

6/12/25

NO. 24-1285

In the Supreme Court of the United States

DONGXIAO YUE, PETITIONER

v.

WENBIN YANG, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
THE CALIFORNIA COURT OF APPEAL, FIRST
APPELLATE DISTRICT, DIVISION 5
After California Supreme Court Denied Petition for
Review

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a civil trial where the trial judge precludes a self-represented plaintiff from offering material evidence, comments that the plaintiff is not a lawyer trained in the United States and is wasting the court's time, brings a motion for judgment on behalf of the defendant, argues for and enters judgment in favor of the defendant without the defendant saying a word of substance, whether the trial court's judicial conduct constitutes violation of the Due Process and Equal Protection Clauses under the Fourteenth Amendment to the United States Constitution.

2. Whether, consistent with the Fourteenth Amendment, California may deem structural errors that taint a civil trial—such as a trial judge's prejudgment, bias, and usurpation of the adversarial role—forfeited because such errors were not timely raised in the trial court, even though federal plain-error doctrine and sister-state's "fundamental-error" rules require appellate review of such defects.

Although the opinion below is not published in the official reports, it sets the baseline standard of permissible judicial conduct governing civil trials in the relevant jurisdiction. Sanctioning a judge's prejudgment, advocacy on behalf of a party, *sua sponte* imposition of judgment without a motion or argument from a defendant, and disparaging commentary on a litigant's immigrant status—raises urgent due-process concerns under the Fourteenth Amendment.

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PETITION FOR A WRIT OF CERTIORARI

Dongxiao Yue, a self-represented civil litigant in California, respectfully petitions for a writ of certiorari to review the judgment of the California Court of Appeal in this case.

OPINIONS BELOW

The California Court of Appeal's decision affirming the trial court's judgment was issued on December 2, 2024 (Dongxiao Yue v. Wenbin Yang, No. A168295). The Court of Appeal's opinion, which is unpublished, is reproduced in Appendix A (App., *infra*, 1a-21a). Petitioner's petition for rehearing was denied on December 17, 2024 (Appendix B, App. 22a). The California Supreme Court's order denying the petition for review (issued on March 19, 2025) is included in Appendix C (App. 23a). Neither the California Court of Appeal's decision nor the denial of the petition for review is reported in the official California reporters.

JURISDICTION

Petitioner timely filed this petition for a writ of certiorari within 90 days of the California Supreme Court's denial of review on March 19, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a) because the judgment of the California Court of Appeal, left in place by the state supreme court's denial of review, is a final judgment of a state court of last resort that adjudicated federal constitutional questions. The

decision below presents federal questions under the Fourteenth Amendment's Due Process and Equal Protection Clauses.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. XIV, §1 (in relevant part):

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Background and Pretrial Proceedings

Petitioner is an individual of foreign origin who represented himself (*pro se*) in the California civil action below against Respondent and three co-defendants¹. The case involved claims of unfair competition and defamation arising out of activities and online postings of Respondent and the co-defendants, which harmed Petitioner's business and reputation. App. 2a-3a. But the precise nature of the claims is not the focus of this petition.

The trial court previously dismissed the case against Respondent for lack of personal jurisdiction in 2019. The California Court of Appeal reversed. *Yue v. Yang*, 62 Cal.App.5th 539 (2021). After numerous delays, the case proceeded to a court trial on March 27,

¹ Petitioner commenced the action *pro se* in 2016. He was admitted to the State Bar of California in 2018.

2023. That morning, the trial court abruptly dismissed the three co-defendants for lack of prosecution². App. 3a.

A court trial proceeded against Respondent alone, App. 3a, and lasted less than eight (8) hours, App. 41a. The trial proceedings were marked by severe irregularities and a lack of the fair process that the U.S. Constitution guarantees every litigant, regardless of representation status or national origin.

B. Trial Court Proceedings

The short bench trial can be summarized as follows: the trial judge acted as an advocate for the defense and repeatedly precluded Petitioner from presenting critical evidence, then the judge brought, argued and granted a motion for judgment against Petitioner on insufficiency of evidence grounds. See, excerpts of trial transcript, App. 24a-41a.

When Petitioner sought to question Respondent about his online activities, the trial judge asserted two objections and preemptively stopped the examination. App. 25a-26a.

Petitioner requested the judge to “have an adversarial proceeding” and let Respondent make his own objections, instead of “objecting on behalf of [Respondent]”. App. 25a-26a. The trial judge gave a speech, stating “You are wasting an inordinate amount of time”, “You are not a lawyer trained in the United States. In fact, you are not a lawyer.”, “This is not a trial; it’s a mess.” App. 25a-27a.

²The California Court of Appeal reversed the trial court’s dismissal of the three co-defendants in its entirety in an unpublished opinion in August 2024 (*Yue v. Trigmax Solutions, LLC* (Aug. 29, 2024, A167577)). App. 3a.

On the first day of the trial, the judge excluded the alleged defamatory blog postings made by Respondent. On the second day of the trial, Petitioner requested the judge to take judicial notice of a prior discovery order in the same case and had the postings admitted. These were saved copies of Respondent's public web postings, including false accusations of "Trojan Virus" attack, false accusation of "burglary felony", and Respondent's written admission that he had "not seen anything indicate that [Petitioner] might really conduct such kind of illegal attack except your claim". The evidence included the original URLs of the postings, date and time, and user comments. App. 3a-4a, 28a-30a, 43a-49a.

Before Petitioner was able to examine Respondent about the defamatory postings, the trial judge stated:

I wish to emphasize that you have these admissions, that means just tell me the exhibits you want me to review, tell me your argument, finish your case. You need to finish your case now. You've been spinning round in circles. My sense is is that you have a number of documents that you find the writings are defamatory. Point those out to me and argue why they are and tell me what your damages are. (App. 30a.)

The judge's directive precluded Petitioner from examining Respondent about the falsity, publication, intent, and effect of Respondent's web postings.

The judge even objected to Petitioner's evidence of damages when Respondent twice expressly stated that he had no objections. App. 32a-33a.

At the close of Petitioner's case, the judge *sua sponte* raised a motion for judgment, without any request from Respondent. The judge then engaged in

extended argument against Petitioner's position on various factual and legal issues, without Respondent saying a single word. Despite Petitioner's request for a written statement of decision, the judge proceeded to announce judgment orally in favor of Respondent, on the ground that the trial lasted not more than "8 hours". App. 33a-41a.

The judge made no findings of fact. The judge placed the burden of proving falsity of defendant's statements on plaintiff, even though the case involved a private figure and a matter of private concern. The judge also concluded that Petitioner failed to prove damages, disregarding the well-settled rule that damages are presumed in defamation per se. Additionally, the judge stated that Petitioner had not shown the statements were public, despite the admitted evidence consisting of saved blog posts from a public website that included comments from other users. Finally, the judge stated that Petitioner had not shown that Respondent failed to exercise reasonable care—even though Respondent admitted he had no evidence of a virus attack and had seen nothing suggesting one occurred. App. 40a-41a.

Judgment was announced against Petitioner at 10:49 AM on the second day of trial. App. 41a.

Petitioner timely appealed the judgment.

C. Court of Appeal Proceedings

On appeal to the California Court of Appeal, Petitioner argued that the trial had been fundamentally unfair and that his due process and equal protection rights were violated by the judge's

bias and open advocacy on behalf the defendant³. Petitioner contended that the errors in the trial court were “structural” in nature – that is, they affected the framework of the trial and required reversal without regard to ordinary harmless-error analysis. Petitioner specifically raised the trial judge’s usurpation of the adversarial role, the preclusion of evidence, and the demonstrated bias, as described above. Petitioner urged the Court of Appeal to recognize that these errors struck at the constitutional right to a fair and impartial tribunal.

On the defamation claim, the California Court of Appeal acknowledged that defendant bears the burden of proving truth as an affirmative defense to defamation, App. 14a, and Petitioner’s position that damages are presumed. But it ruled that Petitioner failed to prove publication and defendant’s failure to exercise reasonable care. App.14a-16a.

On the due process issues, the Court of Appeal ruled *sua sponte* that Petitioner forfeited the constitutional challenges because Petitioner failed to raise them below. App. 20a-21a (citing *Geftakys v. State Personnel Board*, 138 Cal.App.3d 844, 864 (1982)). It then made the conclusory statement that there were no due process or equal protection violations. App. 20a-21a.

Essentially, the Court of Appeal excused or minimized the judge’s conduct in the name of judicial efficiency (App. 20a), rather than recognizing it as misconduct.

³ Plaintiff also argued extensively on the merits of the case on appeal.

Petitioner then filed a Petition for Rehearing at the California Court of Appeal, on the ground that its opinion omitted material facts and key arguments, and the forfeiture of constitutional issues were not proposed or briefed by the parties. App. 42a-67a (Appendix E, excerpts of Petition for Rehearing). Petitioner argued that structural errors are not forfeited, even if not raised below. App. 61a-63a. The Court of Appeal summarily denied the petition for rehearing. App. 22a.

Petitioner filed a timely petition for review at the California Supreme Court, urging that court take up the important issues of a fair trial and the proper standard for review of structural errors.

On March 19, 2025, the California Supreme Court summarily denied review. App. 23a. This petition for certiorari followed.

REASONS FOR GRANTING THE PETITION

The petition should be granted because the decision below presents important and recurring questions about safeguarding due process in civil trials, the role of appellate courts in correcting fundamental injustices, and the equal application of these principles to *pro se* and foreign-born litigants. The case squarely implicates the constitutional right to a fair trial before an impartial tribunal and addresses a split in authority over whether structural trial errors are forfeited on appeal if not raised below. The California Court of Appeal's approach not only conflicts with the practice in federal courts and other states, but it also undermines public confidence in the justice system by effectively insulating serious judicial misconduct from appellate correction. In an era where

large numbers of civil litigants are unrepresented and our communities are increasingly diverse, it is exceptionally important that this Court clarify that due process and equal justice are not mere ideals, but binding guarantees in *every* courtroom.

I. The Trial Judge’s Prejudgment, Bias and Active Usurpation of the Adversarial Process Violated Due Process and Rendered the Trial Fundamentally Unfair.

“[A] cause of action is a species of property protected by the Fourteenth Amendment’s Due Process Clause.” *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). California also recognizes that “[a] cause of action for damages is itself personal property.” *Schauer v. Mandarin Gems of Cal., Inc.*, 125 Cal.App.4th 949, 956 (2005). “A thing in action is a right to recover money or other personal property by a judicial proceeding.” California Civil Code, § 953. Petitioner’s cause of action is therefore protected personal *property* under the Fourteenth Amendment.

It is a foundational principle of American law that every litigant is entitled to an impartial judge and a genuine adversarial process. “A fair trial in a fair tribunal is a basic requirement of due process.” *In re Murchison*, 349 U.S. 133, 136 (1955). This Court has emphasized that “[f]airness of course requires an absence of actual bias in the trial of cases” on the part of the judge, and our system endeavors to prevent even the “probability of unfairness”. *Id.* When a judge abandons neutrality or affirmatively acts in a biased manner, the proceeding is structurally defective and cannot reliably serve its function of adjudicating the dispute.

In the present case, the trial judge's conduct struck at the heart of these due process guarantees. The judge exhibited clear bias against Petitioner, prejudged the case, precluded material evidence, and assumed the role of an advocate for the opposing party. This triple violation — prejudgment, bias, and assuming the adversarial role — made the trial fundamentally unfair.

1. Prejudgment and preclusion of material evidence

Before Petitioner was able to examine Respondent on the alleged defamatory web posts, the trial judge gave the following instruction: "tell me your argument, finish your case. You need to finish your case now. You've been spinning round in circles... Point those out to me and argue why they are and tell me what your damages are." App. 30a.

The trial court thus forbade any questioning of Respondent about the defamatory posts and forced Petitioner to proceed directly to argument, save for evidence of damages. The court's directive foreclosed examination of the witness on essential matters — including falsity, intent, publication, and resulting harm.

By truncating the proceedings and precluding material evidence, the trial court signaled that it had prejudged the case.

The trial court's instruction to "tell me ... what your damages are" indicated that damages were the sole remaining issue. By ordering Petitioner to forgo further liability evidence and proceed directly to damages, the judge created the impression that the evidence already satisfied every non-damage element. Yet, after Petitioner complied, the court abruptly entered judgment against him, ruling that Petitioner

failed to prove each and every element of defamation listed in California Civil Jury Instruction No. 1704: App. 40a-41a.

The Court of Appeal acknowledged the legal error of placing the burden of proving falsity on a private-figure plaintiff, App. 14a, and acknowledged the denying of presumed damages in a defamation-per-se case. Yet it nevertheless deemed the trial court's conduct harmless, concluding Petitioner failed to prove publication—even though the posts appeared on a publicly accessible California-based website—ignoring that the trial judge prevented Petitioner from presenting that very evidence.

By cutting off Petitioner's proof and then faulting him for its absence, the lower courts sanctioned a procedure and process that deprive civil litigants of a fair opportunity to meet their burden, in direct conflict with this Court's due-process precedents.

2. Judicial bias

The judge's disparaging remarks, sarcastic tone, and one-sided rulings evinced a deep-seated antagonism toward Petitioner that shocked the instincts. App. 25a-41a. This Court's precedents leave no doubt that a biased adjudicator violates the Due Process Clause. See, e.g., *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876 (2009) ("It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'" (quoting *Murchison*, *supra*, at 136.)). Unlike ordinary trial errors, judicial bias is a condition that cannot be purged from the proceedings. Once a judge has tipped the balance, the proceedings are irredeemably tainted.

Here, the trial judge's actions and comments demonstrated an active bias against Petitioner. Under

due process standards, any litigant who appears before a judge who exhibits uninhibited bias is denied a neutral forum. Such a trial is a charade of fairness.

3. Judge usurping the adversarial role

The trial judge not only *appeared* biased but overtly supplanted the role of defense counsel. Such irregularities permeated the whole trial.

When Petitioner questioned Respondent about his communications with a Californian co-defendant, the trial judge made two objections, “you are presuming that Mr. Yang wrote this information” and “He has testified he does not remember this he wrote this or not.”⁴ App. 25a. Petitioner requested to “have an adversarial proceeding” and let Respondent make his own objections. *Id.* The judge stated:

I think what you're asking is whether or not you can question Mr. Yang as an adversarial witness, and the answer is yes, you may, which means you may ask leading questions, but Mr. Yang not only is the witness, he also represents himself, so he is entitled to object to the questions before answering. (App. 25a-26a).

Thus, the judge acknowledged that (1) the judge’s interjections were formal objections to Petitioner’s questioning of Respondent, and (2) the judge asserted these objections on Respondent’s behalf, since Respondent did not make them himself.

Despite Petitioner’s request to maintain an adversarial process, the judge persisted in objecting

⁴ Petitioner was not asking Respondent about the writing but the external events referenced in the writing, which were separate matters.

on behalf of Respondent. When Petitioner presented his damages evidence, the trial judge twice prodded Respondent to object. Respondent twice expressly stated that he had no objections. App. 32a-33a. Still, the judge commented that “I don’t see proper foundation here.”⁵ App. 33a.

The judge’s conduct culminated in the *sua sponte* motion for judgment against Petitioner. The judge brought the motion for judgment, argued for it, granted it, and announced judgment in Respondent’s favor — all while Respondent sat silent. App. 33a-41a.

Such a trial shatters the adversarial model, where the parties frame the issues and the court serves as a neutral arbiter. “In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation... we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.” *Greenlaw v. United States*, 554 U.S. 237, 243 (2008). “What makes a system adversarial rather than inquisitorial is ... the presence of a judge who does not (as an inquisitor does) conduct the factual and legal investigation himself, but instead decides on the basis of facts and arguments pro and con adduced by the parties.” *Sanchez-Llamas v. Oregon*, 548 US 331, 357 (2006).

When a judge acts as one side’s advocate — for example, by making and arguing a motion that the

⁵ “[W]here the objection is lack of proper foundation, counsel must point out specifically in what respect the foundation is deficient.” *Bader v. Johnson & Johnson*, 86 Cal. App. 5th 1094, 1115 (2022)

party itself did not make – the balance of the proceedings is obliterated.

The Court of Appeal approved the judge's conduct by saying that a judge may "invite" a motion for judgment. App. 17a. But Respondent never accepted the invitation by bringing the motion – he only said "Yes, it is". App. 5a, 34a. Instead, the judge brought, argued, then decided the motion alone. Respondent merely watched the judge do the work. App. 33a-41a.

The Fourteenth Amendment protects every "person" – not only criminal defendants – from being deprived of *property* or other important interests by unfair procedures. When a civil trial is conducted in a manner that the judge ceases to be neutral and the process ceases to be adversarial, the state has failed to provide "due process of law." This Court's intervention is the last safeguard for the fundamental due process at stake.

The error is structural: it "affect[s] the framework within which the trial proceeds,' rather than being 'simply an error in the trial process itself.'" *Weaver v. Massachusetts*, 582 U.S. 286, 294-95 (2017) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991)). As such, it is not amenable to harmless-error analysis – no one can reliably measure the effect of a judge's bias or advocacy on the outcome, because one could not plausibly say what effect the bias had on the proceeding in any quantitative sense.

The only adequate remedy is to vacate the judgment and remand for a new, fair trial. The Court of Appeal's failure to do so, solely because Petitioner did not utter specific legal objections amid a biased and oppressive environment, cries out for correction by this Court.

II. Structural Errors Require Appellate Review — even if Unpreserved — and the California Forfeiture Rule Conflicts with Federal Authority and Sister-State Precedents

The second question presented is equally momentous: May a state court ignore structural due-process violations in a civil trial simply because the injured party—here a *pro se* immigrant—failed to lodge a timely objection? The California Court of Appeal said “yes.” App. 20a-21a. “It is the general rule applicable in civil cases that a constitutional question must be raised at the earliest opportunity or it will be considered as waived.” *Geftakys v. State Personnel Board*, 138 Cal.App.3d 844, 864 (1982) (citing *Hershey v. Reclamation District No. 108*, 200 Cal. 550, 564 (1927)). But California’s constitutional forfeiture rule in civil cases collides with (1) this Court’s guidance on upholding the rules of fundamental justice, (2) the Federal plain-error framework applied in civil cases, and (3) the highest courts of sister States—notably Ohio and Florida, whose courts refuse to condone such miscarriages of justice. Certiorari is essential to set uniform constitutional ground rules.

1. This Court has long exercised discretion to review fundamental issues

This Court has long recognized that procedural rigidity must yield to fundamental justice in exceptional circumstances. In *Hormel v. Helvering*, the Court emphasized that “[o]rderly rules of procedure do not require sacrifice of the rules of fundamental justice,” *Hormel v. Helvering*, 312 U.S. 552, 557 (1941), particularly when inaction would risk a “plain miscarriage of justice.” *Id.* at 558. The Court noted that “[t]here may always be exceptional cases or

particular circumstances which will prompt a reviewing or appellate court, where the proper resolution is beyond any doubt or where injustice might otherwise result.” *Id.* at 557.

Expanding this doctrine, *Glidden Co. v. Zdanok*, 370 U.S. 530 (1962), allowed late-raised challenges to nonjurisdictional structural constitutional defects. This approach was reaffirmed in *Freytag v. Commissioner*, which classified Appointments Clause violations as structural defects that “could be considered on appeal whether or not they were ruled upon below.” *Freytag v. Commissioner*, 501 U.S. 868, 879 (1991).

Together, these cases underscore the judiciary’s flexibility to bypass procedural defaults when confronting systemic threats to constitutional governance or foundational justice.

2. Federal plain-error doctrine: structural defects are not insulated by forfeiture

Rule 52(b) of the Federal Rules of Criminal Procedure, read through *United States v. Olano*, 507 U.S. 725 (1993), empowers appellate courts to correct “a special category of forfeited errors that can be corrected regardless of their effect on the outcome,” *Id.* at 735, namely structural errors—denials of counsel, biased judges, and similar breakdowns in the adjudicatory framework. Though *Olano* arose in the criminal setting, the principle is universal.

Federal civil practice mirrors that principle. Fed. R. Civ. P. 51(d)(2) authorizes courts of appeals to consider “plain error in the instructions that has not been preserved ... if the error affects substantial rights.”

The Ninth Circuit, sitting *en banc* in *Bird v. Glacier Electric Coop.*, held that it “will review for plain or fundamental error, absent a contemporaneous objection... where the integrity or fundamental fairness of the proceedings in the trial court is called into serious question.” *Bird v. Glacier Elec. Coop., Inc.*, 255 F.3d 1136, 1148 (9th Cir. 2001). The court agreed with other circuits that no party should suffer an “unfair and prejudicial” trial due to an error that strikes at due process, even if counsel failed to object. In *Bird*, this standard was applied to review an egregiously inflammatory closing argument which invoked themes of racial oppression and colonialism to sway the jury. The Ninth Circuit concluded it would examine this unobjected argument for fundamental unfairness, recognizing that if the argument “offended fundamental fairness and deprived the [opposing party] of due process,” *Bird*, 255 F.3d at 1148, a new trial was warranted.

Subsequently, the Ninth Circuit reconfirmed that standard in a civil appeal in *Hoard v. Hartman*, 904 F.3d 780 (9th Cir. 2018), vacating judgment because an unobjected-to jury-instruction error “seriously impaired the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at 791, *cf.*, *Johnson v. United States*, 520 U.S. 461, 466-67 (1997).

Other circuits have also applied plain-error review to structural errors absent objections below.

The Fifth Circuit has consistently recognized the applicability of plain error review in civil litigation to prevent grave injustices. A landmark illustration of this principle is *Rojas v. Richardson*, 703 F.2d 186 (5th Cir. 1983), a personal injury suit where defense counsel improperly referenced Rojas as an “illegal alien” during closing arguments. Though the

plaintiff's counsel failed to object, the Fifth Circuit overturned the verdict, deeming the remarks irrelevant, inflammatory, and so prejudicial that they constituted plain error. In its ruling, the court acknowledged the challenge of precisely defining plain error in isolation but emphasized its role as a safeguard in "exceptional circumstances to avoid a miscarriage of justice." *Id* at 190.

Similarly, the Fourth Circuit held that it "may consider an issue for the first time on appeal 'if the error is 'plain' and if our refusal to consider such would result in the denial of fundamental justice.'" *Singer v. Dungan*, 45 F.3d 823, 828-829 (4th Cir. 1995), citing *Stewart v. Hall*, 770 F.2d 1267, 1271 (4th Cir. 1985).

California's forfeiture standard places it at odds with the baseline federal standard that structural errors are "exceptional circumstances" demanding correction to maintain public confidence in the courts.

3. Sister-State fundamental-error doctrines: Ohio, Florida and Texas (among others) bar forfeiture of structural errors in civil cases

California's rigidity is also an outlier among the States, with many high courts view structural unfairness as non-waivable.

In Ohio, appellate courts review for plain error in civil cases that were not timely objected below. "[T]he plain error doctrine ... may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial

process.” *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122-123(1997).

The Florida Supreme Court articulated a similar rule in *Sanford v. Rubin*, 237 So. 2d 134 (Fla. 1970): an error “which goes to the foundation of the case or the merits of the cause of action” is reviewable on appeal “without objection in the lower court”. *Id.* at 137. More recently, *Murphy v. International Robotic Systems, Inc.*, 766 So. 2d 1010 (Fla. 2000), confirmed that unobjected-to misconduct warrants reversal when it “so damaged the fairness of the trial that the public’s interest in our system of justice requires a new trial.” *Id.* at 1030.

In *Ramsey v. Dunlop*, 205 S.W.2d 979 (Tex. 1947), the Texas Supreme Court reversed *sua sponte* on a point neither raised below nor briefed, explaining that “fundamental error” exists when “the public interest declared in the Constitution is directly and adversely affected.” Texas appellate courts review cases for fundamental error even when it is unassigned. *McCauley v. Consol. Underwriters*, 304 S.W.2d 265, 266 (Tex. 1957) (per curiam). In *Dow Chem. Co. v. Francis*, 46 S.W.3d 237 (Tex. 2001), the Texas Supreme Court recognized that claims of judicial bias would not be forfeited by a failure to object in the trial court if “the conduct or comment cannot be rendered harmless by proper instruction.” *Id.* at 241.

These States recognize that bias, denial of an adversarial hearing, or other structural defects transcend ordinary forfeiture rules because they undermine the legitimacy of the judiciary. California stands alone in insisting that a litigant must object repeatedly to the very judge who is behaving as an adversary or forever lose the point.

4. California's minority stance and the need for national uniformity

California Supreme Court has held that “a strong presumption exists *against* finding that an error falls within the structural category, and ‘it will be the rare case’ where an error — even ‘a constitutional violation’ — ‘will not be subject to harmless error analysis.’” *F.P. v. Monier*, 3 Cal. 5th 1099, 1108 (2017). Moreover, the California case law relied upon by the court below—namely *Geftakys, supra*, which in turn cites the nearly century-old California Supreme Court decision in *Hershey, supra*—forecloses review of structural errors not preserved at trial.

If the decision below stands, identical conduct by a trial judge will be automatically reversible in Columbus, Ohio or Tallahassee, Florida, subject to plain-error relief in federal court, yet immune from correction in California—precisely the fragmentation the Supremacy Clause and this Court’s supervisory role are designed to prevent.

5. Why the conflict matters

Rules that excuse structural injustices on technical forfeiture grounds erode public faith in the courts. As this Court observed in *Rosales-Mireles v. United States*, 585 U.S. 129 (2018), the judiciary’s legitimacy depends on procedures that are “neutral, accurate, consistent, trustworthy, and fair, and that provide opportunities for error correction.” *Id.* at 139. The Ninth Circuit, Ohio, Florida and Texas all heed that admonition; the decision below does not. Only this Court can resolve that split and reaffirm that no State may impose procedural forfeiture where the very structure of a fair trial has collapsed.

III. The Equal Protection Component of Due Process, and the Imperative of Equal Justice, Are Implicated by the Treatment of Petitioner - - a Pro Se Litigant of Foreign Origin.

This case also raises concerns about how our justice system treats those who appear without counsel and those who come from different cultural or national backgrounds. The Fourteenth Amendment's guarantee of "equal protection of the laws" works in tandem with due process to ensure that courts do not become instruments of invidious discrimination or unequal treatment. The subtext of the decision below – effectively condoning a trial judge's mistreatment of a *pro se* immigrant litigant as a matter of expediency – raises red flags that merit this Court's attention. It sends a dangerous message: that there may be a lower tier of justice for certain class of litigants.

1. Equal protection and fair access to the courts

It is well established that the Equal Protection Clause applies to all "persons" within a state's jurisdiction, including those of foreign origin. Equal protection in the justice system context means that courts must not apply rules or practices differently based on improper criteria such as race, national origin, or other arbitrary distinctions.

Here, there is a strong suggestion that Petitioner's background and status (foreign, self-represented) contributed to the judicial bias and the outcome. The trial judge's statement "you are not a lawyer trained in the United States" exhibits clear prejudice based on national origin and representation status. The sarcasm and preclusion of evidence were linked to national origin. In effect, Petitioner was denied the

“equal benefit” of the law and the equal right “to sue” and “give evidence”, which is a core concern of both due process and equal protection. See, *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (the law must not be administered so as to unjustly discriminate).

“[S]tate action in violation of the [Fourteenth] Amendment's provisions is equally repugnant to the constitutional commands whether directed by state statute or taken by a judicial official in the absence of statute.” *Shelley v. Kraemer*, 334 US 1, 16 (1948) . All racial and national origin classifications imposed by federal, state, or local governments are subject to strict scrutiny. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995). “[C]lassifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny.” *Graham v. Richardson*, 403 U.S. 365, 372 (1971). The trial judge's classification based on national origin is therefore subject to strict scrutiny.

In addition, “due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.” *Boddie v. Connecticut*, 401 U.S. 371, 377 (1971). Denying Petitioner the opportunity to question a defendant in a civil trial on the ground that he was “not a lawyer trained in the United States” violates his fundamental right to equal access to the courts, providing another basis for strict scrutiny of the judge's state action.

This Court has long taught that “the Constitution recognizes higher values than speed and efficiency.” *Frontiero v. Richardson*, 411 U.S. 677, 690 (1973) (citations omitted). “And when we enter the realm of

‘strict judicial scrutiny,’ there can be no doubt that ‘administrative convenience’ is not a shibboleth.” *Id.* The efficiency justifications of the conduct of the trial by the courts below do not satisfy strict scrutiny.

When the Court of Appeal excused the judge’s conduct as “efficiency” measures, App. 20a, it tacitly approved a different standard of justice for a class of litigants like Petitioner. It is hard to imagine a judge treating a represented party – say, a large corporate defendant – in the same manner, or a court blithely overlooking such treatment. This disparity touches on equal protection values: All litigants, whether rich or poor, whether a native speaker or one with an accent, whether represented by counsel or appearing *pro se*, are entitled to a baseline of dignified and fair treatment.

The combination of Petitioner’s *pro se* status and foreign origin made him especially vulnerable to being steamrolled, and the Constitution does not permit the courts to exploit such vulnerabilities. To the contrary, courts should be mindful of ensuring equal access and equal justice. In this case, far from facilitating Petitioner’s equal access, the courts below erected insurmountable hurdles in the name of judicial efficiency. The judge cut off Petitioner’s evidence, advocated on behalf of the opposing side, created an atmosphere of oppression, and ruled against Petitioner based on the absence of evidence that the judge precluded. Then the appellate court piled on by refusing to correct these errors, essentially attributing the outcome to Petitioner’s own failure to object properly.

2. Judicial bias masked as efficiency – a dangerous precedent

The rationale of the Court of Appeal that the judge was merely keeping the trial on track or efficient is deeply troubling. It suggests that if a litigant is a *pro se* or the case is viewed as unworthy, a judge may take drastic shortcuts at the litigant's expense, and this will be deemed acceptable as long as it is couched as docket management.

Under California Rule of Court 3.1590(n), a judge does not have to issue a written statement of decision “[w]hen a trial is completed within one day or in less than eight hours over more than one day”. As the excerpts of the trial transcript show, the second day of trial lasted about 90 minutes, the trial judge chided the parties about wasting time at least six times. App. 26a, 27a, 28a, 30a, 31a. The trial judge ordered Petitioner to skip further liability evidence about the numerous web posts and finish the case, App. 30a, and then applied the 8-hour rule to orally announce judgment against Petitioner, denying his request for a written decision. App. 41a.

But efficiency is not a license to dispense with fundamental fairness. *Frontiero, supra*, 411 U.S. at 690. The state's interest in an efficient calendar can never justify a judge showing bias or refusing to hear a party's evidence. By conflating bias with efficiency, the court below sets a precedent that could disproportionately harm those least able to fend for themselves in court. It effectively gives trial judges *carte blanche* to treat foreign-born *pro se* or otherwise “unworthy” litigants in a summary fashion, knowing that any lack of objection will insulate such conduct

on appeal. This is an intolerable erosion of equal justice under law.

Granting certiorari in this case would allow the Court to reaffirm that the Constitution's guarantees of due process and equal protection apply fully in civil trials and protect vulnerable litigants. It would send a message that structural fairness cannot be compromised for convenience, and that appellate courts must be prepared to safeguard fundamental rights, even if the aggrieved party did not make an objection in the heat of an unfair trial. Particularly in our contemporary courts, where increasing numbers of individuals appear without attorneys, this supervision by the Court is crucial. As this Court observed in *Rosales-Mireles*, our justice system's legitimacy rests on being perceived as "neutral, accurate, consistent, trustworthy, and fair". If certain classes of litigants (like self-represented immigrants) are seen as not receiving that baseline fairness, public confidence in the courts suffers, and the promise of "Equal Justice Under Law" is tarnished.

IV. This Case Presents an Ideal Vehicle to Address the Questions, Which Are of Exceptional Importance to Civil Justice.

All the factors favoring certiorari are present here. The record vividly illustrates the problem of a structurally unfair trial; the legal issues were pressed and passed upon in the courts below; and there are clear tensions between the approach of the decision below and that of other courts and of this Court's precedents. Moreover, the stakes transcend this particular case. Outright judicial bias and adversarial usurpation gravely undermine the integrity of the judiciary.

Few individual litigants have the resources to seek review from the highest court. The issue of how appellate courts handle unpreserved errors is perennially important. As society sees more *pro se* litigants, the likelihood of untold mistreatment by trial courts increases – unless appellate courts are willing to correct manifest injustice and provide prophylactic protection against due process violations. A rigid application of forfeiture can, in practice, strip such individuals of their fundamental rights.

Finally, the issues in this petition are legal and broad. There are no factual complexities that would impede this Court's review. The narrative of the trial comes through clearly and is fully supported by the trial transcript in the record. App. 24a-41a. The legal questions – whether and how structural errors should be reviewed, and whether the trial court's actions violated constitutional rights – can be decided on the established facts. If anything, this case provides an opportunity for the Court to deliver a unifying precedent on structural error across criminal and civil contexts, ensuring that no trial – whether involving liberty or property – can tolerate the kind of fundamental unfairness that occurred here.

In sum, granting certiorari will allow the Court to uphold the essential promise of the Fourteenth Amendment: that no State shall deprive any person of life, liberty, or property without “due process of law”, which includes the right to a fair trial before a neutral judge, and that all persons will have the “equal protection” of those fundamental procedural safeguards. The California Court of Appeal's decision, if left standing, sends the opposite message. This Court's intervention is needed to correct that error

and to reassert the paramount importance of structural fairness in our courts.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant the petition for a writ of certiorari. Only this Court's review can remedy the individual injustice suffered by Petitioner and clarify the broader legal principles so that *no* court in the Nation – state or federal – will conclude that fundamental due process errors are beyond appellate correction or that any class of litigants can be effectively denied their day in court.

Respectfully submitted,

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