

23-7454

No:

In The
Supreme Court of the United States

IN RE JENNIFER L M SENDZUL.,

Petitioner

v.

JAY C HOAG et al.,

Respondents

FILED

MAR 22 2024

OFFICE OF THE CLERK
SUPREME COURT U.S.

ORIGINAL

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

PETITION FOR WRIT OF CERTIORARI

JENNIFER L M SENDZUL
CG 3, Av De La Cortinada, 6.,
Edifici Claudia 2-3a.
Ordino. AD300. ANDORRA
Telephone: (+376) 642300
oortcloudfilms@gmail.com

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SUPREME COURT, U.S.

QUESTIONS PRESENTED.

This case is important for the future of meaningful access to the United States courts for indigent persons and in line with modern technology via video conferencing which was extensively used during the COVID pandemic. On September 12, 2023 (post COVID guidelines) the Judicial Conference revised the policy to expand remote audio access over its pre-covid policy. “The new policy will go into effect on September 22, 2023 immediately after the expiration of the temporary exemption ...the exemption allowed judges to permit audio access to any civil or bankruptcy proceedings during and after the pandemic.

This case was heard in the district court during the pandemic and therefore further strengthens the case for video conferencing at the time of the temporary exemption.

“Decisions in which the courts usurp the authority of the people are not merely incorrect; they are themselves unconstitutional. And they are unjust” (Robert George. McCormick Professor of Jurisprudence.)

When this case was brought before the court of appeals a three judge panel agreed to hear the appeal citing non frivolous issues such as exculpatory evidence in favor of the plaintiff which was not ruled on by the district judge. The questions presented are as follow:

1. **Whether a writ of certiorari is appropriate** when a district court denies any other form of meaningful access other than in-person for scheduled hearings to a foreign adversary.

2. **Whether certiorari is appropriate** to correct the appeals courts failure to acknowledge that recusal was appropriate when a district judge only offered restrictive access to his court for indigent participants.

3. **Whether a writ of certiorari is required** when the three judge panel in the appeals court, had just days before reversed and remanded a case for excusable neglect by the same district judge for closing a case when the plaintiff did not appear at his scheduled conference.

PARTIES TO THE PROCEEDINGS

Petitioner Jennifer L M Sendzul, was a Plaintiff in the Central District of California and Petitioner in the Ninth Circuit Court of Appeals.

Respondents in this Court is the Ninth Circuit Court of Appeals and the Central District Court of California.

RELATED PROCEEDINGS

There are no ongoing proceedings at this time.

Jennifer L M Sendzul v. Jay C Hoag, et al., U.S. Court of Appeals for the Ninth Circuit. 22-55508

Jennifer L M Sendzul v Jay C Hoag, et al., U.S. District Court Central District of California. 2:21-cv-06894

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REASONS FOR GRANTING THE PETITION....

1. **Violation of Constitutional Rights and**

Due Process. Certiorari is appropriate to correct the appeal court's error by failing to correct the district court's refusal to offer meaningful access to the court and to correct the district court's abuse of discretion in violation of due process and a human rights to a fair trial.

2. **Withholding exculpatory evidence.**

Certiorari is necessary when the court of appeals erred in correcting the district court's plain error in exercising his discretion to an end not justified, by withholding petitioners evidence, resulting in a judgement that is clearly against the logic.

3. **Conflict with Appeals Court**

Precedents. Certiorari is appropriate to correct the appeals court precedent of reverse and remand on the basis of excusable neglect.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Jennifer L M Sendzul, respectfully petitions for a writ of certiorari to review the judgements of the United States Court of Appeals for the Ninth Circuit.

OPINIONS AND ORDERS BELOW

The acceptance by the first three judge panel to hear the case. App. A. Supplementary Update on Exculpatory Evidence in support of appeal. App. B. The opinion of the court of appeals is unreported. App.C. The timely filed request for rehearing. App. D. The en banc motion denied. App.E. The timely filed stay of mandate for filing a timely writ of certiorari. App. F. Stay of Mandate denied. App. G.

JURISDICTION

This appeal is timely in accordance with Supreme Court Rule 13.3 runs from the date of the denial of a timely filed rehearing which date is January 04, 2024.

CONSTITUTIONAL PROVISIONS AND THE BERNE CONVENTION INVOLVED.

The public interest in the administration of justice requires access to justice for all. Access to justice must be “meaningful” access. The constitutional right of access is inherent in the rule of law.

Article III, § 2, clause 1 of the U.S. Constitution provides:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this constitution, the laws of the United States, and Treaties made, or which shall be made, Under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to all[and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects].

U.S. Const. amend. VI

The fourteenth Amendment provides, in relevant part:
[N]or shall and State deprive any person of life, liberty, or property, without due process of law

U.S. Const. amend. XIV, § 1.

Berne Convention system of universal international authors' rights. Berne Article 5(2) declares that;

“the enjoyment and the exercise of these rights shall not be subject to any formalities.” According to the Boston University Law Review ...”it has long been understood that the term ‘any formality’ encompasses both ‘formal and material conditions’ on the existence of the enforcement of rights. These rights are all the rights which the []respective laws [of the countries of the Union] do now or may grant to their nationals, as well as the rights specially granted by this Convention. Thus a foreign author is entitled to national treatment in Berne member states (but without having to comply with any formalities the state may impose on its own authors), as well as to any additional Convention-guaranteed rights, even if these are not afforded to local authors.”

STATEMENT OF THE CASE

This case arise from a copyright infringement case. *Petitioner's* screenplay was originated and created by herself and ownership is in accordance with the provisions of Art. 3 of the Berne Convention. In early 2020 it became apparent to Petitioner that her protected work had been unlawfully appropriated from a film festival in Canada and allegedly moved across borders into the United States without her permission.

The recommended procedure before filing a claim in a court of law was to exhaust all procedures available for international copyright infringement. A request for mediation was filed by Petitioner to the World Intellectual Property Organization (WIPO) in Geneva. The named defendants declined to participate without due reason.

In August, 2021 Petitioner filed a complaint against the alleged infringes in the Central District of California. The case was assigned to Judge R Gary Klausner. Unbeknownst to Petitioner the judge assigned to this cross border case had restrictive access to his court.

1. Meaningful access to the courts.

Ms. Sendzul was denied her right to remote proceeding under Rule 3.672 (a) (b) and (c) (1)-(8). *Rice v. Superior Court (Times-Mirror Co.) (1982)* ... "We have concluded that the language of section 36, subdivision (a) of the Code of Civil Procedure was intended by the Legislature to be mandatory and thus requires that a litigant qualifying under its terms be given preferential trial setting irrespective of the circumstances leading to the motion for preference."

The limited access to the Judge court only become evident when on March 18, 2022 Plaintiff had made a request for Zoom conferencing facilities to the Judge's clerk but was advised that hearings are "only held in person". In order to mitigate this lack of access Petitioner filed a Notice of Complaint on April 20, 2022 highlighting these concerns and proposing ADR and inclusion of Zoom conferencing facilities to resolve issues. To date this Notice of Formal Complaint remains in the Judge's chambers.

When it was noticed (five days later) that the hearing of April 25, 2022 would nevertheless be going ahead (but not via Zoom), Petitioner immediately filed a notice with the Clerk prior to the court's hearing filed on the ECF system before the opening of the courts hearing. Again this notice was held up in the Judges chambers without mention of it in the scheduling conference minutes. Instead, the Judge merely noted that 'Plaintiff was not present' - despite the notice reaffirming to the Judge that it was geographically impossible for Petitioner to attend in person. This Notice was only uploaded onto the system 15 days after the hearing took place - and was never included on the agenda of the April 25 in-person hearing wherein the Judge notes for the record simply without explanation "not present in the court". The transcripts of that hearing were never included in the paper copies for the Appeals Court. A scheduling conference was then set for 05/09/2022 to show cause as to why Plaintiff never appeared. Even though such reason was patently evident, unable to be fulfilled and had already been communicated

via Notice to the Clerk on the morning of the 04/25/2022 hearing.

The Supreme Court's opinion in *Tuner v Rogers*, 131 S. Ct. 2507 (2011). "In so holding, the Court in its 1996 opinion *Lewis v Casey*, which encompassed on the ability to present grievances to the Court, and embrace broader definitions from its 1977 opinion in *Bounds v Smith* that litigants must be able to engage in "an adversary presentation." This portion of the opinion thus holds promise for a reinvigorated federal constitutional role in ensuring that people who lack counsel nonetheless are able to participate meaningfully in their civil cases."

According to Justice and Public Safety dated October 27, 2023. California Chief Justice: Remote Hearings Improve Access. Chief Justice Patricia Guerrero said..."the remote hearings courts were forced to conduct during the pandemic turned out to be beneficial for many even when they were no longer needed to protect their health." Guerrero said ..."judicial leaders negotiated with the legislature to enact laws that authorized the courts to hold proceedings remotely...and in civil cases through the end of 2025 ...to help people gain access to their legal proceedings, the state's Chief Justice said Thursday.

2. Whether Recusal was appropriate.

On 04/29/2022 realizing that there was little chance of ever receiving a fair and impartial hearing, Plaintiff filed a Notice to the Clerk for Change of Venue Pursuant to 28 U.S. Code §144. "whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice against him or in favor of any adverse party, such judge shall proceed no further therein..." However, as is consistent with the above, the Notice of Motion submitted on 04/29/2022 to Transfer Case to an Appropriate Court was again held up in chambers while the Honorable Judge continued issuing orders. Ultimately, the Honorable Judge went ahead and closed the case as a result of Plaintiff's 'non appearance' at the hearing of May 9th 2022. And, on the same day, despite the Notice of Motion for Change of Venue being scheduled to be heard on June 6th 2022, it was brought

forward without notice to Plaintiff/Appellant and subsequently denied.

Ms. Sendzul was denied her right to remote proceeding under Rule 3.672 (a) (b) and (c) (1)-(8). *Rice v. Superior Court (Times-Mirror Co.) (1982)* ...”We have concluded that the language of section 36, subdivision (a) of the Code of Civil Procedure was intended by the Legislature to be mandatory and thus requires that a litigant qualifying under its terms be given preferential trial setting irrespective of the circumstances leading to the motion for preference.”

3. Excusable Neglect. In conflict with the decision in the Appeals Court and in conflict with the Supreme Court.

In *Briones v. Rivera Hotel Casino (1997)* the Ninth Circuit reviewed the abuse of discretion in the district court's denial of Fed.R.Civ. P. 60(b). *Molloy v. Wilson, 898 F.2d 313, 315(9th Cir. 1989)*...an appeal from a denial of Rule 60(b) motions brings up only the denial of the motion for review, not the merits of the underlying judgement.” *Floyd v. Laws, 929 F2d 1390, 1499 (9th Cir. 1991)*.

The third factor the Supreme Court specifically set forth in *Pioneer Inv. Serve. Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 113 S. Ct. 1489, 123 L.Ed. 2d 74 (1993)*. (“the reason for a the delay, including whether it was within the reasonable control of the movant”) functions differently in the Rule 60(b) context. Under Rule 60(b) as the Supreme Court explained, a party’s failure to file on time is not “neglect” if the cause is beyond the party's control. The Appellant could never satisfy the court order because the lack of video conferencing facilities in the Honorable Judge’s court was beyond her control.

According to the footnotes in *Briones v. Rivera Hotel Casino the Ninth Circuit* affirms that.. “However, as we explained Supra, Pioneer sets for an equitable ‘framework’ for determining the question of excusable neglect in particular cases, and we will ordinarily examine all of the circumstances involved rather than holding that any single circumstance in isolation compels a particular result regardless of the other factors.

REASONS FOR GRANTING CERTIORARI

1. The Supreme Court has settled the matter on meaningful access.

(a) Meaningful access. In *Turner v. Rogers*, 131 S. Ct. 2507, 2513 (2011). Inter alia...”that litigants must be able to identify critical issues and present evidence for access to be meaningful.” The Turner court held that while Mr Turner did not necessarily have a right to counsel, he did have a right to meaningful access to the courts, and that right had been violated in his case. The Supreme Court goes on to highlight that a litigation should be provided with key issues. In this case the key issues was whether a district court could deny an indigent participant video conferencing access for her voice to heard in the judges court.

The meaningful access envisioned by Justice Breyer in Turner - “the ability to identify the critical issues in the case and present relevant evidence regarding this issues.” Petitioner became aware of the critical issue when the judge kept the in -person conference hearing on his calendar and she presented the relevant evidence on the morning before the court opened.

(b) The Supreme Court excusable neglect is unclear on “within a reasonable time.”

Rule 60(b) of the Federal Rules of Civil Procedure authorizes a court to relieve a party from a final judgement, order, or proceedings for various reasons, including “mistake, inadvertence, surprise, or excusable neglect. According to *Kemp v. United States*, 142 S. Ct. 1856, 1861 & n.1, 213 L.Ed. 90 (2022). “a judges errors are indeed ‘mistake[s]’ under Rule 60(b)(1) must be made within reasonable time. Petitioner filed a timely appeal, a timely en banc request and a timely request for stay of mandate.

CONCLUSION.


Petitioner respectfully asks this court to grant a writ of certiorari to preserve the appearance of justice. There is no evidence to support that fact that Petitioner’s “excusable neglect” was willful or that it could be seen as neglect. Petitioner had constantly put the court on notice

that she could only appear via video conferencing through no fault of her own. What Petitioner is asking the court to consider is whether it was neglect on the Judges part for not offering via conferencing facilities for an indigent foreign litigant to access his courtroom. If indeed, the court had offered video conferencing the “excusable neglect” would have been cured. Or, if the Judge had refused himself and granted change of venue to a court with video conferencing facilities this would have cured the “excusable neglect”.

Petitioner is asking this court to considered whether a judge could demand a performance which is out of the control of the litigation or defendant but in the control of the judge and his duty of care to the public in his courtroom.

Date 21 March, 2024

JENNIFER L M SENDZUL



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