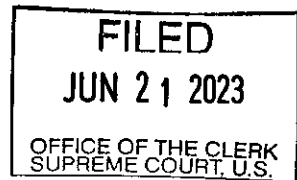


22-1250

ORIGINAL

No.



In the

Supreme Court of the United States

Michael Donatelli and Peter Chien,
Petitioners

versus

Scott E. Jarrett, Christopher Greenwood, Steven
Broy, Dana M. Kelley, Rod Belanger, Town of Old
Orchard Beach,
Respondents

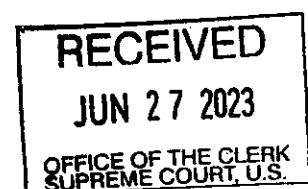
On Petition for Writ of Certiorari
to the Maine Supreme Judicial Court

PETITION FOR WRIT OF CERTIORARI

Michael Donatelli &
Peter Chien

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Question Presented for Review

Does the filing of an entry of appearance within 21 days of opening the mail containing a court order missing a triggering date for the 21 day deadline to file an entry of appearance still constitute compliance with that order?

The question of whether a court order without a triggering date for a deadline for compliance violates the due process clause of the Fourteenth Amendment is one of federal law. The issue is important because it affects the enforceability of court orders and the rights of parties to know when a court order will take effect.

The United States Supreme Court has jurisdiction to review this question because it is a question of federal law. The Court has previously held that the due process clause applies to state court proceedings, and the issue of whether a court order without a triggering date violates the due process clause is one that has not been definitively resolved by the Court.

For these reasons, the United States Supreme Court should grant certiorari to review the question of whether a court order lacking a triggering date violates the due process clause.

List of Parties to Proceeding

1. Plaintiffs:
Michael Donatelli
Peter Chien
2. Defendants:
Scott E. Jarrett
Christopher Greenwood
Steven Broy
Dana M. Kelley
Rod Belanger
Town of Old Orchard Beach

Corporate Disclosure Statement

1. The Plaintiffs-Petitioners have no relationships to institutions involved in this petition.
2. Scott E. Jarrett, Christopher Greenwood, Steven Broy, and Dana M. Kelley are or have been employees of the Police Department of Defendant Town of Old Orchard Beach, a municipal corporation. Rod Belanger was an employee of the Code Enforcement Department of the Town of Old Orchard Beach.

List of Related Proceedings

Michael Donatelli and Peter Chien vs. Scott E. Jarrett, Christopher Greenwood, Steven Broy, Dana M. Kelley, Rod Belanger, and the Town of Old Orchard Beach, CV-19-115 (York County Superior Court, Alfred, ME), final judgment entered June 18, 2021.

Michael Donatelli and Peter Chien vs. Scott E. Jarrett, Christopher Greenwood, Steven Broy, Dana M. Kelley, Rod Belanger, and the Town of Old Orchard Beach, Yor-22-259 (Maine Judicial Supreme Court, Portland, ME), decision March 2, 2023, motion for reconsideration denied March 23, 2023.

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Citations of Opinions

1. Supreme Court of the United States; Case No. 17–459 (*Pereira v. Sessions*)

Statement of the Basis for the Jurisdiction

The Judgment of the Maine Judicial Supreme Court was entered on March 2, 2023. A motion for reconsideration was denied on March 23, 2023. A writ of certiorari postmarked by June 21, 2023 is considered timely filed. This Court's jurisdiction rests on 28 U.S. Code § 1257, and it is a question of federal law, as the state supreme court issued a decision to affirm a trial court's judgment in apparent violation of the due process clause of the Fourteenth Amendment.

Constitutional Provisions and Statutes

Constitutional Provisions

US Constitution 14th Amendment..Pages 1, 7, 10, 11

Statutes

28 USC App Fed R Civ P Rule 6.....Page 8

28 USC App Fed R App P Rule 26.....Page 8

STATEMENT OF THE CASE

Regarding case CV-19-115 in York County Superior Court of the State of Maine (the Trial Court), former Plaintiffs-Petitioners' attorney Stanley Tupper III's family member fell ill, which led Attorney Tupper to close his law practice in order to spend more time with his family member. Thus Attorney Tupper filed a motion to withdraw as Plaintiffs' counsel on October 22, 2020. On October 26, 2020, the Defendants-Respondents' attorney John Wall filed an unopposed Motion and Proposed Order to Toll Scheduling Order deadlines while Plaintiffs retain new counsel (**Appendix E**). No deadline was specified for the Plaintiffs in the Proposed Order that was filed. However, when the Trial Court granted this motion on October 31, 2020, it amended the Proposed Order with a handwritten note by Justice Douglas specifying a deadline for the Plaintiffs to find a replacement attorney (**Appendix F**), but it never sent a copy of this amendment to the Plaintiffs' exiting attorney. Prior Attorney Tupper has affirmed he never received notice of the court-amended Order to Toll Scheduling Order to include a deadline (**Appendix G**). The handwritten amendment by Justice Douglas of the Proposed Order specifying a deadline constitutes a sua sponte order unknown to all parties at the time, but this amendment itself was also never explicitly entered into the docket. A deadline amendment to find a replacement attorney would have been opposed by the Plaintiffs because the order was issued during the COVID-19 pandemic when many law firms had limited their practice to take on new clients. Furthermore, this Motion (now modified by the Trial

Court to specify a deadline without the Plaintiffs' knowledge and consent) was entered into the docket first on November 4, 2020, before the withdrawal of exiting Attorney Tupper was entered into the Docket later on the same day, but as mentioned before, the Trial Court failed to notify the Plaintiffs' exiting attorney of this important development that a deadline is now imposed by the Trial Court for the Plaintiffs to find a replacement attorney.

The Plaintiffs by this time had sheltered in place in Massachusetts to minimize exposure to COVID-19 at the height of the pandemic, before any vaccines for it were available even for FDA Emergency Use Authorization. The York County Superior Court courthouse itself even experienced a COVID-19 outbreak and had to shut down on January 12, 2021. Apparently the Trial Court had mailed the Motion to Toll Scheduling Order Deadline with a court-amending deadline to find a replacement attorney, but to the old service address in Maine. The Trial Court then also mailed its May 27, 2021 order to the old service address instructing the Plaintiffs that if they do not find a replacement attorney or enter a pro se appearance in 21 days, then the case would be dismissed. This May 27, 2021 order did not specify a triggering date for the 21 day deadline (**Appendix C**). The Plaintiffs noted that COVID-19 cases were decreasing with summer and with the rollout of the vaccines, and they themselves being fully vaccinated by April 2021, by happenstance returned to Maine and picked up the mail at the old service address on June 1, 2021. Before this day, the Plaintiffs had not been aware of a court-added deadline to the previously filed unopposed Motion and Proposed

Order to Toll Scheduling Order Deadlines While Plaintiffs Retain New Counsel, which never had a deadline when it was originally filed. As the originally filed unopposed Motion and Proposed Order to Toll Scheduling Order Deadlines did not include a deadline for Plaintiffs to retain new counsel, there had also been no reason for the Plaintiffs to believe the Trial Court would amend the Proposed Order behind the Plaintiffs' backs.

As the May 27, 2021 order did not specify a triggering date to start the 21 day deadline to find a replacement attorney or enter a pro se appearance, the Plaintiffs believed they were entitled to take the triggering date to be June 1, 2021, the day when they picked up the mail and opened the envelope that contained the May 27, 2021 order.

The Plaintiffs attempted to reach out to numerous attorneys to retain new counsel. However, given the backlog of cases due to the COVID-19 pandemic, and taking on new cases regarding COVID-19 related employment issues, all the law firms approached by the Plaintiffs were not available to be retained, and furthermore, many law firms simply did not have time to review the case and perform conflict of interest background checks within the 21 day deadline even from a triggering date of June 1, 2021. Having exhausted their attempts to find a replacement counsel, the Plaintiffs did file an entry of pro se appearance, amongst other filings, on June 22, 2021 (including Plaintiffs' Motion to Seal Identifying Information to limit home address disclosure in publicly accessible records as court documents, and Plaintiffs' Motion to Reconsider for

Enlargement of Time). The Plaintiffs' filing the entry of pro se appearance on June 22, 2021 would be considered timely for the 21 day limit imposed by the Trial Court if the triggering date of notice for its May 27, 2021 order is taken as of June 1, 2021. But a review of the Docket Record reveals that the Trial Court never entered this formal filing of pro se appearance. A Plaintiffs' Motion to Reconsider for Enlargement of Time was also filed on June 22, 2021, (which effectively constitutes an entry of appearance even if the Trial Court failed to enter into the docket the formal entry of appearance filed by the Plaintiffs) asking the Trial Court to modify the notice for its May 27, 2021 order to be effective as of June 1, 2021, but this was denied as well, and a final judgment dismissing the case on June 17, 2021 was upheld. The Plaintiffs then filed a motion for relief from judgment, but the Trial Court denied the motion. In its July 25, 2022 Order (**Appendix D**), the Trial Court states, "The Plaintiffs received the Court's May 27th order, at the latest, on June 1st and had ample time to comply with it but did not.... Here, Plaintiffs admit to being in possession of the Court's May 27th Order on June 1st and still let the deadline to enter appearances pass and have not made any attempt to justify their failure to comply except to blame the court."

After some misfilings of the grounds for appeal by the Plaintiffs, the Plaintiffs as petitioners then successfully filed an appeal of the case before the Maine Judicial Supreme Court, sitting as the Law Court. In the Appellants' Brief, one of the arguments by the Appellants-Petitioners is that the May 27, 2021 order never specified a trigger date to

commence the 21 day deadline to find a replacement attorney or file a pro se entry of appearance, and thus they took June 1, 2021 to be the triggering date, but even though they were unsuccessful in finding a replacing attorney on such short notice, they still managed to file an entry of pro se appearance on June 22, 2021, fulfilling the 21 day deadline if the June 1, 2021 were taken as the triggering date. The Appellees in their brief misrepresented to the court that the “the Plaintiff had twenty-one days from the date of the order to obey,” even while the order itself lacked specifying a triggering date, acknowledging omission of reference to the date of the order itself (Appellants’ Brief page 24). The Appellees further argue in a footnote that “since the order does not mention any other event as the trigger for compliance, the plain and natural reading of the Superior Court’s language is that the order itself is the trigger.” The Appellees’ expectation is that the Appellants should have inferred the triggering date of the order since none was specified. The Maine Judicial Supreme Court issued a memorandum of decision on March 2, 2023 (**Appendix B**) affirming the Trial Court’s judgment but without legal analysis, stating “Chien and Donatelli make numerous arguments on appeal, most of which are based on a misapprehension of the Maine Rules of Civil Procedure. We find no merit in their arguments. The trial court properly exercised its considerable discretion in denying their motions for relief from judgment where Chien and Donatelli failed to demonstrate that their failure to monitor their case and comply with court orders was the result of excusable neglect.” The Appellants filed a

motion for reconsideration with the Maine Judicial Supreme Court, again, pointing out *inter alia* that even the Trial Court, in denying the Plaintiff's motion for reconsideration, had proffered in its July 25, 2022 order, a triggering date of June 1, 2021 for the 21 day deadline of its May 27, 2021 order. And ultimately, the May 27, 2021 still lacked a specified triggering date. The Maine Judicial Supreme Court denied the Appellant's motion for reconsideration (**Appendix A**), rejecting the argument to vacate the Trial Court's order even though it failed to specify a triggering date for the deadline in its May 27, 2021 order. Enforcing the validity of this order that lacked a triggering date for a deadline to comply constitutes a violation of the due process clause of the Fourteenth Amendment.

REASONS FOR GRANTING THE WRIT

The Maine Judicial Supreme Court's decision was based on a misapprehension of the law. The May 27, 2021 order from the Trial Court did not specify a triggering date for the 21-day deadline to find a replacement attorney or file a pro se entry of appearance. The Maine Rule of Civil Procedure Rule 6 (a), governing the Trial Court's court orders, describes "day of the act, event, or default" upon which to compute a designated period of time to begin, but the Trial Court failed to define this "day of the act, event, or default" in its court order. The order is defective on its face. The Maine Judicial Supreme Court's decision to uphold the Trial Court's order was therefore erroneous. The Federal Rule of Civil Procedure 6(a) bear similar language, and the Federal Rule of Appellate Procedure Rule 26(a)(1)(A) also describes the "day of the event" that was undefined by the Trial Court.

The Maine Judicial Supreme Court's decision was unfair to the plaintiffs. The plaintiffs were unaware of the deadline until they picked up their mail containing the order on June 1, 2021. They were unable to find a replacement attorney on such short notice, but they filed an entry of pro se appearance on June 22, 2021, which was still within the 21-day deadline if the June 1, 2021 were the triggering date.

The Maine Judicial Supreme Court's decision is likely to have a significant impact on other cases. The decision could be interpreted to mean that courts can impose deadlines without specifying a triggering

date, which would make it difficult for parties to comply with court orders.

In *Pereira v. Sessions*, 138 S. Ct. 2105, 201 L. Ed. 2d 433 (2018), the United States Supreme Court previously ruled that a notice to appear that omitted the "time or place of the removal proceedings" failed to comply with the requirements of § 239 and was insufficient to trigger the so-called "stop-time rule" of INA § 240A(d). The notice to appear was defective in that it lacked specificity for a time or place and thus could not trigger the stop-time rule. In this instant case, the Trial Court's order to comply with a deadline to file an entry of appearance lacked a time specificity as well, the triggering date upon which to start the 21-day deadline. But when the Trial Court dismissed the case for lack of compliance with the defective order, the Maine Judicial Supreme Court still affirmed it.

Pereira v. Sessions, 138 S. Ct. 2105, 2110 (2018)

("The narrow question in this case lies at the intersection of those statutory provisions. If the Government serves a noncitizen with a document that is labeled "notice to appear," but the document fails to specify either the time or place of the removal proceedings, does it trigger the stop-time rule? The answer is as obvious as it seems: No. A notice that does not inform a noncitizen when and where to appear for removal proceedings is not a "notice to appear under section 1229(a)" and therefore does not trigger the stop-time rule. The plain text, the statutory

context, and common sense all lead inescapably and unambiguously to that conclusion.”)

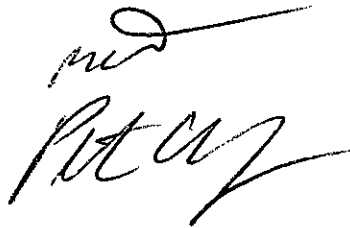
The due process clause of the Fourteenth Amendment requires a state government to provide fair notice and a meaningful opportunity to be heard before depriving a person of life, liberty, or property. A court order without a triggering date does not provide fair notice because it is unclear when the order will take effect. This could lead to confusion and uncertainty about when the order will take effect, and could deprive a person of their right to a meaningful opportunity to be heard before the order is enforced.

For these reasons, the United States Supreme Court should grant certiorari to review the decision of the Maine Judicial Supreme Court.

CONCLUSION

The Maine Supreme Judicial Court affirmed a lower court's order that appears to violate the due process clause of the Fourteenth Amendment of the United States Constitution, and also conflicts with the opinion of this Court in *Pereira v. Sessions* that outlines the principle of a valid order to stand alone on instructions based on time. For these reasons to review, the Court should thus grant this petition for a writ of certiorari.

Respectfully submitted,

The block contains two handwritten signatures in black ink. The first signature is a cursive 'MD' for Michael Donatelli. The second signature is a cursive 'PChien' for Peter Chien.

Michael Donatelli and Peter Chien
Petitioners, Pro Se
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Dated: June 18, 2023