

No. 22-442

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**In The  
Supreme Court of the United States**

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CESAR ROMERO and  
TATANA SPICAKOVA ROMERO,

*Petitioners,*

v.

LI-CHUAN SHIH, et al.,

*Respondents.*

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**On Petition For Writ Of Certiorari To The  
Court Of Appeal Of The State Of California,  
Second Appellate District**

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**MOTION TO DEFER CONSIDERATION OF PETITION FOR WRIT OF  
CERTIORARI**

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Pursuant to Rule 21.1 of the Rules of this Court, Petitioners/Applicants Cesar Romero and Tatana Spicakova Romero (the “Romeros”) hereby request that the Court defer consideration of their petition for a writ of certiorari until the Supreme Court of California resolves the remainder of the case giving rise to their writ petition. The California Supreme Court’s forthcoming decision could either moot the need to petition this Court for certiorari or provide additional bases for the Romeros’ writ petition. Petitioners/Applicants previously consulted opposing counsel and opposing counsel indicated they do not have authority to consent to this request.

In support thereof, the Petitioners/Applicants state as follows:

### **JUDGMENT FOR WHICH REVIEW IS SOUGHT**

The judgment for which review is sought is *Romero v. Shih*, 78 Cal. App. 5th 326 (Cal. 2d Ct. App. 2022). It is also reproduced at App. 1–57. In that decision, issued on May 5, 2022, the California Court of Appeal decreed that the Romeros had lost, via exclusive-equitable easement, a substantial portion of their real property.

The California Supreme Court’s order, which declined to consider the exclusive equitable easement issue giving rise to the Romeros’ petition for certiorari, is reported at *Romero v. Shih*, 296 Cal. Rptr. 3d 648 (Cal. 2022), and it is reproduced at App. 99–100.

### **JURISDICTION**

The Court of Appeal’s judgment was entered on May 5, 2022, *see* App. 1–57, 66, and the California Supreme Court’s order declining to address the exclusive equitable easement issue giving rise to this petition for certiorari was entered on

August 10, 2022, *see* App. 99–100. Accordingly, this Court has jurisdiction under 28 U.S.C. § 1257(a).

### REASONS JUSTIFYING DEFERRAL

1. This case arises from the California Superior Court’s decision to decree that the Romeros may no longer possess (or even access) a substantial portion of their real property because their neighbors (the Shih-Kos) have secured a judicially decreed *exclusive* easement over it. The trial court held, first, that the Shih-Kos were entitled to an exclusive *implied* easement and, in the alternative, that they were entitled to an exclusive *equitable* easement.

2. On appeal, the California Court of Appeal reversed the Superior Court’s fiat that the Shih-Kos had an exclusive *implied* easement over the Romeros’ property, but it nonetheless affirmed the Superior Court’s determination that the Shih-Kos had an exclusive *equitable* easement over the Romeros’ property.

3. Both the Romeros and the Shih-Kos petitioned the California Supreme Court for review of the California Court of Appeal’s opinion.

4. On August 10, 2022, the California Supreme Court granted the Shih-Kos petition, but it denied the Romeros’ petition. In so doing, the California Supreme Court limited the issue it would consider to the following question: “Did the trial court correctly find the existence of an *implied* easement under the facts?” *See* App. 99–100.

5. Given the California Supreme Court's denial of the Romeros' petition for review of the exclusive equitable easement question, the ninety-day deadline to file a petition for certiorari with this Court began running on August 10, 2022.

6. The Romeros maintain that a court violates the United States Constitution any time it grants an exclusive easement (irrespective of whether the exclusive easement was implied or equitable), because doing so amounts to a de facto, judicially mandated transfer of real property from one private entity to another, in contravention of both the Fifth and Fourteenth Amendments.

7. To preserve their arguments regarding the California Court of Appeal's exclusive *equitable* easement holding, the Romeros have filed a timely petition for certiorari from the decision of the California Supreme Court not to address it.

8. If the California Supreme Court determines that a court may not, consistent with the United States Constitution, decree an exclusive implied easement, it may moot the Romeros' need to seek this Court's review.

9. If, however, the California Supreme Court determines that a court may, consistent with the United States Constitution, decree an exclusive implied easement, the Romeros intend to file a petition for certiorari from *that* decision.

10. But because the California Supreme Court may decline to resolve the United States Constitutional issues at all, the Romeros are compelled to file a petition for certiorari now to avoid forfeiture.

11. For all these reasons, concerns of judicial efficiency and economy suggest that this Court should defer consideration of the Romeros' petition for certiorari until the California Supreme Court resolves the exclusive implied easement question.

### CONCLUSION

Accordingly, Applicants respectfully request that the Court defer consideration of their petition for a writ of certiorari until the Supreme Court of California resolves the remainder of the case giving rise to their writ petition. Alternatively, Applicants respectfully request that the Court, upon granting their petition for a writ of certiorari, hold the briefing schedule in abeyance until the Supreme Court of California resolves the remainder of the case giving rise to their writ petition.



/s/

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December 1, 2022

**CERTIFICATE OF SERVICE**

Pursuant to Rule 29.5(b), undersigned counsel certifies that the Applicants have filed the foregoing with this Court in both electronic and in paper format. Undersigned counsel further certifies that the foregoing has been served on all parties at the addresses below via first class mail.

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