

No: 20-7170

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In The
Supreme Court of the United States

_____ • _____

Supreme Court, U.S.
FILED

MAY 11 2021

OFFICE OF THE CLERK

In Re ABHIJIT PRASAD,

Petitioner,

v.

KOMAL RATTAN,

Respondent,

_____ • _____

Petition For Rehearing

On Writ of Mandamus decision No. 20-7170

_____ • _____

PETITION FOR A WRIT OF REHEARING

ABHIJIT PRASAD
2100 N Donovan Way
San Ramon
CA 94582

Telephone (209) 914-6022
abhijit.us@gmail.com (preferred)

Pro Se

RECEIVED

MAY 17 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

i. **REQUEST AND PURPOSE OF THIS PETITION**

Abhijit Prasad (“Petitioner”, “Husband”) humbly submits this petition for rehearing requesting review of U.S. Supreme Court writ of mandamus decision No. 20-7170 asking California Supreme Court to review his appeal in which a decision could be had.

Due to *Pro Se* nature of this filing, Husband respectfully requests that this Honorable Court provide a less stringent standard of review when examining Husband’s attempts at case citing, rules, procedures, and legal syntax. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Erickson v. Pardes*, 551 U.S. 89, 94 (2007).

ii. **EXCEPTIONAL AND EXTRAORDINARY CIRCUMSTANCES WARRANT THE EXERCISE OF THIS COURT’S DISCRETIONARY POWERS TO ALLOW HUSBAND HIS RIGHTS TO ACCESS STATE’S HIGHEST COURT ON APPEAL**

In this case, Husband’s multiple requests (see APPENDIX D) to review California’s First District Court

of Appeals decision with the California Supreme Court, while he was in federal prison were repeatedly denied (see APPENDICES A, B). Husband requested the California Supreme Court to extend the “petition for review” filing deadline by two months because he was serving a Federal sentence at FCI Lompoc, CA and remained under strict lockdown (followed by quarantine) since March 2020, due to COVID-19, which prevented him from filing any petitions ¹ (see APPENDIX D as in Writ of Mandamus petition). FCI, Lompoc underwent a very strict lockdown beginning March 25, 2020 due to COVID-19 pandemic, around the time Husband was transferred there, and the inmates were completely barred from accessing the law library or seek an outside counsel. Husband was left with no ability to counsel oneself or through an outside counsel. The lockdown followed quarantine that was even stricter where

¹ Richard Winton, *Coronavirus Outbreak at Lompoc Prison is the Worst in the Nation: 69 Inmates, 25 Staff Infected*, LOS ANGELES TIMES (Apr. 16, 2020) available at <https://www.latimes.com/california/story/2020-04-16/coronavirusoutbreak-at-lompoc-federal-prison-is-worst-in-nation-with-69-inmates-25-staffinfected>; see also *Torres, et al. v. Milusnic*, CV 20-04450-CBM-PVC (Dkt #18)

Husband was locked up all day and was only allowed to shower or phone for half an hour every alternate day.

Husband was in communication with the California Supreme Court prior to expiry of their jurisdiction that gave court power to protect and exercise its jurisdiction. He last wrote to them on May 15, 2020 (see APPENDIX D), eight weeks before July 8, 2020 when the court would statutorily lose its jurisdiction. (see APPENDIX B). The California Supreme Court responded by stating that "If you are able to have both petitions for review with two separate "Applications for Relief from Default" reach the court before the loss of jurisdiction, court may permit it to be filed late. Once this court loses jurisdiction, it no longer has any authority to consider or grant any relief whatsoever in this case; no matter what reason you may have for submitting a late petition". (see Appendices A, B). Husband was only released to home confinement on Aug 20, 2020, necessitating this request and his earlier requests to the U.S. Supreme Court.

iii. ARGUMENT

Husband argues that he is entitled to the commencement of a new limitations, because his placement in COVID-19 segregation and its attendant limitations on his access to his legal file and the prison law library amounted to an unlawful impediment to his "constitutional right of access to the courts." See *Lewis v. Casey*, 518 U.S. 343, 346, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996) (quoting *Bounds v. Smith*, 430 U.S. 817, 828, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977)).

Considering the ongoing public health concerns relating to COVID-19, several courts have flexed their Court's Rules and practices, including U.S. Supreme Court (see ORDER LIST: 589 U.S. filed 03/19/2020) extending deadlines for filing certain petitions. Some states like Hawaii had extended certain filing deadlines. The Supreme Court of Kansas has issued several orders and temporary

rules in 2020 and 2021 to extend or suspend any deadlines or time limitations established by statute following extension of the State of Disaster Emergency related to COVID-19. However, the California Supreme Court refused Husband's reasonable request (Husband had requested two months extension) to extend his petition for review filing deadline beyond what is permitted by statute by categorically stating that it could not let Husband file a late petition "no matter what reason you may have for submitting a late petition".

Husband has been contesting the underlying case in Family Court that was filed in 2007 that ended abruptly in 2020, where a decision could be had, pouring cold water over his 13 years of effort to get justice in a substantial rights issue. Husband has exhausted all options and no relief can be obtained in any other form or from any other court. Under Supreme Court Rule 20, the U.S. Supreme Court is authorized to issue an extraordinary writ pursuant to 28 U.S.C. § 1651(a), § 2241 or § 2254(a). To justify the

granting of any such writ, the petition must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

Husband requests the U.S. Supreme Court to consider the combination of strict pandemic related lockdown and quarantine when he was in prison that prevented him to file any petition or hire counsel as extraordinary or exceptional circumstance. Thelaw.com Law Dictionary and Black's Law Dictionary 2nd Ed. defines "extraordinary and exceptional circumstances" as "Unusual situation which is not ordinary for a particular place or time". Husband's situation was exactly the same, when he requested a reasonable extension of filing deadline.

The Constitution guarantees citizens the ability to vindicate their rights in court. A Supreme Court decision to this effect is certain to affect a number of similarly situated

persons, particularly inmates, who were and are currently stuck in strict lockdown and/or quarantine imposed by prisons in wake of COVID-19 pandemic and whose requests for continuance or extensions to file petitions or toll their cases during those times were and are being disallowed by courts, because of absence of a uniform national directive from the highest government level. Though some states have relaxed their rigid rules in some cases, others have not. There is an overriding need for national uniformity in all 50 states in this matter so as not to deprive prisoners' access to the justice system during lengthy lockdowns and quarantines required to curb spread of COVID-19, where they lose all abilities to file petitions or communicate with the Court. A Supreme Court decision to this effect will also make it easy for prison authorities to allow only those prisoners access to law libraries who have a filing requirement during COVID-19 lockdown/quarantines without violating the precautionary COVID-19 frameworks. All of Attorney General's and prison commanders' memos that have laid the guidelines for

COVID-19 related lockdowns and quarantines do not provision any help to prisoner's situation that Husband has complained. Prison and jail authorities who usually allow prisoners access to law library and counsel, on showing of good cause, during normal lockdowns (resulting due to fights, etc.), do not allow such access during COVID-19 related lockdowns. A Supreme Court decision to this effect if made retroactive until, say December 2020, when the first COVID-19 patient in America was diagnosed will also help inmates, like Husband who made good faith requests with their respective Courts to extend their filing deadline during COVID-19 lockouts/quarantines but were denied those requests. A Supreme Court decision to this effect is necessary since the pandemic is not yet over and there are scientific predictions of newer waves with more deadly variants that will increase pandemic related lockdowns and quarantines in our prisons in near future. It is requested that statutory filing deadlines be relaxed and extended reasonably across 50 states, especially for persons who are faced with such exceptional circumstance.

iv. STANDARD OF REVIEW

The denial of Prasad's rights to access the highest state is a violation of the equal protection guarantee of the Fifth Amendment's Due Process Clause. In such cases the U.S. Supreme Court can apply the "Rational basis" standard of review, at the minimum. Rational basis review tests whether the government's actions are "rationally related" to a "legitimate" government interest. *United States v. Carolene Products Co.*, 304 U.S. 144 (1938). Under rational basis scrutiny, the means need only be "rationally related" to a conceivable and legitimate state end. Further, in rational basis scrutiny, empirical support is not necessary to sustain a state action.

v. REQUEST AND PRAYER TO THIS COURT

For all the reasons stated herein, the requests made in this petition of rehearing should be granted, together with any relief as this Court deems just and proper.

Respectfully Submitted:

Date: May 11, 2021
Place: San Ramon, CA



ABHIJIT PRASAD
2100 N Donovan Way
San Ramon
CA 94582

Telephone: (209) 914-6022
email: abhijit.us@gmail.com
(preferred)

Petitioner
Pro Se

GOOD FAITH CERTIFICATION

Petitioner Abhijit Prasad certifies that this petition is presented in good faith and not for delay.

Date: May 11, 2021
Place: San Ramon, CA

A handwritten signature in black ink, appearing to read 'Abhijit', is written over a rectangular box. A diagonal line is drawn across the box from the top-left to the bottom-right.

ABHIJIT PRASAD
Petitioner

CERTIFICATION STATING THE GROUNDS OF THIS PETITION

Petitioner Abhijit Prasad certifies that this petition has been filed on the grounds that Prasad's constitutional rights to access the state's highest court was denied, causing substantial prejudice, when the California Supreme Court struck down his multiple requests to file a slightly late petition, even after he informed the California Supreme Court that he was stuck in an extraordinarily strict and the worst COVID-19 segregation and quarantine in the entire nation in FCI-Lompoc, California in 2020, that had introduced emergency measures that disallowed him and other prisoners to access the law library, legal file and outside counsel. The controlling effect of the lockdown and quarantine which was one of its kind, and Prasad's abrupt end to 13 years of litigation that involved substantial rights issue has been presented in this petition.

Date: May 25, 2021
Place: San Ramon, CA



ABHIJIT PRASAD
Petitioner

Issue has been presented in this petition.

end to 17 years of litigation that involved substantial rights quarantine which was one of its kind, and Prasad's abrupt outside counsel. The controlling effect of the lockdown and other prisoners to access the law library, legal file and introduced emergency measures that disallowed him and nation in 1991-1992, California in 2020, that had worst COVID-19 segregation and quarantining in the entire Court that he was stuck in an extraordinarily strict and the petition, even after he informed the California Supreme struck down his multiple requests to file a slightly late substantial prejudice, when the California Supreme Court to access the state's highest court was denied, causing been filed on the grounds that Prasad's constitutional rights Petitioner Abhijit Prasad certifies that this petition has

Placed: San Ramon, CA
12:05:20 PM MAY 27, 2021