

No. 24-948

IN THE
Supreme Court of the United States

PATRICIA GUERRERO, CHIEF JUSTICE OF CALIFORNIA AND KIMBERLY MENNINGER,
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE,
Petitioners,

v.

STEPHEN MORELAND REDD,
Respondent.

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

RESPONDENT'S UNOPPOSED MOTION FOR SUBSTITUTION

Pursuant to Rule 35 of the Rules of this Court, Respondent Stephen Moreland Redd, by and through the personal representative of his estate, Melissa Powe, and undersigned counsel, seeks to amend the caption and substitute Melissa Powe, in her capacity as the Personal Representative of the Estate of Stephen Moreland Redd, for the limited purposes of responding to the petition for writ of certiorari and defending the Ninth Circuit's denial of Petitioners' request for vacatur should certiorari be granted. Petitioners have been notified of this motion and they do not oppose the requested substitution.

1. Respondent, a California state prisoner sentenced to death, brought the underlying action on behalf of himself and a putative class of similarly situated

indigent California capital prisoners awaiting the appointment of counsel for state habeas proceedings guaranteed to them by California state statute. Pet. App. 94a. The district court dismissed Respondent's complaint for failure to state a claim prior to addressing Respondent's motion for class certification. Pet. App. 95a. The U.S. Court of Appeals for the Ninth Circuit reversed that dismissal. Pet. App. 93a. Petitioners subsequently filed a petition seeking en banc review and the Ninth Circuit directed Respondent to file a response.

2. Before the deadline for filing that response, Mr. Redd died. The Ninth Circuit directed Respondent's counsel to proceed with filing the response to the request for rehearing en banc and to address any issues raised by Respondent's death in that response.

3. In addition to responding to the petition for rehearing en banc, Respondent's counsel moved the Ninth Circuit to substitute the Personal Representative of Mr. Redd's estate for Mr. Redd pursuant to Federal Rule of Appellate Procedure 43(a)(1). Rule 43(a)(1) provides that "[i]f a party dies ... while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party." With the motion, Respondent filed a declaration from Mr. Redd's daughter, Melissa Powe, attesting to her status as her father's estate representative under California law and her consent to substituting as a representative of her father's estate in the litigation.

Petitioners did not oppose the substitution request, but took the position that, regardless of substitution, the appeal was moot.

4. The Ninth Circuit subsequently dismissed the appeal as moot and denied Petitioners' petition for rehearing as moot. Pet. App. 3a. In the same order, the Ninth Circuit denied Respondent's motion for substitution, apparently also viewing the substitution issue as moot. *Id.*

5. On February 28, 2025, Petitioners filed the instant petition for writ of certiorari.

6. Supreme Court Rule 35 states that "the authorized representative of [a] deceased party may appear and, on motion, be substituted as a party." The Rule is focused on situations where a party dies after the filing of a petition for a writ of certiorari, as Federal Rule of Appellate Procedure 43 directs courts of appeals to handle substitution when the death occurs during proceedings in those courts. Where, however, as here, a court of appeals does not act in light of the death of a party, the Rule provides a vehicle for this Court to effect substitution in order to permit the orderly administration of its docket. Rule 35 "is not jurisdictional" but a "procedural rule[] adopted by the Court for the orderly transaction of its business," and therefore "can be relaxed by the Court in the exercise of its discretion." *Riegel v. Medtronic, Inc.*, 552 U.S. 804, 804-05 (2007) (internal quotation marks omitted). As such, "[t]he

exercise of this Court's power to grant an untimely motion to substitute a party is not unprecedented." *Id.* (citing cases).

7. Application of Rule 35 is appropriate here. As permitted by Federal Rule of Appellate Procedure 43, Respondent timely sought to substitute the Personal Representative, Melissa Powe, in the Court of Appeals in light of the death of Mr. Redd. The Court of Appeals apparently found no need to grant the motion in light of its decision (which is now the subject of Petitioners' petition for a writ of certiorari) dismissing the matter as moot. Because the Court of Appeals failed to order substitution, such substitution is now needed here in order to facilitate counsel's filing of a response to the petition. Allowing the substitution of Mr. Redd's Personal Representative, Melissa Powe, is proper and necessary to permit response to that petition.

CONCLUSION

For these reasons, Respondent respectfully asks the Court to grant this motion for substitution and amendment of the caption.

Respectfully submitted,

/s/Robert M. Loeb

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March 13, 2025