

ORIGINAL

21-5120  
No. \_\_\_\_\_

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Supreme Court, U.S.  
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IN THE

SUPREME COURT OF THE UNITED STATES

KENT TAYLOR — PETITIONER  
(Your Name)

VS.

STEVEN OTERO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KENT TAYLOR  
(Your Name)

P.O. Box 61165  
(Address)

PACO ADO, CALIFORNIA, 94306.  
(City, State, Zip Code)

1(415)573-6636  
(Phone Number)

QUESTION(S) PRESENTED

- 1) IS IT ABUSE OF DISCRETION WHEN ANY COURT MAKES AN ORDER SUSTAINING A DEMURGER WITHOUT LEAVE TO AMEND, THE QUESTION AS TO WHETHER OR NOT SUCH COURT ABUSED ITS DISCRETION IN MAKING SUCH AN ORDER IS OPEN ON APPEAL EVEN THOUGH NO REQUEST TO AMEND SUCH PLEADING WAS MADE,
- 2) CAN ANY PLEADING BE AMENDED ONCE BY THE PARTY OF COURSE, AND WITHOUT COSTS, AT ANY TIME BEFORE THE ANSWER OR DEMURGER IS FILED, OR AFTER DEMURGER AND BEFORE THE TRIAL OF THE ISSUE OF LAW THEREON, BY FILING THE SAME AS AMENDED AND SERVING A COPY ON THE ADVERSE PARTY, AND THE TIME IN WHICH THE ADVERSE PARTY MUST RESPOND THERETO SHALL BE COMPUTED FROM THE DATE OF NOTICE OF THE AMENDMENT,
- 3) DOES A CAUSE OF ACTION FOR ACTUAL FRAUD LAY, IN A ATTORNEY MALPRACTICE CLAIM,
- 4) WOULD A AMENDMENT TO THE COMPLAINT, TO ACTUAL FRAUD, FROM GENERAL NEGLIGENCE BE FROITFUL,
- 5) IS A FINDING OF FACTUAL INNOCENCE, A REQUIRED ELEMENT, FOR THE CAUSE OF ACTION OF ACTUAL FRAUD,

## **LIST OF PARTIES**

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

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

## **RELATED CASES**

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## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

JOHNSON V. CLARK, (1936) 7 CAL. 2d 529, 536, 61 P. 2d 767.  
TRUTA V. AVIS RENT A CAR SYSTEM, INC., (1987) 193 CAL. APP.  
3d 802, 815, 238 CAL. Rptr. 806.

### STATUTES AND RULES

28 U.S.C. 2101(c).

CODE OF CIVIL PROCEDURE, SECTION 472C.

CODE OF CIVIL PROCEDURE, SECTION 472(A).

OTHER THE UNITED STATES CONSTITUTION

THE FOURTEENTH AMENDMENT, TO THE UNITED STATES CONSTITUTION

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

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

**OPINIONS BELOW**

For cases from **federal courts**:

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

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

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

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

For cases from **state courts**:

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

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

The opinion of the STATE, COURT OF APPEALS court appears at Appendix B to the petition and is

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

## JURISDICTION

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

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

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

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

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

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

For cases from **state courts**:

The date on which the highest state court decided my case was NOV 18, 2020.  
A copy of that decision appears at Appendix C.

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

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

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

CONSTITUTIONAL PROVISIONS INVOLVED  
UNITED STATES CONSTITUTION, AMENDMENT 14:

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABREIGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

## STATEMENT OF THE CASE

PLAINTIFF, MR. TAYLOR, FILED A PERSONAL INJURY COMPLAINT APPROX. AUGUST 27, 2019, ALLEGING THE FOLLOWING CAUSES OF ACTION: GENERAL NEGLIGENCE, BREACH OF FIDUCIARY DUTY, AND PROFESSIONAL NEGLIGENCE. THE LAW AND MOTION DEPARTMENT RULED ON MARCH 13, 2020, SUSTAINING THE GENERAL DEMURRER, WITHOUT LEAVE TO AMEND, AS TO THE ENTIRE COMPLAINT.

THE PLAINTIFF FILED A TIMELY NOTICE OF APPEAL ON APPROX. JUNE 10, 2020, DUE TO THE DELAY OF COVID-19, AND THE CLOSURE OF MOST PUBLIC PLACES.

THE APPELLATE DIVISION DID NOT HEAR THE APPEAL; THEREFORE THE APPEAL WAS HEARD BY THE COURT OF APPEALS, WHICH MOVED TO DISMISS THE APPEAL.

AS SUCH, THE PLAINTIFF WHEREAFTER FILED A TIMELY PETITION FOR REVIEW, TO THE CALIFORNIA SUPREME COURT. THE CASE WAS HEARD BY EN BANC COURT, WHERE THE MAJORITY OPINION IN THIS CASE HOLDS, CONSTITUTIONAL PRECEDENT MUST BE OVERRULED, AND THE GENERAL DEMURRER SUSTAINED WITHOUT LEAVE TO AMEND. THE CALIFORNIA SUPREME EN BANC COURT ISSUE ITS OPINION, JUDGMENT OR ORDER, ON APPROX. NOVEMBER 16, 2020.

PLAINTIFF ALLEGES, THE CAUSES OF ACTIONS HAVE NOT BEEN DIMINISHED AS A RESULT OF ANY STATUTE OF LIMITATIONS BAR, AND THE COMPLAINT HAS NEVER BEEN AMENDED AT ANY TIME, TO THE CAUSE OF ACTION, ACTUAL FRAUD, ALSO; THE FACT REMAINS THERE WAS A CONFLICT BETWEEN THE ASSOCIATE JUSTICES, WHICH RESULTED IN A SPLIT DECISION WITHIN THE EN BANC COURT ON A LEGAL ISSUE, AND THE CALIFORNIA SUPREME EN BANC COURT ERROR IN ITS JUDGMENT.

PLAINTIFF FURTHER ALLEGES, THIS CASE PRESENTS QUESTIONS OF EXCEPTIONAL IMPORTANCE;

- 1) IS IT ABUSE OF DISCRETION WHEN ANY COURT MAKES AN ORDER

STATEMENT OF THE CASE

CONTINUED:

SUSTAINING A DEMURRER WITHOUT LEAVE TO AMEND, THE QUESTION AS TO WHETHER OR NOT SUCH COURT ABUSED ITS DISCRETION IN MAKING SUCH AN ORDER IS OPEN ON APPEAL EVEN THOUGH NO REQUEST TO AMEND SUCH PLEADING WAS MADE,

2) CAN ANY PLEADING BE AMENDED ONCE BY THE PARTY OF COURSE, AND WITHOUT COSTS, AT ANY TIME BEFORE THE ANSWER OR DEMURRER IS FILED, OR AFTER DEMURRER AND BEFORE THE TRIAL OF THE ISSUE OF LAW THEREON, BY FILING THE SAME AS AMENDED AND SERVING A COPY ON THE ADVERSE PARTY, AND THE TIME IN WHICH THE ADVERSE PARTY MUST RESPOND THERETO SHALL BE COMPUTED FROM THE DATE OF NOTICE OF THE AMENDMENT,

9(A).

## REASONS FOR GRANTING THE PETITION

IN COMPLIANCE WITH, THE UNITED STATES SUPREME COURT, RULES OF COURT, RULE 10. CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI,  
IN PERTINENT PART, STATES -

(c) A STATE COURT, OR A UNITED STATES, COURT OF APPEALS, HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW, THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT, OR HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

THIS COURT SHOULD RESOLVE THE CONFLICT BETWEEN, THE UNITED STATES, COURT OF APPEALS, FOR THE NINTH CIRCUIT, AND THE CALIFORNIA SUPREME COURT, A STATE COURT, TO CLARIFY THE IMPORTANT QUESTION OF FEDERAL LAW.

IN CONCLUSION, PETITIONER ALLEGES HIS ACTUAL INNOCENCE OF THE UNDERLYING CRIMINAL CHARGE DURING THE ARR AMENT, AND AT THIS TIME IS SEEKING HABEAS CORPUS RELIEF, WHICH IS PENDING IN THE UNITED STATES, COURT OF APPEALS, FOR THE NINTH CIRCUIT, UNDER CASE NUMBERS.

NO. 21-15231, D.C. NO 3:20-CV-06319-VG.

SEE: ATTACHMENT NOTICE OF APPEAL

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Dwyer", is written over a horizontal line.

Date: February 15, 2021