

IN THE SUPREME COURT OF THE UNITED STATES

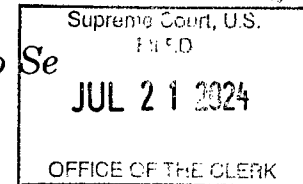
No. 24-5140

ORIGINAL

FREDERICK PIÑA,

*Petitioner, Pro Se*

v.



STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

*Respondent.*

*On Petition for a Writ of Certiorari to the*

*United States Court of Appeals*

*for the Ninth Circuit*

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

### **1. *Claim Preclusion and Due Process:***

Whether the Ninth Circuit erred in affirming the dismissal of petitioner's claims on the grounds of claim preclusion when the petitioner was denied a full and fair opportunity to litigate those claims in the prior state court action, in violation of *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982).

### **2. *Judicial Misconduct and Due Process:***

Whether the Ninth Circuit violated the petitioner's constitutional due process rights and engaged in judicial misconduct by dismissing the appeal without considering the petitioner's evidence of corporate fraud, in retaliation for the petitioner's anti-corruption advocacy, contrary to the Fifth and Fourteenth Amendments, and 28 U.S.C. §§ 453 and 455.

### **3. *Fraud and Claim Preclusion:***

Whether allegations of fraud and fraudulent concealment by the petitioner against the defendant preclude the application of claim

preclusion under Federal Rule of Civil Procedure 60(b)(3), and how the four-year statute of limitations for civil RICO claims impacts the claim preclusion analysis.

#### **4. *First Amendment Retaliation:***

Whether the Ninth Circuit violated the petitioner's First Amendment rights by imposing sanctions or legal consequences in retaliation for the petitioner's political expression and advocacy efforts, as protected by *NAACP v. Button*, 371 U.S. 415 (1963).

#### **5. *Consistency in Judicial Process and Due Process:***

Whether the issuance of conflicting orders by the Ninth Circuit, where an original panel found the petitioner's appeal to be non-frivolous but a later panel dismissed the appeal in retaliation for whistleblowing on state government corruption, constitutes a violation of the petitioner's due process rights to a consistent and fair judicial process, as articulated in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), and related cases.

## ***6. Fraud Upon the Court and Due Process:***

Whether the California state court's approval of State Farm's Motion for Evidence Sanctions, based on deliberate misrepresentations and deceit, constitutes fraud upon the court, and whether the Ninth Circuit's failure to address these allegations in the petitioner's opening brief warrants Supreme Court review to uphold fundamental due process rights under the Fourteenth Amendment, as supported by *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), and *United States v. Throckmorton*, 98 U.S. 61 (1878).

## ***7. Legally Binding Orders and Procedural Rules:***

Whether the Ninth Circuit's memorandum issued on April 2, 2024, not constituting a legally binding order under applicable procedural rules, and the premature and prejudicial denial of the appeal En Banc, while the related California Supreme Court case for claim preclusion is still pending, justify reopening the appeal based on errors and constitutional violations.

## **8. *Jurisdiction and Res Judicata:***

Whether the Ninth Circuit's memorandum fails the two-part test for res judicata as outlined in *Commissioner of Internal Revenue v. Sunnen*, 333 U.S. 591 (1948), because there was no final judgment from the California Supreme Court and the court lacked jurisdiction.

## **CORPORATE DISCLOSURE STATEMENT**

**Petitioner Frederick Piña has no parent companies. No publicly held company owns more than 10 percent of petitioner's stock.**

## RELATED PROCEEDINGS

1. *Frederick Piña v. State Farm Mutual Automobile Insurance Company*, California Supreme Court, **Case No. S284975**.

2. *Frederick Piña v. State Farm Mutual Automobile Insurance Company*, California Court of Appeal, Second District, Division Two, **Case No. B331404**.

3. *Frederick Piña v. State Farm Mutual Automobile Insurance Company*, Los Angeles County Superior Court, **Case No. 21STCV13962**.

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## **I. PETITION FOR WRIT OF CERTIORARI**

Petitioner Frederick Piña, respectfully petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

## **II. OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Ninth Circuit is not yet reported but is reprinted at App. A. The order of the district court dismissing the action is unreported but is reprinted at App. B.

## **III. JURISDICTION**

The original Order of the Court of Appeals was entered on September 27, 2023 (see App. C). A “second,” or rather curious, Memorandum was issued on April 2, 2024; and a timely petition for rehearing en banc that was denied on July 11, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

#### IV. STATUTORY PROVISIONS INVOLVED

- The Fifth Amendment to the United States Constitution:

*"No person shall... be deprived of life, liberty, or property, without due process of law..."*

- The Fourteenth Amendment, Section 1:

*"No State shall... deprive any person of life, liberty, or property, without due process of law..."*

- 28 U.S.C. § 1254(1):

This statute provides the Supreme Court jurisdiction to review cases from the Courts of Appeals.

- 28 U.S.C. § 453:

*"The oath of office for judges."*

- 28 U.S.C. § 455:

*"Disqualification of judges."*

- Federal Rule of Civil Procedure 60(b)(3):

Allows for relief from a judgment due to fraud, misrepresentation, or misconduct by an opposing party.

## INTRODUCTION:

Frederick Piña petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, which affirmed the dismissal of his claims against State Farm Mutual Automobile Insurance Company based on the doctrine of claim preclusion. This petition raises critical issues regarding the proper application of claim preclusion, the protection of constitutional due process rights, allegations of judicial misconduct, and the impact of fraud on judicial proceedings.

The Ninth Circuit's decision to affirm the district court's dismissal of Piña's claims based on claim preclusion is flawed and defective, contravening established precedents and raising substantial constitutional concerns. The concept of res judicata was inapplicable because another related case, still pending at the California Supreme Court, has not yet been resolved. Piña argues that he was denied a full and fair opportunity to litigate his claims in the prior state court action due to the exclusion of critical evidence of fraud, conspiracy, and civil rights violations by State Farm. This exclusion violates the principles



established in cases such as *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982), which requires that litigants must have a full and fair opportunity to present their claims.

Furthermore, the denial of the Petition for Rehearing En Banc by the Ninth Circuit was based on the same flawed decision, exacerbating the judicial errors and misconduct involved. Allegations of judicial misconduct and retaliatory animus in response to Piña's anti-corruption advocacy raise serious questions about the impartiality and fairness of the proceedings, contrary to the standards set in *Tumey v. Ohio*, 273 U.S. 510 (1927), which emphasizes the necessity of an unbiased tribunal.

This case presents an opportunity for the Supreme Court to clarify the proper application of claim preclusion principles, address significant due process violations, and reaffirm the judiciary's commitment to fairness and impartiality. The review by this Court is essential to uphold fundamental constitutional rights, as protected under the Due Process Clause of the Fourteenth Amendment, and ensure that litigants receive a fair and unbiased adjudication of their claims, consistent with the principles established in *Gonzalez v. Crosby*, 545 U.S. 524 (2005).

## V. STATEMENT OF THE CASE

1. Overview: Petitioner, Frederick Piña, filed this action against Respondent, *State Farm Mutual Automobile Insurance Company*, in the United States District Court for the Central District of California. The complaint alleged violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, as well as deprivations of Piña's civil rights under 42 U.S.C. § 1983.

2. District Court Dismissal: The district court dismissed the action, holding that Piña's claims were barred by the doctrine of claim preclusion (*res judicata*) based on a false allegation of a prior so-called judgment in a state court action against State Farm. App. D.

3. Ninth Circuit Appeal: On appeal to the Ninth Circuit, Piña argued that claim preclusion was improperly applied because he was denied a full and fair opportunity to litigate his claims in the state court action. Specifically, Piña alleged that he was prevented from introducing evidence of fraud, conspiracy, and civil rights violations by State Farm.

Piña also raised allegations and supporting evidence of judicial misconduct, bias, retaliation, and deprivations of his due process rights.

4. Ninth Circuit Decision: In a non-precedential memorandum disposition, the Ninth Circuit affirmed the district court's dismissal based on claim preclusion. App. A and B. The court rejected Piña's arguments regarding the state court proceedings, holding that he failed to establish a procedural defect that would preclude the application of claim preclusion.

5. Rehearing En Banc: Piña filed a petition for rehearing en banc, raising multiple issues including: (1) conflicts with binding precedent on claim preclusion; (2) allegations of judicial misconduct and retaliation; (3) due process violations; (4) abuse of discretion; and (5) improper dismissal without considering his evidence. The petition also provided supplemental authorities, including claims of deprivation of rights under color of law, proper ex parte communications, and judicial retaliation.

6. Denial of Rehearing: On July 11, 2024, the Ninth Circuit denied Piña's petition for rehearing en banc. App. B.

7. Reopening Request: On July 13, 2024, Piña requested the reopening of his appeal in Case Number 23-55614 on grounds that the memorandum issued by the court was not legally binding as it did not constitute an order under federal procedural rules (see Rule 36), and that the related California Supreme Court case for claim preclusion is still pending and has not been settled. Piña argued that the previous decision to deny his appeal was premature, prejudicial, and constitutionally incorrect.

Additionally, Plaintiff's First Amendment Rights were willfully violated and retaliated against off, for anti-corruption activities, fully protected by the High Court.

See, *Mt. Healthy City School District Board of Education v. Doyle*, **429 U.S. 274 (1977)**: This case addresses First Amendment retaliation. Mt. Healthy established a burden-shifting framework for retaliation claims.

## VI. REASONS FOR GRANTING THE WRIT

### 1. *Conflict with Precedent on Claim Preclusion:*

This Court should grant certiorari to resolve the conflict between the decision below and this Court's precedents regarding the proper application of claim preclusion principles. In *Taylor v. Sturgell*, 553 U.S. 880 (2008), this Court cautioned against an overly broad application of claim preclusion that would improperly preclude adjudication of claims on the merits. The Ninth Circuit's decision affirming the dismissal of Piña's federal claims based on claim preclusion appears to directly contravene this admonition. Piña has consistently argued that he was denied a full and fair opportunity to litigate his claims against State Farm in the prior state court action due to the alleged exclusion of critical evidence of fraud, conspiracy, and civil rights violations. This Court has long held that claim preclusion should not apply when a party was denied a full and fair opportunity to litigate the claim in the prior action. See *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982). The Ninth Circuit's decision rejecting Piña's arguments on this issue and affirming the dismissal based on claim preclusion conflicts with this Court's

precedents and warrants review to ensure the proper application of claim preclusion principles.

## ***2. Constitutional Due Process and Judicial Misconduct:***

This Court should grant certiorari to address significant constitutional issues raised by Piña, including allegations of judicial misconduct and due process violations. Piña has alleged and presented evidence that the Ninth Circuit's decision to dismiss his appeal was motivated by retaliatory animus in response to his anti-corruption advocacy and efforts to expose judicial misconduct. This Court has recognized that retaliatory actions by judicial officers can constitute violations of due process. See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985). The allegations of bias and retaliation, if proven, would represent a grave breach of judicial ethics and constitutional principles. Piña's claims of due process violations, stemming from the exclusion of critical evidence and the dismissal of his appeal without adequate consideration, raise substantial questions about the fairness and impartiality of the judicial process. Given the importance of maintaining public confidence in the judiciary and ensuring that litigants receive fair treatment, this Court's

intervention is necessary to address these constitutional concerns, as Ninth Circuit's conduct violates Supreme Court precedent. See *Tumey v. Ohio*, 273 U.S. 510 (1927): Emphasizes the importance of an impartial tribunal.

### **3. *Fraud and Rule 60(b)(3):***

The application of claim preclusion in this case also warrants review due to the allegations of fraud and fraudulent concealment by State Farm. Under Federal Rule of Civil Procedure 60(b)(3), a judgment obtained through fraud can be set aside. Piña has presented specific and detailed allegations of fraud by State Farm, which he argues preclude the application of claim preclusion. This Court has emphasized the need to protect litigants from judgments obtained through fraudulent means. See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

Moreover, the four-year statute of limitations for civil RICO claims, as articulated in *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 143 (1987), supports Piña's argument that his claims should not be precluded. Review by this Court is necessary to clarify the interplay

between fraud, claim preclusion, and the statute of limitations for civil RICO claims.

#### ***4. First Amendment Retaliation:***

Piña's allegations of First Amendment retaliation by the Ninth Circuit also raise significant constitutional issues that warrant this Court's review. This Court has consistently held that government actions taken in retaliation for protected speech violate the First Amendment. See *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977). Piña has argued that the Ninth Circuit's dismissal of his appeal was motivated by retaliatory animus in response to his political expression and anti-corruption advocacy. If proven, such retaliation would represent a serious infringement on Piña's First Amendment rights. This Court's intervention is necessary to uphold the principles of free speech and protect litigants from retaliatory actions by judicial officers.

#### ***5. Consistency in Judicial Process:***

The issuance of conflicting orders by the Ninth Circuit, where an original panel found Piña's appeal to be non-frivolous but a later panel dismissed



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the appeal in retaliation for whistleblowing, raises significant due process concerns. This Court has emphasized the importance of consistency and fairness in judicial proceedings. See *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). The conflicting orders in Piña's case undermine the integrity of the judicial process and warrant this Court's review to ensure that litigants receive consistent and fair treatment.

#### ***6. Fraud Upon the Court:***

Piña's allegations of fraud upon the court by State Farm, including the deliberate misrepresentations and deceit that led to the approval of the Motion for Evidence Sanctions, raise significant due process concerns. This Court has recognized the serious nature of fraud upon the court and its impact on the integrity of the judicial process. See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944). Review by this Court is necessary to address these allegations and uphold fundamental due process rights.

#### ***7. Jurisdiction and Res Judicata:***

Finally, the Ninth Circuit's memorandum fails the two-part test for res judicata as outlined in *Commissioner of Internal Revenue v. Sunnen*, 333 U.S. 591 (1948), because there was no final judgment from the California Supreme Court and the court lacked jurisdiction. This Court's intervention is necessary to ensure the proper application of res judicata principles and to address the jurisdictional issues raised by Piña.

#### ***8. The Ninth Circuit's Application of Res Judicata Was Erroneous:***

The Ninth Circuit dismissed Petitioner's federal appeal based on res judicata, erroneously concluding that the issues were already adjudicated. However, the related case against State Farm is still pending before the California Supreme Court. This ongoing state court proceeding fundamentally undermines the application of res judicata, as the issues in both cases have not been fully resolved.

See, *Richards v. Jefferson County*, 517 U.S. 793 (1996): Emphasizes that due process requires a full and fair opportunity to litigate before claim preclusion can apply.

***A. Newly Discovered Evidence Warrants Relief Under Rule 60(b)(2)***

New evidence has emerged showing that the related state case is active and pending. This evidence, which was not discovered with reasonable diligence prior to the judgment, is critical to the proper adjudication of Petitioner's claims. The failure to consider this evidence constitutes a significant error justifying relief from judgment.

***B. Extraordinary Circumstances Justify Relief Under Rule 60(b)(6)***

The dismissal of Petitioner's federal appeal while the related state case is pending presents extraordinary circumstances. These include:

1. The risk of inconsistent rulings between state and federal courts.
2. The potential for conflicting judgments, should the California Supreme Court rule in Petitioner's favor.
3. The unnecessary expenditure of judicial resources in reconciling conflicting decisions.
4. Fundamental fairness, as the dismissal deprives Petitioner of a fair opportunity to litigate his claims.

5. The novel legal question regarding the interaction between parallel state and federal proceedings.
6. The strong public interest in ensuring consistent and equitable resolutions in cases involving dual jurisdiction.

***9. The Judgment Is Void Under Rule 60(b)(4):***

Given the ongoing state court proceedings, the Ninth Circuit's judgment is effectively null and void. The principle of res judicata was inapplicable, rendering the judgment unenforceable under Rule 60(b)(4).

**VII CONCLUSION:**

This petition elevates pressing concerns about the core tenets of due process, judicial impartiality, and the preservation of First Amendment freedoms. The Ninth Circuit's issuance of two diametrically opposed orders not only exemplifies a significant intra-panel split but also raises profound issues of institutional racial bias, which threatens the foundational principles of justice and equity.

The intra-panel split within the Ninth Circuit reveals a disconcerting inconsistency in judicial rulings on critical legal issues. Such internal discord starkly contrasts with the principles of judicial stability and uniformity enshrined in *Williams v. Florida*, 399 U.S. 78 (1970). In *Williams*, the Supreme Court emphasized that a coherent and predictable application of legal standards is essential for maintaining the rule of law and ensuring that all litigants are afforded equal protection. The Ninth Circuit's conflicting decisions create a legal quagmire, leaving litigants and the public in a state of uncertainty and undermining the reliability of the judicial system.

Moreover, the presence of institutional racial bias in these proceedings compounds the gravity of the situation. The Supreme Court's decision in *McCleskey v. Kemp*, 481 U.S. 279 (1987), illuminated the corrosive impact of racial bias on the fairness of judicial processes. The disparate treatment observed in this case suggests a systemic issue that warrants this Court's scrutiny. The erosion of impartiality not only violates constitutional protections but also undermines public confidence in the judiciary's commitment to fairness and equality.

The procedural errors and constitutional violations evident in the Ninth Circuit's handling of this case necessitate rigorous review. As articulated in *Strickland v. Washington*, 466 U.S. 668 (1984), the integrity of judicial proceedings is paramount. Deviations from established procedural and substantive norms jeopardize the fundamental right to a fair trial and call for rectification by the Supreme Court to ensure that justice is not only done but is manifestly seen to be done.

Frederick Piña's relentless pursuit of justice, in the face of substantial judicial misconduct and retaliatory actions, underscores the critical need for this Court's intervention. This petition transcends a mere dispute over claim preclusion; it embodies a broader imperative to reaffirm constitutional safeguards and rectify systemic injustices.

In the interests of upholding justice, preserving the rule of law, and ensuring equitable administration of legal principles, Frederick Piña respectfully petitions this Court to grant a writ of certiorari. A thorough review of the Ninth Circuit's judgments is essential to restore judicial coherence and reinforce public trust in the equitable administration of justice.

DATED: July 18, 2024

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Frederick Piña', with a long horizontal flourish extending to the right.

Frederick Piña, *Plaintiff Pro Se*