24-7406

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Appeal No. 22-55945 SC Case No.

IN THE Supreme Court of the United States

Doug Kisaka

Petitioner, in Pro Se

V

USC (The University of Southern California)

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

(i) Questions Presented

Question 1
(a). "In a case originating in federal court, can a district court judge in the final and 5th Action, rely on a state court's intermediate interpretation of a federal court dismissal to the disregard and exclusion of the interpretation of the plain text of the ruling of the federal court dismissal itself and its restatement with clarification by the same district court judge in a superseding ruling in a 2nd Action?"
(b)"If a district court can rely on the intermediate ruling of a state court instead of the findings of fact by a district court judge in the initiating action, then that begs the question, "Can a state court alter the claim preclusive effect of a federal court ruling?"
(c)Which further begs the question, "Regardless of the legal basis for a ruling, does a district court judge's discretion in a final action extend to materially altering the claim preclusive effect of a prior district court judge's dismissal in the initiating action and if not, does it portend a potentially reversible error? "
Question 2. "Can a case involving an ongoing infringement of an individual's civil rights stemming from the same source within the same limited time period, be barred by res- judicata, permitting the breach of those rights to continue with impunity in perpetuity?"
Question 3. "Does the denial of a self-represented appellant's legitimate request to include admissible evidence in order to complete the record on appeal, under FRAP Rule 30-1.3 supplemental excerpts or record when the appellee fails to do so, constitute a denial of due process and a reversible error?"

(ii) List of Proceedings

US District Court
Case No. 2:11-CV-01942-BRO, Kisaka v USC
Order of dismissal: April 4, 2014

9th Circuit Court of Appeals
Appeal No. 14-55649, Kisaka v USC
Order affirming dismissal: August 26, 2016

US District Court
Case No. 2:17-CV-01746-BRO, Kisaka v USC
Order granting remand: May 11, 2017

Los Angeles Superior Court
Case BC650048, Kisaka v USC
Order sustaining demurrer: August 3, 2017

CA 2nd District Appellate Court
Case. No B284559, Kisaka v USC
Order affirming dismissal: Feb 19, 2019

US District Court
Case No. 2:21-CV-04757-CJC, Kisaka v USC
Order of dismissal: December 16, 2021

Order denying reinstatement & Judgment:
September 26, 2022

9th Circuit Court of Appeals
Case No. 22-59455, Kisaka v USC
Memorandum affirming denial: January 24, 2024

Order on rehearing, preserving memorandum: July 31, 2024

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Other Authorities

Constitutional and Statutory Provisions

Supremacy Clause of the Constitution." U.S. Const. Art. VI., § 2 ,

Federal Rules of Civil Procedure

41(b), Dismissal of Actions Without prejudice

Federal Rules of Appellate Procedure

FRAP 30-1.3. No Excerpts Required for Pro Se Party

Including FRAP Rules30-1.2.(b), & 30-1.3.

PETITION FOR WRIT OF CERTIORARI

(v) jurisdiction

This petition is invoked under rule 28 U.S.C. §1254(1). It is timely filed prior to the 90day deadline after the July 31, 2024 order on rehearing, which falls on Tuesday October 29, 2024.

(vi)Opinions Below

Petitioner Doug Kisaka requests that this court issue a writ of certiorari to review and reverse the decisions below:

.Ninth Circuit Court of Appeals
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App G 5th Act Order Accepting Report & Recommendations & Dismissal of Action 12-16-2021 14-15

App I 2nd Action Ruling Sustaining without Leave to Amend in LA Superior Court, 8-3-2017 40-44

Statement of the Case

Introduction

The questions posed in this petition for review address civil rights issues and the case stems from violations of the civil rights of Doug Kisaka, a long-time student at the time at USC over 12 to 16years ago, Part of which continues to this day, In the form of a discriminatory permanent stay away order without a single allegation of wrongdoing.

Doug is a Black US Citizen, who graduated twice from USC with master's degrees in Cinematic Arts in 1989 and Electrical Engineering In 2009. And despite spending a small fortune to attend USC, without any allegations of misconduct or impropriety, he is currently under a permanent stay-away order from his alma mater, the culmination of a long litany of civil rights, criminal and other violations against him.

.They were all part of a willful and wanton pattern of practice of racism, and oppression, abuse of authority in a conspiracy by a group of bad actors in the Viterbi School of Engineering, backed up and enabled by university administration officials and campus police.

Petitioner was driven away from his shared student housing in the vicinity of USC's campus by the trampling of his civil rights, including harassing, skulking, stalking, and menacing, illegal pretextual stops and detentions, illegal searches and seizures, invasion of privacy, obstruction of justice, concealment of evidence, destruction of evidence, fraud, the filing of a false police report, malicious interferences with his studies, and eventually his kidnapping in a CIA-style sting operation and false imprisonment, and a groundless permanent stay-away order, later extended to barring him from consulting with

librarians or even seeing his USC based doctors. Petitioner moved as far away as he could from his shared student-housing near USC's campus and suffered a debilitating stress related stroke in August 2012, during the course of this litigation.

He filed a complaint with the department of education and vowed to take legal action unless USC apologized and rescinded the racist stay-away order. But USC doubled down. So, he filed a Civil Rights Action against USC in 2011: Case No. 2:11-CV—01942-BRO; dismissed in 2014 when he failed to show up at a deposition.

The questions before the US Supreme court could have implications for similar civil rights cases involving students mistreated on campuses for reasons of race, color, religion, sex, or national origin, hindered at every turn from due process and a fair trial by immensely powerful and influential educational institutions with strong ties to the courts, and a court system often reluctant to hold them accountable.

Statement of Facts

Rule 41. Dismissal of Actions

41(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. The initiating case 2:11-CV-01942-BRO was dismissed for failure to prosecute under Rule 41(b) and 37(b), and confirmed as a dismissal without prejudice by a three- judge panel of the 9th Circuit Court in Appeal No. 14-55649,, in an August 26, 2016 memorandum, and again confirmed as a dismissal without prejudice, in a 2nd Action, 2:17-CV- 01746-BRO, in an order granting remand, by the same original 1st Action district court judge. This case is now before the U.S. Supreme court because a US District Court in the 5th Action, 2:21-

CV-04757-CJC refused to respect the decisions made by the 1st Action judge and the previous 9th Circuit three-judge panel. Its decision for a judgment on the merits was affirmed by the current 3 judge panel on January 24, 2024. A motion for rehearing en banc was denied after no judges joined.

In its ruling dismissing with prejudice, the 5th Action district court relied on a magistrate's report and recommendations (Appendix G). That report, however, relied on the ruling by the state court judge it was remanded to in the 2nd Action (Appendix I). The superior court judge in that Action at first correctly stated the 1st Action was dismissed without prejudice and was not barred by res-judicata, before making his own finding of fact, that the failure to prosecute in federal court was due to Plaintiff's willful disobedience, which constituted an adjudication on the merits in state court, and sustained a demurrer without leave to amend on that basis alone, and not on whether the complaint failed to state a claim upon which Relief can be granted as required by law and legal precedent. Hence this Petition questions the legitimacy of a state court, injecting itself into and making findings of fact about a federal court proceeding in which it had no jurisdiction, and then altering the claim preclusive effect of the federal court ruling based on state law, but it also questions the propriety of the US 5th Action district court relying on an intermediate state court's ruling, to the disregard and exclusion of the original ruling dismissing the 1st Action without prejudice in district court.

Procedural History

The Honorable District Court Judge, Beverly O'Connell dismissed the original Action, 2-11-CV-01942, without prejudice for failure to prosecute (Appendix L), after Plaintiff failed to show at a

March 3, 2014, deposition. The 9th Circuit Court upheld it was for failure to prosecute and declined to consider three concurrent interlocutory appeals because it was not a final judgment (Appendix K).

Plaintiff filed the case in LA Superior Court — BC650048. But it was removed to federal court by USC's' counsel, proceeding as case 2-17-CV-01746 with the same District Court Judge Beverly O'Connell, presiding. USC's counsel twice filed for an outright dismissal with prejudice. They were summarily denied in an 11-page order, which also granted Plaintiff's motion to remand the case back to LA Superior Court (Appendix J). In LA Superior Court on May 16, 2017. USC filed a peremptory challenge against the judge assigned, Judge Yvette M. Palazuelos, simply because she was Hispanic, and USC feared she might rule in Doug's favor. But the judge who replaced her, Michael Raphael ignored USC's counsel's

arguments in a demurrer having been completely debunked in Doug's opposition brief and produced his own surprising theory of law. After admitting that the 41(b) dismissal was not a final judgement and that the 1st Action had been dismissed without prejudice, he reasoned without a shred of evidence that Doug was still culpable in state court for his willful disobedience in federal court and sustained without leave to amend as a sanction (Appendix I). Plaintiff appealed in case B284559. But the ruling was affirmed,

Plaintiff returned to federal court and filed two successive actions , the 3rd & 4th, 2-20-CV-3680 and 2-20-CV-4178 respectively, which were both deemed frivolous and denied from proceeding by a federal magistrate judge. Although in the 4th Action, in order to comply with the magistrate judge's stated objections in the 3rd Action, Plaintiff removed all causes of action beyond the limitations period and left out all but one defendant:— USC. And the magistrate judge

flouted normal federal procedure. Which would have required her to base any rulings on the findings of the previous US District Court Judge Beverly O'Connell and her dismissal without prejudice or her order of remand in the 2nd Action where Judge O'Connell stated the case never reached the merits and denied two of USC's motions to dismiss with prejudice. The magistrate judge instead based her decision on Superior Court Judge Michael Raphael's ruling, this time concluding the case was frivolous because it had been dismissed with prejudice in state court. This ruling departed from US supreme court law that holds that state court proceedings have no bearing on federal courts when they are contrary to federal court interests. Plaintiff filed the fifth Action under a continuing violations theory. But added back violations beyond the limitations period, arguing they were closely related to current continuing violations and took place within the same general time period, all stemming from the same source. This case, 2:2-:CV-04757-CJC, was assigned to the same district court and magistrate judge. USC's counsel now filed a pre-answer motion to dismiss. Plaintiff filed an opposition, but even before USC's deadline to file a reply brief had lapsed, the magistrate judge, putting her thumb on the scale, surprisingly filed a report with recommendations for dismissal with prejudice (Appendix H), (which read like an amicus brief), premised on the false and preposterous assertion that the 1st Action dismissal in district court (Appendix L), had a preclusive effect. Plaintiff filed a motion for the magistrate's recusal because of her close ties to USC including paid lectures at USC's law school, and because her brief's, extravagant use of the compound word res-judicata—123 times on 24 pages— deflected from the truth and would prejudice the court. However, the district court judge yielded to the magistrate (Appendix G), and the case was dismissed (Appendix F).

Plaintiff did not appeal, but later the following year he filed an FRCP Rule 60 motion for relief from a judgment or Order, for (1) mistake, inadvertence, surprise, or excusable neglect; and (6) any other reason that justifies relief. USC filed an opposition, which primarily relied on the magistrate's Report and Recommendations. The district court judge accepted the magistrate's report, with reservations, and denied reinstatement (Appendix E). Plaintiff appealed to the 9th Circuit citing the original dismissal as without prejudice, confirmed as not a final judgment by a previous 9th Circuit three-judge panel who declined to consider three interlocutory appeals because it was not a final judgment. However, the current three-judge panel with different judges sided with USC's counsel relying on the 5th Action district court magistrate judge's report, asserting to the contrary, that the 1st Action involuntary dismissal had a claim preclusive effect (Appendix B). Doug filed a motion for rehearing arguing the 2nd memorandum by a different three-judge panel should not be allowed to supersede the previous 9th circuit three-judge panel, but there were no takers—judges offering to join the case en banc, and the three-judge panel's ruling was left standing (Appendix A).

ARGUMENTS

Question 1. (a) "In a case originating in federal court, can a district court judge in the final and 5th Action, rely on a state court's intermediate construe of a federal court dismissal to the disregard and exclusion of the interpretation of the plain text of the ruling of the federal court dismissal itself and its restatement and clarification, by the same district court judge in a subsequent

superseding ruling in the 2nd Action?"

A district court judge should not rely on a state court's intermediate action's construe of a federal court dismissal to the disregard or exclusion of the interpretation of the plain text of the federal dismissal, or its restatement and clarification by the same district court judge in a superseding action—the ruling in the 2nd Action in which the district court judge denied two of USC's motions to dismiss with prejudice and granted remand to superior court, which confirms without a shadow of a doubt that the 1st Action was dismissed without prejudice, and the plain text of this federal court's two rulings should have been the guiding authorities all along.

Semtek International Inc. v. Lockheed Martin Corp., 531 U.S. 497, 121 S. Ct. 1021 (2001)

Argued December 5, 2000 Decided February 27, 2001 Justice SCALIA delivered the opinion of the Court.

"We think the key to a more reasonable interpretation of the meaning of "operates as an adjudication upon the merits" in Rule 41(b) is to be found in Rule 41(a), which, in discussing the effect of voluntary dismissal by the plaintiff, makes clear that an "adjudication upon the merits" is the opposite of a "dismissal without prejudice":

"Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim."

The Judge in the District court of original jurisdiction dismissed the initiating action for failure to prosecute after plaintiff failed to show at a hearing. In the 2nd Action, the same judge denied two of USC's' motions to dismiss with prejudice and

granted remand to superior court.
In the Order of Remand in the footnotes of pages 8 and 9, the judge clarifies the reasons for the first and second denials of USC's motions to dismiss with prejudice in the 2nd Action (in Appendix J),Stating:

> "Defendants also filed a Motion to Dismiss, stating, "Plaintiff's FAC on April 27, 2017. (See Dkt. No. 17.) Plaintiff's Motion to Remand appears to include arguments that are in opposition to Defendants' first Motion to Dismiss. (See Mot.) As that Motion addresses different issues than the instant Motion and that Motion was mooted when Plaintiff filed his FAC, the Court does not consider these arguments Id." footnote (n 4) :3-5.
>
> "Defendants may argue that Plaintiff is estopped from bringing many of these claims based on this prior proceeding. But this argument does not render remand judicially uneconomical. This court has never before considered such an argument; therefore, no judicial resources will be duplicated if Defendants choose to make an estoppel argument."
>
> Defendants also suggest that the court has a "vested interest" in ensuring that its April 2014 dismissal is" respected." See Id. (n 8):1-5, & (n 9.):1-3.).

The phrase "vested interest" in ensuring that its April 2014 dismissal is" respected meant the Defendants wanted the judge to affirm her 1st Action dismissal as being with prejudice. Judge Beverly O'Connell's rejection of this obsequious request crystallizes the incontrovertible fact— that the 1st Action dismissal was not an adjudication on the merits.

And she adds,

> "Defendants provide no authority for this proposition and, regardless, do not explain the relevance of this 'vested interest' to a §1367(c) analysis." See Id. (n 8):1-5, & (n 9.):1-3."

Judge Beverly O'Connell also denied USC's 28 U.S.C. § 1367 request to exercise supplemental jurisdiction over the state causes of action, writing:

> "Whether the Other Relevant Factors Weigh in Favor of Remand: Upon examining the other relevant factors, the Court finds that there is no reasoning this case to depart from Gibbs's expectation that, in most circumstances, upon the dismissal of all of a plaintiff's federal claims, the Court should decline to exercise supplemental jurisdiction. See Wild v. City of San Diego, No. 14cv2204 JM (MDD), 2014 WL 6388500, at *2 (S.D. Cal. Nov. 13, 2014) ("When federal claims are dismissed early in the case, courts routinely decline to exercise supplemental jurisdiction over the remaining state law claims."

The following is a brief overview of the proceedings in superior court to which it was remanded. And it bears mentioning because it became the guiding authority for the District Court in its final ruling in the 5th Action. A more detailed analysis of the ruling is provided later.

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Despite admitting the 1st Action was dismissed without prejudice, and conceding a federal court 41(b) dismissal was not an adjudication on the merits as Doug had argued in the opposition brief, the judge, Michael Raphael circumvented these points. He also entirely Ignored USC's own

arguments in their motion to dismiss the case and produced his own. Setting aside stare decisis, Supreme Court law, and the US Constitution, and without a shred of evidence or prior finding of fact, he surprisingly construed the 1st Action dismissal was the result of willful disobedience and therefore an adjudication on the merits under California state law.. In arriving at his decision, the Judge dealt a fatal blow to the 2nd Action when he singled out Plaintiff's arguments in the memorandum of authorities, in the opposition brief, and threw them out. Specifically, he struck pages 18 to 22, containing most of the crucial legal authorities being cited by Doug, because he reasoned, the Opposition brief was oversize. By depriving Plaintiff's opposition brief of these crucial pages, the judge had left it toothless, granting USC a default win and providing the judge justification to dismiss the case.
He wrote: " Here, plaintiffs opposition memorandum is 22 pages. Plaintiff did not apply for permission to file an oversized memorandum. The Court disregards the excessive pages." See Appendix I 2 ¶5:1-2.

The judge also unfairly denied a crucial request for judicial notice. While the judge had granted USC's request for judicial notice of the 1st Action judge's April 15,2014 order granting defendants' motion to dismiss that action, contrary to rules on judicial notices, he deemed it superfluous and denied Defendant USC's request for judicial notice of the all-important Order Granting Remand in the 2nd Action by the same Judge, Beverly O'Connell, and crucial to making a correct interpretation of the

intent of the 1st Action dismissal as well as her denial of two subsequent motions to dismiss the case with prejudice in the 2nd Action.
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This order was crucial for interpreting the intent behind the 1st Action dismissal and undermined the Superior Court judge's reasoning for sustaining the demurrer without leave to amend. The refusal to acknowledge this order, which contradicted the judge's conclusions, suggests bias and abuse of discretion. It also raises concerns about the impartiality and fairness of the 5th Action dismissal, which relied on this flawed decision. The Superior Court judge wrote:

> "Along with their moving and reply papers, defendants request judicial notice of (1) plaintiffs amended complaint filed in an earlier federal court action on March 7, 2011, (2) an April 15, 2014 order granting defendants' motion to dismiss that action, (3) the Ninth Circuit Court of Appeals' order rejecting plaintiffs appeal of the order dismissing the action, (4) the remand order filed in this action, and (5) the Ninth Circuit Court of Appeals' memorandum affirming the order granting the motion to dismiss. The request is GRANTED as to the first through third and fifth matters. Evid. Code§ 452(d). It is DENIED as to the fourth matter as superfluous." See Exhibit E at 2 ¶¶ 5, 6.

It is hard to imagine how the order that gave jurisdiction over this case to the Superior Court could then be judged as being superfluous to it, except to the extent that it would have undermined the judge's final decision. It also

renders all subsequent lower court decisions at odds with the Order of Remand potentially reversible.

> ."Of course, neither the parties nor the district court can compel a later court to respect these choices. But as in the preordained effect context, a failure to respect the parties' or the court's designation in this context would likewise constitute reversible error." See https://www.uscourts.gov/sites/default/files/fr_import/14-CV-D-suggestion.pdf 273 (n 4) :1-4

The instant Action was dismissed upon acceptance of the report and recommendation of the district court magistrate, which relied on a superior court's ruling in the 2nd Action and minimized the import and relevance of the district court decision in the 2nd Action. In Appendix H, on page 4 ln20-26 of the report and recommendations the magistrate writes:

> "The demurrer was sustained on August 9, 2017, and judgment entered in the Second Action on August 24, 2017, dismissing the Second Action with prejudice. In particular, the Los Angeles County Superior Court concluded that the First Action Dismissal Order was a judgment on the merits under California law and, thus, had a res judicata effect. Plaintiff appealed (No. B284559), and on December 21, 2018, the California Court of Appeal affirmed, finding that the Second Action was barred in full by res judicata due to the First Action Dismissal Order."

At Id. Page 23 1-5, of the report and recommendations, she writes:

> "The first lawsuit was resolved adversely to Plaintiff through an involuntary dismissal that, by operation of law, is deemed to be an

> adjudication on the merits with prejudice. When the second lawsuit was returned to state court, the Los Angeles County Superior Court and the California Court of Appeal found that the second lawsuit was barred by claim preclusion principles."

The magistrate gives more deference to the state court's opinion on the 1st Action dismissal than she does to the district court judge who wrote it and clarified its meaning in her 2nd Action ruling granting remand. For instance, at Id. page 4 ln12-17 the magistrate writes:

> "On May 11, 2017, District Judge O'Connell remanded the Second Action to state court. [Dkt. 18.] In her May 11, 2017 Order, she declined to exercise supplemental jurisdiction over the case, which by then consisted solely of state law claims, and she did not consider any of the arguments raised in the second motion to dismiss or in Plaintiff's opposition thereto, including whether the Second Action was barred by res judicata."

This statement is absurd, defying basic logic because District Court Judge Beverly O'Connell in that same ruling denied two of USC's motions to dismiss the case with prejudice. It also implies USC knew the 1st Action dismissal was without prejudice when it inadvertently tipped its hand by filing those two motions to dismiss with prejudice, after the fact. It also shows that USC's assertions in subsequent actions when they repeatedly claimed the 1st Action was dismissed with prejudice were intentionally false statements, intended to mislead the courts. Judge O'Connell, in that same ruling, went on to grant remand to state court. To suggest she would remand a case she previously dismissed with prejudice is equally absurd.

Question 1. (b) Can a state court alter the claim preclusive effect of a federal court ruling?"

The superior court judge unfairly refused to grant judicial notice of the order that granted remand to Superior court giving him jurisdiction, even though that request for judicial notice came from the defendant, USC. He admitted the 1st Action was dismissed without prejudice but nonetheless went on to produce his own unconstitutional legal theory to dismiss the 2nd Action, sustaining without leave to amend:

The superior court judge granted USC's request for judicial notice of the 1st Action judge's April 15, 2014 order granting defendants' motion to dismiss that action. Yet contrary to rules on judicial notices, the judge deemed it superfluous and ironically denied Defendant USC's request for judicial notice of the all-important Order Granting Remand in the 2nd Action issued by the same Judge, Beverly
O'Connell, crucial to understanding the 1st Action dismissal as well as her denial of two subsequent motions to dismiss with prejudice in the 2nd Action. This crucial Order also completely shatters the basis for the LA superior court judge's ruling with its unconstitutional and illegitimate theorizing which led to the decision to sustain the demurrer without leave to amend. It can be argued that the judge's refusal to take judicial notice of the order that gave him jurisdiction with its implied stipulations, is emblematic of his bias, and a dead giveaway of how he intended to decide the case. His disregard of the most authoritative and unassailable evidence of the intent of the 1st Action dismissal gave this court all the license and discretion needed to dishonor it, a clear abuse of discretion.

Which also calls into question the impartiality and fairness of the 5th Action dismissal which relied on this flawed decision. The superior court judge wrote:

> "Along with their moving and reply papers, defendants request judicial notice of (1) plaintiffs amended complaint filed in an earlier federal court action on March 7, 2011, (2) an April 15, 2014 order granting defendants' motion to dismiss that action,(3) the Ninth Circuit Court of Appeals' order rejecting plaintiffs appeal of the order dismissing the action, (4) the remand order filed in this action, and (5) the Ninth Circuit Court of Appeals' memorandum affirming the order granting the motion to dismiss. The request is GRANTED as to the first through third and fifth matters. Evid. Code§ 452(d). It is DENIED as to the fourth matter as superfluous." Appendix I 2 ¶¶ 5, 6.

The judge then produced his own unconstitutional legal theory for dismissal.

The Court's Unconstitutional Caveat

After conceding the inadequacy of a rundown of various legal theories, and after admitting that under Rule 41, the case was not dismissed on the merits, he raised a novel theory, which he referred to as a caveat. The problem however is that the caveat does not agree with Supreme Court law, Ninth Circuit law or stare decisis. In it, he states:,

> "It is well settled that, under California law, failure to prosecute [under rule 41 subdivision (b), failure to prosecute, is not a final judgement on the merits [for preclusion purposes]," Hardy, supra, 232 Cal .App 4th at 803 under preclusion rule 41. In federal question cases, [however] federal common

law determines the claim preclusive effect of federal court judgments." Id. 4 ¶8 1:4. "

"There is a caveat under California law: "to this day[,] case law had already established that dismissals pursuant to a terminating sanction for violation of discovery orders are indeed res-judicata." Franklin Capital Corp. v. Wilson (2007) 148 Cal.App.4th 187, 216. [With] These principles in mind, the Court finds as follows. The dismissal was not merely for failure to prosecute in the form of general delays. Rather, the dismissal was based on facts of plaintiffs violating discovery orders and court rules. RJN, Exh. 2, pp. 2-3. Indeed, rule 41, subdivision (b) authorizes the federal court to dismiss for failure to prosecute or stated in the disjunctive - failure to comply with court orders and court rules.
Additionally, the Court of Appeal has likened a rule 41dismissal to a sanction. See Hardy, supra, 232 Cal.App.4th at 80. Therefore, the dismissal was not for failure to prosecute but rather as a sanction for violating court orders and rules. Under California law, the dismissal was a judgment on the merits. Franklin Capital' supra, 148 Cal.App.4th at 216. Ibid. Id. 5 ¶ 2:6-8."

The statement above, that "the dismissal was not for failure to prosecute, " directly contradicts the actual wording in the 1st Action Dismissal which the legal standard the district court judge cited was failure to prosecute, stating,

"If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action Appendix L Order of Dismissal 4 ¶3:1-2.

The superior court judge's logic reasserted in the 5th Action, by the district court magistrate judge's

report and recommendations not only defies the plain language of the 1st Action dismissal, but it also defies the earlier 2016 9th Circuit court ruling affirming the dismissal was for failure to prosecute., when it stated,

> "See Al-Torki v. Kaempen, 78 F.3d 1381, 1386 (9th Cir. 1996) ("Interlocutory orders, generally appealable after final judgment, are not appealable after a dismissal for failure to prosecute, whether the failure to prosecute is purposeful or is a result of negligence or mistake." Appendix K 2 ¶2:8-11.

And it also defies the supremacy clause of the US Constitution as well as Supreme Court law which forbids state courts from altering the claim preclusive effect of a federal court ruling. He also contradicts himself after he had earlier posited that under rule 41 subdivision (b), failure to prosecute, is not a final judgement on the merits, when he later asserts a dismissal under 41(b) is a sanction and therefore, an adjudication on the merits, and bases the conclusion of his ruling on the principle that a 41(b) dismissal is a sanction for wailful disobedience under state law,(and not for failure to prosecute as in federal law, therefore reasoning absurdly in retrospect, that the dismissal by this federal judge was an adjudication on the merits , not based on interpretation of federal law, but on interpretation of state law instead, thereby concocting a reductio ad absurdum dismissal.

He then produced his own novel, unconstitutional and unconventional theory of law justifying dismissal with prejudice, by asserting without a shred of evidence that Doug's failure to appear at the aforementioned court proceedings was due to willful disobedience, which can be construed as an adjudication on the merits in state court and on that arguable basis alone sustained a demurrer without leave to amend Appendix I. 5¶ 6:1. Never mind that a Judge cannot sustain a demurrer on matters not mentioned in the four corners of a

complaint nor included in the demurrer nor its challenge, nor included in matters judicially noticeable?. It only determines if the Complaint has stated claims sufficient upon which relief can be granted. It does not consider facts beyond the scope of the four corners of a complaint, such as the reasons for a litigant's failure to follow procedural court orders in a federal jurisdiction case, well outside the ambit of a superior court. The demurrer should have been decided in Plaintiff's favor because the sufficiency of the Complaint had been long decided, when a Rule 12(b) motion for summary judgment was vacated on October 31, 2013 Appendix M.

In addition, the ruling is inconsistent because it begins by propounding rule 41(b) to be a dismissal for failure to prosecute and not an adjudication on the merits. But it ends by advocating Rule 41(b) as a sanction for willful disobedience and therefore an adjudication on the merits under state law. Here the judge alters the claim preclusive effect of a federal dismissal by reclassifying it from a 41()b) failure to prosecute which he admits is not an adjudication on the merits, to a sanction under state law warranting a dismissal with prejudice in violation of Supreme Court law.. See Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497 (2001) 506-509. "State law will not obtain in situations in which the state law is incompatible with federal interests,"

The rules advised for uniformity are such that federal rules govern the claim preclusive effect of dismissals originating in federal court. And state rules apply to dismissals originating in state court. With one caveat. If the claim preclusive effect of a state dismissal is incompatible with federal interests, then federal rules govern the claim preclusive effect.
"While federal common law also governs the

claim-preclusive effect of a dismissal by a federal Court sitting in diversity, the US Supreme Court concluded there was no need to establish a uniform federal [***18] rule since state, not federal, substantive law was at issue, explaining: "And indeed, nationwide uniformity in the substance of the matter is better served by having the [*806] same claim-preclusive rule (the state rule) apply whether the dismissal has been ordered by a state or a federal Court. This is, it seems to us, a classic case for adopting, as the federally prescribed rule of decision, the law that would be applied by state courts in the State in which the federal diversity Court sits." (Semtek, supra, 531 U.S. at p. 508.) The Supreme Court, however, placed a caveat on this rule, stating that the "federal reference to state law will not obtain, of course, in situations in which the state law is incompatible with federal interests." SEMTEK INT'L INC. V. LOCKHEED MARTIN CORP. (99-1551) 531 U.S. 497 (2001)

Dupasseur v. Rochereau, 21 Wall. 130, 135 (1875), held that the res judicata effect of a federal diversity judgment "is such as would belong to judgments of the State courts rendered under similar circumstances," and may not be accorded any "higher sanctity or effect.

Federal common law governs the claim-preclusive effect of a dismissal by a federal court sitting in diversity. See generally R. Fallon, D. Meltzer, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 1473 (4th ed. 1996); Degnan, Federalized Res Judicata, 85 Yale L. J. 741 (1976).

Question 1. (c) Which further begs the question, Regardless of the legal basis for a ruling, does a district court judge's discretion in a final action extend to materially altering the claim preclusive effect of a prior dismissal in the initiating action and does it portend a potentially reversible error?"

CHARLES ALAN WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, FEDERAL PRACTICE AND PROCEDURE § 2289, at 537 (3d ed. 2010) ("Rule 37(b)(2) gives the court a broad discretion to make whatever disposition is just in the light of the facts of the particular case.")

Dismissals issued Without Prejudice under FRCP 37(b), states:

> "A default judgment that does not dispose of all of the claims among all parties is not a final judgment unless entry of final judgment under Rule 54(b). Until final judgment is entered, Rule 54(b) allows revision of the default judgment at any time."
>
> "Neither the parties nor the district court can compel a later court to respect these choices. But as in the preordained effect context, a failure to respect the parties' or the court's designation in this context would likewise constitute reversible error." (41(b) Dismissals by Bradley Scott Shannon Page 273 § 52,

In Summary

It is impossible to imagine how the order that gave jurisdiction over this case to the Superior Court could then be judged as being superfluous to it and therefore not judicially noticeable., except to the extent that it would have undermined the judge's final decision. And all subsequent court decisions which materially relied on this deeply flawed ruling to the exclusion of the Order of Remand, including the 5th Action dismissal and denial to reinstate, and their affirmations on appeal, are rendered potentially reversible.

Question 2. "Can a case involving an ongoing infringement of an individual's civil rights stemming from the same source within the same limited time period, be barred by res-judicata, permitting the breach of those rights to continue with impunity, in perpetuity?"

No, a case involving an ongoing infringement of an individual's civil rights stemming from the same source within the same limited time period should not be barred by res-judicata, permitting the breach of those rights to continue with impunity in perpetuity. The continuing violation doctrine allows for the statute of limitations to be tolled to the last date on which a wrongful act is committed. This doctrine is supported by various precedents, including Morgan v. AMTRAK and Anderson v. Reno, which establish that ongoing violations related to civil rights cannot be barred by res-judicata if they are part of a continuous pattern of discrimination or harm.

Doug, in his complaint, describes a litany of cruel violations of his civil rights accruing to the present, from arbitrary draconian measures proscribing his presence in places where it was legally permissible for him to be to the issuance of an arbitrary and unwarranted discriminatory stay-away order, still in force at the time of the filing of this petition for writ of certiorari, all stemming from the same defendant and group of co-conspirator's. The stay-away order, issued for no other reason than malice and racial prejudice, has banned him from the campus for the last fourteen years and blocked the release of his academic records. Barring Doug from communicating with anyone at

USC including students, faculty, and staff, as well as librarians and his USC based doctors, the stay-away order has resulted in irreparable harm to Doug's life, career, and any positive future prospects.

The Statute of Limitations & the 14th Amendment

The failure of the 5th Action District Court to see Kisaka V. USC as a continuing violations case, after admitting it was not barred by the statute of limitations, and then denying its reinstatement on the basis that the unadjudicated causes of action were barred by res- judicata, a paradoxical argument, is a denial of due process under the 14th Amendment.
There are thousands, if not tens of thousands of decades-old instances of continuing violations, including serious crimes that would have continued unabated if courts reasoned they were too old to litigate. It cannot be true that an entire case involving an ongoing infringement of an individual's civil rights by the same source in the same time period, can be barred by res-judicata, permitting the breach of those rights and the harm caused, to continue unabated with impunity.

Under the doctrine, "where there is a series of continuing wrongs," the statute of limitations will be tolled to the last date on which a wrongful act is committed. *Henry v. Bank of Am., 147 A.D.3d 599, 601 (1st Dept. 2017)*. If the continuing wrong doctrine applies, it "will save all claims for recovery of damages but only to the extent of wrongs committed within the applicable statute of limitations." Id.

González v. Douglas, 269 F. Supp. 3d 948
The 9th circuit in González v. Douglas, referred to an 8th Circuit Court decision in which Judge McConnell found that the lower court erred when it failed to see it as a continuing violations case despite the evidence.

González v. Douglas is relevant, because Kisaka v

USC also centers on a pattern and practice of racial discrimination, manifest in the form of a permanent stay away order emblematic of the degree of animus behind it and the culmination of various abuses and civil rights violations committed by the same group of bad actors.

And the district court judge erred when the judge admitted the statute of limitations did not apply and yet failed to see it as a continuing violations case despite the evidence.

Any court decisions that ignore or uphold USC's illegal discriminatory practice of a stay-away order against a longtime Black USC student with no allegations of wrongdoing, not to mention the many other violations and crimes by USC's employees against him, are no different than many infamous court decisions that permitted wrongs to persist against minorities and women in the United States. They should be viewed as, or if not more reprehensible than 1896 Plessy v Ferguson, and as repugnant as 1857 Dred Scott v Sanford, regardless of the legal basis, because a serious harm has been committed and continues to this day.[1] It is for this among other key reasons listed in this petition, that the Appellant urges the Supreme Court to grant certiorari in in this all-important case, centering on the supremacy of federal courts.

Res-judicata and claim preclusion cannot apply to a segregative permanent stay-away order. USC is a private institution bound by conformity to civil rights laws imposed on every institution receiving state or federal funding,, including laws against discrimination on account of race, color, religion, sex, or national origin.

Compare White v. Bloom, 621 F.2d 276, 280-81 (8th Cir. 1980) (determining that a conspiracy to violate civil rights is a continuing violation that accrues for limitations purposes upon the final act in

furtherance of the conspiracy), with *Wells v. Rockefeller, 728 F.2d 209, 216-17 (3rd Cir 1984) and Handley v. Town of Shinnston, 289 S.E.2d 201, 202 (W.Va. 1982)* (determining that the statute of limitations begins to run on a trespass claim only once the trespass ends).

. In *Morgan v. AMTRAK, 232 F.3d 1008, 2000 U.S. App.* the Plaintiff set forth [plaintiff's] hostile work environment claim was not based upon a series of discrete and unrelated discriminatory actions but was instead premised upon a series of closely related similar occurrences that took place within the same general time period and stemmed from the same source, which are tantamount to a continuing violation. The 9th Circuit court agreed and reversed.

Implication of Morgan v Amtrak: Where pre-limitation incidents of discrimination were sufficiently related to those occurring during the limitations period, the earlier incidents were not time barred because they fell within the continuing violation theory. This 9th Circuit precedent supports Doug's decision to add back previously removed violations beyond the limitations period, in the Instant Action.

See *Anderson v. Reno, 190 F.3d 930, 936 (9th Cir. 1999) and Draper v. Coeur Rochester, Inc., 147 F.3d 1104, 1107 (9th Cir. 1998).*

Anderson v Reno highlights the continuing violation doctrine where plaintiff filed suit in 1994 after experiencing harassment stretching back to 1986. See *Anderson , 190 F.3d at 936-37.* The 9th Circuit court, referring to *Anderson, 190 F.3d at 936-37. [**20],* held that a plaintiff can establish a continuing violation in one of two ways. First, by showing a series of related acts, one or more of which are within the limitations period. Second, by a serial violation. A serial violation is established if the evidence indicates that the alleged acts of discrimination occurring prior to the limitations period are sufficiently related to those occurring

within the limitations period. See id. See also *Green, 883 F.2d 1472, 1480-81.* Precedent makes clear that the alleged incidents of discrimination cannot [**21] be isolated, sporadic, or discrete, see *Draper, 147 F.3d at 1107-10.* In *Sosa v. Hiraoka, 920 F.2d 1451, 1456 (9th Cir. 1990)*, this court found a sufficient relationship where the acts were "plausibly related as acts of discrimination against Sosa because of his identification as a Mexican American."

In the Morgain v Amtrak ruling, the court added,

> "We consider the allegations with respect to each theory separately, in determining whether any of the events underlying these claims occurred within the relevant period of limitations. *Draper, 147 F, 3d at 1108.* Thus, we analyze Morgan's claims of discrimination, hostile environment, and retaliation discreetly. In light of the circumstances, we are satisfied that the pre- limitations conduct at issue in this case is sufficiently related to the post limitations conduct to invoke the continuing violation doctrine."

Finally, the court found that Morgan had sufficiently presented a genuine issue of disputed fact as to whether a continuing violation existed. It held that pre-limitations period conduct should have been presented to the jury not merely as [*1018] background information, but also for purposes of liability. Accordingly{. It reversed and remanded for a new trial.

The 5th Action district court judge in the denial of the 60(b)(1) motion to reinstate in the Instant Action rejected the statute of limitations arguments made in the magistrate's report, but went on to dismiss an action, not barred by the statute of limitations, with prejudice, which suggests to the contrary that judge had accepted the magistrate's report's conclusion that the case

was in fact barred from being refiled. These contradictory assertions cannot be true at the same time.

The judge stated,

> "Contrary to Plaintiff's arguments, the Court did not dismiss this case on the basis of the statute of limitations, [expressly declining to reach the statute of limitations issue]." Appendix E 2 ¶3:15-18).

Did the judge err by affirming the statute of limitations did not apply to a clear-cut continuing violations case in the instant action, then incorrectly construing it as adjudicated on the merits in the 1st Action and dismissing it with prejudice?

It should also be noted that in the 2nd Action Order Granting Remand, Judge Beverly O'Connell referring to the 1st Action, explicitly stated: "In fact, the Court never reached the merits of any of Plaintiff's claims in that case." Appendix J Order of Remand 8 ¶4:5-6.

The answer is also implicit in the 9th circuit's decision in *González v. Douglas, 269 F. Supp. 3d 948*, when it referred to an 8th Circuit Court decision in which Judge McConnell found that the lower court erred when it failed to see it as a continuing violations case despite the evidence. Likewise, this paradoxical ruling in the instant action is sufficient grounds to reverse and grant the 60(b)(1) motion to reinstate.

Question 3. "Does the denial of a self-represented appellant's legitimate request to include admissible evidence in order to complete the record on appeal, under FRAP Rule 30-1.3 supplemental excerpts or record when the

appellee fails to do so, constitute a denial of due process and a reversible error?"

In Coppedge v. United States" (1962), the Supreme Court reversed a lower court decision because the record on appeal was inadequate to carefully review the case.

The record on appeal in the Instant Action was incomplete because the Appellee, USC did not follow Rule 30 on providing the supplemental excerpts of record corresponding to Appellant's Brief as mandated by Rule 30-1.3. No Excerpts Required for Pro Se Party. Doug filed a notice against USC for non-compliance with this rule in appeal No. 22-55945 at Dkt. No. 17, on 7-21-2023 and then filed a Motion to augment the record with his own supplied supplemental excerpts of record at Dkt No. 19, on 7-25-2023, followed by a motion to amend the Appellate Opening Brief to incorporate citations to the added supplemental excerpts of record at Dkt No. 20, on 7-27-2023 Appendix D. However, the appeals court deferred the decision on these motions in an order at Dkt No. 21, on October 31, 2023 Appendix C. And no decision on them has been posted on the docket since. So, Appellant has reason to believe what the docket shows,— that the request was not granted and therefore the record on appeal was incomplete when the court issued the January 24, 2024 memorandum affirming the District Court's denial to reinstate the 5th Action Appendix B. The indispensable nature of all these documents, and the dispositive relevance of some of them to a review of the lower court's ruling by the 9th Circuit Court cannot be overstated. These supplemental records provided vital documentary evidence in this case and their non-inclusion harmed and prejudiced the review of this case. It was also a denial of due process under the 14th amendment and may constitute a reversible error.
For example, the appellant's supplemental record

list included among 4 indispensable rulings, the all-important and most dispositive of all documents in this case, the Order Granting Remand in the 2nd Action, by District Court Judge Beverly O'Connell, which confirms above all, that the 1st Action dismissal which she issued was without prejudice and dispels any notion to the contrary. She also points out Kisaka v USC as a continuing violations case. Other important documentary evidence included were the 1st Act 12(b)Motion for Summary Judgement Vacated, 1st Act District Court dismissal showing failure to prosecute,, and the 9th Circuit memo affirming the 1st Action dismissal was not a final judgment.

Conclusion

This case presents two diametrically opposed decisions by two different three-judge panels of the 9th Circuit Court of Appeals. One affirming the original district court judge's decision, clearly stating that the 1st Action dismissal was for failure to prosecute and not a final judgment. And the latter affirming a different district court's decision, which was based on a state court's wrong conclusion defying the supremacy clause of the US Constitution, and Supreme Court law: suggesting erroneously that a 41(b) dismissal without prejudice in federal court can be construed as a sanction in state court and therefore as an adjudication on the merits under state law, thereby altering the claim preclusive effect of a federal dismissal. For these and all the aforementioned reasons and to provide uniformity in state and federal courts in cases where the supremacy of federal courts must apply, this Court should grant this Petition for Writ of Certiorari.

Respectfully,

Doug Kisaka Date: June 1, 2025

Petitioner