

Case No. 22-6410

IN THE
Supreme Court of the United States

Pernell El
Petitioner / Appellant



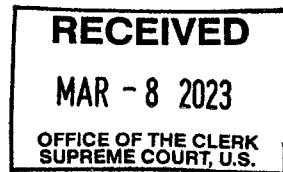
v.

WELLS FARGO BANK NA, Charles Scharf, Carrington Mortgage LLC;
Bruce Rose; MORTGAGE ELECTRONIC REGISTRATION SERVICE; LAWYERS
TITLE
Respondent / Defendant

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REHEARING OF JUDGEMENT

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Pernell El, respectfully moves for rehearing of judgment of the Supreme Court Justices February 21, 2023 Order denying Mr. El's writ of certiorari.

REASON FOR GRANTING REHEARING

Rule 44.2 authorizes rehearing based on "intervening circumstances of substantial or controlling effect or to other substantial grounds not previously mentioned". Pernell El's writ of certiorari explained why this Court's review is warranted in the first instance – namely the existence of clear departure from the standard of review under a 12(b)(6) motion to dismiss (de novo) at the 9th Circuit; the clear departure from the standard of reviewing Article III standing, under *Luian v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992); the clear deviation, from the provisions under Fed R. Civ. Proc. 17(3), where in its inception, it was added to keep pace with law, as it actually is developing; and the clear departure, from the doctrine of *stare decisis*, wherein the legal precedents cited by the Mr. El. are binding authorities, that can not, and were not refuted at any stage in the pleadings by the defendants. Mr. El invoked his applicable treaty title rights to land, pursuant to the Treaty of Peace and Friendship, between the United of North America, and the Empire of Morocco (1836), which by the standards of *customary international law*, to wit, this Court cannot deny / disregard Mr. El's' application to review, said certiorari, on its merits. See *Doe vs. Braden*, 57 U.S. (16 HOW) 635 (1853) (The treaty is . . . a law made by the proper authority, and the courts of

justice have no right to annul or disregard any of its provisions, unless they violate the Constitution of the United States.) The dismissal Mr. El's claim, at the district court, for "lack of standing" has set in motion a chain reaction that has burdened this Court's attention, and warrants this Court's Justices unwelcomed review. Mr. El's case, arises under the laws of the United States, and its treaties, therewith jurisdiction is/ was conferred. The egregious errors perpetuated at the lower courts, must be judicially reviewed by this Court's justices, and corrected. Federal question jurisdiction (diversity) is made on the basis of the plaintiff's pleading and not upon the response of the facts / theories, as they may develop; standing was a non-issue and is non-issue.

As relevant here, the Supreme Court of the United States has never invalidated a treaty itself, on constitutional grounds. See *Louis Henkin, Foreign Affairs on the U.S. Constitution (2d ed. 1996) Restatement (Fourth) of Foreign Relations § 307 cmt. a (2018)*. If the validity or construction of a treaty of the United States is drawn in question, and the decision is against its validity or the title specifically set up by either party, under the treaty, this court has jurisdiction to ascertain that title and determine its legal validity. See *Martin Heir at law and devisee of Fairfax, v. Hunter Lessee March 20, 1816 (Supreme Court)*. Mr. El's land title, under applicable treaty, is drawn into question, and must be answered by this Court. Article 3, Section 2, of the constitution provides, that the judicial power "shall extend to all cases in law or equity, arising under this constitution, 'the laws of the United States, and the treaties made, or which shall be made, under their authority. The judiciary of the United States is exclusively vested with the power of construing treaties. "The word shall, is-a sign of the future tense, and implies" an imperative mandate, obligatory upon those to whom it is addressed." *Id at 314*. It is an imperative mandate, pursuant to article 3, section 1, that this Court reviews the Petitioner certiorari, and correct the errors, at the inferior courts. This Court obligations, and authorities enumerated within the aforementioned articles, obligates this Court's attention, despite any statutory provision contrary to that affect. "It is perfect in this case, and, therefore we have a right, to a certiorari, or writ of diminution." *Id. at 316*. Whether a petition is submitted, and or direct appeal is filed, the appellate jurisdiction of the Supreme Court is not limited to the court, but the case. The judicial power (which includes appellate power) shall extend to all cases," &., and all other cases before mentioned the supreme court shall have appellate jurisdiction.

In *Sosa v. Alvarez* case, this Court granted certiorari to clarify whether the ATS "not only provides federal courts with [jurisdiction], but also creates a cause of action for an alleged violation of the law of nations." The Sosa case established two step framework, for evaluating / addressing questions related to ATS breadth of liability. First, courts must determine whether the claim is based on violation of an international law norm that is "specific, universal, and obligatory." *Id at 107* Second, if step one is satisfied, courts should determine whether allowing the case to proceed is an "appropriate" exercise of judicial discretion. *Id at 108*. Though the Supreme Court did not rule, in favor the plaintiff in Sosa, the certiorari was

granted. Mr. El's claim was not filed in accordance with the Alien Tort Statute (ATS) in order seek redress for the abuses at the United States Court; more significantly, the Petitioner's claim arises under the Constitution and treaties, and this Courts bound pursuant to article III, section 1 and II, and article VI (supremacy clause) of the Constitution for the United States of North America. The Supreme Court's judicial power (which includes appellate power) shall extend to all cases. "The appellate power is not limited by the terms of the third article to any particular Courts", therefore "It is the case, then, and not the court, that gives the jurisdiction." *Martin Heir at law and devisee of Fairfax, v. Hunter Lessee March 20, 1816 (Supreme Court)* at 38. As the inferior court ignored heir imperative obligation, by operation of law, this Court is decided in accordance by "the supreme law of the land".

Ordinarily, it is exceedingly rare for this court to grant rehearing. In the *Supreme Court Practice* § 15.6(a), at 838 (10th ed. 2013). "The small number of cases in which a full Bench can rehear a case decided by an equal division probably amounts to the largest class of cases in which a petition for rehearing after decision on the merits has any chance of success." Mr. El's certiorari presents a unique set of circumstances, which affects the title of lands (Estate) secured by treaty rights, and the corporal hereditaments of his heirs and successors. The res judicata, cited by the Petitioner are binding, the lower courts deviated from the principles of stare decisis and based their judgments on unfounded theories, out of alignment with established law. In *Kimble v. Marvel Enterprises*, the United States Supreme Court described the rationale behind stare decisis as "promot[ing] the evenhanded, predictable, and consistent development of legal principles, foster[ing] reliance on judicial decisions, and contribut[ing] to the actual and perceived integrity of the judicial process." The Respondents' have voluntarily waived their right to respond and or refute the facts within Mr. El's certiorari, and in doing have thus forfeited, renounced any alleged future claim, against Mr. El's estate. A waiver is "The intentional relinquishment of any known right." *Lehigh Val. R. Co. v. Ins. Co.*, 172 F. 364, 97 C.C.A. 62 / Black's law Dictionary 4th Edition page 1751. The Defendant's waiver is an admission of their inability to address the merits of Mr. El's claim.

Conclusion

For the foregoing reasons, and those stated in the writ of certiorari. this Court should grant rehearing of judgment. and then grant review of the judgment, compel the defendants in error to respond to merits of claims. and finally based on said review, make a final determination in favor of Mr. El, binding all parties.

With Respect, I hereby certify that this rehearing of judgment is presented in good faith and not for delay

March 6th 2023

Pernell El / Pro Per

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