

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

William Ramirez and Stacey Ramirez,
Petitioners,

v.

Superior Court of California In and For the County of El Dorado,
Respondent,

Megan Mangiaracina,
Real Party In Interest.

PETITION FOR WRIT OF CERTIORARI TO THE
CALIFORNIA SUPREME COURT

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Petitioners
In Forma Pauperis

QUESTIONS PRESENTED (Rule 14.1(a))

1. Should a *pro se* petitioner reasonably expect relief from default as a part of due process under the Fourteenth Amendment to the United States Constitution, if all criteria for said relief detailed in applicable statutes and/or rules of court have been met, and given that petitioner is filing a petition for review in a state supreme court and that said petition for review is their last resort at the state court level?
2. Is the Fourteenth Amendment's "equal protection" clause applicable to state statutes and/or rules of court regulating relief from default, when said rules make it plain that cases should be resolved on their merits and not on technicality, when other litigants before the same court have been granted relief, and provided a party can prove that said relief from default is just?

LIST OF PARTIES

All parties to this action appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioners, William Ramirez and Stacey Ramirez, respectfully ask that a writ of certiorari issue to review the decision of the California Supreme Court, filed on September 6, 2018.

OPINION BELOW

The California Supreme Court's one-page order denying reconsideration of its decision made on September 6, 2018 is attached as Appendix A. The denial of relief from default decision of the California Supreme Court was made on August 29, 2018, and is

attached as Appendix B. The denial of a writ of mandate from the California Court of Appeals, filed on August 10, 2018, is attached as Appendix C. The denial of a writ of mandate from the El Dorado County, California Superior Court Appellate Division, filed on May 22, 2018, is attached as Appendix D.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The decision of the California Court of Appeal for which Petitioners seek review was filed on August 10, 2018. The California Supreme Court order denying petitioner's timely petition for discretionary review was filed on August 29, 2018. The decision of the California Supreme Court for which petitioner seeks review was issued on September 6, 2018. This petition is filed within 90 days of the California Supreme Court's decision denying reconsideration, under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment 14 provides, in relevant part:

“No state . . . shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The California statutory provisions and court rules that are relevant to this petition, California Code of Civil Procedure (CCP) § 473(b), and California Rules of Court (CRC) 8.60(d), 8.63(b), 8.268(a), and 8.500(e)(2) and others are reprinted in Appendix D.

STATEMENT OF THE CASE

On August 30, 2017, Petitioners were forcibly evicted from their home without having been served a writ of possession. When this fact was brought to the attention of the levying officers, they were told that a court order from the original trial court would be needed to restore them to the property, and have their service animals, which had been seized by animal services, returned to them. In three separate *ex parte* filings, in September of 2017 at the trial court level, Petitioners were denied the relief they sought.

On October 6, 2017 Petitioners filed for a writ of mandate in the Appellate Division of the El Dorado County, California Superior Court. In it, the Petitioners were seeking reinstatement to the property pending the service and execution of a valid writ of possession, and return of their service animals. This petition was denied on December 4, 2017. Petitioners filed a petition for rehearing on December 13, 2017. This petition was granted on February 21, 2018. On May 22, 2018, the Appellate Division again denied Petitioners petition for writ of mandate.

On July 23, 2018, Petitioners filed for a writ of mandate in the California Court of Appeals, Third District. This writ of mandate asked the Court of Appeals to issue a writ to the Appellate Division, ordering them to issue the original writ of mandate to the trial court, to reinstate Petitioners to the property and return their service animals. On August 10, 2018, the Court of Appeals summarily denied the petition.

On August 24, 2018, Petitioners attempted to file a petition for review in the California Supreme Court. They were advised by the court clerk that their petition was untimely, by four days, and that they would need to submit an application for relief from default in order for the case to move forward. This untimely filing came as a result of the fact that Petitioners, in researching the filing deadlines, mistakenly believed that they had 40 days from the date the Court of Appeals denied their writ petition, instead of 10 days, which was actually the case. Since the writ petition had been denied, it became final immediately per CRC 8.490(b)(1)(A). CRC 8.500(e)(1) states that a petition for review must be filed within 10 of the decision becoming final. This would have made the filing deadline for the Petitioners August 20, 2018. Petitioners mistakenly followed CRC 8.264(b)(1) which states that decisions of the Court of Appeals are final 30 days after filing. With the added 10 days past the finality of the decision, Petitioners believed they had 40 days in which to file their petition for review.

After speaking to the Supreme Court clerk, Petitioners immediately filed an application for relief from default, on August 24, 2018. This application was denied on August 29, 2018 with no reason given. Petitioners then submitted an application for reconsideration of the denial of the application for relief from default. This application was denied on September 6, 2018, without having been filed, as Petitioners were told that nowhere in the California Rules of Court is the Supreme Court allowed to reconsider a denial of relief from default.

REASONS FOR GRANTING THE PETITION

1. Should a pro se petitioner reasonably expect relief from default as a part of due process under the Fourteenth Amendment to the United States Constitution, if all criteria for said relief detailed in applicable statutes and/or rules of court have been met, and given that petitioner is filing a petition for review in a state supreme court and that said petition for review is their last resort at the state court level?

This case presents a crucial clarification of the due process rights of petitioners guaranteed by the Fourteenth Amendment, particularly *pro se* petitioners, when it comes to the advancement of their case at the state supreme court level.

CCP § 473(b) describes the due process in which a petitioner may seek relief from a default. The statute states, in relevant parts, that:

“ The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.”

And:

“...the application...shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.”

Petitioners contend that this California state statute is part of the blueprint by which the constitutionally-guaranteed right of due process is afforded to parties in a case where inadvertence caused the untimely filing of a pleading. California's CCP § 473(b)

specifically lays out the due process petitioners can, and should, expect when asking a court to grant them relief from default, and the threshold of proof that needs to be shown. In point of fact, the California Supreme Court has upheld that when it comes to relief from default, courts should be very liberal in their application of said relief, thus supporting a disposition in any case that is based on the case's merits.

Payne v. Superior Court 1976 17 Cal. 3D 908, states in pertinent part that:

“[5] A court is not under a duty to exercise its discretion in a particular manner (5 Witkin, Cal. Procedure (2d ed. 1971) Extraordinary Writs, § 79, p. 3856), **but may be compelled to exercise its discretion in the first instance.** (Schweiger v. Superior Court (1970) 3 Cal. 3D 507, 517-518 [90 Cal. Rptr. 729, 476 P.2d 97] (court ordered to hear retaliatory eviction defense in unlawful detainer action); Nadler v. Superior Court (1967) 255 Cal. App. 2d 523, 525 [63 Cal. Rptr. 352] (court ordered to consider all evidence bearing on fitness as a mother of woman denied [17 Cal. 3d 926] custody because she was homosexual).) [6] Ordinarily, a trial court has discretion to deny a motion to vacate a default judgment. A determination by a court that a judgment was properly taken against a party, even if in error, will not generally be reviewable by mandate. [2c] But in the present case the trial court's denial of relief under Code of Civil Procedure section 473 apparently was **not an act of discretion, but rather a refusal to exercise discretion.**” (emphasis added)

In *Payne*, we see that for a court to simply refuse to act, relying on the fact that its inaction can be excused as discretion is incorrect. In the instant case, this is exactly what happened. The Petitioners showed, with unmistakable clarity, that their inadvertence in filing their petition for review timely is absolutely the type of situation that CCP § 473 is meant to correct. In this case, the Court had the ability to, and, more importantly, the mandate to act to preserve the Petitioners' due process rights under the Fourteenth

Amendment by granting relief from default, as all criteria for this to happen were met by Petitioners.

2. Is the Fourteenth Amendment's "equal protection" clause applicable to state statutes and/or rules of court regulating relief from default, when said rules make it plain that cases should be resolved on their merits and not on technicality, when other litigants before the same court have been granted relief, and provided a party can prove that said relief from default is just?

In the state of California, multiple cases at the Supreme Court level have been decided in favor of *pro se* litigants when it comes to the granting of relief from default, to allow these cases to move forward to be heard on their merits.

Further, in *Riskin v. Towers* 1944 24 Cal. 2D 274

"3] The foregoing conclusion is further supported by the well established rules that the provisions of section 473 of the Code of Civil Procedure are to be liberally construed and sound policy favors the determination of actions on their merits. (14 Cal.Jur. 1012.) [4] The discretion of the lower court in ruling upon matters under section 473 is a legal discretion, not an arbitrary one, and from the circumstances appearing we believe it is clear that the default judgment should have been set aside." (emphasis added)

CCP § 473 exists in order to spell out the due process that must be adhered to with regard to relief from a default in the state of California. There are countless cases at the Court of Appeals level in California that follow this precedent set by the California Supreme Court. These cases, decided at the highest California state court level, to broadly

protect all citizens equally, when the criteria are met for relief. If this does happen, the courts in question are again mandated to move the case forward, so that it may be tried and decided on its merits, protected equally as all other cases before the California judiciary should be

CONCLUSION

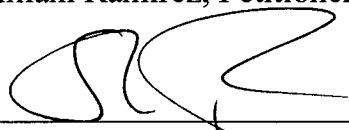
In the case at bar, a ruling in favor of the Petitioners is required, not only to resolve this case, but to provide guidance and clarity to the other state Supreme Courts and the public at large. For the foregoing reasons, Petitioners request that this Court grant the petition for certiorari.

Respectfully submitted,

Date: November 9, 2018



William Ramirez, Petitioner In Forma Pauperis



Stacey Ramirez, Petitioner In Forma Pauperis