No. 22-1250

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

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REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Michael Donatelli &
Peter Chien

Pro Se

10 Dwight St, Unit 3
Boston, MA 02118
(646) 321-5294

Questions Presented for Review

1. Whether a mis-citation to a different clause of the 14th Amendment of the Unites States Constitution while discussion on due process in the state appeal is still considered proper reach on the issue of due process.

2. Whether the issue on due process was properly addressed by the Maine Supreme Judicial Court when it has effectively remained silent on the issue, and whether by issuing a generic decision could this be interpreted as a good faith effort by the state supreme court to address the issue of due process, despite a specific plea from the Appellants, also denied, for an explicit explanation on its decision on the issue.

3. Whether U.S. citizens should enjoy the right to have clear instructions in court orders denoting a a time or place by the due process clause of the 14th Amendment analogous to the right of non-citizens in having such clear instructions in their notices to appear in immigration proceedings.

4. Whether "post-deprivation remedy" by the Maine Supreme Judicial Court was even reached when a Justice who was promoted to and sits on that court was also the judge who issued a problematic order in Superior Court contended by the Petitioners.

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NOTICE OF ERRATA

In the Statement of the Case of the Petition, page 6, written "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)," there is an incorrect reference to the Appellants' Brief. It is actually a reference to the Appellees' Reply Brief page 24 as well as to the footnote of that page.

INTRODUCTION

Petitioners Michael Donatelli and Peter Chien respectfully request the Court to grant this Petition for Writ of Certiori. The Petitioners have raised the federal question of due process, identified in this Petition, and the courts below did decide on it. Therefore, the Court possesses jurisdiction to review the Law Court's decision. Furthermore, the Petitioners have reached the issue of due process violation worthy of review by this Court, meriting the granting of the Petition.

ADDITIONAL STATEMENT OF THE CASE

The Superior Court acknowledges that the Petitioners received the May 27th Order at the latest on June 1, 2021, being in possession of it as of June 1, 2021, but made an incorrect assertion that they have let the deadline to their appearances pass (App. D, Pet. at 18-19), contrary to the Superior Court's Docket Record (Law Court Appendix at 6-7) showing an appearance on June 22, 2021 (which is still within 21 days if, as suggested by the Superior Court, June 1, 2021 is taken as the triggering date).

The Petitioners preserved this issue in its Second Appeal to the Law Court, referring specifically to due process in their Law Court brief, with extensive discussion on why "due process was affected" (*Chien et al. v. Jarrett et al.*, Maine Law Docket No. Yor-22-259, Appellants' Blue Brief at 24 ("Blue Brief at ___"), described in detail as Argument 4 (Blue Brief at 24-26). The Petitioners then clarified and amplified this issue in their Reply Brief in *Chien et al. v. Jarrett et al.*, Maine Law Docket No. Yor-22-259, Appellants' Gray Brief at 12-13 ("Gray Brief at ___"), about the lack of a triggering date for the 21-day deadline, and in particular cited the Fourteenth Amendment of the United States Constitution, (Gray Brief 12-13, Table of Authorities of Gray Brief at 2). However, the Petitioners mistakenly omitted the specific Due Process clause reference in its citation of the Fourteenth Amendment, but this is excusable as argued below.

The Law Court issued only a memorandum of decision for this case (Appendix H), and a

Petitioners' motion to reconsider with a motion for clarification on the legal principles and legal authorities in support of that decision was subsequently denied by the Law Court. The Petitioners bring attention to the U.S. Supreme Court that Justice Wayne Douglas, who issued a problematic order in Superior Court, subsequently joined the Law Court, raising questions about potential influence on the original panel's decision. The Petitioners filed their Notice of Appeal on August 11, 2022 (Law Court Appendix at 9), and Governor Mills swore in Justice Wayne Douglas to the state's Supreme Judicial Court on March 10, 2023 (Appendix I). The Law Court decided on the case on March 2, 2023 (App. B, Pet. at 13-14), but then the Law Court also denied the Petitioners' Motion for Reconsideration on March 23, 2023, stating that the original panel decided on the motion (App A, Pet. at 12). No recusal by Justice Wayne was filed.

REBUTTAL TO RESPONDENTS' REASONS FOR DENIAL OF THE WRIT

I. This Court has jurisdiction to review the Maine Supreme Judicial Court's Decision, as the Petitioners preserved and raised the federal question of due process. The Petitioners complied with the 21-day deadline, and the Law Court had the opportunity to review federal constitutional issues but rendered its decision adverse to the

Petitioners. The Respondents' arguments are rendered moot.

As described in the Additional Statement of the Case, the Petitioners point out their compliance with the 21-day deadline of the May 27th Order of the Superior Court when they entered their appearance on June 22, 2021, but the Superior Court did not believe so even as it suggested that June 1, 2021 could be taken as the triggering date (App. D, Pet. at 18-19). Upon appeal, the Petitioners preserved the issue of violation of due process of the Fourteenth Amendment of the U.S. Constitution, in the Law Court (Blue Brief at 24-26, Gray Brief at 2, 12-13). The Petitioners acknowledge a technical error in citing the Equal Protection Clause in its Gray Brief but by the context of their arguments in the briefs, they clearly refer to the principle of the Due Process Clause. The Respondents might then argue (they did not) that citing the wrong clause in a federal legal authority is a justifiable basis for the Law Court to render its decision, but this would be prohibited per Maine's Statute, 4 M.R.S. §57: "When the issues of law presented in any case before the Law Court can be clearly understood, they must be decided, and a case may not be dismissed by the Law Court for technical errors in pleading alone or for want of proper procedure if the record of the case presents the merits of the controversy between the parties." Unfortunately since the Law Court issued a generic memorandum decision without specific analysis on the legal principles and legal authorities (Appendix H), and rejected the Petitioners' motion for an explanation, we simply do not know whether the Law Court have reviewed any federal constitutional

issues, in particular the Fourteenth Amendment. But since per 4 M.R.S. §57 the Law Court was expected to review the merits of the controversy where the issues of law can be clearly understood, and having not required the Appellants to correct the legal mis-citation, it should be assumed by this Court that the Law Court had in fact had the *opportunity* to review federal constitutional issues and still rendered its erroneous decision adverse to the Petitioners. To deprive the Petitioners of the opportunity to be heard by not adhering to its own state statute on excusing technical errors in pleading would be a further violation of due process by Maine courts upon the Petitioners. For the above reasons, this Court should find the Respondents' arguments (Orange Brief at 6-11) moot.

II. The Maine Judicial Supreme Court was negligent in disposing of the issues raised by the Petitioners, including a docketing error, and the Law Court failed to demonstrate that they reviewed this contention with any particularity. This Court should review the Law Court's apparent capriciousness in adhering to its state statute 4 M.R.S. §57.

The Appellants brought attention to both the Superior Court and the Law Court that they filed a formal entry of appearance on June 22, 2021 but a docketing error omitted this from the record (Blue Brief at 7, 15, 26, Gray Brief at 7, 17-21, Law Court Appendix at 6-7, 42). This error brought before the Law Court's attention, per 4 M.R.S. §57, provided it the opportunity to correct the record, but its memorandum decision did not discuss any particular

review on it. Without any particular explanation by the Law Court on its decisions about this case despite pleading for one by the Petitioners, it would be impossible for anyone to ascertain whether the Law Court had overlooked anything nor establish opportunities it took to review federal constitutional issues, even though the Appellants identified a docketing omission and a Superior Court judgment was based on that omission (App. D, Pet. at 18-19). In essence, it is unclear if the Superior Court had taken June 1, 2021 as the triggering date of its May 27th order or decided that May 27, 2021 should be the triggering date, and the Law Court by record, passed on the opportunity in making a particular review of that question. The U.S. Supreme Court, if not granting this Petition for a Writ of Certiorari, should at least consider summary disposition of the issue to remand to the Law Court that it needs to determine explicitly what the triggering date was, to explain how it arrived at its definition of the triggering date, and to review in particularity whether due process would be violated. Absent these explanations, this Court has the authority to review the Law Court's apparent capriciousness in adhering to its own state statute 4 M.R.S. §57, an act of repugnance to the U.S. Constitution, its Fourteenth Amendment in particular.

III. The Respondents' arguments misrepresent this Court's Opinions. The Respondents' claim that the Petitioners failed to develop their due process argument is also contradicted by the record.

In an attempt to diminish this Court's jurisdiction over the present case, the Respondents grossly misrepresent this Court's majority opinion in citing *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g*, 467 U.S. 138, 151 (1984). The Respondents claim that decision dictates "this Court had no authority to revise a state supreme court's interpretation of its state's jurisdictional law," but the Respondents fail to appreciate that the Court opinion reviewed two competing governments' jurisdiction, the State of North Dakota and an Indian Tribe. The Petitioners in this instant case do not live under a tribal government's jurisdiction but rather are American-born U.S. citizens and thus have constitutional rights under only one citizenship. Accordingly, the cited legal authority is inapplicable to this case. Additionally, in the cited legal authority, this Court still vacated the "court's judgment and remand the case to allow reconsideration of the jurisdictional questions in the light of what we feel is the proper meaning of the federal statute." Furthermore, tribal states hold special dynamic relationships to state and federal governments, and jurisdiction fluctuates depending on Tribal Codes and laws passed by Congress. In fact, in the cited legal authority, at the time no Tribal Code existed for jurisdiction over the plaintiff's claim but subsequently the Tribal Code was amended to empower the Tribe's court to have jurisdiction. This Court's opinion additionally reviewed how "erratic" was the course of federal and state law governing North Dakota's jurisdiction over the State's Indian reservations. Furthermore, since an Indian could be subject to Tribal government

jurisdiction, the Court in its opinion stated "In Yakima Indian Nation the Court held that the unique legal status of Indian tribes under federal law permitted the Federal Government to single out tribal Indians in ways that otherwise might be unconstitutional, and that the state jurisdictional statute at issue there was insulated from strict scrutiny under the Equal Protection Clause because it was enacted under the authority of Pub.L. 280. 439 U.S., at 499-502." This Court also argued that the North Dakota Supreme Court's jurisdictional ruling to stand, but only in the context of evaluating jurisdiction and disclaimers by a government of a Tribe of which the plaintiff is a member. This Court's opinion also states "If the state court has proceeded on an incorrect perception of federal law, it has been this Court's practice to vacate the judgment of the state court and remand the case so that the court may reconsider the state-law question free of misapprehensions about the scope of federal law." The Respondents have grossly misrepresented the opinion of this Court in the aforementioned case. Contrary to the Respondents' claim that "this Court had no authority to revise a state supreme court's interpretation of its state's jurisdictional law," this Court expressly stated in its Opinion "It is important to recognize what ***we have not decided in this case today***. We have made no ruling that Chapter 27-19 has any meaning other than the one assigned to it by the North Dakota Supreme Court. ***Neither have we decided whether, assuming that the North Dakota Supreme Court adheres to its current interpretation of Chapter 27-19, application of the statute to petitioner will deny***

petitioner federal equal protection or violate any other federally protected right. Finally, we have intimated no view concerning the state trial court's jurisdiction over respondent's counterclaim should the North Dakota Supreme Court decide that the trial court does have jurisdiction over petitioner's claim. Instead, we merely vacate the North Dakota Supreme Court's judgment and remand the case for further proceedings not inconsistent with this opinion [emphases added]."

The Respondents also misrepresent the conclusion of the Court's opinion in *Wardius v. Oregon*, 412 U.S. 470 (1973). The Respondents claim that the *Wardius* Opinion asserts that "state courts are the final arbiters of their state's own law." On the contrary the Court's opinion states "We hold that the Due Process Clause of the Fourteenth Amendment forbids enforcement of alibi rules unless reciprocal discovery rights are given to criminal defendants. Since the Oregon statute did not provide for reciprocal discovery, it was error for the court below to enforce it against petitioner, and his conviction must be reversed." Oregon failed to provide information in its notice of alibi to the petitioner that he had reciprocal discovery rights. The Court states that "But we do hold that in the absence of a strong showing of state interests to the contrary, discovery must be a two-way street. The State may not insist that trials be run as a "search for truth" so far as defense witnesses are concerned, while maintaining "poker game" secrecy for its own witnesses. It is fundamentally ***unfair*** to require a defendant to divulge the details of his own case while

at the same time subjecting him to the hazard of surprise concerning refutation of the very pieces of evidence which he disclosed to the State.... ***Instead, respondent has chosen to rest its case on a procedural point.... The State says, in effect, that petitioner should not be permitted to litigate the reciprocity issue in the abstract in federal court after bypassing an opportunity to contest the issue concretely before the state judiciary***.[emphases added]." Finally, we find the Respondents and their Counsel did not even read the the *Wardius* Opinion, having taken its wording out of context. Here is a more candid citation of the *Wardius* Opinion: "It is, of course, true that the Oregon courts are the final arbiters of the State's own law, and ***we cannot predict what the state court might have done had it been faced with a defendant who had given the required notice of alibi and then sought reciprocal discovery rights. But it is this very lack of predictability which ultimately defeats the State's argument. At the time petitioner was forced to decide whether or not to reveal his alibi defense to the prosecution, he had to deal with the statute as written with no way of knowing how it might subsequently be interpreted*** [emphasis added]." Given the misrepresentation by the Respondents on the *Wardius* ruling, the Petitioners need to point out the obvious to the Respondents, that the *Wardius* Opinion reversed Oregon's courts' decision and remanded it. It did not go unnoticed that the *Wardius* opinion in fact supports the Petitioners' claim, that the Superior Court's May 27th order is defective on its face, missing essential elements to

achieve clear compliance with the order. Per the legal authority cited by the Respondents, this Court should actually reverse Maine's courts' decisions and remand the case. The Petitioners believe this Court wrote "It is, of course, true that the Oregon courts are the final arbiters of the State's own law," as an apophasis, a rhetorical irony intended to assert its duty as the United States Supreme Court to overturn state laws and rulings under proper circumstances. If that were not the case, then the Petitioners, the Respondents themselves, and all citizens of the United States could not enjoy this Court's decisions on *Loving v. Virginia* or *Brown v. Board of Education* on the Respondents' notion that "state courts are the final arbiters of their state's own law."

The Respondents claim that the Petitioners failed to develop their due process argument and to state a viable procedural due process claim (Orange Brief at 12-14), contrary to the record as rebutted by the Petitioners in Arguments I and II of this Reply, and thus this Court should reject the Respondents' arguments (Orange Brief at 12-14).

IV. *Pereira v. Sessions* reached the issue of due process principles for noncitizens, and the Petitioners seek analogous due process rights for U.S. citizens receiving court notices with instructions. The Respondents' arguments are refuted.

The Respondents claim that this Court's decision in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), has no bearing on this case, since it "did not involve a due

process claim, nor did it resolve any broad questions as to requirements for notice under the Due Process Clause." The Petitioners note that the Court's Opinion in *Pereira v. Sessions* did not use the words "Due Process." The Petitioners understand that perhaps the Court did not want to reach the issue of Due Process because the petitioner in *Pereira v. Sessions* was not a U.S. citizen, even though non-citizens as persons in the U.S. do enjoy rights under the Fourteenth Amendment as affirmed by this Court's opinion in *Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382 (1982). The Petitioners rely on context of *Pereira v. Sessions*, to support the notion of procedural due process — that is to say, the person must be given notice and an opportunity to be heard, as defined by this Court in *Armstrong v. Manzo*, 380 U.S. 545 (1965).

The issue before the Court in *Pereira v. Sessions* reflects contextually the right of due process provided by giving proper notice of an order that should stand on its own, without the burdens of further research or assumptions made by the noticed party to determine the intended meaning of the court order. As described in this Court's opinion, "If the three words "notice to appear" mean anything in this context, they must mean that, at a minimum, the Government has to provide noncitizens "notice" of the information, i.e., the "time" and "place," that would enable them "to appear" at the removal hearing in the first place. Conveying such time-and-place information to a noncitizen is an essential function of a notice to appear, for without it, the Government cannot reasonably expect the noncitizen to appear for his removal proceedings." The

Petitioners maintain that such a standard for notices should also be afforded to U.S. citizens for court orders. The notice in the instant case, the May 27th Order, failed to provide any date that it becomes effective, that is to say, to take effect, despite service of said order on June 1, 2021. The Superior Court should have concluded at the very least that the notice to the Appellants was deficient, in order for the notice by itself to be reasonably understood and followed for instructions. The issue is not one that can be resolved by Maine courts under Maine law when the notice involves federal Constitutional rights for U.S. citizens, and the U.S. Supreme Court must intervene to resolve this issue of compelling public interest.

The Respondents' claim that the May 27th Order is not equivalent to a "Notice to Appear" in *Pereira v. Sessions* is valid, but it does not invalidate the Petitioners' due process argument. The "Notice to Appear" in *Pereira v. Sessions* has a particular meaning in the context of the Immigration and Nationality Act, as interpreted by the Court. However, in the present case, the May 27th Order functions as a court order with instructions, similar to a summons or a directive for action, for which clarity and specificity are essential. The Court should recognize that due process principles apply to any court notice that carries a directive for action, and failure to provide clarity and specificity can deprive the notice recipients of their right to due process.

V. A defective post-deprivation remedy was provided due to a conflict of interest where the

Justice issuing a problematic order later joined the Law Court without recusal. Given this conflict of interest, the Respondents wrongly claim an adequate remedy was offered through the Maine Supreme Judicial Court sitting as the Law Court.

Justice Wayne, who issued a problematic sua sponte order contested by the Petitioners (Blue Brief at 2, 5, 11-12,16-20, Gray Brief at 3-4,9-11, Law Court Appendix at 6), was already an associate Justice of the Maine Supreme Judicial Court when the Law Court denied the motion for reconsideration (see Additional Statement of the Case and Appendix H). The Law Court stated that the original panel decided on the motion, yet no information was given on whether Justice Douglas participated in the deliberations or influenced the panel, and no recusal was filed for a justice for "withdrawal of a judge from ***any*** involvement in a case" per Me. R. Civ. P. 63. Furthermore Justice Douglas lives in the Town of Old Orchard Beach (Appendix I), and the Town is a Respondent in this Petition as well as a named Defendant in the court of original instance. These multiple perceived conflicts of interest violate the state's own code of judicial conduct, Me. Code. Jud. Cond. 2.11, if recusal rules of civil procedure are not followed. The Petitioners bring this issue before the Court now because they had exhausted their appellate actions in the state's highest court and the Respondents now in its Opposition Brief declare that the state's highest court adequately provided a post-deprivation remedy. The Petitioners note these unusual circumstances probably have no pertinent common law addressing this gross conflict of interest

in the guise of "adequate post-deprivation remedy" that the Petitioners must now bring to this Court's attention. The Petitioners beseech this Court to opine that the circumstances of this case do not rise to the level of "adequate post-deprivation remedy" as claimed by the Respondents.

CONCLUSION

For the foregoing reasons, the Petitioners respectfully request that the U.S. Supreme Court grant the Petition for a Writ of Certiorari and address the issues raised therein, particularly the due process violation. The Petitioners believe that their case presents important constitutional questions and merits the attention of this Court to protect the rights of U.S. citizens and ensure proper compliance with due process principles in state court proceedings.

Respectfully submitted,

Michael Donatelli and Peter Chien
Petitioners, Pro Se
10 Dwight St, Unit 3
Boston, MA 02118

Dated:August 6, 2023

APPENDIX

APPENDIX H (E-mail response from Clerk of the Law Court to Petitioners' question on Motion for Clarification and to Reconsider YOR-22-259)

Matt Pollack <lawcourt.clerk@courts.maine.gov>
Mon, Apr 3, 2023 at 11:35 AM Reply-To: Matt Pollack <lawcourt.clerk@courts.maine.gov>
To: lazygullcottages@gmail.com

Drs. Chien & Donatelli:

The type of decision that the Court issued in your case, a "memorandum of decision," is issued in about two- thirds of appeals. See our website listing of recent memoranda of decisions, and compare that to the published opinions issued so far this year. The opinions that "have detailed explanations reviewing legal principles and legal authorities" are the published decisions.

For an explanation of the different types of decisions and when they are used, see Donald G. Alexander, Maine Appellate Practice, § 12.1(c)(2) (Tower, 6th ed. 2022). The Maine State Law and Legislative Reference Library can provide you with a copy of that section.

A motion to reconsider is the only motion that the rules provide for regarding the content of an issued decision. See M.R. App. P. 14(b). Any request for a change in, or addition to, the text or result of a decision is a motion to

reconsider and is fully considered by the Court as such.
Other than what I have said here, I cannot answer your questions or comment on your assertions. Matt

--
Matthew Pollack
Executive Clerk of the Supreme Judicial Court Clerk of the Law Court
Reporter of Decisions
Maine Supreme Judicial Court
205 Newbury St Rm 139
Portland ME 04101
(207) 822-4146

On Mon, Apr 3 at 8:01 AM , oldorchardroadcottages oldorchardbeachmaine <lazygullcottages@gmail.com> wrote:
Hi Mr. Pollack,

Just wondering if we are not owed any explanation at all? Has the Law Court ever reviewed other motions other than motions for reconsideration? The case is about our civil rights being violated, equitable relief was sought, and our motion for reconsideration did point out particularities that have not been responded to specifically. Per the M.R.S. Title 4, Section 57, it mentions that a case may not be dismissed for technical errors in pleading alone or for want of proper procedure if the record of the case presents the merits of the controversy between the parties. If the court deems our arguments all completely meritless (it said most were based on misapprehension of the Maine Rules of Civil Procedure, but not all), then we have the right to

some explanation rejecting our arguments that weren't based on misapprehension. We also did not see the Law Court reviewing a disputed fact, that we did indeed comply with the May 27, 2021 Superior Court order, by filing court papers on the 21st day of being noticed. We are asking the Law Court why it did not evaluate this disputed fact as it rejects our argument about compliance with the Superior Court order.

We read a lot of court decisions by the Maine Supreme Judicial Court, and many have detailed explanations reviewing legal principles and legal authorities, and we are wondering why we were not afforded the same treatment. We spent significant time and effort writing the Briefs, preparing the Appendix, and submitting Reply Briefs, making hard copies and binding them ourselves as pro se litigants. We deserve at least equal treatment and an explanation.

--Peter Chien and Michael Donatelli

APPENDIX I (Governor Mills Swears In Wayne Douglas As Associate Justice on Maine Supreme Judicial Court, https:// www.maine.gov/governor/mills/news/governor-mills-swears-wayne-douglas-associate-justice-maine-supreme-judicial-court-2023-03-10)

March 10, 2023

Joined by members of the Maine Supreme Judicial Court and others at the State House, Governor Janet Mills today swore in Wayne R. Douglas as Associate Justice of the Maine Supreme Judicial Court.

[...]

Justice Douglas, of Old Orchard Beach, was first nominated to the Maine District Court by former Governor Angus King in 2002 and reappointed by former Governor John Baldacci in 2010. In 2015, former Governor Paul LePage appointed Douglas to the Maine Superior Court.

[...]

Justice Douglas, 71, is a graduate of the University of Maine School of Law and received his undergraduate degree from Bates College. He lives in Old Orchard Beach with his wife and has two adult children.

Governor Mills nominated Justice Douglas on February 1, 2023. Justice Douglas is Governor Mills' fifth nomination to the Maine Supreme Judicial Court since taking office.