 1, 4-5 (1989). The doctrine is of fundamental importance to the rule of law. *Id.* at ¶ 44. In Ohio, a prior decision of the Supreme Court may be overruled where (1) the decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create an undue hardship for those who have relied upon it. *Westfield Ins. Co. v. Galatis*, 100 Ohio St. 3d 216 (Ohio 2003)

When imposing sanctions for judicial misconduct, we "recognize the important role that judges play in society and their concomitant duty to act in an ethical manner." *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, 815 N.E.2d 286, ¶ 56. In *O'Neill*, we observed: "Because they are so important to our society, judges must be competent and ethical, and their actions must foster respect for their decisions as well as for the judiciary as a whole. Given that they hold positions of considerable authority and are entrusted with a great deal of power and discretion, judges are expected to conduct themselves according to high standards of professional conduct. Indeed, it is often said that judges are subject to the highest standards of professional behavior. Judges are held to higher standards of integrity and ethical conduct than attorneys or other persons not invested with the public trust." *Id.* at ¶ 57, quoting Shaman, Lubet & Alfini, *Judicial Conduct and Ethics*, Section 1.01, at 1 (3d Ed.2000). "The primary purpose of judicial discipline is to protect the public, guarantee the evenhanded administration of justice, and maintain and enhance public confidence in the integrity of [the] institution." *Id.* at ¶ 33.

Rooker-Feldman, Younger, and Anti-Injunction Act are not Applicable in the Matter of Holmes vs Lakefront, No: 1-21-cv-00505

Rooker and *Feldman* exhibits the limited circumstances in which the U.S. Supreme Court's appellate jurisdiction over state-court judgments, pursuant to 28 U.S.C. § 1257, precludes a United States district court from exercising subject-matter jurisdiction in an action that it would otherwise be empowered to adjudicate under a congressional grant of authority, e. g., § 1330 (suits against foreign states), § 1331 (federal question), and § 1332 (diversity).

In both *Rooker* and *Feldman*, the losing party in state court filed suit in federal court **after the state proceedings ended**, complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment. Petitioners in both cases, alleging federal-question jurisdiction, called upon the District Court to overturn an injurious state-court judgment. Because § 1257, as long interpreted, vests authority to review a state court's judgment solely in U.S. Supreme Court, the District Courts in *Rooker* and *Feldman* lacked subject-matter jurisdiction. e. g., *Feldman*, 460 U. S., at 476; *Atlantic Coast Line R. Co. v. Locomotive Engineers*, 398 U. S. 281, 286 (1970); *Rooker*, 263 U. S., at 416,

See *Verizon Md. Inc.*, 535 U. S., at 644, "The *Rooker-Feldman* doctrine merely recognizes that 28 U. S. C. § 1331 is a grant of original jurisdiction and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to the U.S. Supreme Court, see § 1257(a).

By contrast, petitioner filed her Title VIII housing discrimination complaint in district court before the Butler County Area III Court had entered its judgment which distinguishes her case from that of *Rooker* and *Feldman*. When there is parallel state and federal litigation, *Rooker-Feldman* is not triggered simply by the entry of judgment in state court. The U.S. Supreme Court has repeatedly held that "the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *McClellan v. Garland*, 217 U. S. 268, 282 (1910); accord *Doran v. Salem Inn, Inc.*, 422 U. S. 922, 928 (1975); *Atlantic Coast Line R. Co.*, 398 U. S., at 295.

In addition, the Sixth Circuit has explained: "*Younger* abstention requires a federal court to abstain from granting injunctive or declaratory relief that would interfere with pending state judicial proceedings." *O'Neill v. Coughlan*, 511 F.3d 638, 643 (6th Cir. 2008) (citing *Younger*, 401 U.S. at 40-41). The Supreme Court has limited *Younger* abstention to "three exceptional categories" of cases: (1) "parallel, pending state criminal proceeding[s]"; (2) "state civil proceedings that are akin to criminal prosecutions"; and (3) state civil proceedings that "implicate a State's interest in enforcing the orders and judgments of its courts." *New Orleans Public Service, Inc. v. Council of New Orleans* ("NOPSI"), 491 U.S. 350, 368, 109 S.Ct. 2506.

Once a court determines that a case falls into a category in which *Younger* abstention may be proper, the court should then analyze the case using the following test: If "(1) state proceedings are currently pending; (2) the proceedings involve an important state interest; and (3) the state proceedings will provide the federal petitioner with an adequate opportunity to raise his constitutional claims," a court may abstain from hearing the federal claim. *Aaron v. O'Connor*, 914 F.3d 1010, 1018 (6th Cir. 2019) (quoting *Doe*, 860 F.3d at 369). Since petitioner explained in her complaint and motion for a stay, the specifics regarding the Butler County Area III Court's lack of subject matter jurisdiction and their failure to certify the case to the Butler County Court of Common Pleas, as required by Ohio Revised Code §§ 1907.03, 1907.031 & § 2305.01. Petitioner was not given an adequate opportunity to raise her constitutional claims in the Butler Area III Court's proceedings.

In *Younger*, this Court emphatically reaffirmed "the fundamental policy against federal interference with state criminal prosecutions." 401 U.S., at 46. It made clear that even "the possible unconstitutionality of a statute 'on its face' does not in itself justify an injunction against **good-faith attempts to enforce it.**" 401 U.S., at 54. At the same time, however, the Court clearly left room for federal injunctive intervention in a pending state court prosecution in certain exceptional circumstances — where irreparable injury is "both great and immediate," 401 U.S., at 46, where the state law is "flagrantly and patently violative of express constitutional prohibitions," 401 U.S., at 53, or where there is a showing of "bad faith, harassment, or . . . other unusual circumstances that would call for equitable relief." 401 U.S., at 54. In the companion case of *Perez v.*

Ledesma, 401 U.S. 82, the Court said that "only in cases of proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in other extraordinary circumstances where irreparable injury can be shown is federal injunctive relief against pending state prosecutions appropriate." 401 U.S., at 85. See also *Dyson v. Stein*, 401 U.S. 200, 203.

In 1793, Congress enacted a law providing that no "writ of injunction be granted [by any federal court] to stay proceedings in any court of a state..." Act of March 2, 1793; 1 Stat. 335. The *Anti-injunction* statute's basic purpose is to prevent "needless friction between state and federal courts." *Oklahoma Packing Co. v. Gas Co.*, 309 U.S. 4, 9. First, petitioners' action was brought under an Act of Congress, 42 U.S.C. § 1981, 42 U.S.C. § 3603(a), (b) and 42 U.S.C. § 3617 provisions for civil relief from violations of constitutionally and federally protected civil rights. In determining whether 42 U.S.C. § 1981, 42 U.S.C. § 3603(a), (b) and 42 U.S.C. § 3617 comes within the "expressly authorized" exception of the anti-injunction statute, the criteria to be applied are those reflected in the Court's decisions prior to *Toucey*. A review of those decisions above makes reasonably clear what the relevant criteria are. In order to qualify as an "expressly authorized" exception to the *Anti-Injunction* statute, an Act of Congress must have created a specific and uniquely federal right or remedy, enforceable in a federal court of equity, that could be frustrated if the federal court were not empowered to enjoin a state court proceeding. This is not to say that in order to come within the exception an Act of Congress must, on its face and in every one of its provisions, be totally incompatible with the prohibition of the *Anti-Injunction* statute. The test, rather, is whether an Act of Congress, clearly creating a federal right or remedy enforceable in a federal court of equity, could be given its intended scope only by the stay of a state court proceeding. See *Toucey*, supra, at 132-134; *Kline v. Burke Construction Co.*, 260 U.S. 226; *Providence N.Y.S. S. Co. v. Hill Mfg. Co.*, 109 U.S. 578, 599; *Treinius v. Sunshine Mining Co.*, 308 U.S. 66, 78; *Kalb v. Feuerstein*, 308 U.S. 433; *Bowles v. Willingham*, 321 U.S. 503.

PETITIONERS' SPECIFIC REQUEST FOR A WRIT OF MANDAMUS

Based on the foregoing, petitioner respectfully request the United States Supreme Court issue a writ of mandamus and/or prohibition as specified in the following matters:

1. In the matter of *Lakefront vs. Holmes*, No:1:21-cv-00444 issue a writ of mandamus directing the U.S. District Court S.D. of Ohio to vacate the judgments rendered by Magistrate Judge Karen Litkovitz and Judge Susan Dlott, for granting Lakefronts' motion to remand the case back to the Butler County Area III Court, and dismissing motions to file under seal (Doc. 3), to appoint counsel (Docs. 4, 11), on July 19, 2021, and August 3, 2021, and seal this case from public view. (*Lakefront vs. Holmes*, No:1:21-cv-00444, U. S. District Court S. D. of Ohio, R & R, PAGEID 297-304), (*Lakefront vs. Holmes*, No:1:21-cv-00444, U. S. District Court S. D. of Ohio, Order, PAGEID 745-746) (Appendix L, Attached) & (Appendix M, Attached) Additionally, petitioner respectfully request the U.S. Supreme Court issue an order directing the

U.S. District Court for the Southern Division of Ohio to seal the case in the matter of *Lakefront vs. Holmes*, No:1:21-cv-00444, after the specific judgments have been vacated.

2. In the matters of *Lakefront vs. Holmes*, No: 21-3731, U. S. Court Sixth Circuit Court of Appeals and *Holmes vs. U.S.A. et. al.*, No: 21-3715, U. S. Court of Appeals Sixth Circuit, issue a writ of mandamus directing the U. S. Court of Appeals Sixth Circuit to vacate the judgment's rendered by Chief Judge Jeffrey S. Sutton, Judge Julia Smith Gibbons and Judge Bernice B. Donald, on August 17, 2021. After the judgments have been vacated petitioner respectfully request the Court issue an order requiring that the cases are sealed from public view. (*Lakefront vs. Holmes*, No: 21-3731, U. S. Court of Appeals Sixth Circuit), (Appendix N, Attached) & (*Holmes vs. U.S.A. et. al.*, No: 21-3715, U. S. Court of Appeals Sixth Circuit), (Appendix O, Attached). Additionally, petitioner respectfully request the U.S. Supreme Court issue an order directing the U. S. Court Sixth Circuit Court of Appeals to seal the cases in the matters of *Lakefront vs. Holmes*, No: 21-3731, and *Holmes vs. U.S.A. et. al.*, No: 21-3715.
3. In the matter of *Lakefront v Holmes*, No: CVG 2100651, Butler County Area III Court issue a writ of mandamus directing the Butler County Area III Court to vacate the judgment's rendered by Magistrate Fred Miller and Judge C. Caperella-Kraemer ordering a forcible entry and detainer action against petitioner, on August 18, and August 19, 2021, respectively. Also, issue a writ of prohibition directing Judge C. Caperella-Kraemer and Magistrate Fred Miller to refrain from exceeding their subject matter jurisdiction pursuant to Ohio Revised Code §§ 1907.03, 1907.031 & § 2305.01. (*Lakefront v Holmes*, No: CVG 2100651, Butler County Area III Court), (Appendix P Attached) Additionally, petitioner respectfully request the U.S. Supreme Court issue an order directing the Butler County Area III Court to seal the cases in the matter of *Lakefront v Holmes*, No: CVG 2100651 & CVG 2100528.
4. In the matter of *Lakefront v Holmes* No: CVG 2100651, Butler County Area III Court, issue a writ of mandamus directing the Butler County Area III Court to vacate the judgment's rendered by Judge C. Caperella-Kraemer denying petitioners' motions to set aside and to reconsider setting aside the August 19, 2021, eviction, on August 26, 2021, and September 1, 2021, respectively. Also, issue a writ of prohibition directing Judge C. Caperella-Kraemer to refrain from exceeding the Court's subject matter jurisdiction pursuant to Ohio Revised Code §§ 1907.03, 1907.031 & § 2305.01. (*Lakefront v Holmes* No: CVG 2100651, Butler County Area III Court), (Appendix Q, Attached) & (Appendix R, Attached)
5. In the matter of *Holmes v Lakefront*, No:1:21-cv-00505, U. S. District Court S.D. Ohio, issue a writ of mandamus directing the U.S. District Court S.D. of Ohio to vacate the judgment rendered by Magistrate Judge Stephanie K. Bowman dismissing petitioners' complaint for failure to state a claim under Federal Rules of Civil Procedure 12(b)(6) pursuant to *Younger* and denying her motion to appoint counsel and for a stay and/or preliminary injunctive relief on August 23, 2021. (*Holmes v Lakefront*, No:1:21-cv-00505, U. S. District Court S.D. Ohio, Bowman

- R & R, PAGEID# 1386-1390), (Appendix S Attached) Additionally, petitioner respectfully request the U.S. Supreme Court to issue a writ of mandamus directing the U. S. District Court S.D. Ohio, to re-open the case No:1:21-cv-00505, consolidate the matter of *Holmes v Lakefront*, No:1:21-cv-00505, with *Holmes vs USA et al.*, No 1:20-cv-00825, U. S. District Court of S.D. Ohio; grant petitioner additional time to amend the complaint for additional causes of action and defendants, once petitioner has amended the complaint issue an order instructing the U.S. District Court for the Southern Division of Ohio to serve the complaint upon all named defendants.
6. In the matter of *Holmes v Lakefront*, No:1:21-cv-00505, U. S. District Court S.D. Ohio, issue a writ of mandamus directing the U.S. District Court S.D. of Ohio, to vacate and seal the judgment rendered by Judge Timothy Black dismissing petitioners' complaint for failure to state a claim under Federal Rules of Civil Procedure 12(B)(6) pursuant to *Younger, Rocker-Feldman, Anti-Injunction Act* and imposing a prefilling injunction and denying her motion to appoint counsel and emergency stay and/or preliminary injunctive relief on August 26, 2021. (*Holmes v Lakefront*, No:1:21-cv-00505, U. S. District Court S.D. Ohio, Black's Order, PAGEID# 1618-1623), (Appendix T, Attached) Additionally, petitioner respectfully request that Judge Timothy Black's August 26, 2021, judgment does not appear on the internet in search engines. Alternatively, petitioner respectfully request the U.S. Supreme Court impose a remedy to the public defamation of petitioners' character by Judge Timothy Black when he imposed a prefilling injunction to embarrass and harass this petitioner.
 7. In the matter of *Holmes v Lakefront*, No: 21-3791, U. S. Court of Appeals Sixth Circuit issue a writ of mandamus directing the U. S. Court of Appeals Sixth Circuit Court to vacate the judgment rendered by Judge Julia Gibbons and Judge Bernice B. Donald denying petitioners' emergency motion for a stay, to appoint counsel, and complaint for failure to state a claim under Federal Rules of Civil Procedure 12(b)(6) pursuant to *Rocker-Feldman, Anti-Injunction Act*, and imposing a prefilling injunction on September 7, 2021. (*Holmes v Lakefront*, No: 21-3791, U. S. Court of Appeals Sixth Circuit, RE 8-2, Page: 1-3), (Appendix U, Attached) Petitioner respectfully request that the U.S. Supreme issue a writ of mandamus directing the Sixth Circuit to remand the case back to the U.S. District Court, with specific instructions to re-open the case, consolidate the matter of *Holmes v Lakefront*, No:1:21-cv-00505, with *Holmes vs USA et al.*, No 1:20-cv-00825; grant petitioner additional time to amend the complaint for additional causes of action and defendants, once petitioner has amended the complaint issue an order instructing the U.S. District Court for the Southern Division of Ohio to serve the complaint upon all named defendants. Additionally, petitioner respectfully request the U.S. Supreme Court issue a writ of mandamus directing the U. S. Sixth Circuit Court of Appeals to seal the case in the matter of *Holmes v Lakefront*, No: 21-3791.
 8. In the matter of *Holmes v Lakefront*, No: 21-3791, U. S. Court of Appeals Sixth Circuit issue a writ of mandamus directing the U. S. Court of Appeals Sixth Circuit Court to vacate the judgment rendered by Judge Joan Larsen denying petitioners' motion in forma pauper and dismissing petitioners' appeal for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(B)(6), on June 21, 2022. (*Holmes*

vs Lakefront, No: 21-3791, U.S. Sixth Circuit, RE 14-2, Page: 1-3), (Appendix V, Attached) Additionally, petitioner respectfully request the U.S. Supreme Court issue a writ of mandamus directing the U. S. Sixth Circuit Court of Appeals to seal the case in the matter of *Holmes v Lakefront*, No: 21-3791.

9. In the matter of *Holmes vs Lakefront*, No: 21-3791, U.S. Sixth Circuit issue a writ of mandamus directing the U. S. Court of Appeals Sixth Circuit to vacate the judgment rendered by Chief Judge Jeffrey S. Sutton, Senior Judge Ralph B. Guy, Jr., Judge R. Guy Cole, Jr., denying petitioners' motion in forma pauper and dismissing petitioners' appeal for failure to state a claim pursuant to Federal Rules of Civil Procedure 12(B)(6), on August 10, 2022. (*Holmes vs Lakefront*, No: 21-3791, U.S. Sixth Circuit, RE 16-2, Page: 1), (Appendix W, Attached) Additionally, petitioner respectfully request the U.S. Supreme Court issue a writ of mandamus directing the U. S. Sixth Circuit Court of Appeals to seal the case in the matter of *Holmes v Lakefront*, No: 21-3791.
10. In the matter of *Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals issue a writ of mandamus directing Ohio's Twelfth District Court of Appeals to vacate the judgment rendered by Judge Robin N. Piper, and Mike Powell denying petitioners' emergency motion for a stay pending appeal, on September 3, & 7, 2021. (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix X, Attached) Additionally, petitioner respectfully request the U.S. Supreme Court issue a writ of mandamus directing Ohio's Twelfth District Court of Appeals to seal the case in the matter of *Lakefront vs. Holmes* No: CA 2021-09-0108.
11. In the matter of *Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals issue a writ of mandamus and prohibition directing Ohio's Twelfth District Court of Appeals to vacate the judgment rendered by Judge Robin N. Piper and Stephen Powell denying petitioners' second emergency motion for a stay and/or temporary restraining order, on November 15, 2021. (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix Y, Attached) Additionally, petitioner respectfully request the U.S. Supreme Court issue a writ of mandamus directing the Ohio's Twelfth District Court of Appeals to seal the case in the matter of *Lakefront vs. Holmes* No: CA 2021-09-0108.
12. In the matter of *Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals issue a writ of mandamus and prohibition directing Ohio's Twelfth District Court of Appeals to vacate the judgment rendered by Judge Stephen W. Powell and Robin N. Piper denying petitioners' emergency motion to void, on December 20, 2021. (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix Z, Attached) Additionally, petitioner respectfully request the U.S. Supreme Court issue a writ of mandamus directing the Ohio's Twelfth District Court of Appeals to seal the case in the matter of *Lakefront vs. Holmes* No: CA 2021-09-0108.

13. In the matter of *Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals issue a writ of mandamus directing Ohio's Twelfth District Court of Appeals to vacate the judgment rendered by Judge Mike Powell, Judge Stephen Powell, Judge Robin N. Piper denying petitioners' motion to supplement the records and failure to consolidate the cases, of *Rosalind Holmes vs Lakefront*, CA 2021-05-046, and *Lakefront vs. Holmes* No: CA 2021-09-0108, on December 27, 2021, and January 4, 2022, respectively (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix H, Attached)
14. Additionally, petitioner respectfully request the U.S. Supreme Court issue a writ of mandamus directing the Ohio's Twelfth District Court of Appeals to seal the cases in the matters of *Lakefront vs. Holmes* No: CA 2021-09-0108 and *Rosalind Holmes vs Lakefront*, CA 2021-05-046.
15. In the matter of *Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals issue a writ of mandamus directing Ohio's Twelfth District Court of Appeals to vacate the judgment rendered by Judge Stephen Powell, Robert A. Hendrickson and Judge Matthew R. Byrne dismissing petitioners' appeal pursuant to the mootness doctrine, on May 10, 2022. (*Lakefront vs. Holmes* No: CA 2021-09-0108, Ohio's Twelfth District Court of Appeals), (Appendix AA, Attached)
16. In the matter of *Rosalind Holmes v. The Honorable, Judge C. Caparella- Kraemer*, No. 2022-0683, Ohio Supreme Court issue a writ of mandamus and prohibition directing the Ohio Supreme Court to vacate and seal their judgment granting Judge C. Caperella-Kraemer's, motion to dismiss under Ohio Rule of Civil Procedure 12(B)(6). (Appendix BB, Attached) Petitioner respectfully request the U.S. Supreme Court to issue a writ of mandamus directing the Ohio Supreme Court to issue a writ of prohibition against Magistrate Judge Fred Miller and Judge C. Caperella-Kraemer to refrain from exceeding its subject matter jurisdiction pursuant to Ohio Revised Code §§ 1907.03, 1907.031 & § 2305.01, in the matters of *Lakefront vs Holmes*, No's: CVG 2100651 & CVG 2100528, Butler County Area III Court and seal both cases. (*Rosalind Holmes v. The Honorable, Judge C. Caparella- Kraemer* No. 2022-0683), (Appendix BB, Attached) Additionally, petitioner respectfully request the U.S. Supreme Court issue a writ of mandamus directing the Ohio Supreme Court to seal the case in the matter of *Rosalind Holmes v. The Honorable, Judge C. Caparella- Kraemer*, No. 2022-0683 and *Lakefront of West Chester, LLC v. Rosalind Holmes*, No: 2022-0793.
17. On October 11, 2021, PLK-Lakefront sent petitioner a final bill and Ohio's Twelfth District Court of Appeals, and the Ohio Attorney General's Office has been sending petitioner letters requesting payment on cases related to Lakefront and the Landings.(Exhibits 6, 7 & 8, Attached) Specifically, petitioner request the U.S. Supreme Court to issue an order directing PLK-Lakefront, Butler County Area III Court, Ohio's Twelfth District Court of Appeals, Ohio Supreme Court and Ohio Attorney General to cease and desist collection efforts on the following cases No: CVG 2100651 & CVG 2100528, CA-2021-05-0046, CA-2021-09-0108, CA-2021-09-0118, CA-2020-04-0050, No. 2022-0683,

No: 2022-0793. Petitioner respectfully request the United States Supreme Court issue an order to PLK-Lakefront, The Landings at Beckett Ridge, Hills Properties, the Butler County Area III Court, Ohio's Twelfth District Court of Appeals, and the Ohio Supreme Court to cease and desist all collection efforts including but not limited to reporting adverse information about Rosalind Holmes to the Equifax, Transunion, and Experian; remove any adverse information that was previously reported to the credit bureaus, prohibit the filing of a case against Rosalind Holmes in any Court in the United States of America for monetary relief and damages related to Judge Dan Hughey's, March 4, 2020, order of forcible entry and detainer action and Judge Courtney Caperella-Kraemers' August 19, 2021, order of forcible entry and detainer action. (*The Landings at Beckett Ridge vs Rosalind Holmes*, No: CVG 1901594, Butler County Area III Court), (Appendix A, Attached) & (*Lakefront v Holmes*, No: CVG 2100651, Butler County Area III Court), (Appendix P Attached)

Part Four: *Holmes vs USA et al.*, No 1:20-cv-00825, U. S. District Court S. D. of Ohio

On October 20, 2020, petitioner filed a 92-page federal lawsuit pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and *Davis vs Passman*, against the F.B.I., City of Cincinnati, State of Ohio Disciplinary Counsel, F.M.R., Tuck Lakefront at West Chester, LLC., Landings at Beckett Ridge, and many others collectively ("defendants"). (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, filed 10/20/2020, RE 1) Simultaneously, petitioner filed several motions along with her federal complaint which includes the following: Motion for Equitable Tolling due to Defendants F.B.I., City of Cincinnati, State of Ohio Disciplinary Counsel, Fraudulent Concealment. Motion for Equitable Estoppel as a Defense to the Mootness Doctrine, Motion to Substitute Successors and/or Include as Defendants, Motion to Decide if the State of Ohio can be Treated as a Person, Motion for Breach of Contract, Motion for Injunctive & Declaratory Relief. As the above motions were filed as an 82-page document. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, Motion for Relief, RE #6, PAGE ID#1114-1195) On November 12, 2020, petitioner amended her federal lawsuit to include additional defendants and causes of action. *Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, RE 9 amended 11/12/2020) On May 12, 2024, petitioner amended her complaint to include five additional causes of action and additional defendants. A list of the thirty causes of actions are as follows:

Number	Count	Claims
1	I	<u>Federal Constitutional Claim – Equal Protection and Due Process-Abuse of Power</u>
2	II	<u>Federal Constitutional Claim – Equal Protection and Due Process-Gross Negligence</u>
3	III	<u>Federal Constitutional Claim – Equal Protection and Due Process-Discrimination</u>
4	IV	<u>Federal Constitutional Claim – Unlawful Search and Seizure</u>
5	V	<u>Federal Constitutional Claim – Equal Protection and Due Process- Civil Conspiracy</u>
6	VI	<u>Federal Tort Claims Act – Invasion of Privacy – Intrusion upon Seclusion</u>
7	VII	<u>Federal Tort Claims Act – Invasion of Privacy – False Light</u>
8	VIII	<u>Federal Tort Claims Act- Tortious Interference</u>
9	IX	<u>Federal Tort Claims Act – Intentional Infliction of Emotional Distress</u>
10	X	<u>Federal Tort Claims Act – Gross Negligence</u> <u>Federal Constitutional Claim – Return and Expungement of Information unlawfully Searched and Seized</u>
11	XI	
12	XII	<u>Discrimination: 42 USC §1981 - Discrimination</u>
13	XIII	<u>Discrimination: 42 USC §1983 Deprivation of Rights</u>
14	XIV	<u>Discrimination: 42 USC §1985 Conspiracy To Interfere With Civil Rights</u>
15	XV	<u>Conspiracy: 42 USC §1986 Action for neglect to prevent</u>
16	XVI	<u>Retaliation: ORC 4112, Title VII 42 USC §2000e--3(a) & 42 USC §2000--3</u>
17	XVII	<u>Intentional Infliction of Emotional Distress</u>
18	XVIII	<u>Defamation, Libel, Slander</u>
19	XIX	<u>Invasion of Privacy-Intrusion upon Seclusion</u>
20	XX	<u>Invasion of Privacy – False Light</u>
21	XXI	<u>Civil Conspiracy</u>
22	XXII	<u>Tortious Interference</u> <u>Breach of Contract Implied Duty of Good Faith, Fraud & Retaliation, Macy's Inc., City of Cincinnati, Freking Myer Reul LLC and Elizabeth Tuck</u>
23	XXIII	<u>Race Discrimination (Disparate Treatment/Harassment) 42 USC § 2000e-2(a)(1), Title VII and ORC 4112 Georgia Pacific</u>
24	XXIV	<u>DISCRIMINATION: TITLE VIII – 42 U.S.C. 3601 et seq. & ORC 4112 Defendants: Landings, Hills Properties, Lakefront, PLK Communities & Four Bridges, Towne Properties</u>
25	XXV	<u>RETALIATION: TITLE VIII – 42 USC 3617 & ORC 4112 Defendants: Landings, Hills Properties, Lakefront, PLK Communities & Four Bridges, Towne Properties</u>
26	XXVI	<u>Breach of Contract Quiet Covenant of Enjoyment Defendants at the Landings, Hills Properties, Lakefront, PLK Communities & Four Bridges, Towne Properties</u>
27	XXVIII	<u>Tortious Interference Intentional or Negligent Spoilation of Evidence The Christ Hospital, Atrium Medical Center, Modern Psych and Wellness, UC Health</u>
28	XXVIII	<u>Federal Constitutional Claim – Bivens 42 U.S.C. 1968 Fourth Amendment Unlawful Arrest and Malicious Prosecution</u>
29	XXIX	<u>Federal Constitutional Claim- Bivens 42 U.S.C 1968 Retaliatory False Arrest and Prosecution 42 U.S.C. § 1983—First, and Fourteenth Amendments (Retaliatory Arrest and Prosecution)</u>
30	XXX	

On December 16, 2020, petitioner filed a motion for leave to file medical records under seal and to amend the complaint because on November 13, 2020, defendants conspired with the West Chester, Ohio police, [REDACTED]

On January 11, 2021, after not receiving an order on the motion for leave Rosalind Holmes wrote a letter to the chambers of both Magistrate Karen Litkovitz and Judge Matthew McFarland which stated in part,

"Defendants have continuously engaged in a conspiratorial campaign to violate my rights and they continue to involve other individuals. Without immediate injunctive relief they will continue to violate my constitutional rights and possibly cause fatal harm. Most recently the defendants have involved the West Chester, Ohio police, a social worker and a Doctor of Osteopathic Medicine in their conspiratorial campaign. The Doctor of Osteopathic Medicine purposely misdiagnosed me with a severe and disabling illness, forced me to take strong doses of unnecessary medication under threat. The medicines that I was forced to take cause significant changes in the brain chemistry and could possibly cause a material dysfunction in an individual's brain. I have requested to file a motion for a temporary restraining order which includes my medical diagnosis, extensive medical records and reference to them that are protected under law and I cannot file the motion until this Court grants me the permission to file under seal. In my view, the government is being permitted to continue their conspiratorial campaign against me under the guise of the United States District Court. I have filed the proper motions that would prevent the government from causing further harm, but the Court continues to ignore my request. Under the law, I have taken the most appropriate actions. Please let me know if the Court cannot be fair and impartial." (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, Letter, RE #12)

On February 8, 2020, Magistrate Karen Litkovitz ignored petitioners' motion for leave and issued her report and recommendation to dismiss with prejudice petitioners' amended complaint, except for petitioners' employment discrimination claim against Georgia Pacific because counts I-XXIII are time barred. In addition, Magistrate Karen Litkovitz denied petitioners' motions for equitable tolling due to defendant's fraudulent concealment, for breach of contract, for temporary restraining order and/or injunctive relief, and all other motions included in RE #6. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, Magistrate Report and Recommendation, RE13, PAGE ID 1426), (Appendix CC, Attached)

Magistrate Litkovitz clearly and indisputably abused her discretion when she misapplied the doctrine of equitable tolling, generally. As petitioners' motion explicitly requested equitable tolling due to defendant's fraudulent concealment and conspiracy. Magistrate Litkovitz's explanation is as follows:

Equitable tolling generally "applies when a litigant's failure to meet a legally-mandated deadline unavoidably arose from circumstances beyond that litigant's control." *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 560-61 (6th Cir. 2000) (citing *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984)). Petitioner bears the burden of establishing equitable tolling applies to her claims. *Jackson v. United States*, 751 F.3d 712, 718-19 (6th Cir. 2014). To carry her burden, petitioner must demonstrate more than just "a garden variety claim of excusable neglect." *Zappone v. United States*, 870 F.3d 551, 556 (6th Cir. 2017) (quoting *Chomic v. United States*, 311 F.3d 607, 615 (6th Cir. 2004)). Equitable tolling is applied sparingly. *Zappone*, 870 F.3d at 556 (citing *Jackson*, 751 F.3d at 718). Whether to apply equitable tolling in a given case "lies solely within the discretion of the trial court." *Betts v. C. Ohio Gaming Ventures, LLC*, 351 F. Supp. 3d 1072, 1075 (S.D. Ohio 2019) (citing *Truitt v. Cty. Of Wayne*, 148 F.3d 644, 648 (6th Cir. 1998)). Courts in the Sixth Circuit consider five factors to determine whether the equitable tolling doctrine should be applied. *Zappone*, 870 F.3d at 556 (citing *Jackson*, 751 F.3d at 718) (citing *Truitt*, 148 F.3d at 648). The factors are: (1) lack of notice of the filing requirement; (2) lack of constructive knowledge of the filing requirement; (3) diligence in pursuing one's rights; (4) absence of prejudice to the defendant; and (5) the petitioners' reasonableness in remaining ignorant of the particular legal requirement. *Truitt*, 148 F.3d at 648. These factors are considered on a case-by-case basis. *Id.* They are not necessarily comprehensive, and the court may consider additional factors. *Betts*, 351 F.Supp. 3d at 1075 (citing *Allen v. Yukins*, 366 F.3d 396, 401 (6th Cir. 2004)). See also *Graham-Humphreys*, 209 F.3d at 560-61 (citing *Truitt*, 148 F.3d at 648). Often "the most significant consideration in courts' analyses" will be the petitioners' "failure to meet a legally-mandated deadline' due to 'unavoidable[le] . . . circumstances beyond'" the petitioners' control, not any one of the five *Truitt* factors. *Zappone*, 870 F.3d at 556 (quoting *Graham-Humphreys*, 209 F.3d at 560-61) (citations omitted)

Petitioner has failed to allege facts justifying equitable tolling in this case. Her conclusory allegations of a secret conspiracy, warrantless surveillance, and retaliation are insufficient to meet her burden to show her failure to meet the statutory deadlines for filing her causes of action were due to circumstances beyond her control. *Zappone*, 870 F.3d at 556. Nor has petitioner shown that she satisfied the five *Truitt* factors. Petitioner fails to present an argument or explanation why the facts of this case warrant the benefit of equitable tolling. Because petitioners' federal claims are time-barred and the doctrine of equitable tolling does not apply, her claims pre-dating October 2018 should be dismissed. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, Magistrate Report and Recommendation, RE13, PAGE ID 1421-1423), (Appendix CC, Attached).

Petitioners' motion filed in the District Court was for equitable tolling, due to the defendant's City of Cincinnati, the Cincinnati Division of the F.B.I., the State of Ohio Disciplinary Counsel, Elizabeth Tuck, Freking, Myers, Reul, and others fraudulent concealment and conspiracy. (Motion for Equitable Tolling, RE 6, PAGE ID #: 1144) Magistrate Litkovitz clearly and indisputably abused her discretion by applying the general doctrine of equitable tolling ignoring petitioners' motion for equitable tolling due to defendant's fraudulent concealment and conspiracy.

On February 22, 2021, petitioner filed her objections to Magistrate Litkovitz's report and recommendation and clearly outlined by page number the fraudulent concealment committed by defendants that were included in her memorandum to her motion for equitable tolling due to defendant's fraudulent concealment. (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, Objections to the Magistrate R &R, RE 14, PAGEID #: 1429-1447)

Petitioners' motion for equitable tolling by fraudulent concealment²⁰ and objections²¹ filed in federal court provide an explanation (date, time, place, who, what, why, how, when and where) of the fraudulent concealment committed by defendants and each page number of where Magistrate Judge Karen Litkovitz and Judge Matthew McFarland could have referenced.

Despite filing the objections, on February 26, 2021, Judge Matthew McFarland issued his order adopting the report and recommendation of Magistrate Judge Litkovitz. (*Holmes v. USA et al.*, No: 1:20-cv-00825, Entry and Order, RE18, PAGE ID 1467-1468), (Appendix DD, Attached) Judge McFarland clearly and indisputably abused his discretion by ignoring petitioners' objections, dismissing twenty-three counts from the amended complaint and denying petitioners' motions for equitable tolling due to defendants fraudulent concealment, for breach of contract, and the entire (Doc.6) and his decision is contrary to binding legal authority as established by the U. S. Court of Appeals Sixth Circuit and the U.S. Supreme Court. Magistrate Judge Litkovitz and Judge McFarland's adverse judgments are a direct violation of petitioners' right to equal protection and due process under the Fifth Amendment to the U.S. Constitution. Magistrate Litkovitz and Judge McFarland's application of the general doctrine of equitable tolling as their justification for dismissing petitioners' twenty-three causes of action as time-barred is an intentional misapplication of the law which constitutes reversible error. (*Holmes v. USA et al.*, No: 1:20-cv-00825, Entry and Order, RE18, PAGE ID 1467-1468), (Appendix DD, Attached)

Law and Analysis

It is a paradigmatic abuse of discretion for a court to base its judgment on an erroneous view of the law. See *Cooter Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990). Having decided that the district court committed legal error, and thus abused its discretion, by relying on *Sawyer v. Whitley*,

²⁰ On November 3, 2020, Petitioner filed a Motion for Equitable tolling based on defendants fraudulent concealment, breach of contract due to fraudulent concealment and retaliation, etc. (*Holmes v. United States of America et al.*, No: 1:20-cv-00825, Motion for relief, RE 6, PAGEID #: 1119-1147)

²¹ On February 22, 2021, Petitioner filed Objections to Magistrate Litovitz's Report and Recommendation where she outlined the fraudulent act taken to conceal her claims. (*Holmes v. United States of America et al.*, No: 1:20-cv-00825, Objections to the Magistrate R &R, RE 14, PAGEID #: 1429-1447)

505 U.S. 333 (1992), instead of *Murray v. Carrier*, supra, the Court need not decide the question — neither argued by the parties nor passed upon by the Court of Appeals — whether abuse of discretion is the proper standard of review. "An abuse of discretion exists only where the reviewing court is certain that a mistake was made." *Habib*, supra, 15 F.3d at 73. "The district court abuses its discretion when it relies on clearly erroneous findings of fact, uses an erroneous legal standard, or as in this case improperly applies the law." *United States v. White*, 492 F.3d 380, 408 (6th Cir. 2007) (citing *United States v. Heavrin*, 330 F.3d 723, 727 (6th Cir. 2003)). An error of law is by definition an abuse of discretion. *Koon v. United States*, 518 U.S. 81, 100, 116 S.Ct. 2035, 135 L.Ed.2d 392 (1996). An abuse of discretion may consist of error in applying the correct law to the issue presented. *Cf. Huff v. Metropolitan Life Insurance Company*, 675 F.2d 119, 123 n. 5 (6th Cir. 1982) A ruling based on a failure to apply settled law is an abuse of discretion. See *Southward v. South-Central Ready-Mix Supply Corp.*, 7 F.3d 487, 492 (6th Cir. 1993) (a district court abuses its discretion "when it improperly applies the law or uses an erroneous legal standard.") Abuse of discretion is defined as a definite and firm conviction that the trial court committed a clear error of judgment. *Balani v. Immigration and Naturalization Service*, 669 F.2d 1157 (6th Cir. 1982).

The doctrine of equitable tolling by fraudulent concealment is distinguishable from equitable tolling, generally. Equitable tolling applies when there is no allegation that the defendant acted improperly, and yet the petitioner remains unaware of her causes of action despite exercising due diligence. Equitable estoppel, sometimes referred to as fraudulent concealment, is invoked in cases where the defendant takes active steps to prevent the petitioner from suing in time, such as by hiding evidence or promising not to plead the statute of limitations. *Hentosh v. Herman M. Finch Univ.*, 167 F.3d 1170, 1174 (7th Cir. 1999); *EEOC v. Ky. State Police Dep't*, 80 F.3d 1086, 1095 (6th Cir. 1996); *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450-51 (7th Cir. 1990). While equitable tolling extends to circumstances outside both parties' control, the related doctrines of equitable estoppel and fraudulent concealment may bar a defendant from enforcing a statute of limitation when its own deception prevented a reasonably diligent petitioner from bringing a timely claim. See *United States v. Beggerly*, 524 U. S. 38, 49-50, 118 S. Ct. 1862, 141 L. Ed. 2d 32 (1998) (Stevens, J., concurring) (noting that these doctrines are distinct)

Where the Government's secretive conduct prevents petitioners' from knowing of a violation of rights, statutes of limitations have been tolled until such time as petitioner's had a reasonable opportunity to learn the facts concerning the cause of action. *Bowen v. City of New York*, 476 U.S. 467 (1986) at 481. In *Irwin v. Veterans Administration*, 498 U.S. 89 (1990), the U.S. Supreme Court held that "statutes of limitations in actions against the Government are subject to the same rebuttable presumption of equitable tolling applicable to suits against private defendants. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass."

A civil conspiracy is "an agreement between two or more persons to injure another person by unlawful action." *Moore v. City of Paducah*, 890 F.2d 831, 834 (6th Cir. 1989). Moreover, the Sixth Circuit has noted that, "[c]ourts have traditionally viewed conspiracy suits against public officials with suspicion and disfavor. Accordingly, pleading requirements governing civil conspiracies are relatively strict." *Fisher v. City of Detroit*, No. 92-1759, 1993 WL 344261 (6th Cir. Sept. 9, 1993). The complaint must "state with specificity the facts that, in the plaintiff's mind, show the existence and scope of the alleged conspiracy." Express agreement among all the conspirators is not necessary to find the existence of a civil conspiracy. Each conspirator need not have known all of the details of the illegal plan or all of the participants involved. All that must be shown is that there was a single plan, that the alleged coconspirator shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused injury to the complainant. *Hooks v. Hooks*, 771 F.2d 935 (6th Cir. 1985) at 944. In *Adickes v. S.H. Kress and Co.*, 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970), the Supreme Court held that, even though the petitioner had no knowledge of an agreement between the alleged conspirators, "the sequence of events" alleged were sufficient to allow a jury to "infer from the circumstances that the [conspirators] had a "meeting of the minds." *Id.* at 157, 158, 90 S.Ct. at 1608, 1609.

More importantly, a petitioner relying on the doctrine of fraudulent concealment must plausibly plead: (1) the defendant wrongfully concealed its actions; (2) the petitioner failed to discover the cause of action before the expiration of the limitations period; and (3) petitioner exercised due diligence." *Burd v. Manley Deas Kochalski PLLC*, No.2:13-cv-593, 2014 WL 12572908, at *2 (S.D. Ohio Mar. 31, 2014) (citing *Lutz v. Chesapeake Appalachia, LLC.*, 717 F.3d459,475 (6th Cir. 2013J) A petitioner seeking to establish fraudulent concealment must prove that the defendant took affirmative action or committed some overt act to conceal the petitioners' cause of action and that the petitioner could not have discovered the existence of the cause of action despite exercising reasonable diligence. *Duncan v. Leeds*, [742 F.2d 989, 992](#) (6th Cir. 1984); *Id.*; *Vance*, [547 S.W.2d at 930](#). "Generally, the affirmative action on the part of a defendant must be something more than mere silence or a mere failure to disclose known facts. There must be some trick or contrivance intended to exclude suspicion and prevent inquiry, *or else there must be a duty resting on the party knowing such facts to disclose them.*" *Benton*, [825 S.W.2d at 414](#) (emphasis in original). See also *Electric Power Bd.*, [879 F.2d at 1377](#); *Soldano v. Owens-Corning Fiberglass Corp.*, [696 S.W.2d 887, 889](#) (Tenn. 1985).

When alleging fraud and conspiracy, "a party must state with particularity the circumstances constituting" the fraud. Fed. R. Civ. P. 9(b) "To plead fraud with particularity, the petitioner must allege (1) the time, place, and content of the alleged misrepresentation, (2) the fraudulent scheme, (3) the defendant's fraudulent intent, and (4) the resulting injury." *Chesbrough v. VPA, P.C.*, 655 F.3d 461, 467 (6th Cir. 2011). Petitioners' allegations provide specific details, as to the time, place, and content of the alleged" fraudulent acts.

Additionally, Magistrate Litkovitz and Judge McFarland intentionally delayed responding to petitioners' emergency motions for leave to seal and to amend, motions for temporary restraining order which permitted defendants to gain a tactical advantage over petitioner and cause extreme

hardship and prejudice to petitioner because during the delay defendants conspired to have petitioner wrongfully evicted, as a result of the wrongful eviction petitioner was homeless, incurred substantial debt, further delayed having a necessary surgery, was required to file several additional cases in the federal, state of Ohio, and Butler County Courts, etc. The filing of several additional court cases resulted in a lack of judicial economy on a federal, state, and county level. More importantly, Troye Shirley, petitioners' star witness who would have testified as to the discriminatory and conspiratorial treatment while petitioner was employed at the City of Cincinnati and throughout her prior discrimination lawsuit has died.

Furthermore, petitioner filed this case (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825) on October 20, 2020, against over thirty defendants as a direct result of defendant's the Cincinnati Division of F.B.I., City of Cincinnati, Freking, Myers, Reul, Elizabeth Tuck and State of Ohio's, Disciplinary Counsel's fraudulent concealment. This was approximately two to six years after the limitations period expired under Ohio Revised Code § 2305.09, four-year tort statute of limitations period applies to petitioners' constitutional claims. Ohio Revised Code § 2305.10, two-year personal injury statute of limitations applies to petitioners' claims for bodily injury or injury to personal property. Magistrate Judge Litkovitz and Judge McFarland never issued the complaint to the defendants allowing the defendants the opportunity to formulate a defense and petitioner the opportunity to respond to defendant's defense.

The delays by the judicial process in this case have been considerable enough to award prejudgment interest to this petitioner. Prejudgment interest accords with the remedial purpose of section 1983 and is often included in damage awards, petitioner contends that prejudgment interest includes attorney's fees and costs. "In the absence of explicit statutory direction on the issue, the award of prejudgment interest is ... in the discretion of the court." *Green v. Nevers*, 196 F.3d 627, 633 (6th Cir.1999) (citing *Bricklayers' Pension Trust Fund v. Taiariol*, 671 F.2d 988, 990 (6th Cir.1982)). "Awards of prejudgment interest are compensatory, not punitive, and a finding of wrongdoing by the defendant is not a prerequisite to such an award." *E.E.O.C. v. Kentucky State Police Dept.*, 80 F.3d 1086, 1097 (6th Cir.1996) "Prejudgment interest, of course, is 'an element of complete compensation.' *Loeffler v. Frank*, 486 U.S. 549, 558, 108 S.Ct. 1965, 100 L.Ed.2d 549 (1988) (quoting *West Virginia v. United States*, 479 U.S. 305, 310, 107 S.Ct. 702, 93 L.Ed.2d 639 (1987)). Discrimination victims should not be penalized for delays in the judicial process and discriminating employers [defendants] should not benefit from such delays. *E.E.O.C. v. Wilson Metal Casket Co.*, 24 F.3d 836, 841-42 (6th Cir. 1994)

On March 1, 2021, May 25, 2021, and August 9, 2021, petitioner filed an appeal in the U.S. Sixth Circuit Court of Appeals, because of the clear abuse of discretion involving Magistrate Judge Litkovitz and Judge Matthew McFarland's ignoring petitioners' motion for equitable tolling due to defendant's fraudulent concealment and their misapplication of law. Petitioner explained the same set of facts in her appeal that she has stated in this petition. That the District Court applied an incorrect legal standard under the doctrine of equitable tolling, generally. Although petitioners'

motion specifically requested that the statute of limitations be tolled under the doctrine of equitable tolling by fraudulent concealment. Specifically, petitioner stated the following in her motion in forma pauper:

"The Magistrate's reliance on the general doctrine of equitable tolling as her justification for dismissing [counts I-XXIII]as time-barred is a mistake in the application of the law. Plaintiff's motion filed in the District Court was for equitable tolling, due to the defendant's fraudulent concealment. The doctrine of equitable tolling by fraudulent concealment is distinguishable from equitable tolling, generally. Equitable tolling applies when there is no allegation that the defendant acted improperly, and yet the plaintiff remains unaware of her causes of action despite exercising due diligence. Equitable estoppel, sometimes referred to as fraudulent concealment, is invoked in cases where the defendant takes active steps to prevent the plaintiff from suing in time, such as by hiding evidence or promising not to plead the statute of limitations. *Hentosh v. Herman M. Finch Univ.*, 167 F.3d 1170, 1174 (7th Cir. 1999); *EEOC v. Ky. State Police Dep't*, 80 F.3d 1086, 1095(6th Cir. 1996); *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450-51 (7th Cir. 1990)."

On April 2, 2021, and July 12, 2021, Senior Judge Alan E. Norris, Judge John K. Bush, Senior Judge Helene N. White, Judge Bernice B. Donald and Judge Amul R. Thapar, clearly and indisputably abused their discretion when they dismissed petitioners' appeal for lack of appellate jurisdiction. (*Holmes vs U.S.A. et al.*, No: 21-3206, 21-3491 & 21-3521 U.S. Sixth Circuit Court of Appeals) (Appendix EE, Attached) The U.S. Sixth Circuit Court of Appeals stated the following:

"On February 26, 2021, the district court partially dismissed Rosalind Holmes's civil-rights action. On March 1, 2021, Holmes filed a notice of appeal from the partial dismissal order. This court lacks jurisdiction over this appeal. The February 26 order disposed of fewer than all of the claims and parties involved in this action and did not direct entry of a final, appealable judgment under Federal Rule of Civil Procedure 54(b). See Fed. R. Civ. P. 54(b); *Solomon v. Aetna Life Ins. Co.*, 782 F.2d 58, 59-60 (6th Cir. 1986). Nor was the partial dismissal an immediately appealable "collateral order" under the doctrine announced in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546-47 (1949). The district court has not entered its final decision during the pendency of this appeal; therefore, we lack appellate jurisdiction over this interlocutory appeal. See *Gillis v. U.S. Dep't of Health & Human Servs.*, 759 F.2d 565, 568-69 (6th Cir. 1985). Accordingly, it is ordered that the appeal is **DISMISSED.**"

Although no formal petition for a writ of mandamus has been filed here, the appeal itself may be treated as a petition. *Hammons v. Teamsters, Chauffeurs, Etc. Loc. No. 20*, 754 F.2d 177, 179 (6th Cir. 1985). *Van Meter v. State Farm Fire & Cas. Co.*, 1 F.3d 445, 451 n. 3 (6th Cir.1993), overruled on other grounds by *Blackburn v. Oaktree Capital Mgmt., LLC*, 511 F.3d 633 (6th Cir.2008); *Melahn v. Pennock Ins., Inc.*, 965 F.2d 1497, 1500-01 (8th Cir. 1992). see also *Gresham v. Corr. Med. Servs., Inc.*, 650 F.3d 628, 630 (6th Cir.2011). However, "[t]he remedy of mandamus is a drastic one, to be invoked only in extraordinary situations where the petitioner can show a clear and indisputable right to the

relief sought." *In re Am. President Lines, Ltd.*, 929 F.2d 226, 227 (6th Cir.1991). The decision whether to grant mandamus relief involves analysis of five factors: (1) the party seeking the writ has no other adequate means, such as direct appeal, to attain the relief desired; (2) the petitioner will be damaged or prejudiced in a way not correctable on appeal; (3) the district court's order is clearly erroneous as a matter of law; (4) the district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules; (5) the district court's order raises new and important problems, or issues of first impression. *Id.* at 435 (citing *In re Chimenti*, 79 F.3d 534, 540 (6th Cir. 1996)). We treat an appeal as a writ of mandamus "only [in] exceptional circumstances amounting to a judicial `usurpation of power,'" or where a "clear abuse of discretion will justify the invocation of this extraordinary remedy." *Cheney*, 542 U.S. at 380, 124 S.Ct. 2576 In applying that standard, we consider, among other things, whether "the party seeking the writ has no other adequate means, such as direct appeal, to attain the relief desired"; whether "the petitioner will be damaged or prejudiced in a way not correctable on appeal"; whether the district court's order is plainly incorrect as a matter of law; whether the district court's order "manifests a persistent disregard of the federal rules" and whether "the district court's order raises new and important problems[.]"

In this instance, petitioners' motion specifically requested equitable tolling due to defendants fraudulent concealment and conspiracy, the District Court, applied the incorrect legal standard of the doctrine of equitable tolling, generally. The correct legal standard of equitable estoppel or equitable tolling due to defendants fraudulent concealment is distinguishable from the doctrine of equitable tolling, generally. Equitable tolling generally allows a plaintiff to extend the limitations period when they have been prevented in some extraordinary way from asserting their claims timely. A plaintiff invoking the doctrine of equitable tolling generally asserts that some extraordinary circumstances beyond their control prevented them from asserting their claims timely. The general doctrine of equitable tolling does not involve a situation where a defendant engages in misconduct or conspiracy and takes steps to conceal their claims. By contrast, equitable tolling due to defendants fraudulent concealment involves situations where a defendant has taken actions to prevent a plaintiff from discovering and asserting their claims timely. More importantly, the District Court relied on clearly erroneous facts when they dismissed counts I-XXIII of petitioners' amended complaint. Petitioner properly plead facts sufficient to explain the fraudulent acts of each defendant, the circumstances of the alleged fraud with sufficient particularity including the dates, times, place, who, what, where, when, why and how in her amended complaint and motion.

Additionally, on February 22, 2022, petitioner filed objections to Magistrate Litkovitz's decision and where she outlined the fraudulent acts committed by the defendants, the circumstance of the alleged fraud by page and paragraph. The District Court completely ignored her objections which should have been construed as a motion for relief under Federal Rule 60(b)(1) or (6). Under Federal Rule of Civil Procedure 60(b), a motion for relief from judgment can be granted for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; or (6) any other reason justifying relief from the operation of the judgment. Rule 60(b)(1) provides that "[o]n motion and upon such terms as are just, the

court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect. . . ." Such a motion is intended to provide relief to a party in only two instances: (1) when the party has made an excusable litigation mistake or an attorney in the litigation has acted without authority; or (2) when the judge has made a substantive mistake of law or fact in the final judgment or order. To be corrected, under Rule 60(b)(1), a mistake of law by the court must involve a fundamental misconception of law or a conflict with a clear statutory mandate. *Cacevic v. City of Hazel Park*, 226 F.3d 483, 490 (6th Cir. 2000).

As a matter of text, structure, and history, the Government is correct that a "mistake" under Rule 60(b)(1) includes a judge's errors of law. But we see no reason to limit Rule 60(b)(1) to "obvious" legal mistakes, as the Government proposes. The ordinary meaning of the term "mistake" in Rule 60(b)(1) includes a judge's legal errors. When the Rule was adopted in 1938 and revised in 1946, the word "mistake" applied to any "misconception," "misunderstanding," or "fault in opinion or judgment." Webster's New International Dictionary 1383 (1914) (Webster's); see also Funk & Wagnalls New Standard Dictionary of the English Language 1588 (1944) (Funk & Wagnalls) (defining "mistake" as an "error in action, judgment, or perceptions," including, e.g., "a mistake in calculation"). In ordinary usage, then, a "mistake" was not limited only to factual "misconception[s]" or "misunderstanding[s]," or to mistakes by non-judicial actors. Webster's 1383. Likewise, in its legal usage, "mistake" included errors "of law or fact." Black's Law Dictionary 1195 (3d ed. 1933) (Black's). Thus, regardless whether "mistake" in Rule 60(b)(1) carries its ordinary meaning or legal meaning, it includes a judge's mistakes of law. *Kemp v. United States*, No. 21-5726 (June 13, 2022) Although courts have some discretion in granting relief from judgment pursuant to Rule 60(b), that power is limited by the public policy favoring finality of judgments. *Blue Diamond Coal Co. v. Trs. of the UMWA Combined Benefit Fund*, 249 F.3d 519, 524 (6th Cir. 2001). This is "especially true in an application of subsection (6) of Rule 60(b), which applies only in exceptional or extraordinary circumstances which are not addressed by the first five numbered clauses of the Rule." Rule 60(b)(6) is "a catchall provision" that "should apply only in exceptional or extraordinary circumstances which are not addressed by the first five numbered clauses of [Rule 60(b)]." *West v. Carpenter*, 790 F.3d 693, 696-97 (6th Cir. 2015); *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990) Accordingly, "courts must apply Rule 60(b)(6) relief only in unusual and extreme situations where principles of equity mandate relief." *Blue Diamond Coal Co. v. Trs. of the UMWA Combined Benefit Fund*, 249 F.3d 519, 524 (6th Cir. 2001). Only "a clear error of judgment, such as applying the incorrect legal standard, misapplying the correct legal standard, or relying upon clearly erroneous findings of fact," will prompt reversal. *Jones v. Ill. Cent. R.R. Co.*, 617 F.3d 843, 850 (6th Cir. 2010)

Petitioner, explained that her appeal involved the District Court's misapplication of an incorrect legal standard which is plain error and grounds for immediate reversal. The District Court relied upon erroneous facts and law when they dismissed counts I-XXIII of petitioners' amended complaint and denied petitioners' Rule 54(b) motion to certify. Applying the *Cheney* factors petitioner had no other adequate means to attain the relief desired, petitioner has been damaged in a way that is not correctable on appeal because her star witness passed away, since the case

was filed two to six years outside of the statute of limitations witnesses are no longer available, memories have faded, documents, and evidence has been destroyed, or is no longer available, etc. Additionally, defendants have harassed and isolated plaintiff from the rest of society by having her terminated off every job, blacklisting her from bona fide employment opportunities, conspiring with the property management to have her evicted from any housing she obtains, illegally installing cameras into petitioners' place of dwelling, closely monitoring her relationships with everyone, tracking and monitoring her everywhere, spreading disinformation and lies about her, telling others not to get involved with petitioner, making it difficult for petitioner to connect and associate with other individuals who can potentially assist or provide information, details, about defendants unlawful actions, making it virtually impossible for her to gain any evidence against them. Thereby increasing the difficulties of discovery, enabling defendants to gain an unfair advantage over petitioner in the litigation process and providing defendants with a significant opportunity to commit fraud and collusion. These issues will not be corrected on appeal. More importantly, the judgment issued by Magistrate Judge Litkovitz and Judge McFarland represents plain error as a matter of law. With few exceptions, all judgments rendered by Magistrate Judge Litkovitz and Judge McFarland in the matter of *Holmes v U.S.A. et. al.*, No: 1-20-cv-00825 represent plain error as a matter of law which constitutes reversible error and repeatedly manifest a persistent disregard of the law and federal rules of civil procedure. Based on the foregoing, the United States Court of Appeals for the Sixth Circuit failed to follow binding legal precedent in the Sixth Circuit Court of Appeals and the United States Supreme Court. Their repeated adverse judgments demonstrated their partiality, prejudice, discrimination, retaliation gross indifference and bias against petitioner and are a direct violation of petitioners' right to equal protection and due process as guaranteed under the Fifth Amendment to the U.S. Constitution.

On April 15, 2021, Magistrate Litkovitz clearly and indisputably abused her discretion when she further delayed the case by denying petitioners' motions to appoint counsel (Doc. 1 at PAGEID 10-14; Doc. 24), to seal (RE. 11), for Rule 54(b) certification (RE. 23), without just cause and contrary to binding legal authority as established by the U. S. Sixth Circuit Court of Appeals and the U.S. Supreme Court. Magistrate Litkovitz's, April 15, 2021, order failed to follow binding precedent as established by the Sixth Circuit and the United States Supreme Court and violated petitioners' right to due process and equal protection when she denied petitioners' motions for leave to file her medical record under seal, and for Rule 54(b) certification, as moot. (*Holmes vs U.S.A. et al.*, No 1:20-cv-00825, U. S. District Court S. D. of Ohio, Order, RE 27, PAGEID 1551-1554), (Appendix FF, Attached)

Pursuant to 28 U.S.C. § 1915(e)(1), the "court may request an attorney to represent any person unable to employ counsel." However, "[t]here is no constitutional or . . . statutory right to counsel in federal civil cases." *Farmer v. Haas*, 990 F.2d 319, 323 (7th Cir. 1993). Generally, a court will only appoint counsel in exceptional circumstances. *Levado v. Keohane*, 992 F.2d 601, 606 (6th Cir. 1993); *Willett v. Wells*, 469 F. Supp. 748, 751 (E.D. Tenn.1977). Although "no comprehensive definition of exceptional circumstances is practical," *Branch v. Cole*, 686 F.2d 264, 266

(5th Cir. 1982), courts resolve this issue through a fact-specific inquiry. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). Examining the pleadings and documents in the file, the Court analyzes the merits of the claims, the complexity of the case, the pro se litigant's prior efforts to retain counsel, and his ability to present the claims. *Henry v. City of Detroit Manpower Dep't*, 763 F.2d 757, 760 (6th Cir. 1985). As a general rule, counsel should be appointed in civil cases only if a litigant has made "a threshold showing of some likelihood of merit." *Montgomery v. Miller*, No. 08-2710-STA-dkv, 2008 WL 4853336, at *2 (W.D. Tenn. Nov. 6, 2008) (citing *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 174 (2d Cir. 1989)). "Here, the Court has found that Plaintiff has made a threshold showing of merit sufficient to survive summary judgment and proceed to trial. Where Plaintiff was able to conduct these proceedings on his own behalf until this point, the complexity going forward, including the need to capably present and cross-examine witnesses at trial and handle the documentary evidence cited by Brantley in his motion practice, bespeaks the appropriateness of the appointment of counsel. This matter is therefore RETURNED to the Magistrate Judge for the appointment of counsel to represent Plaintiff for pre-trial proceedings and trial. After conferring with all parties, the Magistrate Judge shall recommend an appropriate target trial date." *Robinson v. Brantley*, No. 1:16-cv-00095 (M.D. Tenn. June 14, 2018)

In petitioners' motion to appoint counsel, she established that she is likely to succeed on the merits of her claims, she provided substantial documentary evidence of her efforts to obtain counsel. (*Holmes vs USA et al.*, No 1:20-cv-00825, Amended Motion to Appoint Counsel, RE 24) Petitioner explained that this case involves very complex legal matters, including but not limited to Constitutional Law, Qualified Immunity, Legal Malpractice, Employment Law, State law, etc. As legal malpractice cases involve expert opinions from a licensed attorney objectively unacquainted with the defendant attorney. The legal expert that testifies is usually from outside the geographical area in which the defendant attorney practices and has not been acquainted with the defendant attorney to prevent a conflict. This case relies heavily upon petitioners' credibility, cross-examination of witnesses, depositions, interrogatories, investigation of the government and other defendants. Petitioner has never attended law school, does not have any experience conducting cross examination of witnesses, deposition of witnesses and interrogatories and defendants have made it virtually impossible for her to acquire legal advice or assistance through their discriminatory and conspiratorial actions. Therefore, petitioner lacks the legal expertise, financial resources, experience, and knowledge to successfully litigate this case on her own absent good legal counsel. (*Holmes vs USA et al.*, No 1:20-cv-00825, Amended Motion to Appoint Counsel, RE 24) Petitioner has contacted several attorneys, as well as the American Civil Liberties Union, Center for Constitutional Rights, Legal Aid, several law clinics, etc. Unfortunately, every attorney, government watch dog agency, legal aid and several law clinics have declined representations. Defendants have made it extremely clear that they will not allow plaintiff to obtain legal counsel which is grossly unfair and they have been capable of dictating the litigation proceedings and outcome up to the present because Magistrate Judge Litkovitz, Magistrate Stephanie Bowman, Judge McFarland and Judge Black have permitted the defendants to control the case. Additionally, as petitioner has described throughout this petition the judges

involved in the proceedings includes judges on the United States District Court for the Southern District of Ohio, the Butler County Area III Court, and Ohio's Twelfth Appellate, Ohio Supreme Court, and the Sixth Circuit Court of Appeals repeatedly clearly and indisputably abused their discretion and issued judgments that were contrary to the law and binding legal precedent. Thereby, persistently violating petitioners' rights to due process and equal protection under the Fifth and Fourteenth Amendments to the U.S. Constitution. Based on the facts and issues described in this petition and petitioners' motion to appoint Counsel petitioner should have been granted Counsel.

On May 10, 2021, Magistrate Judge Karen Litkovitz, clearly and indisputably abused her discretion and failed to follow binding legal authority as established by the U. S. Sixth Circuit Court of Appeals and the U.S. Supreme Court when she denied petitioners' motion for a Rule 54(B) final appealable order (RE. 60). Her repeated adverse judgments demonstrate her partiality, prejudice, discrimination, retaliation gross indifference and bias against petitioner and are a direct violation of petitioners' right to equal protection and due process guaranteed under the Fifth Amendment to the U.S. Constitution. (*Holmes vs USA et al.*, No 1:20-cv-00825, U. S. District Court S. D. of Ohio, Order RE 31, PAGEID 1581-83), (Appendix GG, Attached)

Magistrate Judge Litkovitz stated the following:

"Here, neither judicial administrative interests nor the equities involved favor an immediate appeal from the order dismissing the majority of petitioners' claims in her first amended complaint. As the undersigned concluded, these claims did not fall within the jurisdiction of the federal courts and were not premised on "factual content or context from which the Court [could] reasonably infer that the named defendants violated petitioners' rights." (Doc. 13 at PAGEID 1425-26). Petitioners' motion for a final appealable order regarding the dismissal of Counts I-XXIII in her first amended complaint (Doc. 18) will be denied."

As previously stated, because Magistrate Litkovitz intentionally applied the doctrine of equitable tolling, generally instead of the doctrine of fraudulent concealment she wrongfully dismissed petitioners' federal claims counts I-XXIII as time-barred pre-dating October 2018, on February 8, 2021. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Mag. R &R, RE 13, 1421-26) The United States Supreme Court has held "The party seeking Rule 54(b) need not show that "harsh or unusual circumstances" merit such a ruling; instead, "the proper standard against which a district court's exercise of discretion in granting a Rule 54(b) certification is to be judged, is the interest of sound judicial administration." "It was therefore proper for the District Judge here to consider such factors as whether the claims under review were separable from the others remaining to be adjudicated and whether the nature of the claims already determined was such that no appellate court would have to decide the same issues more than once even if there were subsequent appeals." *Curtiss-Wright Corp. v. General Electric Co.*, 446 U.S. 1 (1980). at 8 and 9. Additionally, the Sixth Circuit, in *Akers v. Alvey*, 338 F.3d 491, 495 (6th Cir. 2003) citing *Corrosioneering, Inc., v. Thyssen Env. Sys., Inc.*, 807 F.2d 1279, 1283 (6th Cir. 1986) delineated five factors which the trial court should consider when deciding whether to certify a judgment as final:"1) the relationship between the adjudicated and the unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the

same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final; (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like." As petitioner clearly stated in her motion, "petitioners appeal to the Sixth Circuit seeks to address the District Court's error in applying an incorrect legal standard in petitioners' motion for equitable tolling, due to defendants fraudulent concealment.... the adjudicated (Counts I - XXIII) and unadjudicated (Count XXIV) do not share a strong factual and legal relationship and they are not dependent upon one another subject to appeal. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion under Rule 54(b), RE 23, PAGEID# 1488-1495)

There is no possibility that the Circuit Court's review will be mooted by future developments in the District Court. There is no possibility that the Circuit Court would be asked to consider the same issue a second time. There is no claim or counterclaim which could result in set-off against the judgment sought to be made final. More importantly, this case has already been delayed as a result of defendant's fraudulent conduct and petitioner specifically requested equitable tolling, due to defendants fraudulent concealment. If the District Court fails to grant the Rule 54(b) motion the case will continue to be delayed resulting in prejudice, undue hardship and infringement upon the petitioners' due process rights under the [Fifth] Amendment. More importantly, petitioner filed this case (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825) on October 20, 2020, against over thirty defendants as a direct result of defendant's the Cincinnati Division of F.B.I., City of Cincinnati, Freking, Myers, Reul, Elizabeth Tuck and State of Ohio Office of the Disciplinary Counsel and many others fraudulent concealment and conspiracy. This was approximately two to six years after the limitations period expired under Ohio Revised Code § 2305.09 (D), four-year tort statute of limitations period applies to petitioners' constitutional claims. Ohio Revised Code § 2305.10, two-year personal injury statute of limitations applies to petitioners' claims for bodily injury or injury to personal property. The statute of limitations in a §1983 suit is that provided by the State for personal-injury torts causes of action providing the closest analogy to claims *Owens v. Okure*, 488 U. S. 235, *Heck v. Humphrey*, 512 U. S. 477. Magistrate Judge Litkovitz and Judge McFarland never issued the complaint to the defendants which has further delayed this case. These factors weigh in favor of certification. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion under Rule 54(b), RE 23, PAGEID# 1488-1495)

On June 30, 2021, and February 28, 2022, petitioner filed an emergency motion to file under seal certain portions of her Emergency Motion for Indicative Order under Rule 62.1 ("Motion") and the proposed Amended Complaint ("Complaint"), Emergency Motion for Reconsideration ("Motion") and the proposed Amended Complaint ("Complaint") and exhibits that either reference confidential information in her medical records and/or include the medical record from a healthcare provider. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for leave, RE 43 & 72) Petitioner provided the District Court with the redacted version of her Motion and Complaint. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for leave, RE 43 & 72, Exhibit 1) Additionally, Petitioner requested to file portions of her an

amended temporary restraining order under seal and to include the prior events and the newly discovered events that either referenced confidential information included in her medical records and/or include the medical record from a healthcare provider. Petitioner provided the District Court with the redacted version of her motion for a temporary restraining order and/or preliminary injunction. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for leave, RE 43 & 72, Exhibit 2) Petitioners' redacted motion for an indicative order under Federal Rule of Civil Procedure 62.1 she included a description of the exhibits that **either referenced confidential information included in her medical records and/or included the medical record from a healthcare provider.** (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for leave, RE 43, PAGEID# 1627 & 1631)

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Exhibit	Description	Redacted	Paragraphs In Proposed Amendment	Counts Proposed Amendment
A-1	Atrium Medical Records	Yes	¶¶ 252 -272	XXVIII
B-1	DOMH Application for Emergency Admission	Yes		
C-1	Dr Barnett's Medical Records	Yes	Defendants added in Proposed Amendment:	
D-1	Phone records w/Dr. Quinton Moss 12/04/2020	Yes	Dr. Jonathan Lazzaro, Atrium Medical Ctr.	
E-1	Emails to Dr. Moss w/Federal Discrimination lawsuit	Yes	Premier Health and Atrium Medical Ctr.	
F-1	Dr. Moss' Treatment Plans 11/5, 11/13, 12/4	Yes	Carissa Piper, Butler Behavioral Health	
G-1	Dr. Moss' Treatment Plans 5/11	Yes	Butler Behavioral Health	
H-1	Phone records w/Dr. Quinton Moss 5/19/2021	Yes	Dr. Quinton Moss, Modern Psych. & Wellness	
I-1	Dr Moss' Medical Records	Yes	West Chester Ohio Police Department	
J-1	Emails to Modern Psy reporting falsification	Yes	Modern Psychiatry and Wellness	
K-1	Emails from Modern Psych agreeing to write letter	Yes		
L-1	Email from Suzanna Lozano renegeing on agreement to write letter	Yes		

Lakefront at West Chester - Newly Discovered Evidence

Petitioner requested the Court to appoint counsel to assist her with this case because she had suffered from health problems that would be disclosed once the Court approved her emergency motion to file under seal. As petitioner previously filed an amended motion to appoint counsel on April 5, 2021. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Amended Motion to Appoint Counsel, RE 24) The medical records are directly related to this case and further substantiate the allegations described in the proposed amended complaint i.e., conspiracy, retaliation, spoliation of evidence, tortious interference, etc. The redacted motion and proposed complaint contains and refers to information related to petitioners' confidential medical records and the exhibits include petitioners' confidential medical records from a healthcare provider.

On December 14, 2021, Magistrate Litkovitz issued her report and recommendation denying petitioners' emergency motion to file under seal six long months after petitioner submitted an Emergency Motion to file under Seal. (*Holmes vs USA et al.*, No 1:20-cv-00825, U. S. District Court S.D. Ohio, Litkovitz R & R, PAGEID# 2330-2337), (Appendix HH, Attached) Her decision to dismiss demonstrates a clear and indisputable abuse

of discretion and is contrary to binding legal authority as established by the U. S. Sixth Circuit Court of Appeals and the U.S. Supreme Court. Her adverse judgments demonstrate her partiality, prejudice, discrimination, retaliation, gross indifference and bias against petitioner and are a direct violation of petitioners' right to equal protection and due process guaranteed under the Fifth Amendment to the U.S. Constitution.

In her report and recommendations, Magistrate Litkovitz stated the following:

"Petitioner shoulders a strict and heavy burden on a motion to seal, which may be granted only upon a detailed presentation—tailored to the particular documents to be sealed—of the compelling reasons and legal basis for such relief. *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016) (*In re Knoxville News–Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983)).

Petitioners' "Emergency Motion to File Under Seal" is 176 pages long, including a proposed amended 522-count complaint against dozens of defendants and several hundred pages of exhibits. (See Doc. 43). As best the Court can tell, she seeks to seal:

- emails, phone records, and medical records related to proposed additional defendants Dr. Jonathan Lazzaro, Atrium Medical Center, Premier Health, Carissa Piper, Butler Behavioral Health, Dr. Quinton Moss, Modern Psychiatry and Wellness and the West Chester Ohio Police (*id.* at PAGEID 1626-27).

- certain information related to her proposed motion to amend complaint to add UC Health, UC Health Psychiatric Emergency Services, and Does UC Health PES as defendants, and medical records from those defendants (*id.* at PAGEID 1629-31).

other than referring to the medical records as confidential and reflecting upon her competency, she does not explain how such medical records are relevant to her proposed amended complaint—"

Clearly, Magistrate Litkovitz failed to read or otherwise disregarded petitioners' entire motion as it did not include 522 counts. As petitioner cited Federal Rule of Appellate Procedure 10(e)(2)(C), Federal Rules of Evidence Rule 201 and Federal Rules of Civil Procedure Rule 15(d), as the legal basis and she also provided the below explanation as to why the medical records were relevant to her proposed amended complaint.

Below is the exact information and explanation petitioner provided:

Motion to File Under Seal in District Court – District Court Mistake or Omission

On December 16, 2020, petitioner filed a motion to file under seal a Temporary Restraining order including medical records related to her being wrongfully and involuntarily admitted to the Psychiatric unit of Atrium Medical Center in Middletown, Ohio. (Motion for Leave to file under Seal, RE 11, Page ID 1394) The motion consisted of extensive medical records and reference to them that were protected under privacy laws and petitioner could not file the motion without permission from the District Court. On January 11, 2021, petitioner wrote a letter to Honorable Magistrate Litkovitz and Honorable Judge McFarland, stating, in part, the following: (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Letter to Chambers from Petitioner, RE 12, Page Id 1395), (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for leave, RE 43, Page Id# 1625- 1626)

In addition, the defendants have continuously engaged in a conspiratorial campaign to violate my rights and they continue to involve other individuals. Without immediate injunctive relief they will continue to violate my constitutional rights and possibly cause fatal harm. Most recently the defendants have involved the West Chester, Ohio police, a social worker and a Doctor of Osteopathic Medicine in their conspiratorial campaign. The Doctor of Osteopathic Medicine purposely misdiagnosed me with a severe and disabling illness, forced me to take strong doses

of unnecessary medication under threat. The medicines that I was forced to take cause significant changes in the brain chemistry and could possibly cause a material dysfunction in an individual's brain. I have requested to file a motion for a temporary restraining order which includes my medical diagnosis, extensive medical records and reference to them that are protected under law and I cannot file the motion until this Court grants me the permission to file under seal. In my view, the government is being permitted to continue their conspiratorial campaign against me under the guise of the United States District Court. I have filed the proper motions that would prevent the government from causing further harm, but the Court continues to ignore my request. Under the law, I have taken the most appropriate actions. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Letter to Chambers from Petitioner, RE 12 Page ID 1396), (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for leave, RE 43, Page Id# 1625- 1626)

Also, the District Court dismissed petitioners amended complaint Counts I – XXIII, as time barred, and her initial motions for injunctive and other relief, on February 8, 2021. (Report and Recommendation, RE 13, Page ID 1409 – 1428) The District Court erroneously failed to issue an order on petitioners' December 16, 2020, motion to file legally protected medical records under seal before dismissing her amended complaint, on February 8, 2021. If the District Court had issued an order on petitioners' motion to file under seal before dismissing her amended complaint, petitioner could have amended her complaint to include the additional defendants, the additional counts and the medical records would have been included in the District Courts Records. On April 15, 2021, after approximately four months had past the district court denied petitioners motion to file under seal as moot. (Order, RE 27, Page Id 1553) Therefore, petitioner could not include the additional defendants, the exhibits or additional counts in her amended complaint. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for leave, RE 43)

Most of the exhibits that petitioner wishes to include were included in Case Number CV 2021 05 0639, Butler County Clerk of Courts which is directly related to the issues that are the subject of petitioners' appeal in the Sixth Circuit. Under the Federal Rules of Evidence 201 the federal courts of appeals may take judicial notice of a proceeding in another court if the proceeding has a direct connection to the issues on appeal. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for leave, RE 43)

Motion to File Under Seal in District Court – Supplemental Request

In addition, petitioner respectfully requests the court to allow her to supplement her amended complaint to include Dr. Jonathan Lazzaro, Atrium Medical Center, Premier Health, Carissa Piper, Butler Behavioral Health, Dr. Quinton Moss, Modern Psychiatry and Wellness and the West Chester Ohio Police as defendants on counts I-XXIII, the attached exhibits and additional counts of violations of Tortious Interference (Intentional Spoilation of Evidence) against Dr Lazzaro, Dr. Moss, Carissa Piper, Atrium Medical Center, Modern Psychiatry, and Butler Behavioral Health. On or around December 22, 2020, petitioner discovered new evidence that, with reasonable diligence, could not have been discovered in time to amend her complaint. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Motion for leave, RE 43, Page Id# 1626- 1627)

Petitioner also cited the following precedent from the Sixth Circuit:

A court's discretion to seal records from public inspection, however, is limited by "the presumptive right of the public to inspect and copy judicial documents and files, which the United States Court of Appeals for the Sixth Circuit has described as a "long-established legal tradition." *In re Knoxville News Sentinel Co., Inc.*, 723 F.2d 470, 473-74 (6th Cir. 1983); *see also Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1178-80 (6th Cir. 1983) (discussing the justifications for the "strong presumption in favor of openness"). Therefore, "only the most compelling reasons can justify non-disclosure of judicial records." *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016) (internal quotation marks and citation omitted). The Sixth Circuit has indicated that exceptions fall into two categories: (1) exceptions "based on the need to keep order and dignity in the courtroom"; and in this case, (2) "content-based exemptions," which "include certain privacy rights of participants or third parties, trade secrets, and national security." *Brown & Williamson Tobacco Corp.*, 710 F.2d at 1179.

In accordance with the general principles set out in these cases petitioner did not seek a "blanket order" that would preclude all information contained within the motion for approval. Rather, petitioner requested that portions dealing with her confidential medical records and treatment

be redacted from the public record. Additionally, petitioner also requested that certain documents and exhibits referring to her medical records and treatment be redacted from public view.

Applying the foregoing considerations to this case, the information sought to be sealed is petitioners' private health and medical information. In *Whalen vs. Rowe*, 429 U.S. 589 (1977), the Supreme Court implicitly recognized a privacy interest protected by the Fifth and Fourteenth Amendment including those inherent to a doctor-patient relationship and the individual's interest in avoiding disclosure of personal matters. *Id.* at 599 The Sixth Circuit has acknowledged that the same privacy concerns extend to medical records which should not be revealed without legitimate grounds. *Gutierrez vs. Lynch*, 826 F. 2d 1534, 1539 (6th Cir. 1987); *Mann vs. University of Cincinnati*, 824 F. Supp. 1190 (S.D. Ohio 1993).

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), a federal law that seeks to ensure the security and privacy of health information, *Wade v. Vabnick-Wener*, 922 F.Supp.2d 679, 687 (W.D. Tenn. 2010), represents a "strong federal policy in favor of protecting the privacy of patient medical records." *Law v. Zuckerman*, 307 F.Supp.2d 705, 711 (D. Md. 2004). In addition, Ohio courts have found the state statute governing Ohio's physician-patient privilege, Ohio Revised Code § 2317.02(B), is even "more stringent than HIPAA, and therefore is not preempted, because it 'prohibits use or disclosure of health information when such use or disclosure would be allowed under HIPAA.'" *Turk v. Oiler*, 732 F.Supp.2d 758, 771 (N.D. Ohio 2010).

The Court found strong policy interest in protecting the non-disclosure of private health and medical information outweighs any public interest in disclosure of these materials in this case. *Law*, 307 F.Supp.2d at 711; *Turk*, 732 F.Supp.2d at 771. Sealing petitioners' health and medical information is in accordance with the strong policy of HIPAA and Ohio Revised Code Section 2317.02(B) of protecting patient information. Finally, permitting petitioner to file this information under seal "is no broader than necessary" to protect that information. *In re Nat'l Prescription Opiate Litig.*, 927 F.3d at 940.

On May 31, 2022, Honorable Judge McFarland issued an order and stated the following, "Thus, because petitioners' motion to file under seal (Doc. 72) is nearly identical to her emergency motion to file under seal (Doc. 43), which was recently denied by Magistrate Judge Litkovitz, none of petitioners' objections confront the reasoning or conclusions of Magistrate Judge Litkovitz' s report and recommendation. Petitioner fails to identify anything specific she believes may be incorrect in Magistrate Judge Litkovitz' s findings. See *Miller v. Currie*, 50 F.3d 373,380 (6th Cir. 1995). Such nonspecific objections are, in effect, restatements of prior arguments and amount to a failure to object. *Bradley v. United States*, No. 18-1444, 2018 WL 5084806, at *3 (6th Cir. Sept. 17, 2018); *Cole v. Yukins*, 7 F. App1x 354,356 (6th Cir. 2001). Upon such review, the Court finds that petitioners' Objections (Docs. 72) are not well-taken and are accordingly **OVERRULED**. In summary, the Court ADOPTS the Report and Recommendations (Doc. 68) in its entirety...

Judge McFarland's order adopting Magistrate Litkovitz's report and recommendations (Doc. 68) in its entirety demonstrates a clear and indisputable abuse of discretion and is contrary to binding legal authority as established by the U. S. Sixth Circuit Court of Appeals and the U.S. Supreme Court. His repeated adverse judgments demonstrate his partiality, prejudice, discrimination, retaliation and bias against petitioner and are a direct violation of petitioners' right to equal protection and due process guaranteed under the Fifth Amendment to the U.S. Constitution. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court S.D. of Ohio, Entry and Order, RE 75, PAGEID 2537-39), (Appendix II, Attached)

On June 28, 2022, petitioner filed a motion to proceed in the Sixth Circuit Court of Appeals in forma pauper and Magistrate Judge Litkovitz denied petitioners' motion. On July 13, 2022, and September 29, 2022, Magistrate Karen Litkovitz and Judge Matthew McFarland denied petitioners' motion for leave to proceed in forma pauperis on appeal. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Litkovitz R&R, RE 88, PAGEID# 3056-3058) (Appendix JJ, Attached) Magistrate Litkovitz's and Judge McFarland's' order demonstrates a clear and indisputable abuse of discretion, and is contrary to binding legal authority as established by the U. S. Sixth Circuit Court of Appeals and the U.S. Supreme Court. Their repeated adverse judgments demonstrate their partiality, prejudice, discrimination, retaliation and bias against petitioner and are a direct violation of petitioners' right to equal protection and due process guaranteed under the Fifth Amendment to the U.S. Constitution. Magistrate Litkovitz stated the following:

"On May 31, 2022, the District Judge adopted the Report and Recommendation of the Magistrate Judge Litkovitz recommending that Ms. Holmes' "Motion to Reconsider Rule 54(B) Certification Under Rule 59" (Doc. 63) be denied. See Doc. 75. For the reasons set forth in the undersigned's December 14, 2021, order denying petitioner leave to file documents under seal and the report and recommendation of the same date recommending that petitioners' "motion to reconsider Rule 54(B) Certification under Rule 59" be denied (Doc. 68), the undersigned recommends that the district court certify that Ms. Holmes' in forma pauperis appeal would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a)(3). Accordingly, Ms. Holmes' motion for leave to proceed in forma pauperis on appeal (Doc. 87) should be DENIED."

On September 19, 2022, Judge McFarland stated the following:

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a de novo review of the record in this case. Upon said review, the Court finds that petitioners' objection is not well-taken and are accordingly OVERRULED. Thus, the Court ADOPTS Magistrate Judge Litkovitz' s report and recommendation (Doc. 88) in its entirety and ORDERS the following: (1) The Court CERTIFIES that petitioners' in forma pauperis appeal would not be taken in good faith within the meaning of 28 U.S.C. § 1915(a)(3); and (2) The Court DENIES petitioners' motion for leave to proceed in forma pauperis on appeal (Doc. 87).

The court must dismiss any action brought under federal law in forma pauperis if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. See 28 U.S.C. § 1915(e)(2). This screening process applies to complaints brought by both prisoners and non-prisoners. *McGore v. Wrigglesworth*, 114 F.3d 601, 608 (6th Cir. 1997). Sua sponte dismissal is appropriate if the complaint lacks an arguable basis either in law or in fact. *Id.* at 612. An action is frivolous within the meaning of section 1915(e)(2) when it is based on either an inarguable legal conclusion or fanciful factual allegations. *Neitzke v. Williams*, 490 U.S. 319, 325, 109 (1989). A complaint that fails to allege "enough facts to state a claim to relief that is plausible on its face" must be dismissed for failure to state a claim. *Traverse Bay Area Intermediate Sch. Dist. v. Michigan Dep't of Educ.*, 615 F.3d 622, 627 (6th Cir. 2010) (*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A plaintiff must 'plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Albrecht v. Treon*, 617 F.3d 890, 893 (6th Cir. 2010) (*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "A plaintiff falls short if he pleads facts 'merely consistent with the defendant's liability' or if the alleged facts do not 'permit the court to infer more than the mere possibility of misconduct[.]'" *Albrecht*, 617 F.3d at 893 (*Iqbal*, 556 U.S. At 678-79). When employing these standards, the court must read the plaintiff's pro se complaint liberally, *Haines v. Kerner*, 404 U.S. 519 (1972), and accept the plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

Based on the foregoing, this Court should compel the United States District Court for the Southern Division of Ohio to grant petitioners' motion for leave to file portions of her pleadings and exhibits that contain or reference medical records from a health care provider.

MANDAMUS LIES TO ORDER RESPONDENTS TO FOLLOW BINDING LEGAL PRECEDENT

Mandamus is a "drastic and extraordinary remedy reserved for extraordinary causes." *Cheney v. U.S. Dist. Ct. for the Dist. of Columbia*, 542 U.S. 367, 380, 124 S.Ct. 2576, 159 L.Ed.2d 459 (2004) Because the writ of mandamus "is one of the most potent weapons in the judicial arsenal, three conditions must be satisfied before it may issue." *Id.* First, a petitioner must "have no other adequate means to attain the relief [it] desires—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process." *Id.* at 380-81, 124 S.Ct. 2576. Second, a petitioner must show a "clear and indisputable" right to the relief sought. *Id.* at 381, 124 S.Ct. 2576 Finally, a petitioner must show that issuing the writ is otherwise "appropriate under the circumstances." *Id.*; see also *In re Pros. Direct Ins. Co.*, 578 F.3d 432, 437 (6th Cir. 2009) (listing five balancing factors to consider when deciding whether to issue the writ). In evaluating whether to issue a writ of mandamus, we consider five factors:(1) whether the party seeking the writ has no other adequate means, such as direct appeal, to attain the relief desired; (2) whether the petitioner will be damaged or prejudiced in a way not correctable on appeal after a final judgment; (3) whether the district court's order is clearly erroneous as a matter of law; (4) whether the district court's order contains an oft-repeated error, or manifests a persistent disregard of the federal rules; (5) whether the district court's order raises new and important problems, or legal issues of first impression.

John B. v. Goetz, 531 F.3d 448, 457 (6th Cir. 2008).

Respondent has a clear legal duty to follow binding authority as established by the Ohio Supreme Court, U.S. Sixth Circuit Court of Appeals and the U.S. Supreme Court

Federal district courts and circuit courts are bound to adhere to the controlling decisions of the Supreme Court. *Hutto v. Davis*, [454 U.S. 370, 375] (1982) Justice Rehnquist emphasized the importance of precedent when he observed that 'unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.' *Davis*, [454 U.S. at 375]. See Also, *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, [460 U.S. 533, 535] (1983) (the Supreme Court, in a per curiam decision, recently stated: 'Needless to say, only this Court may overrule one of its precedents')." 705 F.2d, at 1532. Furthermore, a district court is only bound by the decisions of the Circuit Court of Appeals in which it sits. See *Cochran v. Trans-General Life Ins. Co.*, 60 F.Supp.2d 693, 698 (E.D. Mich.1999).

Petitioner lacks a plain and adequate remedy

On August 11, 2022, petitioner filed a writ of prohibition and mandamus in the U.S. Court of Appeals for the Sixth Circuit regarding the exact same legal facts and issues presented in this petition. (*In re: Rosalind Holmes*, No: 22-3652, & No: 22-3664 Sixth Circuit Court of Appeals) However, the U.S. Court of Appeals for the Sixth Circuit opened two cases for under *In re: Rosalind Holmes*, No: 22-3652, & No: 22-3664 and has not issued a final decision on the emergency writ of mandamus and prohibition. Pursuant to *Erie Railroad vs Thompkins* federal judges are bound by the decisions of the Ohio Supreme Court. The Ohio Supreme Court's August 17, 2022, decision to dismiss petitioners' writ of prohibition created binding legal authority that the Sixth Circuit must follow. Therefore, the Sixth Circuit would be required by stare decisis to dismiss petitioners' writ of prohibition and mandamus filed in the matter of *Holmes vs. The Honorable Magistrate Stephanie K. Bowman, Judge Timothy Black, Magistrate Judge Litkovitz and Judge McFarland*. Additionally, the obvious conflict of interest between the judges and defendants involved in the proceedings with the Ohio Disciplinary Counsel and Ohio Board of Professional Practice is indicative of their lack of impartiality and presents an overwhelming appearance of impropriety. Therefore, it is more likely than not, that the Sixth Circuit would dismiss petitioners' writ of prohibition and mandamus filed in the matters of *In re: Rosalind Holmes*, No: 22-3652, & No: 22-3664 Sixth Circuit Court of Appeals.

PETITIONERS' SPECIFIC REQUEST FOR A WRIT OF MANDAMUS

Because of the number of adverse judgments in the federal, state, and local courts and the number of judges involved in the proceedings, petitioner has serious doubts about the impartiality of Magistrate Judge Litkovitz, and Judge Matthew McFarland and all the judges on the U.S. District Court for the Southern Division of Ohio and Sixth Circuit Court of Appeals. Petitioner believes that the judges involved in the proceedings are incapable of adjudicating the case in accordance to established binding legal precedent which clearly, indisputably and unambiguously

demonstrates the appearance of impropriety and partiality. On July 15, 2014, petitioner filed her initial discrimination complaint as a pro-se litigant in the matter of *Holmes v City of Cincinnati*, No 1:14-cv-00582, and requested equitable tolling due to defendant Elizabeth Tuck's misrepresentation. (Exhibit 2, Attached) She provided the District Court with copies of email evidence that was disputed in her complaint of misconduct filed with the Ohio Disciplinary Counsel. Magistrate Judge Litkovitz was the prior magistrate in the matter of *Holmes v City of Cincinnati*, No 1:14-cv-00582, and she obtained significant knowledge of the disputed evidence involving the Ohio Disciplinary Counsel, Tuck, F.M.R., F.B.I., and the City's false accusations against petitioner of email fraud. Not to mention Magistrate Litkovitz had direct knowledge of settlement discussions, negotiations, offers, and agreement in the matter of *Holmes v City of Cincinnati*, No 1:14-cv-00582. Her prior knowledge of the disputed evidentiary facts presents a significant conflict of interest and appearance of impropriety. This weighs heavily against her requirement to be a fair and impartial judge/jurist. In the year of 2014, Judge Matthew McFarland was a Fourth District Court of Appeals elected judge, who was appointed by Chief Justice Maureen O'Connor to serve on the Ohio Board of Professional Conduct ("BPC") formerly the Ohio Board of Grievances and Discipline. Petitioner filed her complaint of attorney misconduct with the Ohio Disciplinary Counsel in July 2014, while Judge Matthew McFarland was on the BPC and served on the Advisory Opinion Committee. The BPC and the Ohio Disciplinary Counsel work together to resolve allegations of attorney misconduct. The board's primary responsibility is to adjudicate allegations of professional misconduct on the part of lawyers and judges and make recommendations to the Supreme Court regarding the appropriate sanction to be imposed when a lawyer or judge is found to have engaged in professional misconduct. The BPC provides advice to the Ohio Disciplinary Counsel, judges, lawyers and law firms regarding the handling, investigation, resolution and adjudication of allegations involving attorney misconduct. Judge McFarland's political and professional relationship with Chief Justice O'Connor the BPC and the Ohio Disciplinary Counsel presents a significant conflict of interest and weighs heavily on his requirement to be a fair and impartial judge and presents the appearance of impropriety. More importantly, there is a strong possibility that Judge Matthew McFarland and/or Magistrate Litkovitz could potentially become a witness or party in the matter of *Holmes v. U.S.A. et. al.* No: 1-20-cv-00825.

Additionally, petitioner is concerned about two issues in the matters of *Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court S.D. of Ohio. First, petitioners' complaint is against the Ohio Disciplinary Counsel, Freking, Myers, Reul LLC., Attorney Elizabeth Tuck, F.M.R., current and former attorneys employed by the City of Cincinnati's Law Department including former Solicitor Paula Boggs-Muething, several current and former City of Cincinnati Council Members including former Mayor John Cranley and the Cincinnati Division of the F.B.I. Since the defendants are local attorneys, current and former attorneys of the Ohio Disciplinary Counsel and the City of Cincinnati, politicians, law enforcement, etc. The Ohio Disciplinary Counsel and the Ohio Board of Professional Conduct ("BPC") have significant ability to influence the attorneys, judges and the politicians involved and sway the outcome in the proceedings. Most attorneys, judges, and politicians are reluctant to

go against the Ohio Disciplinary Counsel and the BPC. There is a significant conflict of interest involving the Ohio Disciplinary Counsel, the BPC, the attorneys and the judges on the Butler County Area III Court, Ohio's 12th District Court of Appeals, the U.S. District Court S.D. and the Sixth Circuit Court of Appeals fairness in adjudicating the proceedings described in this petition. The defendants include attorneys and politicians, Joseph Caligiuri, Catherine Russo, Randy Freking, Kelly Mulloy Myers, George Reul, Elizabeth Tuck, Emily Woerner, William Hicks, Paula Boggs-Muething, former Mayor John Cranley, and several former and current members of Cincinnati City Council who either practice or have significant professional and political relationships with the judges and their staff members in the State of Ohio Courts, U.S. District Court and U.S. Court of Appeals. As a direct result of their relationships with the defendants the judges involved in the proceedings are incapable of being fair, impartial and issuing judgments based upon the law against their close professional associates who are defendants. Second, there is also a conflict involving the F.B.I, City of Cincinnati, and the Ohio Disciplinary Counsel's, Tuck, F.M.R., secretive conduct of circumventing the law which exacerbates Butler County Area III Court, Ohio's 12th District Court of Appeals, the U.S. District Court S.D. and the Sixth Circuit Court of Appeals judges lack of impartiality and fairness.

"The proper test for determining whether a judge's participation in a case presents an appearance of impropriety is * * * an objective one. A judge should step aside or be removed if a reasonable and objective observer would harbor serious doubts about the judge's impartiality." *In re Disqualification of Lewis*, 117 Ohio St.3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 8. Thus, disqualification is appropriate when a professional relationship between a judge and an individual involved in a proceeding—such as a party, witness, or the alleged victim—could suggest to a reasonable person the existence of prejudice. The chief justice has disqualified entire benches of judges when the existence of a personal, professional, or political relationship between the judges and one of the parties to the underlying case could suggest to the reasonable person the appearance of bias or impropriety. For example, *In re Disqualification of Corrigan*, 110 Ohio St.3d 1217, 2005-Ohio-7153, 850 N.E.2d 720, the chief justice disqualified an entire bench from hearing a case in which the plaintiff was a county commissioner who had a leadership role in local party politics. The chief justice noted that as a county commissioner, the plaintiff necessarily exercised considerable authority over the budget of the common pleas court and that it was alleged that as the former chair of a county political party, he had significant personal and political relationships with many judges. Based on those facts, the public could reasonably question whether any judge of that county's common pleas court would be able to render a decision based solely on the relevant law and facts. Moreover, section 455(a) provides, in pertinent part, that a federal judge "shall disqualify himself in any proceeding where his impartiality might reasonably be questioned." The law is well-established that adverse judicial decisions can form the basis for recusal only in the most extraordinary circumstances. See *Liteky v. United States*, 510 U.S. 540, 555 (1994); *United States v. Grinnell Corp.*, 384 U.S. 563, (1966). Petitioner has alleged an extraordinary circumstance involving the significant appearance of impropriety by the Ohio Disciplinary Counsel, the BPC, the politicians, attorneys and the judges involved in the

proceedings who have repeatedly issued adverse judgments that are contrary to binding legal authority. Permitted the defendants more liberty in their submissions, objections, and arguments in Court, ignored or delayed responding to petitioners' submissions to the Court and engaged in the ongoing conspiratorial harassment against petitioner. Not to mention their involvement with the Cincinnati Division of the F.B.I., State of Ohio Disciplinary Counsel, Elizabeth Tuck, Freking, Myers, Reul and others. The judges involved in the proceedings displayed a "clear inability to render fair judgments," and "a deep-seated favoritism or antagonism" that makes fair judgment impossible. The judges involved in the proceedings were bias, and the likelihood of continued bias or an appearance of bias demonstrates that the judges involved in the proceedings are unable to hold the balance between vindicating the interests of the court and the interests of the defendants." *Ungar v. Sarafite*, 376 U.S. 575, 588 (1964).

Pursuant to the Code of Conduct for United States Judges, Canon 3(C)(1)(a). This Canon states that a judge shall disqualify himself or herself when the judge has "personal knowledge of disputed evidentiary facts concerning the proceeding." A court of appeals can exercise its inherent authority to correct errors that were forfeited because they were not timely raised in district court. *Yakus v. United States*, 321 U.S. 414, 444 (1944). Although "[a] rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with . . . the rules of fundamental justice, *Hornel v. Helvering*, 312 U.S. 552, 557 (1941), the authority created by Rule 52(b) is circumscribed. There must be an "error" that is "plain" and that "affect[s] substantial rights." Moreover, Rule 52(b) leaves the decision to correct the forfeited error within the sound discretion of the court of appeals, and the court should not exercise that discretion unless the error "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *United States v. Young*, 470 U.S. 1, 15 (1985) (quoting *United States v. Atkinson*, 297 U.S. 157, 160 (1936)). Since the District Court committed plain error in the matter of *Holmes v U.S.A. et. al.*, No: 1:20-cv-00825, and *Holmes v. Lakefront*, No: 1:-cv-00505, the U.S. Supreme Court has authority to correct the errors in the interest of justice, judicial integrity and fairness and to disqualify the judges on the U.S. District Court for the Southern and Northern Division of Ohio and the Sixth Circuit Court of Appeals

Currently it's the year of 2022, the defendants have consumed and ruined approximately twenty years of petitioners' life to promote their campaign and agenda of injustice at the discretion and under the direction of the Federal Bureau of Investigation, Cincinnati, Ohio. Individuals in America who have killed or whose actions resulted in the death of another person have not received a sentence of approximately twenty years. The protection and interests of the defendants and judges involved in the proceedings far outweighed petitioners' rights to due process and equal protection as guaranteed by the U.S. Constitution.

Petitioner, respectfully request that the U.S. Supreme Court issue an order directing the U.S. District Court for the Southern Division of Ohio and the U.S. Sixth Circuit Court of Appeals to vacate the following orders:

- 1.)) On February 8, 2021 and February 26, 2021, respectively Magistrate Judge Karen Litkovitz, and Judge Matthew McFarland, clearly and unambiguously abused their discretion when they , dismissed with prejudice, counts I-XXIII of petitioners' amended complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and denied petitioners' motion for equitable tolling due to defendants fraudulent concealment, breach of contract, injunctive relief (RE. 6) on February 8, 2021 and February 26, 2021, respectively. (*Holmes vs U.S.A. et al.*, No 1:20-cv-00825, U. S. District Court S.D. of Ohio, Litkovitz R & R, RE 13, PAGEID 1409-1428), (Appendix CC, Attached) & (*Holmes v. U.S.A. et al.*, No: 1:20-cv-00825, Entry and Order, RE18, PAGE ID 1467-1468), (Appendix DD, Attached)
- 2.) April 2, 2021, and July 12, 2021, Senior Judge Alan E. Norris, Judge John K. Bush, Senior Judge Helene N. White, Judge Bernice B. Donald and Judge Amul R. Thapar, clearly and indisputably abused their discretion when they dismissed petitioners' appeal for lack of appellate jurisdiction. Their judgments are contrary to binding legal authority as established by the U. S. Sixth Circuit Court of Appeals and the U.S. Supreme Court. (*Holmes vs U.S.A. et al.*, No: 21-3206, 21-3491 & 21-3521 U.S. Sixth Circuit Court of Appeals) (Appendix EE, Attached)
- 3.) April 15, 2021, Magistrate Judge Karen Litkovitz clearly and indisputably abused her discretion when she denied petitioners' motions to seal (RE. 11), for Rule 54(b) certification (RE. 23), to appoint counsel (Doc. 1 at PAGEID 10-14; Doc. 24). Magistrate Litkovitz's, April 15, 2021, order failed to follow binding precedent as established by the Sixth Circuit and the United States Supreme Court and violated petitioners' right to due process and equal protection when she denied petitioners' motion for leave to file her medical records under seal as moot. (*Holmes vs U.S.A. et al.*, No 1:20-cv-00825, U. S. District Court S. D. of Ohio, Order, RE 27, PAGEID 1551-1554) (Appendix FF, Attached)
- 4.) May 10, 2021, Magistrate Judge Karen Litkovitz, clearly and indisputably abused her discretion and failed to follow binding legal authority as established by the U. S. Sixth Circuit Court of Appeals and the U.S. Supreme Court when she denied petitioners' motion for a Rule 54(B) final appealable order (RE. 60). Her repeated adverse judgments demonstrate her partiality, prejudice, discrimination, retaliation and bias against petitioner and are a direct violation of petitioners' right to equal protection and due process as guaranteed under the Fifth Amendment to the U.S. Constitution. (*Holmes vs USA et al.*, No 1:20-cv-00825, U. S. District Court S. D. of Ohio, Order RE 31, PAGEID 1581-83), (Appendix GG, Attached)
- 5.) On December 14, 2021, Magistrate Karen Litkovitz, clearly abused her discretion when she denied petitioners' "Emergency Motion to File Under Seal" (RE. 43). Her decision to dismiss is clearly and indisputably an abuse of discretion and is contrary to binding legal authority as established by the U. S. Sixth Circuit Court of Appeals and the U.S. Supreme Court. Her adverse judgments demonstrate her partiality, prejudice, discrimination, retaliation and bias against petitioner and are a direct violation of petitioners' right to equal

protection and due process guaranteed under the Fifth Amendment to the U.S. Constitution. (*Holmes vs USA et al.*, No 1:20-cv-00825, U. S. District Court S.D. Ohio, Litkovitz R & R, PAGEID# 2330-2337), (Appendix HH, Attached)

- 6.) On May 31, 2022, Judge McFarland clearly abused his discretion when he adopted Magistrate Litkovitz's report and recommendations (Doc. 68) in its entirety, denying petitioners' "Emergency Motion to File Under Seal" (RE. 43). Judge McFarland's judgment is contrary to binding legal authority as established by the U. S. Sixth Circuit Court of Appeals and the U.S. Supreme Court. His repeated adverse judgments demonstrate his partiality, prejudice, discrimination, retaliation and bias against petitioner and are a direct violation of petitioners' right to equal protection and due process guaranteed under the Fifth Amendment to the U.S. Constitution. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court S.D. of Ohio, Entry and Order, RE 75, PAGEID 2537-39), (Appendix II, Attached)
- 7.) On July 13, 2022, and September 29, 2022, Magistrate Karen Litkovitz and Judge McFarland clearly and indisputably abused their discretion when they denied petitioners' motion for leave to proceed in forma pauperis on appeal (RE. 87). Magistrate Karen Litkovitz and Judge McFarland judgments are contrary to binding legal authority as established by the U. S. Sixth Circuit Court of Appeals and the U.S. Supreme Court. Their repeated adverse judgments demonstrate their partiality, prejudice, discrimination, retaliation and bias against petitioner and are a direct violation of petitioners' right to equal protection and due process guaranteed under the Fifth Amendment to the U.S. Constitution. (*Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court, Litkovitz R&R, RE 88, PAGEID# 3056-3058) (Appendix JJ, Attached)

Additionally, petitioner respectfully request that the U.S. Supreme Court issue an order to the U.S. District Court for the Southern Division of Ohio and the U.S. Sixth Circuit Court of Appeals directing them to do the following:

- 1.) In the matter of *Holmes vs USA et al.*, No 1:20-cv-00825, United States District Court S.D. of Ohio, issue an order directing the Court to consolidate the matter of *Holmes v Lakefront*, No:1:21-cv-00505, with *Holmes vs USA et al.*, No 1:20-cv-00825; permit petitioner additional time to amend her complaint for additional causes of action and defendants Attorney Amy Higgins, State of Ohio and Butler County; once petitioner has completed amending the complaint, issue an order directing the Court to serve the complaint on all defendants.
- 2.) Petitioner respectfully request that the U.S. Supreme Court disqualify the judges on the U.S. District Court for the Southern and Northern Division of Ohio and the U.S. Sixth Circuit Court of Appeals and a change of venue.
- 3.) Petitioner respectfully request pursuant to Federal Rule of Civil Procedure 53 appoint an outside independent Special Master to issue all decisions in the matters of *Holmes vs USA et al.*, No 1:20-cv-00825, and *Holmes vs Lakefront* No: 1-21-cv-00505, United States District Court S.D. of Ohio moving forward. Petitioner also request that the U.S. Supreme Court issue an order to the U.S. District Court

for the Southern Division of Ohio to issue a Stay Order pending the appointment of the Special Master in the matters of *Holmes vs USA et al.*, No 1:20-cv-00825, and *Holmes vs Lakefront* No: 21-3791, United States District Court.

4.) Additionally, petitioner is requesting the U.S. Supreme Court's intervention in working to ensure the Ohio Disciplinary Counsel, Ohio Board of Professional Practice, Ohio Supreme Court, Ohio's Twelfth District Court of Appeals, and the Butler County Area III Court, judges, justices and others fairness and impartiality. Petitioner is continuously being harassed daily by the property management team at Four Bridges Apartments who is owned by Towne Properties. On October 22, 2022, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Previously petitioner personally contacted the Director and other individuals at the [REDACTED] and requested that they not come back to my apartment. However, they have continuously engaged in conspiratorial harassment. Petitioner respectfully request that the U.S. Supreme Court issue a temporary restraining order and or injunction against the [REDACTED] prohibiting them from coming back to petitioners' home.

5.) Issue an order to Chief Judge Algenon L. Marbley of the U.S. District Court SD. Ohio and the Sixth Circuit Chief Judge Jeffrey S. Sutton directing them to transfer the matter of *Holmes v USA et al.* 1:20-CV-00825, to another Circuit Judge who does not have any conflict of interest, financial interest, and who will be an impartial trier of fact.

6.) Issue an order directing the appointment a Court Monitor to oversee the matter of *Holmes v USA et.al.* 1:20-CV-00825. The Court Monitor shall report directly to Brett Kavanaugh, Sixth Circuit Justice who will supervise the case, ensure compliance with the Supreme Court's, U.S. District Court S.D. Ohio, U.S. Sixth Circuit injunction and orders, serve as a supervisor of the Court, resolve any conflicts as to discovery, admissible evidence, witnesses, expert witnesses, adverse orders (orders contrary to jurisdictional precedent), any other relevant matters etc.

7.) Issue and order to the newly appointed Federal from another Circuit, that petitioner will have the opportunity to make reports directly to a court monitor overseen by the US Supreme Court regarding any additional retaliation and harassment by defendants. Also, the US Supreme Court should maintain jurisdiction over any violations of the permanent injunction imposed against respondents.

8.) Since the campaign of conspiratorial harassment began under all named defendants but several defendants who were former officials of the City, State of Ohio and Federal Government have left their respective positions. Nevertheless, the campaign of continual

discriminatory and conspiratorial actions continued even after the former officials of the City, State of Ohio Disciplinary Counsel and Federal Government left their respective positions. Petitioner respectfully request that the U.S. Supreme Court issue instructions to the new Judge from another Circuit and the Court Montitor on how to decide pursuant to Fed. R. Civ. P. 25(d) whether certain successors to prior positions held by defendants who are no longer in office should be included and/or substituted in petitioners' complaint in the matter of *Holmes vs U.S.A. et. al.*, No: 1:20-cv-00825.

9.) Petitioner respectfully request that the U.S. Supreme Court decide as to whether to treat the State of Ohio as a person pursuant to the exceptions under the Eleventh Amendment Immunity and permit plaintiffs' lawsuit to be filed against the State of Ohio defendants in their official an individual capacity. Qualified immunity protects government officials performing discretionary functions "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Congress has properly abrogated the states' immunity to Sections 1981,1983, 1985, and 1986 through its enactment of legislation. The Ohio Disciplinary Counsel individual defendants, The Estate of Scott Drexel, Joseph Caligiuri, and Catherine Russo were not performing discretionary functions when they engaged in a conspiracy with the F.B.I, City, Tuck, Freking, Myers, Reul and others. Thereby, wrongfully accusing petitioner of fraud, conspiracy and should be treated as persons for Sections 1981,1983, 1985, and 1986 purposes.

10.) Petitioner respectfully request that the U.S. Supreme Court appoint an experienced outside independent attorney to represent petitioner in the matters of *Holmes vs. U.S.A. et. al.* No: 1-20-cv-00505 and *Holmes vs. Lakefront*, No: 1-21-cv-00825 moving forward. In making its decision, petitioner respectfully request that the U.S. Supreme Court review her motion to appoint counsel and motion for relief filed in District Court (*Holmes vs. U.S.A. et. al.*, No: 1-20-cv-00825, RE 24, PAGE ID# 1496-1544) & (*Holmes vs USA et.al.*, No: 1-20-cv-00825, Motion for Relief, RE 6, Page ID# 1150-1195). The motions were wrongfully denied by the U.S. District Court and Sixth Circuit.

In petitioners' motion to appoint counsel, she established that she is likely to succeed on the merits of her claims, she provided substantial documentary evidence of her efforts to obtain counsel. (*Holmes vs USA et al.*, No 1:20-cv-00825, Amended Motion to Appoint Counsel, RE 24) Petitioner requested the Court's review of her motion for injunctive relief in the matter of *Holmes vs USA et.al.*, No: 1-20-cv-00825, Motion for Relief, RE 6, Page ID# 1150-1195, for an explanation of the merits of her case. Her motion for injunctive relief provided an explanation of a strong likelihood of success on the merits of the case sufficient to survive summary judgment and proceed to trial. Petitioner explained that this case involves very complex legal matters, including but not limited to Federal Tort Claims Act, Constitutional claims under *Bivens*, and 42 U.S.C. §§ 1981,1983,1985,1986, Qualified Immunity, Legal Malpractice, Employment Law, State law, etc. As legal malpractice cases involve expert opinions from a licensed attorney objectively unacquainted with the defendant attorney. The legal expert that testifies is usually from outside the geographical area in which the defendant attorney practices and has not been acquainted with the defendant attorney to prevent a conflict. This case relies heavily upon petitioners' credibility, cross-examination of witnesses, depositions, interrogatories, investigation of the government and other defendants. Petitioner has never attended law school, does not have any experience conducting cross examination of witnesses, deposition of witnesses and interrogatories and defendants have made it virtually impossible for her to acquire legal advice or assistance through their discriminatory and conspiratorial actions. Therefore, petitioner lacks the legal expertise, financial resources, experience, and knowledge to successfully litigate this case on her own absent good legal counsel. (*Holmes vs USA et al.*, No 1:20-cv-00825, Amended Motion to Appoint Counsel, RE 24) Petitioner has contacted several attorneys, as well as the American Civil

Liberties Union, Center for Constitutional Rights, Legal Aid, several law clinics, etc. Unfortunately, every attorney, government watch dog agency, legal aid and several law clinics have declined representation. Defendants have made it extremely difficult for plaintiff to obtain legal counsel which is grossly unfair and they have been capable of dictating the litigation proceedings and outcome up to the present because Magistrate Judge Litkovitz, Magistrate Stephanie Bowman, Judge McFarland and Judge Black have permitted the defendants to control the case. Additionally, as petitioner has described throughout this petition the judges involved in the proceedings including judges of United States District Court for the Southern District of Ohio, the Butler County Area III Court, Ohio's Twelfth District Court of Appeals, Ohio Supreme Court, and the Sixth Circuit Court of Appeals clearly, indisputably and repeatedly abused their discretion and issued judgments that were contrary to the law and binding legal precedent. Thereby, persistently violating petitioners' rights to due process and equal protection under the Fifth and Fourteenth Amendments to the U.S. Constitution. Based on the facts and issues described in this petition and petitioners' motion to appoint Counsel petitioner should have been granted Counsel.

Petitioner was receiving advice regarding several of the issues related to this case from Maguire, Schneider, Hassay LLP., through her membership with LegalShield. Maguire, Schneider, Hassay LLP., is the provider law firm for Ohio members of LegalShield and petitioner was a member of LegalShield formerly Pre-paid Legal. Maguire, Schneider, Hassay LLP., assisted petitioner with understanding how to file this case in the District Court. Petitioner received substantial assistance regarding the drafting of the complaint, preparing exhibits explanations of Constitutional Law, Title VII, etc. from the attorneys at Maguire, Schneider, Hassay LLP. In other words, without the assistance of the attorneys at Maguire, Schneider, Hassay LLP., petitioner would not be capable of filing this case in Court. On December 18, 2020, petitioner contacted Maguire, Schneider, Hassay LLP., regarding filing a motion for a Temporary Restraining Order in the matter of *Holmes v U.S.A. et.al.*, 1:20-cv-00825. Petitioner was given a file number of OH-2SS72N and the file was assigned to Attorney Gary Andorka, by the intake personnel who advised petitioner to email documents for the attorney to review. Suddenly, on December 21, 2020, petitioner received a letter from Legal Shield who cancelled petitioners' membership without any justification and she has been incapable of obtaining reinstatement. (Exhibit 3, Attached) Because this case involves corruption and conspiracy by the Cincinnati Division of the F.B.I., Ohio Disciplinary Counsel the City of Cincinnati, Elizabeth Tuck, the partners of Freking, Myers, Reul LLC., and others. Petitioner is convinced that any attorney appointed to represent her would have to be from outside of the geographical area and be granted protection and immunity from retaliation by the defendants. Clearly, petitioners' right to due process and equal protection has and will continue to be violated without the U.S. Supreme Court granting petitioners' request for Counsel. It is evident, from the facts, issues and circumstances described in this petition that petitioner will not receive fair and impartial justice without the appointment of experienced Counsel and the guarantee of protection and immunity from retaliation for any attorney appointed.

The court "may request an attorney to represent any person unable to afford counsel." 28 U.S.C. § 1915 (e)(1). Similarly, under 42 U.S.C. § 2000e-5(f)(1) and 42 U.S.C. 3613 "upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney." "District courts exercise substantial discretion in deciding whether to appoint counsel. *Ferrelli v. River Manor Health Care Center*, 323 F.3d 196, 204 (2d Cir. 2003). Generally, a court will only appoint counsel in exceptional circumstances. *Willett v. Wells*, 469 F. Supp. 748, 751 (E.D. Tenn. 1977). The Second Circuit has cautioned against the "routine appointment of counsel." *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 173-74 (2d Cir. 1989). Before appointment is even considered, the indigent movant must establish that he is unable to obtain counsel. *Id.* at 173; *Hodge v. Police Officers*, 802 F.2d 58, 61 (2d Cir. 1986). If the movant satisfies that threshold requirement, the court must then consider the merits of his claim and determine whether his position "seems likely to be of substance." *Hodge*, 802 F.2d at 61. If so, the Court should then consider other factors bearing on the need for appointment of counsel, including the movant's ability to investigate the factual issues of the case, whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder, the movant's apparent ability to present the case, and the complexity of the legal issues involved. *Id.* at 61-62. Examining the pleadings and documents in the file, the Court analyzes the merits of the claims, the complexity of the case, the pro se litigant's prior efforts to retain counsel, and her ability to present the claims. *Henry v. City of Detroit Manpower Dept.*, 763 F.2d 757, 760 (6th Cir. 1985)

11.) Petitioner respectfully request that U.S. Supreme Court issue an order to the U.S. District Court to issue a stay pending the outcome of this petition and a temporary restraining order and injunction against all defendants named in the matters of *Holmes vs USA et al.*, No 1:20-cv-00825, and *Holmes vs Lakefront*, No: 1-21-cv-00505 including Attorney Amy Higgins the State of Ohio and Butler County. Petitioner respectfully request that the U.S. Supreme Court reviews this petition, Appendix KK, attached, her amended complaint & exhibits and her motion for

miscellaneous relief filed in the U.S. District Court in making its decision. (*Holmes vs USA et al.*, No 1:20-cv-00825, Amended Complaint, RE 9, PAGE ID 1217-1392) & (*Holmes vs USA et al.*, No 1:20-cv-00825, Exhibits, RE 1-3, PAGE ID 113-517) & (*Holmes vs USA et al.*, No: 1-20-cv-00825, Motion for Relief, RE 6, Page ID# 1150-1195)

Courts should apply the four traditional stay factors in considering whether to issue a stay, temporary restraining order “ (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.’ *Nken v. Holder*, 556 U.S. 418, 434, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987)). *Northeast Ohio*, supra, 467 F.3d at 1009; see also *Rios*, supra, 345 F. Supp. 2d at 835. *Washington v. Reno*, 35 F.3d1093 (6th Cir. 1994). These factors are not prerequisites to the grant or denial of injunctive relief, but factors that must be carefully balanced by the district court in exercising its equitable powers. A trial court is required to make specific findings concerning each of the four factors unless fewer factors are dispositive of the issue. See *In re DeLorean Motor Co.*, 755 F.2d 1223, 1228 (6th Cir. 1985).

Plaintiff respectfully request the U.S. Supreme Court to issue a stay pending the outcome of this writ, and her emergency motion for injunctive relief filed in the U.S. Supreme Court, on May 13, 2023, emergency motions for permanent injunction against all named defendants and declaratory relief in the matters of *Holmes vs USA et al.*, No: 1-20-cv-00825.

Denial of the writ would result in injury without an adequate remedy

Because of the defendants nearly twenty-years ongoing conspiratorial campaign to deprive petitioner of her legal rights she has experienced long periods of unemployment and she is currently unemployed, incapable of obtaining permanent employment because they have blacklisted her from bona fide job opportunities. For the period of June 2017 to the present petitioner has been employed sporadically from time to time by various staffing and temporary services. As a direct result of the defendant's conspiracy petitioner has experienced extreme financial and emotional distress and is incapable of meeting her current obligations. Defendants have spread disinformation and lies, advised other individuals not to get involved with her causing her embarrassment and the inability to make or maintain relationships with her friends. The emotional distress caused by defendants, the breakdown of her marriage, personal relationships with family and friends, the inability to enjoy her life and complete isolation from society. Defendants gain access to petitioner's dwelling anywhere she goes to live. They intentionally harass petitioner 24-hours a day by circulating different chemicals and foul odors throughout the ventilation system causing her constant upper respiratory symptoms, just as they did at Lakefront at West Chester. Because of defendants conspiratorial campaign of retaliation, petitioner does not have friends or anyone who she can trust. Petitioner is currently unemployed and homeless does not have any money to buy food and live like a normal human being in society If the U.S. Supreme Court fails to issue this writ of mandamus the emergency injunctive relief, plaintiff will be continuously denied equal justice and protection, due process under the Constitution and laws of America and **REPEATEDLY** retaliated against through the judicial system. Additionally, if the U.S. Supreme Court fails to immediately issue the writ of mandamus AND emergency injunctive

relief as petitioner has requested, she will suffer irreparable harm. Plaintiff asserts that she has and is currently suffering from the harm imposed by defendants for over eighteen years including but not limited to being **REPEATEDLY** subjected to wrongful terminations, being **REPEATEDLY** subjected to wrongful evictions, being **REPEATEDLY** subjected to embarrassment, being **REPEATEDLY** subjected to false fraud accusation, being **REPEATEDLY** unemployed and homeless, **REPEATED** violations to her constitutional rights, **REPEATEDLY** blacklisted from employment, **REPEATEDLY** banned from accessing medical and dental services, **REPEATEDLY** denied promotions, **REPEATEDLY** prevented from obtaining her CPA licensure, and prevented from competing for promotions, loss of work experience, **REPEATEDLY** retaliated and harassed by and through the judicial system, **REPEATED** harassment by law enforcement everywhere, loss of professional and business relationships due to false fraud accusations etc., public hatred, ridicule, and embarrassment, etc.

Based on the foregoing, petitioner does not have an adequate remedy in the ordinary course of law.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Honorable Court issue a writ of prohibition and/or mandamus as petitioner has specifically requested in Part I -VI of this petition and as outlined in Appendix A-1 of this petition.

DECLARATION OF ROSALIND HOLMES

"I, Rosalind Homes declare under penalty of perjury that the foregoing is true and correct. Executed on May 15, 2024.

Rosalind Holmes
Rosalind Holmes

"I Rosalind Homes declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on on May 15, 2024.

Rosalind Holmes
Rosalind Holmes

Respectfully,

Rosalind Holmes

Rosalind Holmes
6673 Boxwood Lane Apt. C
Liberty Township, Ohio 45044
Initial Submission May 15, 2024