

3/18/23

No. 22-916

In the
Supreme Court of the United States

PRISCILLA MCMANUS,

Petitioner,

v.

NBS DEFAULT SERVICES, LLC ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. When Did the Importance of Deadlines Cease to Exist?

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below

- Priscilla McManus

Respondents and Defendants-Appellees below

- NBS Default Services, LLC
- Bank of America, N.A.
- Nationstar Mortgage, LLC
- Mortgage Electronic Registration Systems, Inc.

LIST OF PROCEEDINGS

United States Court of Appeals for the Ninth Circuit
No. 21-16211

Priscilla McManus, *Plaintiff-Appellant*, v.
NBS Default Services, LLC; Bank of America, N.A.;
Nationstar Mortgage, LLC; Mortgage Electronic
Registration Systems, Inc., *Defendants-Appellees*.

Date of Final Opinion: September 27, 2022

Date of Rehearing Denial: January 6, 2023

United States District Court for the Eastern District
of California

No. 2:18-cv-02047 JAM AC PS

Priscilla McManus, *Plaintiff*, v.
NBS Default Services, LLC, et al., *Defendants*.

Date of Final Order: June 28, 2021

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Priscilla McManus respectfully requests the issuance of a writ of certiorari to review the judgement of the United States Court of Appeals for the Ninth Circuit.



OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Ninth Circuit, dated September 27, 2022, is included at App.1a. The Order of the United States District Court for the Eastern District of California dated June 28, 2021 is included at App.3a, adopting the Magistrate Report and Recommendation, included at App.5a, and dismissing the case. These Opinions were not designated for Publications.



JURISDICTION

The Court of Appeals entered its Opinion on September 14, 2022 (App.1a) Its Order Denying Rehearing was Filed January 6, 2023. (App.84a) This Court has jurisdiction under 28 U.S.C. § 1254(1).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. III, § 2, Cl. 2.4 Supreme Court Appellate Jurisdiction

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all other cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

In 1988, Congress enacted legislation that replaced direct appeals with discretionary certiorari petitions in almost all remaining circumstances. Act of June 27, 1988, Pub. L. No. 100-352, § 3, 102 Stat. 662. *But see, e.g.*, 28 U.S.C. § 1253 (authorizing direct appeal to the Supreme Court of decisions of a three-judge district court).

5 U.S.C. § 706(2)(A)

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

[. . .]

- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;



STATEMENT OF THE CASE

A. Proceedings in the District Court Below

On December 20, 2019, Petitioner filed a Motion to Show Cause, because the May 15, 2019 Order from United States Magistrate Judge Allison Claire was ignored by the Respondents, Bank of America, N.A., Nationstar Mortgage, LLC, and Mortgage Electronic Registration Systems, Inc. The Order stated that:

The parties are directed to promptly meet and confer to discuss settlement of this action. Settlement discussions require focus and preparation and *should* involve the attorneys who will try the case and the person or persons having full authority to negotiate and settle the case on any terms. Plaintiff *should* initiate settlement discussions by providing a written itemization of damages and a meaningful settlement demand that includes an explanation of why the demand is appropriate. Defendant *should* respond with an acceptance of the offer or with a meaningful counteroffer, and which includes an explanation of why the counteroffer is reasonable. The parties *should* continue this way until they reach settlement or have exhausted informal settlement efforts.

(App.107a).

BLACK'S LAW, Sixth Edition, defines "should" as "the past tense of shall; ordinarily implying duty or obligation. . . ."

The word *should*, past tense of the word *shall*, is important in legal terms. The Supreme Court Rules and Procedures make use of the word *shall* frequently in their stated requirements, to enforce compliance with litigants' entries, or they are thrown out. For example, Rule 24, "Briefs on the Merits: In General 1. A brief on the merits for a petitioner *shall* comply in all respects with Rule 33.1 and 34 and *shall* contain in the order here indicated: (a) The questions presented for review under Rule 14.1(a). The questions *shall* be set out on the first page following the cover, . . ." The Respondents never replied to Petitioner's Written Itemization of Damages sent to them by registered mail June 11, 2019, well within the 45 day requirement set by the Court. A lack of response confers acquiescence from the Respondents per Petitioner's settlement offer of June 11, 2019 (App.105a)

The Court Order dated December 30, 2019, replying to Petitioner's Motion to Show Cause stated "there was no reason to issue an order to show cause." (App. 35a) The December 30, 2019 Order never mentioned the fact that the May 15, 2019 Order gave the parties 45 days to present meaningful settlement demands and counteroffers, which the Respondents never acknowledged nor responded to Petitioner's settlement offer. They missed a deadline.

On January 18, 2022, Petitioner filed a timely Notice of Appeal, seeking review by the Ninth Circuit Court of Appeals panel judges consisting of O'Scannlain, Rawlinson, and Owens, of the District Court's lack of

a due process of law, resulting in a violation of a court Order by the Respondents.

B. Proceedings in the Court of Appeals Below

On September 27, 2022, the United States Court of Appeals for the Ninth Circuit, issued a Memorandum, case No. 21-16211 (App.1a), contending “there was no basis for the district court to enter default against the defendants.” On October 11, 2022, Petitioner submitted a petition for panel rehearing (App.84a). It was denied on January 6, 2023.

The May 15, 2019 Order in the Eastern District by Magistrate Judge Allison Claire directed that both parties discuss settlement offers and counteroffers that are meaningful and reasonable with an explanation of why. The Petitioner made a settlement offer with explanation, and never received a reply from the Respondents, contrary to the direction of the court Order. They missed a deadline.

On January 18, 2022, Petitioner filed a Reply Brief with the United States Court of Appeals for the Ninth Circuit, Case No. 21-16211, requesting a review of the District Court’s May 15, 2019 Order, in the belief that she had been denied due process of law. The Fifth Amendment of the Constitution states that “no one shall be “deprived of life, liberty, or property without due process of law.” That is the basis of the Petitioner’s Appeal, and why it is appropriate for the Supreme Court to rule on this case.



REASONS FOR GRANTING THE PETITION

The Petitioner didn't receive due process of law by the lower court's failure to rule that the defendants lost by default, for not responding to a deadline within 45 days. Deadlines give us rules to live by, to conduct worthwhile endeavors that improve and stabilize society as a whole, and that support and sustain all contracts when supported by law. They create the "fabric" that holds a country together, establishing the rights and privileges of their people who can rely on these laws to lead productive, secure lives. A commitment to legality is at the heart of all advanced legal systems, and the Fifth Amendment has as its central promise that all levels of American government must operate within the law and provide fair procedures. This was denied the Petitioner.

The Petitioner is asking the Court to uphold the constitutionality of deadlines by adhering to the demands stipulated in the May 15, 2019, Order by Magistrate Judge Allison Claire. The Defendants never acknowledged the May 15, 2019, Order and therefore defaulted on July 1, 2019. The Petitioner now requests that the Written Itemization of Damages sent to the Defendants on June 11, 2019, be activated, including any penalties the law allows, and that it is done in a timely manner, as prescribed by law.



CONCLUSION

For the reasons stated above, the Petitioner respectfully requests that this Petition should be granted.

Respectfully submitted,

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March 17, 2023