No. 24-_____

In the
Supreme Court of the United States

Igor Lukashin,

Petitioner

v.

U.S. Court of Appeals for the Ninth Circuit,

Respondent

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

PETITION FOR WRIT OF CERTIORARI

Igor Lukashin, *pro se*

PO Box 2002
Bremerton, WA 98310
(360) 447-8837

QUESTIONS PRESENTED

1. Whether the Ninth Circuit has continued to deny Due Process by applying a purportedly categorical, *Ramirez-Alejandre v. Ashcroft*, 320 F.3d 858, 875 (9th Cir. 2003) (en banc), argument waiver / forfeiture rule allegedly supported by *Padgett v. Wright*, 587 F.3d 983, 985 n. 2 (9th Cir. 2009) to hundreds of *pro se* appellants, *a-la* the secret policy in *Schexnayder v. Vannoy*, 140 S. Ct. 354 (U.S. 2019) (Sotomayor, J.), even after the *en banc* *Brown v. Arizona*, 82 F. 4th 863, 873 (9th Cir. 2023) embraced this Court's reasoning in *Yee v. Escondido*, 503 U.S. 519, 534 (1992)?

2. Whether the Ninth Circuit amended the original pre-filing review order (which was the subject of the certiorari petition No. 22-648) in a manner that denied Lukashin Due Process by failing to provide notice or opportunity to be heard in opposition, representing a departure "from the accepted and usual course of judicial proceedings... to call for an exercise of this Court's supervisory power" under Rule 10(a).

QUESTIONS PRESENTED

1. Whether the Ninth Circuit has continued to deny Due Process by applying a purportedly categorical, *Ramirez-Alejandre v. Ashcroft*, 320 F.3d 858, 875 (9th Cir. 2003) (en banc), argument waiver / forfeiture rule allegedly supported by *Padgett v. Wright*, 587 F.3d 983, 985 n. 2 (9th Cir. 2009) to hundreds of *pro se* appellants, *a-la* the secret policy in *Schexnayder v. Vannoy*, 140 S. Ct. 354 (U.S. 2019) (Sotomayor, J.), even after the *en banc* *Brown v. Arizona*, 82 F. 4th 863, 873 (9th Cir. 2023) embraced this Court's reasoning in *Yee v. Escondido*, 503 U.S. 519, 534 (1992)?

2. Whether the Ninth Circuit amended the original pre-filing review order (which was the subject of the certiorari petition No. 22-648) in a manner that denied Lukashin Due Process by failing to provide notice or opportunity to be heard in opposition, representing a departure "from the accepted and usual course of judicial proceedings... to call for an exercise of this Court's supervisory power" under Rule 10(a).

PARTIES TO THE PROCEEDING

Petitioner is Igor Lukashin, *pro se*. Lukashin was the only party to the case below, *In re Igor Lukashin*, No. 22-80034 (9th Cir. 2024), the amendments to the 2022 pre-filing order *sua sponte* entered by the Ninth Circuit Court of Appeals via the June 17, 2024 Order.

Related recent proceedings in this Court were *Lukashin v. United States Court of Appeals for the Ninth Circuit*, No. 22-648, *petition denied* (U.S. March 20, 2023); *Lukashin v. United States Court of Appeals for the Ninth Circuit*, No. 24A249 (U.S. September 11, 2024)(extension of time to file petition until November 14, 2024 granted by Justice Kagan).

According to the docket in No. 24A249, Respondent USCA 9 is represented by Solicitor General Elizabeth B. Prelogar.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv-vi
DECISION BELOW	1
JURISDICTION	1
STATEMENT OF THE CASE	1
REASONS TO GRANT CERTIORARI	3
1. Ninth Circuit has continued to deny Due Process by applying a purportedly categorical rule allegedly supported by *Padgett, supra*, to hundreds of *pro se* appellants, as recently as late October 2024	5
2. The Order conflicts with the Ninth Circuit own binding precedent and this Court's Due Process jurisprudence	7
CONCLUSION	10
Appendix	12

TABLE OF AUTHORITIES

Brown v. Arizona, 82 F. 4th 863 (9th Cir. 2023) (en banc) *passim*

Calhoon v. Thierolf, No. 21-35950 (9th Cir. Oct. 23, 2024) (mem.) 5

City of Grants Pass, Oregon v. Johnson, 144 S. Ct. 2202 (U.S. 2024) 5

Connerly v. Tarpin, No. 23-15297 (9th Cir. Sep. 23, 2024) (mem.) 5

Fuentes v. Shevin, 407 U. S. 67, 80 (1972) 9

Hathorn v. Lovorn, 457 US 255, 262 n. 11 (1982) 4

Hemphill v. New York, 142 S. Ct. 681, 689, 595 U.S. 144 (2022) 6

In re Igor Lukashin, No. 22-80034 (9th Cir. 2024) ii, 1

Kashem v. Barr, 941 F.3d 358, 377–383 (9th Cir. 2019) 9

Martin v. Boise, 920 F.3d 584 (9th Cir. 2019) 5

Padgett v. Wright, 587 F.3d 983, 985 n. 2 (9th Cir. 2009) *passim*

Phelps v. Alameida, 569 f.3d 1120, 7

1123 (9th Cir. 2009)

Ramirez-Alejandre v. Ashcroft, 320 F.3d 858, 875 (9th Cir. 2003) (en banc) i

Ringgold-Lockhart v. County of Los Angeles, 761 F.3d 1057, 1062–67 (9th Cir. 2014) 7

Safir v. U.S. Lines, Inc., 792 F.2d 19, 24 (2d Cir.1986) 7

Schexnayder v. Vannoy, 140 S. Ct. 354 (U.S. 2019) (Sotomayor, J.) i, 6

Shinn v. Ramirez, 142 S. Ct. 1718, 1730 n. 1, 596 US 366 (2022) 6

United States v. Pallares-Galan, 359 F.3d 1088, 1095 (9th Cir. 2004) 4

Yee v. Escondido, 503 U.S. 519, 534 (1992) i, 4

Zerezghi v. USCIS, 955 F.3d 802, 808–13 (9th Cir. 2020) 9

Recent GVR disposition where Solicitor General conceded error

Jones v. United States, No. 23-7166 (U.S. Nov. 12, 2024) 10

DECISION BELOW

On June 17, 2024, the Ninth Circuit entered an order, *In re: Igor Lukashin,* No. 22-80034 (9th Cir. 2024), denying Lukashin's motion to establish deadlines (DE: 62, filed August 6, 2023), but also *sua sponte* amending the May 24, 2022 pre-filing review order, DE:8.

JURISDICTION

This Court has jurisdiction to review June 17, 2024 order ("the Order") pursuant to 28 U.S.C. § 1254(1). An extension of time to file certiorari petition was granted by Justice Kagan until November 14, 2024, *see* Docket No. 24A249

STATEMENT OF THE CASE

This Court denied a prior certiorari petition regarding the original pre-filing review order on March 20, 2023, *see* Docket No. 22-648.

Docket summary in No. 22-80034 below since the prior denial of certiorari, provided in the Appendix, indicates that, between 4/2/23 and 1/15/24, Lukashin requested publication of eight Ninth Circuit's memorandum dispositions, as permitted by Cir. R. 36–4, with six requests coming after the *en banc* Brown v. Arizona, 82 F. 4th 863 (9th Cir. 2023) was published.

Notably, *Brown* dissent recognized the following, 82 F. 4th at 899:

> concluding that waiver and forfeiture only apply to claims abandons voluminous caselaw in which we have applied these rules to arguments...

The most recent six publication requests[1] attempted to bring the *Brown en banc* court's new argument waiver/forfeiture rule to the Ninth Circuit's attention. Four of them were summarily denied without explanation, and the two most recent were likely implicitly denied.

The Order, containing a one-sentence denial of Lukashin's Due Process-based motion to establish deadlines, filed over ten (10) months prior, and without providing Lukashin any prior notice that additional action was contemplated:

1) extended the original June 1, 2024 date, when Lukashin would have been able to petition to lift the pre-filing review order, **by three (3) years (!)** to June 1, 2027;

---

[1] CA9 memoranda in Nos. 22-55877, 22-16771, 18-17464, 22-16929, 21-35151, and 22-16842, most citing to *Padgett v. Wright*, 587 F.3d 983, 985 & n.2 (9th Cir. 2009).

2) advised that "[t]he court will issue an order only if the court grants permission for the submission to proceed."

Deputy Clerk MCD below entered several boilerplate orders denying permission to proceed in August 2023 and May 2024. None of those orders (DE Nos. 64–68, 75–78) provided any indication that changes to the pre-filing review order were being contemplated by that court.

On September 11, 2024, Justice Kagan granted Lukashin's request to extend time to file this certiorari petition until November 14.

REASONS TO GRANT CERTIORARI

1. Ninth Circuit has continued to deny Due Process by applying a purportedly categorical rule allegedly supported by *Padgett, supra*, to hundreds of *pro se* appellants, as recently as late October 2024

The main allegation, QP 1, is that the Ninth Circuit routinely denies equal protection of the law to *pro se* appellants via application of a purported categorical rule ("*Padgett* fraud"), where the actual rule, contemporaneously

applied in published opinions, permits discretion.

The majority of the *en banc Brown* court, *supra*, by citing to *United States v. Pallares-Galan*, 359 F.3d 1088, 1095 (9th Cir. 2004) ("As the Supreme Court has made clear, it is claims that are deemed waived or forfeited, not arguments."), embraced this Court's reasoning in *Yee v. Escondido*, 503 U.S. 519, 534 (1992) ("Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.").

This Court's building engraving promises EQUAL JUSTICE UNDER LAW, so Sup. Ct. R. 10(a) calls for the Court's supervisory power.

Also, while an essentially identical Question was presented in the certiorari petition in No. 22-648 this Court denied, "that denial ... imparts no implication or inference concerning the Court's view of the merits" *Hathorn v. Lovorn*, 457 US 255, 262 n. 11 (1982).

Plus, additional developments may now persuade the Court to grant certiorari and accept review on this issue, which is what

happened in *City of Grants Pass, Oregon v. Johnson*, 144 S. Ct. 2202, 2211–14 (U.S. 2024) (agreeing "to grant review to assess the *Martin*[2] experiment")

Over 2,600 (!) *pro se* appeals have now been affected[3], including very recently, *e.g.* *Connerly v. Tarpin*, No. 23-15297 (9th Cir. Sep. 23, 2024) (full rule) or *Calhoon v. Thierolf*, No. 21-35950 (9th Cir. Oct. 23, 2024)(partial rule: "We do not consider arguments and allegations raised for the first time on appeal").

The Ninth Circuit's continuing application of the purported categorical *Padgett* rule post-*Brown,* when a *Brown* dissent recognized the majority was abandoning voluminous *argument* waiver / forfeiture caselaw, 82 F. 4th at 899, while also noting:

---

[2] *Martin v. Boise*, 920 F.3d 584 (9th Cir. 2019)

[3] Searching Google Scholar case law for Ninth Circuit Court of Appeals cases that cite *Padgett v. Wright*, 587 F. 3d 983, 985 n. 2 (9th Cir. 2009) (per curiam) and contain the following search terms +"pro se" +"not for publication" +"We do not consider" yielded 2,370 results on 12/16/22 and 2,650 results on 11/12/2024. Purported full rule is: "We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments or allegations raised for the first time on appeal."

> Unlike most situations where we are bound to follow the Supreme Court, application of the waiver rule by a court of appeals may appropriately differ because the Supreme Court has a discretionary docket. Our line of cases applying the Supreme Court's waiver rule disregards certain unique characteristics of the Supreme Court...

arbitrarily denies some parties, including *pro se* appellants, the benefit of *Brown*, the currently applicable binding Ninth Circuit law embracing this Court's approach.

Recently, *Shinn v. Ramirez*, 142 S. Ct. 1718, 1730 n. 1, 596 US 366 (2022) noted "discretion to forgive any forfeiture", while *Hemphill v. New York*, 142 S. Ct. 681, 689, 595 U.S. 144 (2022) restated this Court's argument-forfeiture law citing *Yee, supra.*

EQUAL JUSTICE UNDER LAW compels this Court to invoke its supervisory powers to address the Ninth Circuit's possible secret policy *a-la Schexnayder, supra,* and ensure uniform application of the waiver / forfeiture rules.

Lukashin's relevant arguments were "*undeniably correct* under *currently* governing

law" *Phelps v. Alameida*, 569 f.3d 1120, 1123 (9th Cir. 2009), *i.e. Brown, supra*; no "vexatious-litigant" original or amended pre-filing review sanctions were ever appropriate.

2. The Order conflicts with the Ninth Circuit own binding precedent and this Court's Due Process jurisprudence

The Ninth Circuit amended the pre-filing order without following its own Due-Process-grounded test, articulated in *Ringgold-Lockhart v. County of Los Angeles*, 761 F.3d 1057, 1062–67 (9th Cir. 2014) ("In light of the seriousness of restricting litigants' access to the courts, pre-filing orders should be a remedy of last resort"), *see* Sup. Ct. R. 10(a) and (c).

The test articulated in *Safir v. U.S. Lines, Inc.* , 792 F.2d 19, 24 (2d Cir.1986), as cited in *Ringgold-Lockhart, supra*, 761 F.3d at 1062, is:

> (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4)

> whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

Presumably, the amended pre-filing order was in response to Lukashin's petitioning conduct in the Ninth Circuit Court of Appeals subsequent to entry of the original order. However, Lukashin was neither advised such action is being contemplated, nor provided with a list of objectionable filings or reasons why specific filings were deemed objectionable, nor given an opportunity to respond in opposition to the specific proposed amendments.

Jonhson v. Ryan, 55 F. 4th 1167, 1199 (9th Cir. 2022) observed:

> The Supreme Court's "procedural due process cases have consistently observed that [notice of the factual basis for a decision and a fair opportunity for rebuttal] are among the most important procedural mechanisms for purposes of avoiding erroneous deprivations." *Wilkinson*, 545 U.S. at 226.

See also Fuentes v. Shevin, 407 U. S. 67, 80 (1972) ("For more than a century the central meaning of procedural due process has been clear: `Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified'")

In the motion to establish deadlines for decision (DE: 62 below), Lukashin argued that Due Process requires an opportunity to: a) be meaningfully heard; b) at a meaningful time; and c) receive a full statement of reasons, noting

> Due Process also requires a full statement of reasons, *Kashem v. Barr*, 941 F.3d 358, 382–83 (9th Cir. 2019), *Zerezghi v. USCIS*, 955 F.3d 802, 808–11, 813 (9th Cir. 2020); and "completely unfettered discretion poses a risk of arbitrary decision-making", *State v. Rogers*, 487 P.3d 177, 185 (Wash. App. Div. 1 2021). Obviously, if the Court simply fails to rule whether Lukashin is permitted to proceed after requiring Lukashin to seek such permission, such action is a de-facto equivalent to an unexplained denial, and also violates Due Process.

Review is warranted due to a departure, below, "from the accepted and usual course of judicial proceedings... as to call for an exercise of this Court's supervisory power" Rule 10(a).

Lukashin's right to petition in the Ninth Circuit, otherwise available to nonlawyer non-parties via e.g. Circuit Rule 36-4 requests for publication, have been curtailed, subject to a de-facto filing ban by prior unexplained, and, going forward, no longer even forthcoming, denials of permission to proceed, offending Due Process.

CONCLUSION

The Court should grant certiorari to consider one or more of the Questions Presented, possibly using the Grant, Vacate, and Remand ("GVR") approach to provide the Ninth Circuit with an opportunity to consider anew whether to enter an amended pre-filing order consistent with this Court's and the Ninth Circuit's Due-Process-grounded precedent.

Lukashin urges the Solicitor General, counsel of record for the Respondent, to concede the court of appeals' error and, at the very least, request the GVR relief, like it recently did in the Brief of Respondent, pp. 12–17, in *Jones v. United States*, No. 23-7166, a case where, on

November 12, the Court granted the GVR relief and remanded "for further consideration in light of the brief for the United States before this Court filed on October 9, 2024."

Dated: November 14, 2024

s/ Igor Lukashin
PO Box 2002
Bremerton, WA 98310
(360) 447-8837 igor_lukashin@comcast.net

APPENDIX

Description	Page
DE:79, June 17, 2024, Order denying motion to establish deadlines and modifying pre-filing order	1
CA9 No. 22-80034 Docket Summary Post-Denial of Certiorari in No. 22-648	3