NO. 25-_____

In the Supreme Court of the United States

HANSUELI OVERTURF,

Petitioner,

v.

CALIFORNIA COURT OF APPEALS,
SECOND APPELLATE DISTRICT,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of California

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether entry of default based on defective service of process, which failed to provide defendant with actual notice of the action, violates the Fourteenth Amendment's guarantee of notice and an opportunity to be heard?

2. Whether the Superior Court's denial of equitable relief from a default judgment, where the defendant lacked proper notice and opportunity to present his objections, violates the Fourteenth Amendment?

3. Whether the Court of Appeal's refusal to reinstate an appeal, in light of alleged due process violations in the underlying judgment, violates the Fourteenth Amendment's guarantee of a meaningful opportunity to be heard?

LIST OF PROCEEDINGS

Supreme Court of California
No. S290365
Overturf v. CA 2 (Maslon)
Order Denying Mandamus: June 11, 2025

Court of Appeal of the State of California,
Second Appellate District
No. B340241
Sally Maslon, *Plaintiff and Respondent*, v.
Hansueli Overturf, *Defendant and Appellant*
Final Order: September 30, 2024
Order Denying Motion to Recall: January 31, 2025

Superior Court of California, County of Los Angeles
No. 22SMCV02361
Sally Maslon v. Hansueli Overturf, et al.
Judgment: January 23, 2024
Order Denying Motion to Set Aside: June 5, 2024

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OPINIONS BELOW

The Opinion of the California Court of Appeals, Second Appellate District, dated September 30, 2024 is included at App.4a. The Orders of the Superior Court of California, County of Los Angeles, denying the Motion to Vacate/Set Aside Entry of Default are included at App.6a, 19a. The Superior Court Judgment, dated January 23, 2024, is included at App.17a.

JURISDICTION

The Supreme Court of California denied Petitioner's Petition for Writ of Mandamus on June 11, 2025. (App.1a). This Court has jurisdiction under 28 U.S.C. § 1257(a), because the petition is timely filed within ninety days of that judgment.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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.

STATEMENT OF THE CASE

A foundational principle of due process is fairness. Rules governing service of process—ensuring that a party receives actual notice of a proceeding—exist to prevent the arbitrary deprivation of life, liberty, or property. An additional procedural due process safeguard requires courts to establish personal jurisdiction over a defendant before exercising judicial authority. A court cannot assert personal jurisdiction unless the defendant has been adequately notified of the proceedings. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.").

Petitioner HANSUELI OVERTURF ("Overturf") was never notified of the proceedings initiated by Respondent SALLY MASLON ("Maslon") until after a default judgment was entered against him. Maslon "effectuated" service via substituted service on an alleged co-occupant of Overturf—a 35-year-old individual residing at a former Eureka, California address of Overturf. (App.29a, 32a). The server failed to inquire about any relationship between said co-occupant and Overturf. In reality, at the time of service on March

29, 2023, Overturf had been domiciled in Switzerland for nearly eight years. (App.38a).

Service on Overturf should have complied with the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters*, which requires documents served in Switzerland to go through the appropriate Swiss Central Authority. Maslon took no such steps.

Despite filing a timely Motion to Set Aside/Vacate Default, the Superior Court of California denied Overturf's motion and subsequently entered a Default Judgment against him in the amount of $253,233.00 on January 23, 2024. (App.17a). Overturf then filed a motion to set aside/vacate the previously-entered default judgment, but the Court denied the relief prayed for on June 5, 2024. (App.6a).

Overturf timely appealed to the Second District Court of Appeal on August 2, 2024. Instead of reviewing the merits, the Court placed the appeal in default on September 30, 2024, because Overturf, acting pro se, allegedly failed to comply with administrative requirements, including filing a Civil Case Information Statement, filing a Designation of Record on Appeal, and paying the $775.00 filing fee. Even after attempting to correct these minor administrative defects and filing a motion to recall the remittitur and reinstate the appeal, the Court of Appeal declined to substantively review the proceedings. (App.4a). An order was filed on January 31, 2025, denying Overturf's Motion to Recall the Remittitur and Reinstate Appeal as well as Maslon's Opposition. (App.2a).

Ultimately, California's Supreme Court did not address the significant encroachments on Overturf's

due process rights. The Supreme Court denied review of Overturf's petition for writ of mandate on June 11, 2025. (App.1a).

Overturf now respectfully seeks judicial intervention to recognize that he was never afforded a fair opportunity to be heard, as service and notice were deficient. Relief from an arbitrary judgment exceeding a quarter of a million dollars and the opportunity to have the case heard by a neutral, unbiased factfinder are essential protections that procedural due process demands.

REASONS FOR GRANTING THE PETITION

I. The Superior Court Allowed Defective Service in Violation of the Hague Service Convention.

The *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (the "Hague Service Convention" or "Convention") is a multilateral treaty intended to ensure that defendants domiciled in foreign jurisdictions receive actual and timely notice of proceedings. *Inversiones Papaluchi S.A.S. v. Superior Court*, 229 Cal.Rptr.3d 701, 706–07 (Ct.App.2018) (citations omitted). The United States was one of the first signatories, and the treaty became effective in this country in 1969. *Id*. This Court has made clear that "[b]y virtue of the Supremacy Clause, U.S. Const., art. VI, the Convention pre-empts inconsistent methods of service prescribed by state law in all cases to which it applies." *Rockefeller Tech. Investments (Asia) VII v.*

Changzhou Sinotype Tech. Co., Ltd., 233 Cal.Rptr.3d 814, 824 (Ct.App.2018), *rev'd and remanded*, 460 P.3d 764 (2020). As applied to Switzerland, the Convention permits service only through the appropriate Swiss Central Authority.[1]

Overturf has been domiciled in Switzerland since 2015. (App.36a, 38a). The address used for service of process by Sally Maslon on Overturf was a former residence with which Overturf had no connection. *Id.* Service was effectuated by substituted service under California Code of Civil Procedure § 415.20, by personally serving an alleged co-occupant at Overturf's former California address—where he had not resided for eight years—and mailing copies of the documents to that same address.

Only after entry of default did Overturf receive notice of the proceedings. Even then, such notice did not constitute actual notice, never being served with a copy of the issued summons and complaint—the goal of Federal Rule of Civil Procedure 4. *See Hanna v. Plumer,* 380 U.S. 460, 462–63 (1965) (citing Fed. R. Civ. P. 4(d)(1)). Once placed on constructive notice, Overturf's former counsel informed both Maslon and the Court that service was defective and provided proof that Overturf was a permanent resident of Switzerland.

In support of Overturf's Motion to Set Aside Default and Motion to Quash Service of Summons for

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[1] *Service Process,* U.S. Embassy in Switzerland and Liechtenstein (last visited September 4, 2025). https://ch.usembassy.gov/service-process/

Lack of Personal Jurisdiction, the following documents were submitted:

1. Declaration of Hans Overturf (App.35a)
2. Confirmation of Residence by the Municipality of Hallau (App.38a); and
3. Proof of Service of Summons. (App.28a)

The Proof of Service of Summons confirms that service was not effectuated pursuant to the Hague Service Convention. *Id.* Instead, Maslon relied on methods available under the California Code of Civil Procedure—but such means are ineffective under the Convention. This failure should have "void[ed] the service even though it was made in compliance with California law." *Rockefeller Tech. Investments (Asia) VII v. Changzhou SinoType Tech. Co., Ltd.*, 460 P.3d 764, 771 (2020); *see also* Fed. R. Civ. P. 4(f)(1) ("by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents").

Overturf's declaration confirmed he has resided in Switzerland since 2015—where he was born and raised—and that he "ha[d] not received any summons and complaint in this action." (App.36a). His position was further corroborated by a certified Confirmation of Residence produced, stamped, and notarized by the Residents' Registration Office of Hallau on August 31, 2021. (Duration of residence: "15 June 2015 – until further notice"). (App.38a). Despite this credible evidence and the timely motion, the Superior Court found that Overturf's affidavit was not sufficiently supported to establish permanent residency in Switzerland. (App.26a). The Court almost entirely relied

on Maslon's declaration to cast doubt on the credibility of Overturf's declaration—an improper favoritism toward the Plaintiff. *Id.*

Appropriate service of summons is a *sine qua non* for the Court's exercise of personal jurisdiction over a defendant. *Omni Capital Int'l., Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987). Once service is challenged, the plaintiff carries the burden to prove jurisdiction by establishing effective service. *Summers v. McClanahan*, 44 Cal.Rptr.3d 338 (Ct.App.2006). As the California Court of Appeal has emphasized, "compliance with the statutes governing service of process is essential to establish th[e] court's personal jurisdiction over a defendant." *Floveyor Int'l., Ltd. v. Superior Court*, 69 Cal.Rptr.2d 457, 460 (Ct.App.1997) (emphasis added) (citation omitted). The Supremacy Clause requires States to adhere to methods of service prescribed by the Hague Service Convention, in all cases to which it applies. *See Rockefeller Tech. Investments (Asia) VII,* 233 Cal.Rptr.3d at 824.

Despite these standards, the Court relied on Maslon's contradictory declaration. Maslon claimed Overturf admitted to living in California and provided California addresses—yet offered no timeframe for such residency. *Id.* She further claimed that Overturf used two different California addresses as return addresses in mailings. *Id.* Nothing established that the service address was Overturf's "usual mailing address." *See* Cal. Code Civ. P. § 415.20. To the contrary, another California address was used for mailings during 2021. The Court's analysis rested on scattered evidence, including Overturf's daughter returning mail sent to the service address and a skip trace conducted by a third party hired by Maslon. (App.26a).

Alarmingly, the Court concluded: "Overturf has not met his burden of showing that he did not receive actual notice of the summons and complaint in this action." (App.27a). This was the wrong standard. Once jurisdiction was challenged, Maslon carried the burden of proving valid service. *See Motul S.A. v. USA Wholesale Lubricant, Inc.*, 686 F.Supp.3d 900, 907 (N.D. Cal. 2023) (citing *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004)). This rule is grounded in Federal Rule of Civil Procedure 4, which requires proof of service to the Court and compliance with federal law, including the Hague Service Convention. *See* Fed. R. Civ. P. 4(c), (k)(2), (I) .

Here, the Court bypassed those protections and placed an improper burden on Overturf, who was already disadvantaged by the lack of actual notice and a meaningful opportunity to be heard. Most troubling, the Court's conclusion omitted any reference to the Hague Service Convention or the undeniable fact that Maslon failed to comply with the methods of service prescribed therein. Thus, despite the Court's improper burden-shifting, Overturf could not be subject to the Court's jurisdiction without Maslon demonstrating compliance with the Convention's service requirements. *See Haywood v. Drown*, 556 U.S. 729 (2009) (a court's invocation of jurisdiction does not obliviate the Supremacy Clause); *see also Hillsborough Cnty., Fla. v. Automated Med. Labs., Inc.,* 471 U.S. 707 (1985) (citing U.S. Const. art. VI, cl. 2) (Supremacy Clause invalidates state laws that interfere with or are contrary to federal law). The method of service in this case was inconsistent with the Hague Service Convention, and any reliance on California's Code of Civil Procedure provisions for substituted service carries no weight.

II. The Court of Appeal Dismissed Petitioner's Appeal on Technical Grounds, Denying Due Process.

On August 2, 2024, Overturf filed an appeal in the Court of Appeal of the State of California, Second Appellate District. Acting *pro se*, the Court found that he failed to substantially comply with the California Rules of Court—rules acknowledged as immensely difficult even for attorneys—by neglecting to: (1) file a Civil Case Information Statement; (2) file a designation of record on appeal; and (3) pay the $775.00 filing fee. The Court subsequently placed Overturf's appeal in default, which led to dismissal. Despite later moving to recall the remittitur—after being misdirected by various clerks—and having a fee waiver application approved, the Court denied his request. (App.2a, 4a).

By declining to reach the merits of Overturf's constitutional claims, the Court exacerbated the very due process concerns those claims sought to vindicate. Due process promotes resolution of claims on their merits, not dismissal based on rigid adherence to administrative technicalities where a litigant has made substantial efforts to comply. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 434 (1982) ("the State may not finally destroy a property interest without first giving the [defendant] an opportunity to present his claim"). *Logan* does not establish a general rule requiring courts to decide cases on the merits even when a party fails to meet procedural requirements. *Id.* at n.7. Yet it reinforces that courts must consider "the importance of the private interest and the length or finality of the deprivation of that interest." *Id.* at 434 (citations omitted).

Here, the private interest at stake—Overturf's due process right to notice and an opportunity to be heard—is a fundamental right protected by the Fourteenth Amendment. U.S. Const. amend. XIV. The entry of a default judgment deprived Overturf of that right permanently. Strict adherence to complex procedural requirements cannot outweigh such a fundamental interest. As *Logan* makes clear, the Court should have considered the merits of Overturf's appeal rather than dismissing it for minor technical defects.

III. The California Supreme Court's Refusal to Review Leaves an Important Federal Question Unresolved

On April 16, 2025, Defendant Overturf filed a Petition for Writ of Mandamus in the Supreme Court of the State of California. On June 11, 2025, the Supreme Court denied Overturf's petition, leaving unresolved an important federal question—whether Overturf was afforded notice and an opportunity to be heard in a manner consistent with procedural due process. (App.1a). *See A.A.R.P. v. Trump*, 145 S.Ct. 1364, 1367–68 (2025) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *see also* U.S. S. Ct. R. 10.

The Superior Court had affirmed personal jurisdiction on the ground that service of process was adequate, concluding that Overturf's evidence of his residency "lacked credibility in light of the contrary evidence Plaintiff provided." (App.8a). As a result, Overturf is left with a decision by the Superior Court of California, County of Los Angeles, that directly implicates procedural due process under the United States Constitution. (App.6a, 15a). *See* U.S. Const. Amend. XIV; *see also* U.S. S. Ct. R. 10(c).

The right to procedural due process of law "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Moreover, "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* (citations omitted). The opportunity to be heard is triggered when "th[e] summons, or equivalent notice [being] employed." *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) (citation omitted). Due process requires something more than a mere gesture for notice. *Mullane,* 339 U.S. at 315. The constitutionality of a method of service is only proven by a showing that it is "reasonably certain to inform those affected." *Id.*

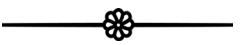
Consistently, due process requirements apply equally when service is effectuated abroad. In such cases, the Hague Service Convention ensures that notice is "reasonably calculated to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705 (1988) (quoting *Mullane*, 339 U.S. at 314).

Here, it has already been established that service of process on Overturf, as required under the Hague Convention, was not fulfilled. More troubling than Maslon's deviation from the Treaty are the consequences imposed on Overturf, who was never afforded an opportunity to be heard. While Overturf resided in Switzerland, service was attempted at a California

address by leaving copies of the documents there. (App.28a). The process server, however, had no basis to believe that Overturf resided at that address. In his declaration of diligence, there is no reference to Overturf, nor any indication that the alleged co-occupant even knew who Overturf was. At most, this individual appeared to be a subsequent property owner at Overturf's former residence—someone with no duty to forward legal papers. *Id.*

In fact, official government records from Switzerland should have prompted the Court to require Maslon to comply with the Hague Convention to ensure Overturf actually received notice. Instead, the Court accepted service based on speculation, without credible proof that Overturf resided in California or ever received the papers. (App.27a). Overturf only became aware of the action after a default had been entered against him.

Rather than resolving doubts in Overturf's favor, the Superior Court brushed aside clear defects in service of process. *Id.* Without compliance with the Hague Convention and without actual notice of the proceedings, Overturf's due process rights were violated. A default judgment was entered arbitrarily, denying him any opportunity to present objections or defenses.



CONCLUSION

For the foregoing reasons, Petitioner Hansueli Overturf respectfully requests that this Court grant this Petition for a Writ of Certiorari and review the decision of the Supreme Court of California, which denied his petition for extraordinary relief. The judgment below leaves unresolved a substantial federal question: whether entry of a default judgment without proper service and actual notice violates the fundamental guarantees of due process under the Fourteenth Amendment. Certiorari is necessary to ensure that litigants are not deprived of life, liberty, or property through arbitrary procedures that fail to provide notice reasonably calculated to apprise them of the proceedings and afford a meaningful opportunity to be heard.

Respectfully submitted,

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